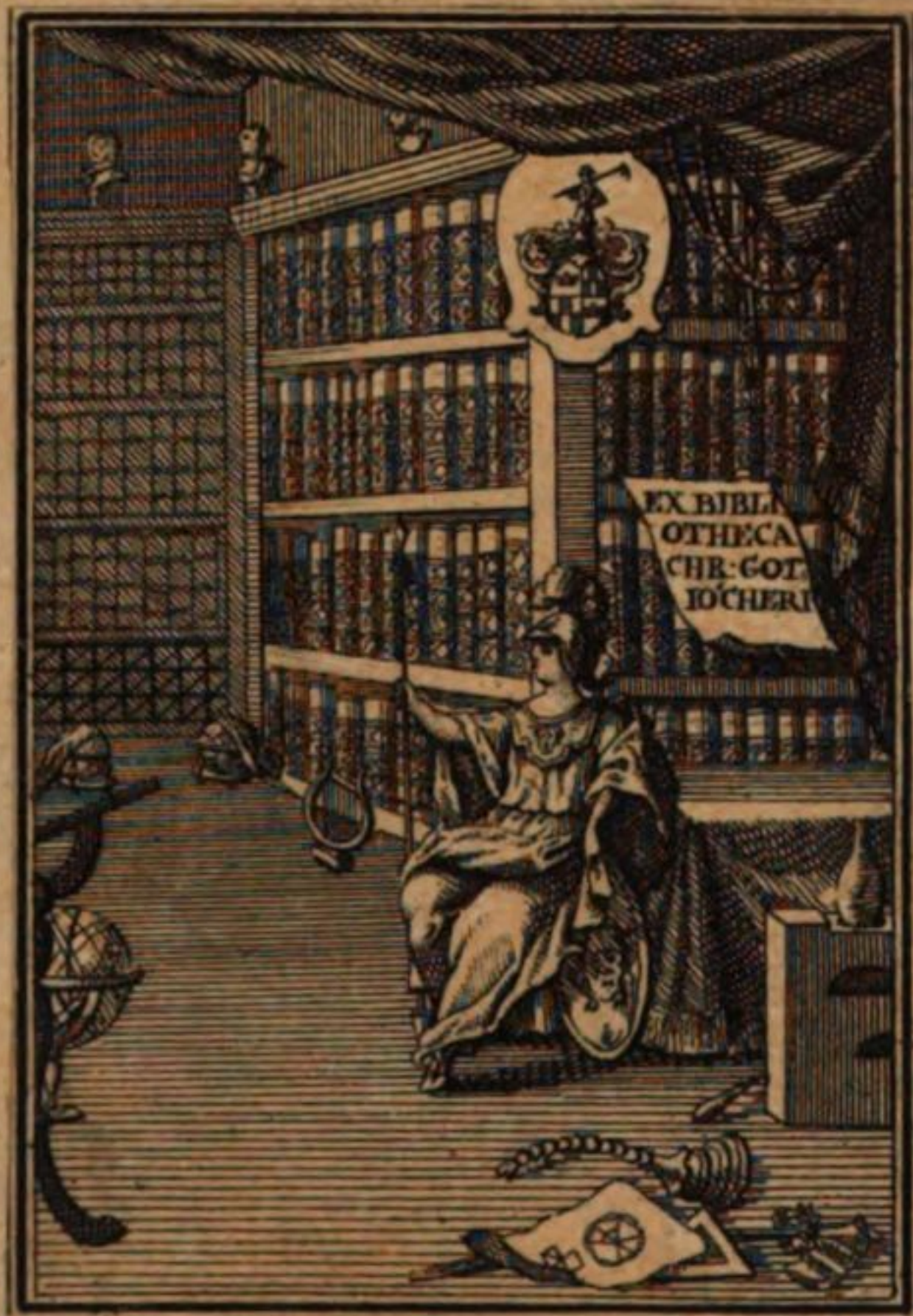




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FROM
The Reign of King RICHARD II.
TO
The End of the Reign of King GEORGE I.

The SECOND VOLUME.

With two Alphabetical Tables to the Whole.

The SECOND EDITION, with great ADDITIONS.

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 554. col. 1. l. 12. r. *Hutton's Reports*.
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A Complete
COLLECTION
OF
TRIALS, &c.

XLIV.

The Trial of JAMES Duke of HAMILTON, and Earl of CAMBRIDGE, before the High Court of Justice, for High-Treason, Febr. 9. 1648. I Car. II.*



R. STEEL and Mr. Cook, the Counsel for the People of *England*, did exhibit on the Ninth of *February*, being Friday, the following Charge :

That the Earl of Cambridge, about the 19th of July last, traitorously invaded this Nation in a hostile manner, and levied War to assist the King against the Kingdom and People of England, and had committed sundry Murders, Outrages, Rapines, Wastes, and Spoils, upon the said People; and particularly about the 20th of August, near Preston, did make War, join Battel, and fight against the Forces of the Parliament, and therein did murder and kill Colonel Thornley and others.

To this the Duke put in the Declinatour and special Plea following, intending at last to answer the Charge, if the Plea was not sufficient: having first told the Court, he was better known by another Name than the Earl of *Cambridge*. His Plea consisted of three Heads: First, He pleaded this his undertaking that Employment was by Command of the Parliament, and Supreme Authority of the Kingdom of *Scotland*, for such Ends as he conceived were good and justifiable,

and in no way derogatory to the Peace and Happiness of these Dominions: That he did earnestly endeavour to decline it, but that not being accepted of, he could not disobey their Commands without incurring the severest Censures. Secondly, That he was born in *Scotland* before the Naturalization of his Father in *England*, therefore he conceived himself an Alien, and not triable in *England*. Thirdly, That he had render'd himself Prisoner upon Capitulation and Articles with those who had Major-General *Lambert's* Commission; and that by these he was first a Prisoner of War; next, his Life and the Safety of his Person was secured to him by the Articles, which were signed by the Commissioners of both sides, before he was their Prisoner, and that they could fasten neither a Breach nor Non-performance on him. Upon this the Counsel of the People caused the Act of his Father's Naturalization to be read, and spake a little to aggravate and set out his Fact: but he desired a convenient time to procure Papers, Witnesses, and other Evidences material to his Plea, which he said was seldom denied to any in that condition; and it was well known to many there, how that since the beginning of this Parliament many Weeks were granted to an Eminent Man upon his Trial, (by whom he meant the Earl of *Stratford*, who had time allowed him to send to *Ire-*

* Dr. Burnet's *Memoirs of the Dukes of Hamilton*, p. 385, &c. *Clar. Hist.* Vol. 3. p. 204—209,

land.) The Court adjourned to the next day, without giving him any satisfactory Answer. But the Duke's Carriage and Discourse that day gained much on all the Spectators, being so serene and calm, that his very Enemies did applaud it.

Saturday the 10th, in the Evening, his Grace was again brought to the Bar, and he desired Counsel, which was granted; and it was referred to him, whether the Court or himself should name them: which he then passed over, and without much speaking on either side, the Court adjourned; notice being given him, that he must appear again on Tuesday the 13th. But no Order being issued forth for Counsel, some Counsel who were dealt with did decline the Employment.

Tuesday the 13th, his Grace being brought again to the Bar, desired a longer time, since notwithstanding serious means had been used, no Lawyer would be his Counsel without the

Court's Orders. This was granted by the * President after some Exposition, and upon his Grace's Nomination, Mr. Chute, Mr. Hales, Mr. Parsons, and Dr. Walker, were assigned him for Counsel, to have free Access to him, in the presence and hearing of some of his Keepers, and to be ready against Thursday following to maintain his Plea: upon which, the Court adjourned till the 15th.

Thursday the 15th, his Grace being again brought before the Court, declared that their Order being offered to his Counsel, they all found themselves unable to plead for him, or to do what was otherwise fitting, and so had refused to come and speak with him at St. James's. The Court objected the time they had already granted, and alledged this was a mere Delay: but his Grace protested it was true, and offered one of his Servants to attest it. Dr. Walker in Court declared, he would not be of his Counsel, by reason of his Employment under the Parliament. His Grace desired a convenient time, as was usual in the like Cases, not only in respect of his Lawyers, but that he might send to Scotland, and other remote Places, for Witnesses and Evidences necessary for his Defence; since no Prejudice could come by that Delay, and this was denied to none in Trial for Life, and had been granted to Mac-Guire and Mac-Hum, two Irishmen. But for his Counsel, the Court ordained, that any of the six he should name might be authorized to advise with him in private, and to speak in Court in the Matter of Law arising out of the Fact of the Plea, after the Matter of Fact was handled, which his Grace was to maintain next Saturday. And for the Time he craved, they said, he looked on the unreasonable Time was granted to *Strafford* and *Canterbury*, those grand Offenders, with whom he had been too familiar, as Precedents; but those were Precedents without a Precedent, and none were to expect the like at this time, especially since there were now so many Prisoners to be try'd.

Saturday the 17th, his Grace was brought to the Court with some Witnesses, his Counsel being near, but not present; and in order to the Parts

of his Plea, he first produced Duplicates of the Commission, and Orders from the Parliament of Scotland and Committee of Estates there. The Court demanded Evidence for both. His Grace answered, Were Time granted, he would not only sufficiently prove these, but many other Points belonging to his Justification. But the Court answered, That unless they were presently attested *viva voce*, they would not suffer them to be read. Whereupon his Grace desired that his Servant Mr. Lewis might be examined, whose Testimony was accepted, and the Papers he produced were received for Evidences, and read. Next, the Declaration containing the Ends of the Engagement was read, and being proved by the same Witness, was left in Court with the former Papers. Then the Court upon his Grace's desire produced the original Articles of Capitulation, which were read; and Mr. Cole proved he saw them delivered to his Grace about Nine in the Morning, before the Lord Gray came in.

The Lord Gray deposed, That two several Summons, which were sent by him to his Grace to yield upon Mercy, were both answered negatively in respect of the Cessation and Treaty; That by a Letter from *Cromwell*, dated *Warrington August 20*, he was enjoined to pursue the *Scottish* Forces with all vigour; That he had received Letters from the *Staffordshire* Gentlemen with whom the Cessation begun, intimating that they had condescended to it, on purpose to gain a few days time to strengthen themselves, in regard the *Scots* were so numerous: and that he dispatched away *Wayte* and *Peters* that Morning in which the Treaty ended, to protest against it.

Peters was next examined, and answered, That going that Morning to protest, by Order from the Lord Gray, he came accidentally to the Duke, where he found the Hostages in his Chamber, and asked if he was willing to be the Lord Gray's Prisoner, who answered, he could not, in regard of the Treaty; but if he were afterwards to be disposed of, he had rather be his Lordship's Prisoner than any other's, being of his Acquaintance: That he had seen the Summons, and the negative Answer to them; That this was about five in the Morning; and that *Wayte* and he went a part of the way towards the Place of Treaty, where he heard the Articles were concluded.

Lilburn was next examined, who deposed, That the Articles were signed by himself, and the other Treaties, about Five in the Morning, and were to be ratified by the Duke and *Lambert*; and that his own Meaning of preserving the Duke's Life (he knew not how the rest meant) was only to preserve him from the Violence of the Soldiers, and not from the Justice of the Parliament. At this *Peters* rose up, expressing great dislike of *Lilburn's* Gloss, saying, That much Tenderness was to be used where the Life of so eminent a Person was concerned: That he had seen many Articles of War, but never had heard of such Ambiguity; and that it was clear by those Articles the Duke held his Life secured, as well from the Parliament as the Soldiers; and wished to God, that if their Commissioners had meant otherwise, it had been so expressed in the Articles, it being most necessary that Articles in a Concernment of Life should be plain and

and certain. The President answered, You say well for the future, but it is now too late.

His Grace resumed what had been said, and spoke much on the Articles for weakening *Lilburn's* Gloſs.

Next the Governour and Marshal of *Windsor* were examined about his Escape from *Windsor* Castle. The Governour deposed, That the Duke said to him he needed not fear his Escape, he would be a true Prisoner, and not go away though the Gates were opened. The Marshal said, he only heard this from the Governour.

The Duke expressed a deep Resentment of this Injury done him by the Governour, who wounded his Honour so much, which he valued above all earthly things; and did shew how unlike it was, that any such thing was either demanded or granted, since that is only done for a little more Liberty, whereas he was all the while kept under strict Guards; nor had he the liberty of walking in the Park, but was always guarded by two Keepers, the one lying all night in the Room next him, and the other every night locking the Door, and carrying the Key with him: That the Governour's Testimony in this matter was not to be received, he being a Party, and now in hazard for his Negligence, for he was told that if he escaped, he should die for it; adding, that if he were not a Prisoner, he would desire Right of the Governour for that Scandal cast on him, and chuse no other place for it but *Westminster-Hall*. But to all this the Governour made no Reply; only the President said, that though he could not blame the Earl of *Cambridge* for what he said, yet for all that the Governour was not to be discredited.

After this, the Duke spake a little to all the three Branches of his Plea, reserving the fuller enlarging upon them to his Counsel. He insisted most on the Articles, which he doubted not were sufficient to protect him: he desired them to consider, how sacred Articles of War were reputed in all Places, and among all Nations, and how inviolably they were kept, all Princes and States being most careful to observe them, not only to Strangers, but to Subjects; having great regard to Articles, though only for Quarter, much more when there was a Capitulation for Life: adding the following Instances. *Elisha* the Prophet would not suffer the King of *Israel* to kill the Syrian Captains, saying, *Wouldst thou smite those whom thou hast taken captive with thy Sword and thy Bow?* The Blood of *Abner* lay on *Joab's* head, who killed one that had the King's Safe-Conduct. The *Gibeonites* also, though they used *Joshua* deceitfully, yet were preserved according to the Articles given them; and not only *Saul's* House, but the whole Land suffer'd for the Violation of them. That Prince *Robert* and the Lord *Cottingham*, tho excepted from Life or Pardon by Act of Parliament, were notwithstanding that, upon the Articles of the Rendition of *Oxford*, permitted to go beyond Sea, and never questioned for Life: and the like Justice was done the Earl of *Bristol* and the Lord *Paulet*, upon the Articles of the Surrender of *Exeter*, tho both were excepted from Pardon: And that the Lord *Fairfax* and the Officers of the Army were most careful to see Articles always kept, in which they judged their Honour deeply concerned, and had often written to the Parliament to that end; therefore he did not doubt the like Justice would

be done him. By this time it was late, and the President appointed Monday next for the Duke to finish his Plea in Matter of Fact, ordering his Counsel to be in the Court, for their better Information; and so they adjourned.

Monday the 19th, the Duke and his Counsel were brought to the Bar. Colonel *Wayte* was examined, who deposed, That the Duke rendered himself to be the Lord *Gray's* Prisoner, and desired *Wayte* to protect him from the Multitude, who thereupon left a Guard at his going away. But during his Deposition, *Peters* said, *He lyes, he lyes!* And *Peters*, *Spencer*, and other Officers who were with *Wayte* at *Utoxeter*, being examined, did totally falsify his Deposition. Divers were also that day examined about the Place of the Duke's Birth, who all swore, they heard it always said that he was born at *Hamilton*, and that it was not a thing to be doubted of. Others were examined about the signing of the Articles, who all witnessed, that they were signed long before the Lord *Gray* came: and Major *Blackmore* deposed, That the Duke's being the Lord *Gray's* Prisoner, was by an Agreement betwixt him and *Lambert*, whose Occasions pressed him to go suddenly Northward.

After this the Duke spake a little, to shew how little weight was to be laid on *Wayte's* Testimony, which was so evidently disproved. Next, his Counsel asked the Court's Directions how they should proceed; and the Court answered, That after the Matter of Fact was handled, they might plead in Law upon all the parts of the Plea: and they told the Duke, by the next Wednesday to finish his Evidence.

He desired a Warrant for bringing some Gentlemen, then Prisoners in *Whitehall*, who were his material Witnesses: but the Court adjourned, and promised to consider of that Motion in the Painted Chamber; yet they granted it not.

Wednesday the 21st, the Court sat, and the Duke was brought to the Bar. Some were interrogated about the Time of his Birth, to prove him *Post-natus*: but it was not proved, one Person only swearing, that he heard him say he was some Years younger than the King. Evidence was also brought of his Conjunction with *Langdale*, which they accounted Treason; yet even that was not clearly proved, tho it was much laboured. Some Letters of his to *Langdale* had been taken, and were brought into Court: but as the Letters proved no Conjunction, so it did not appear that they were his Letters; only *Peters* asserted they were like his Hand. Then a Vote of the two Houses was read, repealing a former Vote of setting an hundred thousand Pounds *Sterling* upon him for Ransom; and Proof was brought, that notwithstanding Articles were given, yet some had been forced to take the Negative Oath; and thereby they studied to evince, that the Parliament did not hold themselves bound to stand to Articles.

After this, his Grace resumed the Substance of all those Evidences, and shewed that it was not proved he was a *Post-natus*, nor that he joined with Sir *Marmaduke Langdale*, who neither received Orders nor the Word from him, but marched and quartered apart; and that tho he had done otherwise, it could not be criminal in him, since he had no Orders to the contrary

from the Parliament of *Scotland*, but was commanded by them to join with all who would concur with him for prosecuting the Ends of the Engagement, of which Sir *Marmaduke* approving, he had no reason to refuse Concurrence with him; neither could this be made Treason by the Law of *England*: of all which it seem'd the Parliament was once well-satisfied, since by a Vote they had fined him in an hundred thousand Pound *Sterling*, as the Price of his Liberty; by which it appeared they look'd not on him as a Traytor, but as an Enemy who had Life granted him by Articles.

Upon this, the Court adjourned till Thursday the 22d, and his Counsel were appointed to plead, and he was to close his Evidence. The Duke was brought to the Bar, and by divers Witnesses it was proved, that there was no Rendition made to the Lord *Gray*, but a plain Refusal; and that the Treaty was ended, the Articles signed, and *Lambert* come up, before the Lord *Gray* came thither. There was also produced an Order of Parliament, made four Years before, That no Quarters should be given to any of the *Irish* in Arms, which inferred that others might have them: and another Order was read of the 14th of *July* last, declaring all the *Scots* who entred *England* Enemies, and all the *English* and *Irish* who assisted them Traytors; and with this he closed his Evidence. And since he was not to be suffered to speak any more, he enlarged on all the parts of his Plea, and spake at length as follows.

That he was sent by the Kingdom of *Scotland*, which was a free Kingdom, and independent on *England*; That he having had his Birth, Honour, and Fortune there, was bound to give obedience to their Orders; That for himself, he had lived much out of Business, and was seldom in publick Trust in that Kingdom, nor very desirous of any; but that being commanded to undertake the Charge of General, for Ends which he conceived lawful, and no way contrary to the Peace or Interest of *England*, he was obliged to follow their Orders: and that by some Papers emitted by the Parliament of *England* against that Expedition, they declared they look'd on it as a National Breach, whereby *Scotland* had violated their Leagues and Treaties with them, so that it was no private Act of his: That the entering of the *Scottish* Army into *England*, Anno 1640, was accounted no Invasion nor Treason, but on the contrary was acceptable to this Kingdom, which gave a brotherly Assistance for it; and that the late unfortunate Army was designed fully for as good Ends, and would have been so look'd on had it prospered. And for his joining with Sir *Marmaduke Langdale*, he answered it as was before set down. Therefore he being taken Prisoner in such a War, he conceived it without a Precedent that he should be try'd for his Life, for serving his native Kingdom in an open War. As for his being an Alien, he referred that to his Counsel, but said it was undeniable he was born in *Scotland*, nor was he proved a *Post-natus*; he was also born before his Father's Naturalization, and so not included in it, and his own Naturalization had been in agitation in the beginning of this Parliament: That his sitting in Parliament did not conclude him an *English* Earl, for if questioned, he might probably have been expel-

led out of the House of Peers, as his Countryman Mr. *Walter Stuart* was out of the House of Commons; and that his being an Earl did not naturalize him, that being the King's single Act, whereas Naturalization was only by Act of Parliament. As for the Articles, it was clear, that *Lambert* being a General Officer, commissioned by Parliament, was impowered to capitulate both by the Parliament and by *Cromwell*, the Lord *Gray* having no Authority from the Parliament, but only from *Cromwell's* Letter: That he became the Lord *Gray's* Prisoner only by *Lambert's* Order, and that he made no Surrender till the Articles were signed and delivered: That tho the Lord *Gray* had protested against it, (and yet only an Intention to do it was proved) he was not concerned in it, nor bound to take notice of it, *Lambert* being the Parliament's Officer, and sent against him by them. That Articles were to be expounded by their plain Meaning, and not by any mental Reserves pretended by the Commissioners: That by the first Article, he was a Prisoner of War, and that it was seldom known that the Life of any such was taken; and that by the second Article, Life and Safety of Person were expressly secured without any exception: That if Articles were now violated, it would make the Sequel of the Wars, if any more followed, a downright Butchery, since none would any more trust to a Capitulation; which Mischiefe he pray'd God to avert. That his Escape out of Prison was no Breach, he being only bound by the Articles to deliver himself Prisoner, which he did, but not to continue so. And he concluded, That he was confident, had he no better Plea, his Articles were sufficient, according to the Laws of all Nations, to preserve his Life.

Then the President asked him, if he had any thing to say as he was Earl of *Cambridge*? Whereupon he and his Counsel moved, That if what he had said and proved was not satisfactory for the Averment of his Plea, he might answer the Charge exhibited, which he had not yet done. But to this, neither the Court nor their Counsel would yield, tho they gave no reason for it, save only that it imply'd a Desire of Delay: but the reason, as was said, was, That they knew had they yielded to that, the Charge had been overthrown, since the Law of *England* does not admit that to be Treason which they charged on him, that he had assisted the King against the Kingdom and People by levying War. Then the Court told his Counsel, that Saturday was the longest time they allow'd them for performing their part: but the Counsel answered, That it was impossible for them to undertake it, and discharge their Consciences to their Client, having so short a time allow'd them; there being a necessity of searching divers Records for Precedents, which required a competent time, as had been allow'd in former Cases. But the Court refused to promise it, only they said they would take it into their consideration. The Counsel insisted, and said plainly, they declined the Employment on those Terms, and would be forced to declare it.

Monday the 26th, the other two Officers that had signed the Capitulation for the Duke and his Troops, who had been sent for a great way off, were examined; who agreed with the former Witnesses in Matters of Fact, and also with

Lilburn,

Lilburn, that by signing the Articles, they only meant the Duke should be preserved from the Violence of the Soldiers, and not from the Justice of the Parliament. Then the Counsel began to plead, and all four spoke on the several Heads of the Plea. *Mr. Heron* spoke cursorily and elegantly, but not very materially: *Mr. Parsons*, a young Man, spoke boldly, and to good purpose: *Mr. Chute* the Civilian spoke learnedly and home: and *Mr. Hales* (since the much-reowned Lord Chief Justice of the *King's-Bench*) elaborately and at length. The Heads of their Arguments follow.

The Duke being, as was granted, a born *Scotchman*, his Tye of Obligation and Subjection to that Kingdom was indispensable and indissoluble; so that his late Employment could not be refused when laid on him by the Authority of that Kingdom, no more than a Native of *England*, living in it, can disobey the Commands of this Parliament: whereas any Subjection the Duke owed the Parliament of *England* was only acquired, and dispensable. That since no Man can be a Subject of two Kingdoms, whatever Tye lay on him to the Kingdom of *England*, it was not to be put in competition with what he owed *Scotland*; it being a Maxim in Law, That *major Relatio trahit ad se minorem*, and that *Jus Originis nemo mutare potest*: That there was an Allegiance due to the King, and another to the Kingdom, and no Treason could be without a Breach of Faith and Allegiance due to them against whom it was committed, for these Kingdoms were two distinct Kingdoms; and tho the Allegiance due to the King was the same in both Kingdoms, yet that due to the Kingdoms was distinct: nor was the actual Administration of the Kingdoms in the King's Person, when the Duke got his Employment. Therefore as his Allegiance to the Kingdom of *Scotland* was antienter and stronger than any Tye that lay on him in *England*, so what he did by their Order might well make him an Enemy to this Kingdom, but could not infer Treason. Yet all this of the Allegiance due to the Kingdom was founded on no Common or Statute Law, as *Mr. Hales* himself confessed afterwards: but he urged this well against those who asserted it, it being the universally received Maxim at that time.

That whether he was a *Post-natus* or *Ante-natus*, did not appear; but tho he were, it did not vary the Case, nor his Obligation to the Place of his Nativity: and so tho he were *Post-natus*, or accounted a Denizen by his Father's Naturalization, his Offence could not be Treason, but Hostility at most; and by that supposed Hostility, he could only lose his Privilege of a Denizen, but could not be made a Traytor, there being no Precedent where ever any Man was attained of Treason for a hostile Invasion, and it was questionable if this Offence could amount to that. Nor could any Case be alledged, where one born in another Independent Kingdom, acting by a Commission from that Kingdom, and residing there when he received his Commission, and raising the Body of his Army in that Kingdom, and coming into this in an open hostile manner, was ever judged guilty of Treason. Naturalization was intended to be a Benefit, and not a Snare; so that one might well lose it, but was not to be punished for it. And so when *France* and *England* were under one Sovereign, divers of both Nations were naturalized in the

other; yet when Hostility broke out betwixt them, many so naturalized fought on the side of their native Kingdom, for which none were put to death, tho divers were taken Prisoners. And in *Edward* the Third's time, tho' he claimed *France* as his by his Right; yet when the Constable of *France* invaded *England*, and was taken Prisoner, he was not try'd, nor put to death, but sent back to *France*, as being a Native of that Kingdom. And when *David Bruce* King of *Scotland* invaded this Kingdom, and was taken Prisoner, great Endeavours were used to find a legal Ground for his Trial, he being Earl of *Huntingdon* in *England*; but this Plea was waved, for it was found that it could not be done justly, that being but a less Degree of Honour, tho King *Edward* claimed a kind of Homage from the Crown of *Scotland*. That if the Duke were on that account put to death, it might prove of sad consequence, in case there was War any more betwixt the Kingdoms; since most of the present Generation were *Post-nati*, and all would be so quickly: and yet if the Lord *Fairfax*, who was both a *Post-natus* and had his Honour in *Scotland*, were commanded to lead an Army thither, and being taken were put to death, it would be thought hard measure. For the Duke's Father's Naturalization, it was true, by the Statute of the 25th of *Edw.* 3. provision was made, that Children born without the Kingdom, whose Parents were then in the King's Allegiance, should be Denizens: but the Duke was born before his Father's Naturalization, which can never reach him, none but the Issue after his Father's Naturalization being included within it; and the word *Hæres* in the Act is only a word of Limitation, and not of Creation: nor did his making use of the Assistance of some *English* Forces, make him a Traytor. It is true, if an *Englishman* conduct a foreign Army, or if a Foreigner come of his own head, or in a rebellious way, to assist an *English* Rebellion, it will amount to Treason: for the Act of such an Alien is denominated from the Crime of those he assists here, where he owed a local Obedience, which was the Case of *Shirley* the *Frenchman*, and of *Lopez*. But if an Alien come with a foreign Force, tho he make use of *English* Auxiliaries, that only infers a Hostility, but no Treason; and was the Case of the Lord *Harris* a *Scotchman*, 15 *Eliz.* and of *Perkin Warbeck*, both having *English* Help: and tho *Warbeck* was put to death, it was by no Civil Judicatory, but only by the Will of *Henry* the Seventh, who erected a Court-Martial for that purpose. The present Case was yet clearer, where the Alien had Authority from his native Kingdom, and was commanded by them to make use of *English* Help: so that tho *Langdale's* assisting the Duke did make himself a Traytor, yet the Duke's accepting of it only infers an Act of Hostility. And whereas it was objected, That the Parliament had already by their Act which constituted this Court for his Trial, declared him a Traytor; it was not to be disputed what the Parliament had power to do, but no Parliament had ever done the like before: and the Meaning of the Act must be, that he should be try'd whether guilty of Treason or not, since if the Parliament have already declared him a Traytor, further Trial was needless. And it was clear, the Parliament by their Act in *July* last, which declared all the *Scots* who entered *Eng-*
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land Enemies, considered not the Distinction of *Post-nati*, nor judged that inferred Treason, since most of them all were *Post-nati*; That many of the Officers of that Army, who had been taken Prisoners, tho' clearly *Post-nati*, were ransomed, others banished, others still in Prison: why then should the Imputation of Treason be fastned on the Duke, when the rest were used only as Enemies?

And for the Articles, they made it appear, they were the Publick Faith of the Kingdom, when given by Persons publickly authorized, upon the observing of which inviolably, depended the whole Intercourse of all Nations, and their mutual Confidence, which is founded on all States being bound by the Acts of their Publick Ministers: That this was not a pure Rendition, but a Paction concluded upon Deliberation, wherein the Parliament lost nothing, but on the contrary were Gainers: That the Parliament had ratified this upon the matter, by voting a hundred thousand Pounds Sterling Fine, to be the Price of the Duke's Liberty: That the secret Sense the Treators pretended, was not to be considered, since all Compacts are to be understood according to the clear Meaning of the Words, and the universal Sense of Mankind, who look on Articles wherein Life is granted, as a sufficient Security, not only from the Soldiers, but from the Civil Powers; and that these Treators, when the Articles were agreed, should have made known their secret Meaning, otherwise it was not to be regarded. And it was a most dangerous Precedent to admit of collateral Averments of secret Meanings against express Words, much more in a Case of Life, and yet much more in Military Agreements, wherein the Concernments of Armies and Nations were included, and which concerned the Honour and Security of all Soldiers. And for this divers Precedents were cited. The Argument ended thus: That as the Court consisted of Gentlemen, and Lawyers, and of martial Men; so the Plea consisting of three Branches, was the more proper for their Cognizance, a part of it being drawn from the Law of *England*, another part from the Civil Law, and a third part from the Martial Law: And if the Plea in any of the three Branches was made good (and they doubted not but it would be found so in them all) the Court would be satisfied, there was Reason and Justice for preserving the Duke's Life.

The Court adjourned till Friday the second Day of *March*, and the Duke being again brought to the Bar, the Counsel for the People pleaded, but so poorly, that all who heard them were ashamed: But they had one Advantage, that neither the Duke nor his Counsel were allowed to speak after them, nor to discover their impertinent Allegations, which made the Duke's Counsel obviate all they could imagine they might say, though they said a great deal so far out of the way of Reason, that none could have thought of it; and yet it was so weak, that it needed neither be obviated, nor replied to.

Yet at the end of every Branch of their Pleading, I shall add the Answers against them, as they are set down in some Notes taken by the Duke's Counsel.

They begun with *Alienage*, and studied to make it appear, that though he was a *Scotchman*

born, yet he was no Alien, having enjoyed all the Privileges an *Englishman* was capable of, as being a Peer, a Privy-Counsellor, possessing Lands and Inheritances, and marrying in *England*. But *Naturalization cannot be but by Act of Parliament, and not by the King's single Deed; much less by those Privileges of which any Stranger might participate.*

Next they urged his Father's Naturalization, and since his Name was not in that Act, as was in other Acts of Naturalization, that proved him to be no Alien, otherwise his Name had been put in. *From that it rather appeared he was an Alien, since others found it necessary to insert their Childrens Names; which his Father not doing, proves the Son an Alien still.*

They also urged his being *Post-natus*, which must be held true, since he brought no Evidence to the contrary; and it being so, his Tie of Subjection was as great in *England* as in *Scotland*: That Allegiance was only due to the King, and not to the Kingdom; That there was a Kingdom when he entred into *England*, and that though he was secluded from the Government, yet all Writs were issued in his Name; so that this Expedition was a Breach of the Allegiance he owed the King. *This was the oddest part of all their Plea, since his Charge was, That he assisted the King against the Kingdom; and now they did plead he owed no Allegiance to the Kingdom, but to the King, whom they had so lately murdered; the Duke's coming with his Army being only to relieve him from the barbarous Usage he had met with.*

They also urged at large, That an *Englishman's* Children, in what place of the World soever they were born, were Denizens of *England*, and cited many Precedents. *But the Mis-application of them was gross and palpable, those being of Persons who were Englishmen before their Children were born; whereas the Duke's Father was naturalized after he was born; so that he could not communicate that Privilege to him, which he did indeed transmit to his Children born after his Naturalization.*

Next, they pleaded, That the Parliament of *Scotland* had no Power to commissionate him to enter into *England*; and that if some of them were there, they ought likewise to suffer for it; and it was fit he suffered for his Masters, who employed him: That it was pity the King had not suffered sooner. They also produced many Precedents of Strangers being condemned as guilty of Treason, for Treasons committed in *England*; as the Queen of Scots, Lopez, Perkin Warbeck, the Lord Harris, Shirley the Frenchman, and the Spanish Ambassador. *All this was obviated in the former Argument, where Distinction was made betwixt secret Practices, and an open Invasion with a foreign Force.* They added, That *Scotland* belonged to the Crown of *England*, and so was to be look'd on as some of the Counties of *England*. *But Scotland had no Subjection to the Crown, but only to the King of England, whom they had murdered, and so they had no Power to judge any Scotchman.*

As for the Articles, they pleaded it was not in the power of the Army to absolve any from the Justice of the Parliament, which being above them, was not tied to their Articles; and therefore, though they confessed the Words ought to have been less ambiguous, yet they said, the Exposition of those who signed them

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was to be admitted, since every Man was to be the Expounder of his own Words; and pleaded some Precedents about the Exposition of ambiguous Words. *But the Words here were plain and not ambiguous, only a treacherous Equivocation was invented to break them.*

Cook, by a strange Subtilty, said, The Articles only secured his Life during Imprisonment; so that his breaking of Prison, and being retaken, put an end to the Obligation of the Articles. *Though he broke not Prison, but went out at Door and Gate, which was no Crime.*

Mr. Steel, Attorney-General on behalf of the Commonwealth.

My Lord,

THE Counsel for the Earl of Cambridge have framed their Arguments upon the Fact, as they conceived it proved; and also by admittance of the contrary in some Points. I shall use the same Method; first arguing from the Fact, as I conceive it stated by the Proofs produced; and then by admittance of the contrary, that though the Fact should be as they would have it, that yet the Law will fall out to be against them.

The Charge being read to the Prisoner, he hath thereunto put in his Plea, consisting of three Parts; the Truth and Validity whereof hath been denied on the behalf of the Commonwealth.

First, The first Part of his Plea was, That he was employed by the Parliament of the Kingdom of Scotland, not to invade this Kingdom, but for the Ends declared by them. The Improvement made of this part of the Plea, is, That the Earl was but a Servant in this Expedition, and under the Authority and Command of another, and tied under Oaths and Penalties to give Obedience; if he had disobeyed, he had been liable to Punishment; therefore it were hard for him to be punished for obeying also: That he hath not exceeded his Commission: Besides, the Parliament of England in their Declaration of the 17th of February last, lay the Blame of this Invasion upon the Parliament of Scotland: And lastly, That the Earl's Case is not unlike that of an Ambassador, who is not to be blamed for acting against a State, if he have it in *Mandatis*, as in the Case of the Bishop of Ross, in the Reign of Queen Elizabeth.

By endeavouring to give Satisfaction to all which, I shall dispatch what I have to say upon this first part of the Plea.

I shall admit it proved, That he had that Commission and Authority mentioned; and also, that the Rule is generally true, That a Man is not to be punished for an Act which he doth by the necessity of Obedience, because he hath not *solutum Arbitrium*, which is required to denominate Actions either blame-worthy or excusable: but I shall easily prove, that this Rule is capable of Restriction, both by the Rules of Law and Reason; and if we observe the Distinctions aright, which determine this Question, we shall still find the Earl of Cambridge within that part which renders him inexcusable.

First, The first difference is, where the Action is lawful, and where unlawful, which is commanded: If it be lawful, a superior Command may dispence with some Circumstances; but if unlawful, the Servant obeying, is not the less to be

blamed. I never held that Law of *Ina* the Saxon King to be warrantable Divinity; *Servus si quid operis patravit Die Dominico ex precepto Domini sui, liber esto*, if the Precept it self were unjust.

Now for the Action in question, wherein this Earl was engaged; it is not defended by his own Counsel, the Dispute being only *de modo*, whether he be to be punished as an Enemy, or as a Traytor; though if this Argument held, he were neither way to be punished: and therefore certainly the Necessity of his Obedience is no Mitigation for his Crime; and if it should, *Empson* and *Dudley*, with all their monopolizing Successors, had been unjustly censured, who always have had Patents and Commissions from Authority to plead: And so also all that Catalogue of former Traytors, who have hatched their Treasons and Designs against this State in foreign Parts, and have ever had the Pope or foreign Princes to put a Stamp of Authority and Command upon them, must by this Argument be in some measure justified.

It was never expected from any under Command, to write himself more a Servant than *usque ad aras*, those being the *Hercules's* Pillars whereon a *Non plus ultra* is written; and therefore whoever exceeds those Bounds, he will find it to be at his Peril.

Secondly, The second Difference is, where the Instrument is *inanimatum*, and where an active living Instrument: Of the first it is truly said, *Instrumenti nulla vis*, all being therein attributed to the principal Efficient, but otherwise of the other. From hence the Statute of 1, 2 *Phil.* and *Mary*, c. 10. did justly repeal the Statute of 33 *H. 8.* c. 20. which had punished a Man for Treason, though he became *non compos Mentis* before the Execution. And no less justly did 25 *Ed. 3. de Proditionibus*, by the Word [*Imagination*] alter in the like Point that Law which was in use till then, concerning such a Person's committing the Act of Treason, such an one being no better than *quasi inanimatus*. But who can affirm this Earl to be other than an active and vigorous Instrument? *non modo vivit, sed in Senatum venit*, being a chief Member of that Parliament, under whose Command he would shelter himself; and by that means he is a Master rather than a Servant, and so met with by that Declaration of the Parliament of this Kingdom, of which he would have made an Argument for himself.

Thirdly, Where there is *Necessitas culpabilis*, the Law will not excuse, as it will where there is no Crime in contracting the Necessity. Those who in former times gave Victuals and Provision to Sir *John Oldcastle*, were not punished as Traytors, because they did it (say our Records) *pro timore Mortis, & recesserunt quam citò potuerunt*, 3 *Inst.* 10. And upon this Reason seems that Opinion of *Tremayle* to be grounded in 21 *H. 7.* 39. That a Servant may justify the killing of another, to save his Master's Life, if he cannot otherwise escape.

But if one being drunk commits a Crime, though he hath not properly and immediately the free Exercise of his Will, yet the Law reputes him *voluntarius Daemon*; and he is not at all the less excusable by our Law, 1 *Inst.* 247. 4 *li. Beverley's* Case: and by the Philosopher's Rule, such a one doth *ignorans*, not *per ignorantiam*

tiam agere; and is therein so far from being excused, that he is therefore to be doubly punished.

Now to assume, that whereby the Earl's Counsel would excuse him, *viz.* his Oath and Commission, renders him the less excusable; because both are strong Arguments of a free and full Consent: for who can imagine them of Scotland to be such mean Statists, as to think that Oath equally obliging, which was compulsive to the same, if freely taken; or that that General should be trusted with a Commission over all their Forces both by Sea and Land, as his Commission runs, whose Heart as well as Hand had not imbraced it? And truly, they that have heard his Letters read to Sir Marmaduke Langdale, wherein he prays for the Increase of the Distractions at London, and for his Friends at Colchester, would not judge him an unwilling Instrument, but one exceeding, rather than falling short in executing his Commission.

Lastly, Necessity of Obedience may excuse *in privatis*, but never *in publicis*. If a Feme-covert, together with her Husband, commit an Act which in another would amount to Felony, yet in her it shall not, because *sub potestate viri*, 27 Aff. p. 40. but otherwise the Law is in point of Treason; and so is the Judgment of my Lord Verulam; *Nec valet Privilegium* (saith he) *contra Rempublicam*. And as to the Case of an Ambassador urged on the other side, and in particular of the Bishop of Ross in the Days of Queen Elizabeth; I answer, First, The Privileges of those who are entertained as Ambassadors, are very great, and not to be made Precedents, or assumed by any other; whence *Proregis Dedecus redundat in Regem*: and therefore before 25 Ed. 3. it was Treason to kill an Ambassador, 22 Aff. p. 49. And from hence might arise that Privilege shewed to the Bishop of Ross. Secondly, It appears rather to be an Act of Grace than of Justice, that the Bishop was freed, because he was set at liberty after a long Imprisonment; which if not liable to the Censure of the Law, he should not at all in Justice have endured. Also by the Judgment of my Lord Bacon, cited by the learned Doctor on the other side, in point of Conspiracy against the State, even an Ambassador is not privileged; yet of this Bishop learned Camden saith in his *Eliz. Fuit liberatus, qui Rebellioni clam faces subjecerat*. All which were Arguments of Grace, and therefore that Case will be no Precedent for this, wherein also Conspiracies and Correspondencies with many of this Nation have been proved, and are otherwise notorious.

And for that inevitable Labyrinth, out of which the Earl of Cambridge cannot extricate himself, but that whether obey or not obey, he is under a Mischief, he may for that thank himself; *volenti non fit injuria*: this is like the Plague of an erroneous Conscience, which whether obeyed or not, proves a Tormentor to its Subject.

Secondly, The second Part of the Earl's Plea is, That he is no *Englishman*, notwithstanding the Naturalization of his Father; which, in effect, is as much as to say, and so it hath been insisted on, he is by Birth a *Scotsman*, and by consequence an Alien to, and not triable as a Traytor by the Laws of England. Concerning the handling of which Question, it being that whereupon the Validity of the other two doth,

in my Judgment, principally depend; I shall first answer the material Objections which I conceive made by the Counsel on the other side, before I offer any thing positively to assert the Invalidity of this part of the Plea.

Obj. *It hath been said, The Proof is not clear for the Earl of Cambridge's being a Post-natus; viz. one born after King James's Access to the Crown of England; and that being but a non liquet in favorem vitæ, the most favourable Construction is to be taken for the Prisoner.*

Ans. First, I deny that the Proof amounts to no more in this Particular than a *non liquet*; for there is one positive Witness that speaks directly to the Earl's Birth after K. James's coming to the Crown of England: another speaks to the Earl's own Confession, being about two or three and forty years of Age, which speaks him born since that time; and a third speaks to the common Report of his being born since: and if the Proof were but *semiplena probatio*, yet as *Brañton* saith, that amounts to a Presumption; and, saith he, *Presumptioni stabitur donec probetur in contrarium*, especially when the Earl himself, who should have proved the contrary for the making good his Plea, hath offered nothing against it; and being asked, never absolutely denied it.

Secondly, I do agree, that what the Jewish Expositors observe in the Exposition of their Laws, which sounded in favour, is to be observed in our Law, in those things which we usually say the Law favours; *viz. Favores sunt ampliandi*; and that strict Expositions are only for penal Rules, according to that of the Civilians, *Constitutio penalis non excedit Casum*: yet we shall find, that where the Penalty of a penal Law is against one or few Persons, and the Benefit redounds to the Generality, in that case even a penal Statute shall be taken largely against the Offender; so the Rule is put, *Plow. Com. 36. Plat's Case*, where it is resolved, though the Statute of 1 R. 2. c. 12. give an Action of Escape against the Guardian of the Fleet, yet for the Reason abovesaid, it is, though a penal Law, by a benign Interpretation, to extend to the Sheriff of London: and in like manner, if there were any Latitude in Cases of Treason and Murder (as there is not) yet to extend it on the behalf of the Prisoners, might prove to many thousands *crudelis Misericordia*.

Thirdly, Add to this, that the Law of England is so tender of the publick Weal, that though in other Cases it may seem to insist too much upon Formalities, yet herein it will dispense sometimes with its most certain Rules. Hence it is, that if one pass over another's Land without his Consent, to fetch a Falcon, or the like, he may be punished as a Trespasser; but not so, if to hunt or kill a Fox or an Otter (which Instances I suppose not unsuitable to the Prisoner) because these are Creatures *contra bonum Publicum*; which Reason the Book gives of the Law in that Case, 12 H. 8. 10. For the same reason no Man shall be punished as a Trespasser for erecting Bulwarks on another's Land, *Dyer 36. Maleverer's Case*. And hence certainly was the reason of that ancient Law, That capital Offenders, who had transgressed against the Law, had *Lupina Capita*, and might therefore by the Justice of *Lex talionis, arte perire sua*; wherein the Law followed *Naturæ Ordinem*: The Rules of Nature are most constant,

constant, yet for the Preservation of the whole, it will sometimes contradict it self; as to prevent a *Vacuum*, and the like, what an Inversion do we see of Nature's most constant and ordinary Rules? Do not they then in this prove somewhat unnatural, imbrace a Cloud instead of Substance, that fear not to omit the weightiest things of the Law, rather than in Cases of invincible Necessity, dispense with some Formalities?

Obj. But though the Earl of Cambridge were a *Post-natus*, yet he is quasi *Ligeus acquisitus* unto England; and if so, as his Allegiance began with an Act of the Nation, so it might determine by an Act of the same Power, to wit, by Command from the Parliament of Scotland.

Ans. First, The Strength of this Objection, if admitted, would, as I conceive, by a new invented Distinction, overthrow the learned and solemn Resolution of all the Judges and Chancellor of England, 6 Jac. in Calvin's Case, wherein all Allegiances that the Wits of Men could imagine, are enumerated, and they are but four, viz. *Ligeantia naturalis, acquisita, localis, and legalis*: and by the Judgment of that Case, Robert Calvin, Son and Heir to James Lord Calvin of Colcross in Scotland, born three Years after King James's Access to the Crown (as also all other so born) were adjudged Subjects of this Kingdom of England, *Ligeantia naturali*, by the best and highest Allegiance, without any quasi at all, in the same kind, and to all Intents and Purposes that any natural-born Englishman was.

Secondly, The Objection seems to me not only to be against the Judgment of this Case, but against Reason also: For what Acquisition is there by the Party, or what contributes he to it, whether he be born in this or that Time or Place? The Conceit that there is any Act of the Party's in this (as there must be to make a *Quasi Ligeus acquisitus*) seems to favour of the *Pythagorean Metempsychosis*, or that Opinion of Plato, who held a Pre-existence of Souls, which after came into the Bodies, *tanquam in ergastula*.

Obj. It is inconsistent to have two natural Allegiances to two several Kingdoms, as it is impossible to have two Fathers; in which Case major relatio trahet ad se minorem: And in that Case the Earl is rather to be reputed a Subject of Scotland, where he was born, than of England.

Ans. First, It is indeed inconsistent that the same Person should in two several Kingdoms have two original Allegiances, in a physical Acceptation, to wit, to be so born: Yet by Construction of Law, he that is born in Scotland may have an Allegiance to England, equivalent with the other. Thus Calvin by the Resolution of that Case was *Scotus patria*, and *Anglus privilegio*.

And thus, without any Contradiction, it was ever held for Law, That the Natives of *Gascoign* and *Aquitain*, and those other Countries which were geographically out of England, were yet in Construction of Law equally Denizens and Subjects of England with those born here; in regard of one Allegiance and Protection wherein they were equally involved, 27 Aff. Pla. 48.

Secondly, No Allegiance which gains the Name of *Alta & Naturalis Ligeantia*, can by the Common Law of England be divested, though otherwise it may be by the Civil Laws, there being no *Magis & Minus* that it's capable of, which the Objection would suppose. And the truth is,

the Resolution of Calvin's Case answers all the Suppositions of any future Contingencies, and positively resolves, That this Allegiance cannot possibly be lost by any Matter *ex post facto*, no, not by Difference of Descents and Governments, 7 Li. 27. And what is agreed to be inherent to a natural-born Englishman, belongs also to a *Post-natus*, *Non potest patriam in quo natus est exuere, nec Ligeantiae Debitum ejurare*, 1 Inst. 129.

Thirdly, And for the Inconsistencies of Allegiances that the Objection seems to insinuate, in the Case of Competition between the Kingdoms, Bracton hath met with that Supposal long since, Li. de Except. 427. speaking of one that is *ad fidem utriusque Regis, si contingat guerram accidere inter Regna*; putting the case of one born in France, and indenized in England, *Remaneat personaliter cum eo cui Ligeantiam fecerit, & faciat servitium debitum ei cum quo non steterit in persona*.

Obj. Though the Earl of Cambridge were a *Post-natus*, yet, as this Case is, it makes him not to differ from an Alien, because the Kingdoms of England and Scotland were at the Time of this Invasion divided, and there were then several Administrations of their Powers; from whence a double Allegiance is to be considered, *Regis & Regni*.

Ans. First, If we look upon the judicial Powers of the Kingdoms in a legal Consideration, even at the Time mentioned in the Objection, besides the Union of the Kingdoms made by force of 1 Jac. cap. 1. we shall find as strong Stipulations and Engagements by Treaties, confirmed by Parliament and otherwise, betwixt the Nations, as were possibly to be made; none of which were repealed at the time of this Expedition: And so far from that, that the Earl himself hath often at the Bar professed, That neither his Coming or Commission were against the Parliament or Kingdom of England. How then were the Powers of these Nations so legally or judicially different?

Secondly, The Union of the Laws and Governments of these Nations was a Thing desired and endeavoured by some, as may appear by the latter part of the Statute of 4 Jac. cap. 1. but it was not effected. Therefore the Distinction of the Kingdoms was taken into Consideration in Calvin's Case, where [*Regna*] was one of the *Nomina operativa*, and granted, That though the Kingdoms, Laws, and Nobilities of the Nations of England and Scotland were several and distinct, yet the Allegiance of all born in either Nation after the Union was one and the same. And the Pleading of that Case (which best denotes the Law) demonstrates this, That such Distinction of the Kingdoms was under Consideration: For the Pleading was, That Calvin was born *extra Ligeantiam Regni Regis Angliae, and infra Ligeantiam Regni Regis Scotiae*. And the learned Chancellor of that Time saith, in his *Post-nati*, that the Judgment was, That neither Calvin, nor any other *Post-nati*, were Aliens to the King or Kingdom of England.

Thirdly, It is agreed on the other side, That there was always one *Ligeantia Regis*: And therefore, even thence, I do infer that there was also one *Ligeantia Regni*; because that Allegiance which was due to the King, was certainly due to him in his politick Capacity, though not to that only, or divided in the Subject from his natural Capacity. However, it may be said nevertheless, as it is in Calvin's Case, (by a Community

of Properties) that it was due to the natural Capacity also, viz. as it ought ever to be accompanied with the politick; thence it was but just in the Parliament, notwithstanding the King's personal Command and Opposition against them, yet to permit the taking of the Oath of Allegiance, and not to abolish it till after his Death, it being *ad Legem Legatio*; yet the Person was so necessary, that without it, it had been ridiculous to administer it in the Form it was, in which case *majus dignum trahit ad se minus*. And hence it was that capital Crimes committed in one King's time, might be proceeded against after the Death of that King, 3 Ed. 3. Fitz. Reattach. 18. & Bro. Cor. 178. If the King had purchased Land to him and his Heirs, though the Word [Successors,] the Word of his politick Capacity, had not been mentioned, yet he was seized thereof in *Jure Coronæ*, 43 Ed. 3. 20. And if Land had been given to the King and another, and their Heirs, they had for the same reason been Tenants in Common, and not Joint-Tenants, Com. 239. for the same reason. And tho many of those Persons who have been Kings have often oppressed, instead of preserving their Subjects, yet still that which Bracton hath said upon the same Ground remains true of the Regal Power, *Non aliud Rex potest, quam quod de jure potest*, his Office still being *ex Officio*, as 2 Littl. Co. Wiseman's Case, saith; and Fitz. Nat. Brev. 113. out of the Register, to provide for the Preservation of his People. And if any other Construction should be made, then it must have followed in the King's Personal Absence, Minority, or Disability, the Kingdom must either have been but weakly, or not at all govern'd. From all which it may be inferred, That the Obligation and Allegiance which was owing to the King, did include that which *sano sensu* was the Kingdom's also.

It remains now that somewhat be spoken for the further invalidating of this part of the Plea; wherein I shall,

First prove, That one born in Scotland, after the Union of the Crowns, cannot be to any purpose considered as an Alien to England.

Secondly, That though the Earl of Cambridge had been born before the Union, yet he had not been an Alien to England, partly from a national Consideration, but more principally from personal Considerations, viz. 1. By reason of his local Allegiance both in Scotland and England. 2. *Ligeantia acquisita*; and that by the Naturalization of his Father, or his own Denization.

Thirdly, That though he had been an Alien, yet as this Case is upon the Proofs, he will prove triable for Treason by the Laws of this Kingdom.

Before I speak of any of these, I might touch upon that Part which layeth Murder to the Charge of this Earl; it having been fully proved that several Persons by name, amongst many others, were slain and murdered by the Scottish Army. And to make him punishable for this Crime, there is no need of Denization; it being an Offence in it self against the Law of God and Nations, and no Trust requisite to be an Ingredient to it, as is required in Treason. Hence we find Rape punishable in England, committed by a Scot, 13 Eliz. Dyer 304. and Murder done by the Lord Zanchar, of the same

Nation, 9 Co. 116. where we find him indicted by the Name of Robert Creighton Esq; Which together with the express Authority of 11 Ed. 3. Fitz. Brev. 473. are, by the way, sufficient Warrants for our charging the Prisoner by the Name of James Earl of Cambridge, without mentioning his Dukedom, as he hath often intimated we should have done.

And if the Earl should say he killed not these Persons himself, his Counsel can soon tell him that's not material, the Law being, That if divers Persons come to do an unlawful Act, and one commit a Murder or Treason, it is so in all. 1 Mar. Dyer 38. 13 H. 4. 13. 19 Ed. 2. Fitz. Cor. 433. But the truth is, I shall not rely upon this, being not willing so high an Offence should pass under any other Name than that of Treason: Therefore I pass to those aforementioned Considerations, which will evince his Crime to be no less than Treason.

1. As to the first of these, there being so much said in the Argument of Calvin's Case, I shall omit the citing of any thing particularly from thence, and select something from the Statutes made shortly after the Union. It's agreed by all Historians that these two Kingdoms were anciently but one, *Divisos orbe Britannos, & subducta Britannia mundo*. Thence it's observable, that in the Preface of 1 Jac. cap. 1. by the Access of the King of Scotland to this Kingdom, the Parliament speaking of the Union, correct themselves in these Words, *Or rather a Reuniting of these two Nations, (though anciently but one.)* If so, this Reunion amounted to no less than (as it were) a national Remitter of the ancient Union.

For the Settlement of this Union, Commissioners were chosen to compose some Differences betwixt the Nations, and to consider what was fit and necessary to be done for the Commonwealth of both Kingdoms, 1 Jac. cap. 2. These Commissioners consult long about it; and because they could not perfect it within the Time prefix'd, an Act passeth for longer Time, 3 Jac. cap. 3.

At length the Work is finish'd by the Statute of 4 Jac. cap. 1. By which all Statutes that express or imply any Strangeness of the one Nation to the other are repealed. And moreover, it doth enact and say, *That if there had appeared any other Statutes of this Realm of England, wherein any thing is ordained, enacted, and established, expressly and by name against the Scottish as Enemies, or Scotland as an Enemy-Country to the King of this Realm, or the State of the same; we should, for so much of them as concerneth Scottish Men or Scotland, have utterly abrogated and annulled the same, seeing all Enmity and Hostility of former Times between the two Kingdoms and People is now happily taken away.* So the Statute. After which it seems as strange, that any born in Scotland after and during the Continuance of that Union, should make themselves Strangers to England; as if natural-born Englishmen should have made the same Allegation.

In the aforesaid Statute of 4 Jac. 1. there is a Clause, That no Scottishman coming into England to prosecute the Law against any Englishman offending in Scotland, is to be arrested here, except for Treason and Murder. And in the latter end of the Act, amongst other Things, it is enacted, *That if any Englishman should commit Treason*

son or other Crimes in Scotland, and come into England, he shall not upon his Apprehension here be sent into Scotland, to have his Trial there, but be tried where he is taken. But the Statute of 7 Jac. cap. 1. which was the Year after the Resolution in Calvin's Case, repealed that Clause of 4 Jac. 1. last mentioned, as to all Offences but Treason, leaving the Offenders in that kind to be tried in the Kingdom where they were apprehended. And though the Statute speak only of English, yet the like Act was to pass in Scotland, in case any of that Nation committed Treason here; else neither was to be binding to the Nations.

2. In the next place, somewhat may be said from a national Consideration, to prove the Earl no Alien here, though born before the Union: Not that my Purpose is to endeavour the Revival of that antient Homage done formerly by that Kingdom to this; it is not worth the mentioning, in comparison of that Love and those Engagements which have been betwixt us: *Gens una summa* was heretofore said of us, and, if it may be, I wish *sic simus in ævum*. But because somewhat hath been on the other side cited from the Stories of Bruce and Baliol, in the Days of Edward I. and for that I find both Law and History afford some Matter for this Argument, I hold it my Duty not to be altogether silent in what passed in those Times, and since. I will not insist upon those several Appeals made by Magdolphus, and others of the Scottish Nation, to Edward I. *contra custodes Scotiæ*, and against the Kings of Scotland themselves: All Arguments of Allegiance then acknowledged from that Kingdom to this.

But to instance in some Precedents nearer to this in question, Simon Fryfel in 34 Ed. I. Anno 1306, a Native of Scotland, came in an hostile manner from that Kingdom to invade this; and being apprehended here, he was condemned as a Traitor. The Words of Mat. West. 456, concerning him are, That he was a *turri Londinensi per plateas distractus, ut proditor*.

In the same Year of Edward I. William Wallis, the Commander in chief of the Scottish Forces, and a Native of that Nation also, as the Prisoner was, came into this Kingdom; and being apprehended, was, saith Walsingham, fol. 61. *Londonias usque ductus & judicialiter condemnatus, trahitur, suspenditur, & ultimo decollatur*; though he pleaded, as our Historians tell us, what this Earl doth, That he was a Subject of Scotland, and not of this Kingdom, and therefore ought not to be tried here for Treason. In 42 Ed. 3. cap. 3. in the Lord Beaumont's Case, when it was replied that the Party, objected against to be an Alien, was a Scotsman, the Plea is no longer insisted upon. A Protection *quia profecturus* lies not into a Country that is within the Allegiance and Protection of England, 7 H. 4. c. 14. Yet we shall find the only Reason given wherefore it was granted into Scotland, was because of the Wars that were then betwixt the Nations; 7 Ed. 4. c. 27. After the ceasing of which Wars, it may be collected by the Book, a Protection would have lien no more thither, than it would have lien into Wales or Ireland.

In 13 & 14 Eliz. Dyer 304. one was arraigned for a Rape. At the Return of the *Venire Facias* to try him, he pleaded that he was a Scots-

man, and desired a *Medietate Lingue*, which Manner of Trial is granted to Aliens by the Statutes of 27 & 28 Ed. 3. But by the Judgment of the Judges of both Benches it was denied him, for this reason, amongst others, Because, saith the Book, a Scotsman was never here reputed for an Alien, but rather a Subject.

Obj. Whereas it hath been said, This was because the Statutes of 27 & 28 Ed. 3. were made when Scotsmen were generally reputed Subjects to this Kingdom:

Ans. I answer, 1st, That the Book gives no such Reason. 2dly, To affirm this, is to suppose the Judges, by such a foreign Conceit, to go against the expresse Provision of two Acts of Parliament, and the constant Practice in pursuance thereof.

In the same Year of 13 Eliz. in the Case of the Duke of Norfolk, the Evidence of the Bishop of Ross, a Scotsman, was offered against the Duke by the Counsel for the Commonwealth; which the Duke opposed from the Judgment of Bracton, That a Foreigner's Testimony was not in that Case to be received. But Cataline, Chief Justice, though he says nothing to Bracton's Opinion touching *Exteriorum Testimonium*, yet he gives the Rule of the Court, That the Testimony was to be received. Camden's Eliz. 214.

After this Time also the Queen of Scots was tried in this Kingdom, though not upon the Statute of 25 Ed. 3. yet upon the Statute of 27 Eliz. cap. 2. then in force. And though in the Proceedings of that Business Commissioners of both Nations met, and that the Scots Commissioners did protest, that though they did join with our Commissioners, yet they did thereby make no Acknowledgment that they were other than a Foreign Nation to this; yet the Englishmen protested against that Protestation, as we find in the History of that Queen.

3dly, But to pass from this national to a more personal Consideration, and from thence (though he were an *Ante-natus*) to prove the Earl liable to Punishment for Treason against this State, and that by a local Allegiance both in Scotland and England: Wherein it must be granted as a Principle, and cannot be denied, but that if an Alien come into this Nation, and there abide, and commit that Act which would always be Treason in an English Subject, it is by the Law Treason in him during that Abode, because he oweth *Localem Ligeantiam*, and the Indictment against him shall say *contra Ligeantiam sue debitum*, 7 Li. Calvin's Case. Thus in 36 Eliz. the Portugals here in England join in an Act of Treason with Doctor Lopez; and it was adjudged Treason in all. Thus this Earl, tho he had been born before the Union, yet he lived in Scotland after the Union, and at the very Time of this Invasion, whereby he became a Subject, at least *Locali Ligeantia*.

So in England also, not only by his former Residence here, which he will say perhaps was avoided by his Removal hence, but by his late coming in, he became *Ligeus* here *Locali Ligeantia*, because he came from a Kingdom then, by his own Confession, in Amity with this. This was the Case of Shirley, a Frenchman, 4 Mar. who came from France, then in Amity with England; and being taken levying War in an hostile manner, was indicted and executed as a Traitor.

tor, *Dyer* 144. And as the Book puts it, 7 *Li. Calvin's Case*, if he had had Issue here, that Issue should have inherited.

4thly, In the next place, I shall prove the Earl of Cambridge (though he had been an *Ante-natus*) to be a Subject of *England Ligeantia acquisita*, and that by the Naturalization of his Father, or by his own Denization. But, First, as to the Naturalization of his Father:

1. The Act of Parliament hath been read and proved, whereby the Father of this Earl, by the Name of James Marquis of Hamilton, Earl of Cambridge, in 21 *Jac.* was naturalized to be to all intents and purposes a Subject of this Nation, as if he had been here born; with a further Clause, That his Heirs might inherit and purchase any Lands, Tenements, &c. By which Act it clearly appears that this Earl is naturalized also: For, 1st, though in the Case of a Denization there may need the Word *Heirs* to extend it to them, because it goes as it is limited, it may be for Life, in Tail, or upon Condition, 9 *Ed. 4. cap. 7.* yet it is repugnant to suppose that in point of a Naturalization, because he that is born in *England*, as by Relation this makes him, without any other Expressions, conveys the Right to his Heirs. Hence Naturalization is never *temporanea*, though *data*, 1 *Inst.* 129. 2dly, Here are not wanting Words neither, that reach to the Heirs, if necessary; for the Act is, That his Heirs may inherit and purchase, &c. And in pursuance hereof it's notorious that this Earl hath done both. But we shall find that oftentimes no more goes to express a Naturalization than this; no other Expression is used to import the Privilege of being *English*, to them that are born of *English* Parents beyond-Sea, but only that they may have, and freely bear the Inheritance within the same Allegiance as other Inheritors, 25 *Ed. 3. De natis ultra Mare.* And in 3 *H. 6. cap. 55.* *Hall* and his Wife brought a Writ of *Trover*: The Tenant pleaded that the Feme was an Alien. The Demandants reply, That the Feme, in the Time of *Henry IV.* was enabled by Act of Parliament to purchase Lands and Tenements, &c. With which Reply the Defendant's Counsel rested satisfied, as if the Replication expressed it sufficiently that she was naturalized; and thereupon demanded View.

Obj. But it hath been objected, *That this Act can have no other Effect than if the now Earl's Father had been born in England: And though he were a native Englishman, yet having Issue, this Earl, by a native Scotswoman in Scotland, the Issue thereby remains an Alien, though his Father were naturalized or born in England.*

Answ. 1. I shall easily grant both that this Earl was so born in *Scotland*, and that the Naturalization amounts to no more than if the old Earl had been born in *England*; but do deny the Inference drawn from thence, That therefore the now Earl must be an Alien: For though in former Times some Controversy hath been touching this Question, *viz.* Whether the Issue of an *Englishman*, going out of the Kingdom, born of an Alien Woman, shall be a Subject of *England*, or no; yet I take the Law to be clear at this day, that such Issue is a Subject of *England*.

By the Common Law, if Father and Mother, both *English*, have Issue beyond-Sea, that Issue is *English*, 1 *R. 3. 4.* the Statute of 25 *Ed. 3. De natis ultra mare*, being declarative of the Com-

mon Law, 42 *Ed. 3. cap. 10.* And if the Reason and Practice of the Law be examined, we shall find it to be the same, where the Father only is *English*, for these Reasons:

First, Because at this day any Person may go from this Kingdom to another without Licence, though he be neither Nobleman, Merchant, or Soldier, except some Restraint by a *Ne exeat Regnum*, Proclamation, or other Act of State be against him. So is it resolved, 12 & 13 *Eliz. Dyer* 296. And though all, except Persons so qualified, were restrained by 5 *R. 2. cap. 2.* yet that Statute is repealed by the Statute of 4 *Jac. cap. 1.* made principally in reference to *Scotland*. Therefore however the Law may be as to such as go when prohibited, or who stay beyond-Sea when commanded to return; yet as to all others, at this day, and always as to Noblemen, as the Father of this Earl was, upon whom no Restraint was ever put by Common or Statute Law, certainly the Law is otherwise, especially when the Removal is to a Country in Amity, as *Scotland* was.

Secondly, *Partus sequitur semem*, by the Common Law: Therefore, in 4 *Ed. 4. 25. Statham Villen.* 9. if a Freeman marry a Nief, and have Issue, that Issue is free; but otherwise, if the Man had been Villain, and the Woman free.

Thirdly, The Woman Alien by the Marriage is indenized, and the Issue then must needs partake of the Privilege. And it appears by 26 *Ed. 1. Rot. Parl.* 1. that when *Edmond*, the Brother of *Edward I.* who married the Queen of *Navarre*, died, all the Judges resolved she should be indowed. And what though she should not, as in other Cases it hath been doubted, yet that hinders not, but during Coverture she was indenized, and that's enough to indenize the Issue. If a Nief marry a Freeman, it is and hath been a Doubt, whether this be a perpetual Infranchisement to the Woman after the Death of her Baron: But it never was doubted but that both her self, during Coverture, and her Issue ever after, were enfranchised. *Lit. Sect.* 187. 1 *Inst.* 136.

And for express Authority in the Point in hand, besides the ancient Authority of *Abridg. Aff.* 39. *tit. Bastard.* 7. and *Bro. Denizen* 21. it was the Judgment of all the Judges of *England*, 2 *Ca.* in the Dutchy-Chamber, betwixt the King and *Eaton*, usually called *Stephenson's Case*, the Record whereof is ready to be produced; where Judge *Yelverton* and *Harvey*, then Judges Assistants to that Court, declared it to be their Judgments, as also of all the other Judges, That the two Sons of *Stephenson*, born beyond-Sea upon the Body of an Alien, were Denizens.

Object. I observed but one Book cited for maintenance of the contrary Opinion, and that was 26 *H. 6.* where indeed it is 22 *H. 6.* 38.

Answ. Which Authority is against, not for that Opinion for which it is cited: for in an Action there brought, the Defendant pleads that the Plaintiff's Ancestor, in the time of *H. 4.* went beyond-Sea without Licence, and there had Issue the Plaintiff. Upon this Plea, *Arderne* the Plaintiff's Counsel demurs; but saith the Book, *Prisot* the Defendant's Counsel durst not demur.

Secondly, If the Book were as it is supposed, yet it makes nothing against the Law at this day; because by the Book it appears, that the Plaintiff's

Plaintiff's Ancestor went beyond Sea in the time of *H. 4.* without Licence; which being after *R. 2.* there was a Restraint upon him, except by Licence, or qualified as that Statute of *R. 2.* requires: which Restraint is now abrogated, as is before said; and the Inhabitants of *England*, as is suitable to all Islanders, may travel at pleasure, except especially forbidden: and so whatever the Law was then, it's otherwise now; *Mutata ratione Legis, mutatur Lex.*

Object. What if the present Earl did himself endeavour, or, as he saith was advised, notwithstanding the Naturalization of his Father, to procure himself to be naturalized, or indenized.

Ans. Yet that could be but in *maiores cautelam*; as some Savings have been inserted into Acts of Parliament themselves, not for Necessity, but for Satisfaction of the Lay-Gents, as our Books express it, *1 li. Coo. 24. Plow. Com. 379.* upon the Statute of *5 Ed. 6.* And even in that Case of *Stephenson*, tho the Judges Assistants delivered what was their own Opinions and of the rest of the Judges; yet if making the Party a Denizen would end the Controversy, they did advise it.

5thly, Besides this Purchase of his Father's, the Earl hath himself contributed to his own Denization, not so much by inheriting his Father's Dignity, and purchasing and enjoying himself Lands in *England*, that being rather an Evidence of what he formerly was, than making him what he was not before; but by the Writ of Summons sent to this Earl himself, *15 Car.* The Record whereof hath been read, commanding him *ex fide & ligeantia sua* to appear in Parliament as a Peer of this Realm, who accordingly did appear, and acted in this Parliament, being chosen of several Committees in the Lords House, to consider of many things of great Concernment, some whereof were for the Strength of the Nation, as hath been fully proved by the Records of the Lords House. All which Actions are so inconsistent with his being an Alien, and would be such a Solecism in State to admit an Alien to be invested amongst others with a judicial Power, that rather than it should be admitted, all this laid together will (I conceive) amount to, at least, a Denization.

I will not say, that the granting of every Office, or the being employ'd in any Transaction which concerns the Law or Government of the Kingdom, will make an Alien a Denizen; the Books of *9 Ed. 4. 1.* and *14 H. 4. 19.* forbid me to say so: but it's another thing to have a judicial Power in Parliament, and to sit by virtue of such Summons in the Parliament of *England*. The Lord *Delaware* was disabled to sit in the House of Peers during his Life; but he dying, and a Writ of Summons coming to his Son, he was by virtue thereof enabled not only to sit, but to enjoy that Place which his Ancestors formerly had done, *11 li. Coo. 1.* And in *39 Ed. 3. 29.* *Umfrevil* Earl of *Angus* ought to be named Earl in the Writ against him, because by that Name he was summoned to the Parliament; and for not naming him so, the Writ abated. A Denization is a kind of a National Manumission: now as there is in Law an express Infranchisement of a Villain, and an Infranchisement in Law, *Lit. sect. 205.* so it may be said of Denizations. And amongst other Manumissions by Act in Law, I find in *Britton, fol. 79, & 82.* if a Villain were

made a Knight, this did make him free *ratione dignitatis*, and did not make the conferring of that Dignity to be a void Act, parallel whereunto is the Case in hand.

Sixthly, The last thing I shall insist upon, touching this second Part of the Plea, is to make it appear, that tho the Earl had been born before the Union, and an Alien, that yet there are other Circumstances in this Case yet remaining, which will clearly make this Act of his to amount to no less than Treason, *viz.* his coming from a Kingdom in Amity with this, and his marching in hither with *English* Traitors. That he march'd in and held Correspondency with Sir *Marmaduke Langdale* and his Son, and with Sir *Thomas Glenham*, and divers others, hath been fully proved; and that that Kingdom was then in Amity with this, besides the National Treaties and Engagements unrepealed, it appears as well by the Earl's own Confessions at the Bar, as by the Words of the *Scottish* Declaration made upon this Expedition, read at the Earl's own Request; which, whatever it be, doth yet conclude this Earl and all his Party from alledging the contrary for their advantage, it having been often reiterated by him; and also therein said, That this Expedition was neither against the Parliament nor People of *England*: besides, that it is no slight matter to make Nations in Amity to become open Enemies in a legal Construction, which we are now upon, as appears by the Book of *19 Ed. 4. 6.*

Now that these Circumstances will make this Act reach to Treason, appears by these Authorities of Law. In the days of Queen *Mary*, *France* and *England* were in Amity; *Sherley*, a *French* Native, during that Amity, joins himself with some *English* Traitors: *Sherley* is apprehended, and indicted as a Traitor, *contra ligeantiam suam debitam*, *4 Mar. Dyer 144.* which is confirmed for good Law likewise, *7 li. in Calvin's Case*, by all the Judges: with which agrees *Brook. Treason 32.* and *Crompton's Jurisdiction of Courts 72.* and Mr. Justice *Dallison's Reports, 3, 4 Mar.* All which Authorities agree in this difference, That if Alien Enemies join with *English* Rebels, and be apprehended, the Aliens shall be try'd by Martial Law, or ransom'd; but if Alien Amies so join, it's Treason in all. And 'tis observable that the Case is put cautelously in *H. 4.* and so abridg'd by *Brook. Treason 1.* That where Alien Enemies join with *English*, the Aliens shall be try'd by Martial Law, and the *English* as Traitors.

Object. The Objection hath been made, and so far it seems the Law is agreed, That if Aliens fight under the Banner of *English*, that this may be Treason in all; but not if the *English* fight under the Command of Aliens, which is alledged to be the Case in hand.

Ans. 1. I cannot safely admit that which the Objection takes for granted, that the *English* were the Auxiliaries, and the *Scots* the Principals in this Act, when I find it in the Proof offered by the Earl himself, that he came in by the Invitation of their Friends in *England*, and when I remember what was designed and produced in the South of *England* before and at the same time with this Expedition.

2. But admit it to be otherwise, yet if this Difference were material, then it should follow likewise, That if Alien Enemies did fight under

an *English* Command, it should be Treason in all, but it is not so.

3. The Law makes no such Difference, nay, the very Objection seems to be made and answered, 4 *Mar. Dyer* 144. for the Book saith, that tho *Sherley* were an Alien, yet *hoc non refert tempore pacis inter Anglos & Gallos*; the weight is laid upon *tempus pacis* only.

4. The true Reason of the Law in one Case is the same in both; which I conceive to be from the Detestation of conspiring with an inward secret Enemy, and from the Trust the Law repositeth in such as are of a Country in Amity. There is no Treason, but where there is a Trust: hence antiently Treason, in its genuine and original Acceptation, was only and properly amongst Allies and Friends, who mutually did repose Confidence in each other, as may be seen in the *Mirror*, fol. 30, & 201. And that a greater Trust was placed in Aliens Amies, than in others, appears in that our Law allows not only Traffick and Commerce with them, but also allows them to be to some purposes Denizens; namely, as to the bringing personal Actions, which if they bring, it shall not be allowed to plead that the Plaintiffs are Aliens: 19 *Ed.* 4. 6. & 6 *H.* 8. *Dyer* 2.

Object. But the Earl hath objected, That upon the *Scotish* Forces coming in under his Command, they of that Nation were by the House of Commons voted Enemies, and those of this Kingdom who adhered to them, Traitors.

Ans. 1. The words of that Vote seem to be exclusive of the Prisoner, mentioning only those under his Command.

2. Tho every Enemy, in the legal Signification of the Word, be not a Traitor, yet every Traitor is an Enemy; and therefore if now he be proved a Traitor, he may be well enough an Enemy within that Vote. The present Charge against him is a Charge of High Treason, yet the Conclusion doth not improperly pray Judgment against him both as a Traitor and publick Enemy.

3. Take the Words in the strictest sense, and the Vote only names those of the *Scotish* Nation Enemies, but those of this Kingdom Traitors. Now the labour hath been, and I suppose it clear that the Earl himself is of this Nation, and so a Traitor by that Vote, from which he would derive an Argument for himself.

4. If yet any other Construction should be made, *Leges posteriores priores abrogant*; he is, by the Act whereby this Court now sits, ordered to be try'd for Treason in the same kind as the rest, who are now under question: and if his Fact be Treason, it will easily follow by an Argument of *à denominatis*, that he is a Traitor.

The third Part of the Earl of *Cambridge's* Plea is, That he is a Prisoner of War, and rendred upon Articles, and that those Capitulations were made before his Rendition with Major-General *Lambert's* Commissioners.

That there were Articles, and he a Prisoner of War, I shall agree to be proved; as also that one of those Articles was, That he should have Quarter, and have his Life assured: and it must be agreed on the other hand, That the Lord *Gray*, who had equal Authority, protested from the first against that Treaty, and after took him Prisoner before any Assent thereunto. But whether, by the Proof, the Earl were not a

Prisoner before the signing the Articles; and whether before the Articles were to have any effect, the same were not to be ratified by the Commanders in chief, is submitted to Judgment upon the Evidence. That therefore I may do the Prisoner right in this point, which he seems to make his strongest Asylum, I shall admit that there were such Articles, and wave the relying upon the other Circumstances, which may not seem so clear in Proof.

Nevertheless I shall briefly shew my Reasons, wherefore I apprehend no Security from the Stroke of Civil Justice belongs to the Prisoner by this Refuge; for as to the Military, is not the Contention.

First, if these Articles be of avail against the Civil Power of the State, they must in effect amount to a Pardon or Discharge of Treason; (for this Point doth take the last Point by admittance, viz. that the Fact is Treason.) Now tho the Military Power may exempt a Prisoner of War from the Execution of the Sword, and of their own Power; yet it is not in their power, nor do they assume or ever challenged such a Power, as to exempt Delinquents and Traitors from the Execution of the Magistrate; for the bringing of whom to condign Punishment, the Soldier was at first armed, and the War principally begun: and if it should be in the power of one Soldier, it would *pari ratione* be in the power of all, as well to spare all as one; and if to grant a Pardon of Life, then likewise for their Livelihoods. And so the End of the War, and the Satisfaction promised, would be in the power of the Servants of the State to frustrate; not that the Articles have no effect, for he was by them freed from the immediate Execution of the Sword.

Secondly, The pardoning of Treason is a Power so inseparable to the Supreme Power, that by the Authorities of Law it is not communicable to any other: in 5 *Ed.* 4. 123. it's made a great doubt, and so said to be 1 *Bro. Treason* 22. Mercy and Justice being not transferable. 7 *li. Co.* in the Case of Penal Statutes, 9 *Ed.* 4. 2. & 20 *H.* 7. 6. It's true indeed, there was a time when some had gotten this Power into their hands, but by the Statute of 27 *H.* 8. cap. 24. this Power was resumed into the Supreme Power, and there it hath since lodg'd. And however we dispute not what the Parliament may do by express Words, as they have done in many Acts and Tenders of Indemnity; yet without such Expressions, not by any implicit Power, nor *ex Officio*, can any justly assume it.

Thirdly, By the Rules of Law no Officer or Minister of State can give away or dispense with the Interest of the Commonwealth. If a Customer, who is an Officer of State, take a Bond in his own name for the Importation of Bullion, he cannot discharge this Bond; 4 *Ed.* 4. 4. & 12. The King was the supreme Officer of the Commonwealth, yet if an Indictment of Nuisance had been preferred against one in his name, it had not been in his power to have discharged this Offence; 3 *Ed.* 3. *Fitz. Aff.* 445. Nor could he for the same reason by any *Non-obstante* dispense with the Penalty of any Statute which did concern the Interest of the Commonwealth, 12 *Jac.* Sir *Arthur Ingram's* Case, and *H.* 36 *Eliz.* betwixt *Hammond* and *Griffith*, in an Information upon a penal Statute, the Informer died, yet the King's Attorney might proceed. The Difference

ference I apprehend to be, as to the point in hand, betwixt one triable by Martial Law merely, as an Alien Enemy is; for such a one being triable by the Sword, if taken, may be discharged by that Power, tho in that case I totally exclude not the Legislative Power: But for a Traitor, originally and legally only triable by the municipal Laws of a State, to be absolutely discharged by a subordinate Power, without the Concurrence or Confirmation of the Magistrate, will ever be strange to me, till I find that Rule overthrown of *Nil dat quod habet*, which can never be in a just and moral sense.

Fourthly, However the Words sound, the Intention and true Meaning of the Parties was not to free those that were concerned from Justice, if the State required it; and Intentions are the best Rules for Construction in these Cases. That it was intended only in this Treaty to free the Prisoner from the present Execution of the Sword by Martial Law, and no otherwise, hath been sworn by two of those Gentlemen that were Commissioners under Major-General Lambert, who have sworn their own Intentions. Words, saith *Bracton*, are but *Vestimenta Rerum*, as the Body and outward Form; the true Meaning and Intention of Parties is the Life and Soul of every Contract; as for *Sensus literalis*, it hath been (I have observed) *via regia*, but it hath not proved unto that side *via tuta*. However Words sound, the Exposition must be *secundum subjectam Materiam*. In 41 E. 3. 6. if one having divers Faculties hath an Annuity granted to him *pro concilio impenso*, the Words are general, but it shall be construed for Counsel in that Art which was intended. And as *Brudnel* saith, in 14 H. 8. 2. Contracts shall be expounded according to the Intents of those that did contract. *Cicero* saith, speaking *de Justitia*, as a Judge, not as an Advocate, fol. 24. to cavil with Words against the mind of the Parties, *est Calumnia quedam & malitiosa juris Interpretatio*; in which place he puts a Case upon a Treaty, as ours is, of one who had made a Truce for one hundred and thirty Days with his Enemy, and taking advantage of the Letter, fell upon his Enemy in the Night, alledging the Truce was only for Days, which the Orator derides as mere Injustice. And no otherwise may the littoral Construction, contended for, be in the present Case, except the Letter must be observed or not observed, as it proves advantageous or disadvantageous to the Prisoner. Besides, it's usual in Law, that by Averments the Intentions of Parties take place, where the Letter would not so decide the Question; as 5 li. Co. 68. and 21 R. 2. Fitz. Devis. 27. Nor do I see, how in the penning those Articles any other Expressions could well have been. If provision had been made, that the Prisoner should have been exempted from the Power of Civil Justice, that had been void; and if it had been expressed, that nothing was by those Articles intended to exempt him from Civil Justice, that had also implied a Power in them, if they had seen cause, to have given an absolute Discharge from the Magistrate; which had been equally by Construction derogatory to the Civil Power.

Fifthly, If the Earl had ever been *de facto* pardoned, yet he may seem to have lost the benefit thereof by his Escape made after a special Promise to the Governour with whom he was

Prisoner. The Civil Law, as *Fortescue* observes, cap. 46. *Libertinum ingratum in pristinam redigit Servitutem*; and our Law saith, if one hath committed a capital Crime, and, being pardoned after, do but break the Peace, he forfeits the Benefit of the Pardon; 3 H. 7. 7. as *Bartue* did the Benefit of his Licence to travel, by his Resort to the Fugitives, 2 Eliz. Dy. 176. And I conceive no difference, whether the Condition be expressed or implied; which I infer not to make the Escape Treason, being not so charged, and the Statutes of 2 H. 6. & 14 Eliz. being expired concerning that; but only for this purpose it is enforced, that he who rendred himself up a Prisoner of War, and had for that consideration Quarter granted him, and yet after breaks that which was on his part to be performed, hath thereby deprived himself of that Privilege which otherwise he might have enjoy'd.

Obj. If now the Prisoner shall be questioned for his Life, who by the Rendition of himself had Quarter given him for it, how is the Consideration made good which did induce him to surrender? Besides, there if he had died (as the Earl himself said) he had preserved his Estate, and avoided the Consequences of Attainder.

Answ. It's strange that it should be thought no privilege to have so much time to die, in case there were certainty of it, above a Death by military Execution, which usually is sudden, and *sine strepitu Judicii*.

2. Is it no privilege above an immediate Death by the Sword, to have a fair judicial Proceeding by a Charge against him, putting in his own Plea thereunto, the Matter of Fact by Witnesses and other Evidence proved on both sides, and Counsel assigned him of his own choice to argue his Cause in point of Law, and himself to be heard as much as he could speak in his own Defence?

3. And the Danger seems by this manner of Trial not greater than before; for he that dies a Traitor *in furore belli*, because himself is the cause why Formalities of legal Proceedings against him cannot be observed, by the antient Law forfeited his Estate, and remained attainted notwithstanding. *Plowd. Com. 262. Fitz. Dower. 106.* where, in a Writ of *Dower*, the Demandant was barr'd, for that her Husband went into *Scotland*, and joining himself with the Enemies, died in Enmity.

Object. As to the Examples of *Joshua* with the *Gibeonites*, and of the Prophet *Elisha* forbidding the King of *Israel* to smite those whom he had taken captive with his Sword and Bow:

Answ. I answer, as to the first, viz. that of *Joshua* with the *Gibeonites*, God forbid but that as that, so all other Leagues and Treaties should be kept so far, as to bind that Power that made them, and who can rationally expect more? Now *Joshua* was the Successor of *Moses*, and a Magistrate as well as Commander. Besides, it's said the Princes of the Congregation swore unto them; and had these Circumstances been incident to this Case, the Dispute had been ended.

1. As to the other Instance, the Men of *Syria* had a personal Quarrel against *Elisha*; and therefore none being interested but the Prophet, it might well become his Piety to be their Intercessor.

2. For any thing appears, the Prophet only speaks against their being smitten with the Sword of

of War, which, if it had been drawn in cold Blood, might have been the Blood of War in Peace; but not against the Sword of Civil Justice.

3. These Enemies were taken in the midst of *Samaria, incruento praelio*; and therefore Bread and Water might well be set before them, that they might eat, and go to their Masters: but there hath been in this case much Blood drawn, and Mischief done; for the avenging and satisfaction whereof, Justice cries to them that bear not the Sword in vain.

And now (my Lord) tho I might have demanded Judgment for want of the Prisoner's making good his own Plea, which he ought to have done before I had said any thing to the contrary; the Plea of being an Alien lying on his part to prove that pleads it: 9 *Ed.* 4. 12. & *Dy.* 300. and the Plea of a Pardon being a Confession of the Fact, if not made out, proves fatal and final also to the Party; *Stanf. Cor.* 150. Yet nevertheless, for that the Prisoner hath not been confined herein to the strict Formalities of the Law, I have also, on the behalf of the Commonwealth, taken the privilege of speaking thus much for asserting the Invalidity of his Plea. And therefore, upon the whole matter, having now said what hath prevailed with my Judgment to offer in this Case, I humbly submit the same to the Judgment and Consideration of this Honourable Court.

The Court adjourned to Tuesday, being the sixth of *March*; and then the Duke was brought to the Bar, and the Judges sat in Scarlet: They rejected the Duke's Plea in all its Branches, and found him guilty of the Charge whereof he was indicted. But before Sentence, *Bradshaw* the President resumed all, and spoke long for aggravating of every Particular, justifying every thing the Counsel had pleaded, as if it had been all both good Law and good Reason. Then he caused to be read the Earl of *Essex's* Commission, to shew how little Power was given him: (*But spoke nothing of Fairfax or Lambert their Commissions, which had been more pertinent, but the reason was they were ampler; and yet the Parliament had never refused to ratify any Articles Essex gave.*) He confessed the Duke's Articles were fuller than any others, therefore he would insist the more to invalidate them. He said, It was true, if there had been a War proclaimed, and prosecuted betwixt a foreign Nation and Enemy and *England*, then by the Law of Nations, to which their Law was consonant, Articles signed by the Commissioners of both Parties should have been kept inviolable: but the Prisoner was no Enemy, for when the ordinary Course of Justice was obstructed by the late King's prevailing Party, so that neither Constables nor Sheriffs, nor other Civil Officers, could lay hold on such Delinquents as he was, or bring them to Punishment, the Parliament was forced to raise an Army, commissioning their Generals to bring such to condign Punishment. This being the End and Substance of their Commission, it was not in their power, who were but the Sword of Justice in the Parliament's hand, to give Articles for securing any from the Justice of the Parliament, since it was never intended their Acts should limit that Power that gave bounds to them. He added also, That the Court was fully satisfied, that the Duke was

naturalized. At last Sentence was given against him, *That his Head should be sever'd from his Body on Friday next, being the ninth Instant*: yet it was remitted to the Parliament's Consideration, what Mercy should be shew'd to him; and so the Duke was carried back.

The rest of that Day, and the next Day, the Duke was earnestly solicited to preserve himself by making Discoveries. And Mr. *Peters*, who appeared concerned for him during his Trial, did now insinuate himself on him to draw somewhat from him: but all was in vain, there being no choice to be made betwixt a Glorious Death and an Infamous Life.

On the Eighth of that Month, it being put to the Vote of the House, whether he should be reprieved or not, it was carried in the Negative.

And he was executed the Ninth of *March* 1643.

THE Night before his Execution, the Duke, the Earl of *Norwich*, the Lord *Capel*, and Sir *John Owen* (who had all receiv'd Sentence of Death) were brought into one Room: Having spent great part of that Night in taking leave of their Friends, and in their Devotions. The next Day the Duke made the following Speech to his Friends, that attended him, which his Brother publish'd from the Original he sent him.

I know you that are here to be true and faithful to me, I will therefore, in your hearing, say somewhat in order to myself and to my present Condition, and give you also this Copy of it; which, after I am gone, may, perhaps, be thought necessary to be publish'd as the last Testimony of my Loyalty to my King, for whom I now die, and of my Affection to my Country, for the pursuance of whose pious and loyal Commands I am now to suffer.

That my Religion hath always been, and still is Orthodox, I am confident no Man doubts: I shall not therefore need to say much to that Particular, only that *I am of the true reform'd Protestant Religion, as it is profess'd in the Church of Scotland*.

I take God to Witness, that I have been constantly a loyal and faithful Subject and Servant to his late Majesty, in spite of all Malice and Calumny: I have had the Honour, since my Childhood, to attend and be near him till now of late; and during all that time, I observ'd in him as eminent Virtues, and as little Vice as in any Man I ever knew; and I dare say, he never harbour'd Thought of countenancing Popery in any of his Dominions, otherwise than was allow'd by the Laws of *England*, and that among all his Subjects there could not be found a better Protestant than himself, and surely also he was free from having any Intent to exercise any Tyranny, or absolute Power over his Subjects, and that he hath been so unfortunate, I rather impute the Cause of it to the Sins of his People, than to his own: For my own Part, I do protest never to have swerv'd from that true Allegiance which was due to him, and that hath constantly been paid (to my Comfort I speak it) to his Progenitors by my Ancestors, for many Ages, without Spot or Dishonour; and I hope shall be still, by my Successors, to his Posterity.

I do heartily wish well to, and pray for his Royal Issue, and shall die a true and loyal Subject to his eldest Son *Charles II.* the unquestionable

able King by Right of all his Father's Kingdoms. I hope, tho' I do not live to see it, that God's Justice and Goodness will in his own time establish him on the Throne of his Father, which I doubt not some of you will see come to pass; and I am confident till then, and so long as Men deeply plung'd in Guilt and Self-Interest usurp Power and Government, these Kingdoms will fall short either of Peace, or any other permanent Happiness.

I speak this from my just Affection to the Royal Race, and much Compassion to his Majesty's Subjects; but not from any Malice, Anger, or desire of Revenge against any, for what I have, or am to suffer, for I forgive all Men.

It is well known what Calumnies and Aspersions have been thrown upon me by Men of several Parties and Interests, not excepting those who would seem to carry much Affection to his late Majesty, as if I had express'd Disservice or Disloyalty to him; the which, how malicious and groundless they were, I appeal to God, who, with my own Conscience, clearly beareth Witness of my Innocency therein, and I shall beg Mercy from him to whom I am now to give an Account of all my Thoughts and Actions, as I have still had a faithful and loyal Heart to my Master.

It hath been a general Complaint, that I persuaded his Majesty to pass the Act of continuing this Parliament. I dispute not whether the doing of it at that time might have been reputed good or bad, but surely it was not I that did persuade it; neither did I at all deal with his Majesty for his Consent to the Bill of Attainder for taking away the Life of the Earl of *Strafford*, whose great Parts and Affection, 'tis known, I highly valued: Yet some have been pleas'd to attribute to me the Cause of that Concession; but were his Majesty now living, I am confident he would publicly clear me in both these, as he hath been pleas'd many times in private formerly to do.

And truly I am not conscious to my self, (tho' I have been for many Years a Privy-Counsellor to him) of ever giving him any Advice that tended to other Ends (as I conceiv'd) than the Good and Peace of his Majesty and his Dominions.

It hath been rumour'd, since my last Imprisonment, that I should confess my self to be the greatest Instrument under his Majesty (by making use of his *Scottish* Great Seal) for authorizing the War in *Ireland*; a Report so false and simple, as, in my Opinion, judicious and honest Men will not believe it. And truly, as I am free from having Hand therein in any manner of way, so I am of nothing more confident, than that his Majesty was also absolutely free thereof, and that he was not in any case a Causer or Countenancer of those *Irish* Troubles.

I have been often examin'd touching Persons of several Qualities within this Kingdom, that, as is suppos'd, did invite into *England* the late Army from *Scotland*, or promis'd Assistance after their coming; and of late much Persuasion hath been us'd with me to that Purpose, as that upon my Discovery thereof depended the only Means of my Preservation. I will not say that I had any thing to reveal, which would have been satisfactory; but this I desire you to attest to the World, that I have not accus'd, or said any thing that may reflect on any Man, of what Degree soever, within the King's Dominions: And indeed it was so contrary to my Conscience, and so de-

rogatory to my Honour, that if I had been able, yet should I never have prejudiced any in that Nature, though it had been to save me an hundred Lives.

Touching that foul and senseless Slander, that I betray'd the Army under my Conduct, the Care and Pains I then took to prevent the loss of it, and the near Approach of my suffering for it, will, I suppose, abundantly contradict this Aspersion. I was satisfied with the Justness and Necessity of that Engagement upon the Grounds of the Declaration of the Parliament of *Scotland*, fearing then the sad Confusions which have since follow'd here both in Church and State, and particularly the fatal Fall of my Master, to the Preservation of whose Person I was by Obligation and natural Affections as passionately tied, as I could be by Duty and Allegiance.

And now I confess I am void of all Rancour or Displeasure against any, tho' I am within few Hours to die, adjudged by a lawless and arbitrary Court of purpose erected, as is said, to destroy my Master, and some of his Servants, and for a great Part compos'd of Men mechanick and unfit to be Judges; my Death being decreed right or wrong, as is reported, before ever the Trial begun. And tho' my Death is no less than Murder, yet I forgive all, and pray to God to do it, and that my Blood be not laid to their Charge, or to some powerful and eminent Mens, who, as is thought, upon some finistrous Ends, have many Months since contriv'd my Destruction, which now is ready to take effect. And tho' I have answer'd to that Court in regard of the Justness of my Defence, which I thought would have weigh'd with them: Yet I never thought, nor do I acknowledge any Jurisdiction, or lawful Authority in the same, notwithstanding I do with all Christian Humility submit to the Punishment, which for my other personal Sins the Lord hath justly brought upon me. I should have spoken more, yet would not have said so much, but for fear lest either my Memory might slip it on the Scaffold, or that the Rudeness of some People, by Noise or otherwise, might have interrupted me speaking on this Subject. So I thank God I am well prepar'd. God bless you, remember me to all my Friends. I know I have been a great Sinner, yet thro' Faith I have an Assurance that God will forgive me, and have Mercy upon me, thro' the alone Suffering and Intercession of Jesus Christ my Saviour. *Amen.*

About nine a-clock the Officers call'd to the Prisoners to prepare to go, and they were carried in Sedans, strongly guarded, to Sir *Robert Cotton's* House: When they came to Sir *Robert Cotton's*, three or four Officers came from *Cromwell*, desiring the Duke to make some Discoveries, who should not only be prefer'd, but be made a great Man; but he refus'd, as he had formerly done on those Occasions, and said, if he had as many Lives, as Hairs on his Head, he would lay them all down, rather than redeem them by so base a Means. Then they all went to Prayers, and they had some excellent Preachers waiting on them, and praying with them. Some Wine was brought them, and they all drank one to another, and embrac'd and kiss'd each other with much Tenderness. The Duke was first led to the Scaffold, and on the way other Officers came from *Cromwell*, renewing the former Offers, if he would make Discoveries, but he rejected them with scorn.

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When the Duke came to the Scaffold, perceiving greater Silence than he expected, tho' he had resolv'd to make no publick Speech, yet being invited by the Attention he observ'd, he spoke to the People; but as he had not premeditated it, no Copy remains but what was printed from the Notes of the Hearers, and therefore *Dr. Burnet* says he only gives us the Heads of it; as follows,

He address'd himself to the Sheriff, and told him, he judg'd it not very necessary for him to speak much, his Voice was so weak and low, that few of the Croud that look'd on would hear him; nor was he ever so much in love with speaking, or with any thing he had to say, that he took much Delight in it: Yet since this was his last, he being by the Divine Providence of Almighty God brought justly to that End for his Sins, he would speak a little to the Sheriff, for his Voice could not reach others. He was now to suffer as a Traitor to the Kingdom of *England*, a Country which he had ever lov'd equally with his own, not having intended any general Prejudice to it, or to any particular Person in it: His late Actings were the Commands of his own Country, which he could not disobey. It is true, it had pleas'd God so to dispose of the Army under his Command, that it was ruin'd, and he for being cloath'd with a Commission to be General, stood now ready to die. He would not repent what he had pleaded for his own Defence, God was just; nor would he say any thing of his Sentence, but that he did willingly submit to God's Providence, acknowledging that on many Accounts he deserv'd Punishment in this Life, as well as in the next, for he confess'd himself a great Sinner: Yet for his Comfort he knew there was a God in Heaven, who was very merciful, and that his Redeemer did sit at his right Hand, and he was confident that he was mediating for him at that very Instant, being hopeful, thro his all-sufficient Merits, to be pardon'd all his Sins, and to be receiv'd into his Mercy, trusting only to the free Grace of God thro Jesus Christ. He declar'd he had never been tainted in the Religion profess'd and establish'd in the Land, in which he had been bred from his Infancy: It was not this or that Mode or Fancy of Religion that was to be built on, but one that was right and sure, and came from God.

Here observing some were taking Notes, he said he did not expect that, or he had digested what he had said into a better Method: But desir'd that what he had said might not be publish'd to his Disadvantage, since he had not intended to speak any thing when he came to that Place. Then he went on and said, Many dreadful Aspersions had been cast on him, as if his Intentions had not been such as he pretended; but he thank'd God he was unjustly blam'd: That for the King he had ever lov'd him, both as he was his King and his Master, with whom he had been bred many Years, and had been his Domestick-Servant, and that there was nothing the Parliament of *Scotland* declar'd for the King, that was not really intended by himself; and as he hazard'd his Life for him one Way, so he now was to lose it another; and that his Design of Leading in the Army to *England* was really that which was publish'd in the Declaration, in so far as concern'd the King: He was not then to speak of the rest of the Declaration, which had many other Particulars in it; and for what he said of his Duty to the King, there was no Reason to suspect

him of Flattery, or any other End in saying it (God having now so dispos'd of his Majesty) but tho he could gain nothing by it, yet he ow'd the freeing himself of that Calumny to Truth, by which all Men shall gain for ever. There had been many Discourses founded on a Part of the *Scotish* Declaration, which mention'd an Invitation to come to *England*, upon which he had been much labour'd for discovering the Inviters; but he had and did still remit himself to the Declaration, without any other Answer. He was ever willing to serve this Nation in any thing was in his Power, which was known to many worthy Persons in it; and he would still have continued in those Resolutions, had those, in whose Hands the Power was then, thought fit to have preserv'd his Life. But since he was thenceforth to be of no more use, all he could do, was to wish the Kingdom Happiness and Peace, and to pray that his Blood might be the last should be shed: And tho perhaps he had some Reluctance within himself at the Suffering for this Fact, yet he freely forgave all Men, and carried no Rancour with him to the Grave; but did submit to the Will of him who created Heaven and Earth, and himself, a poor sinful Creature then speaking before him: He conceiv'd it could contribute to no End for him to speak of State Business, of the Government of the Kingdom, or things of that Nature; his own Inclinations had been still for Peace. He was never an ill Instrument betwixt the King and his People, nor had he acted to the Prejudice of the Parliament. And as he had not meddled much in those Wars, so he was never wanting in his Prayers to Almighty God for his King's Happiness, and he earnestly prayed God to direct his Majesty (who then reigned) that he might do what should tend to his Glory, and the Peace and Happiness of the Kingdoms. He said he was of the establish'd Religion, which he had profess'd in his own Country where he was born and bred; but for particular Opinions he was not rigid, he knew many godly Men had Scruples about divers things, wherein he had never concern'd himself; nor did Difference of Opinion (which was never more than at this time) move him. His own was clear. He pray'd the Lord to forgive him his Sins, as he freely forgave even those against whom he had the greatest Grounds of Animosity, remembering that Prayer, *Forgive us our Trespases, as we forgive them that trespass against us.*

He discover'd a great Composure by his Looks and Manner of Expression; and when he was desir'd to change the Posture he stood in, since the Sun shin'd full in his Face: He answer'd presently, no, it would not burn it; and he hop'd to see a brighter Sun than that very speedily.

After the Duke had done speaking, he call'd for the Executioner, and desir'd to know how he should sit his Body for the Blow, and told him his Servants would give him Satisfaction. Then he called to his Servants, and commanded them to remember him kindly to divers of his Friends in *England*, particularly to his Mother-in-law, the Countess of *Denbigh*, to whom he had ever paid a filial Respect, and to the old Countess of *Devonshire*: He bid them tell her she would no more question his Loyalty (which she had done sometimes in Raillery) since he was now to seal it with his Blood: Then he kneel'd down and pray'd, after which *Dr. Sibbald* entertain'd him with some pious Discourses; then the Duke pray'd a short

short Prayer himself, and with a chearful Countenance embrac'd the Doctor, and said, *Truly I bless God I do not fear, I have an Assurance that is grounded here (laying his Hand on his Heart) that gives me more true Joy than ever I had. I pass out of a miserable World, to go to an eternal and glorious Kingdom; and tho' I have been a most sinful Creature, yet I know God's Mercy is infinite; and I bless my God I go with so clear a Conscience, that I know not the Man I have personally injur'd.* Then embracing his Servants, he said to every one of them, *You have been very faithful to me, the Lord bless you.* He turn'd next to the Executioner, and after he had observ'd how he should lay his Body, he told him he was to say a short Prayer to his God while he lay all along, and should give a Sign by stretching out his right Hand,

and then he was to do his Duty; *whom he freely forgave, as he did all the World.* And then he stretched himself out on the Ground, and having plac'd his Head right, he lay a little while praying, with great Appearance of Devotion, and then gave the Sign: Upon which the Executioner, at one Blow, sever'd his Head from his Body, which was receiv'd in a Crimson Taffety Scarf by two of his Servants, kneeling by him, and was, together with his Body, immediately put in a Coffin, which was ready on the Scaffold, and from thence convey'd to a House in the *Meuse*, from whence it was, according to the Orders he had given, sent down by Sea to *Scotland*, and inter'd in the Burial-place of his Family.



XLV. *The Trial of Lieutenant-Colonel JOHN LILBURNE, at the Guild-Hall of London, for High-Treason, the 24th, 25th, and 26th of October 1649. 1 Car. II.*



THE Commissioners Names of the extraordinary Commission of Oyer and Terminer, for the Trial of Lieutenant-Colonel John Lilburne, follow.

Thomas Andrews, Lord-Mayor.
 Richard Keble, Lord Commissioner.
 Philip Jermin, Justice of the Upper Bench.
 Tho. Gates, Baron.
 John Puleston, Justice of the Common-Pleas.
 Francis Thorpe, Baron and Member.
 Rob. Nicolas, Member, } Justices of the Upper
 Richard Aske, } Bench.
 Peter Warburton, Justice of the Common-Pleas.
 Alexander Rigby, Baron; but absent.
 Sir Thomas Fowler.
 Sir Henry Holcroft.
 Sir William Row.
 Sir Richard Saltonstall.
 Sir Richard Sprignall.
 Sir John Woolifston.
 Sir William Roberts.
 John Green, }
 John Clarke, } Serjeants at Law.
 John Parker, }
 William Steel, Recorder.
 John Fowke, }
 Thomas Foote, }
 John Kendrick, }
 Thomas Cullum, }
 Simon Edmonds, } Aldermen.
 Samuel Avery, }
 John Dethicke, }
 Rob. Titchburn, }
 John Hayes, }
 Henry Proby, Common Serjeant.

Thomas Brigandine.

Nathaniel Snape.

Edward Rich.

Owen Roe.

Tobias Lisle.

Austin Wingfield.

Richard Downton.

Daniel Taylor.

William Wibend.

Silvanus Taylor.

At the Guild-Hall of London, the 24th of October 1649, being Thursday, at the Trial of Lieut. Col. John Lilburne.

YES made; all Persons that were adjourned to the Court, requir'd to make their Appearance.

The Lieutenant of the Tower of London, Col. Francis West, called to bring forth his Prisoner, according to the Precept.

Whereupon Col. West, Lieutenant of the Tower, brought up the Prisoner out of the *Irish* Chamber, where he had been some time before the fitting of the Court, and was guarded by the said Lieutenant, and a special Guard of Soldiers besides. And being brought to the Bar, the Sheriffs of London were directed to take the Prisoner into their custody.

Silence commanded.

Cryer. John Lilburne hold up thy Hand.

Lieutenant-Col. Lilburne directed himself to Mr. Keble, one of the Keepers of the Great Seal, as the President of the Court, and said to this purpose: Sir, will it please you to hear me?

* See Clar. Hist. Vol. III. p. 390. The Notes subjoined to this Trial were inserted in the first Edition of it.

and if so, by your favour thus. All the Privilege for my part that I shall crave this day at your Hands, is no more but that which is properly and singly the Liberty of every free-born *Englishman*, viz. The Benefit of the Laws and Liberties thereof, which by my Birth-right and Inheritance is due unto me; the which I have fought for as well as others have done, with a single and upright Heart; And if I cannot have and enjoy this, I shall leave this Testimony behind me, That I died for the Laws and Liberties of this Nation; and upon this Score I stand, and if I perish I perish. And if the Fact that I have done, cannot be justified by the Law of *England*, let me perish. I mention none of this for the gaining of Mercy, or by way of Merit; no, I scorn it: for Mercy I crave from none, but from the hands of my God alone, with whom I hope, and am assured one day to rest; whom I have set before my eyes, and so walked, as believing I am always in his Presence, in whose Power my Confidence is fixed, whom I take and own to be my Stay, my Staff, my Strength and Support, and in whom I rest as the Life of my Life, and whom I hope to meet with Joy, when this fading and uncertain Life shall have an end, to live with him in Glory and Blessedness for evermore. And therefore, because I would not willingly trouble you with many Words, to cause you to spend your time impertinently; therefore, Sir, in reference to the Court, I shall crave but so much Liberty from you as was given to *Paul* when he pleaded for his Life before the Heathen *Roman* Judges, which was free Liberty of Speech to speak for himself; the which I now humbly crave as my Right, not only by the Law of God and Man, but also by the Law and Light of Nature. And I shall do it with that Respect, Reason, and Judgment, that doth become a Man that knows what it is to plead for his Life. I hope God hath given me Ability to be Master of my own Passion, and endow'd me with that Reason, that will dictate unto me what is for my own good and benefit.

I have several times been arraigned for my Life already. I was once arraigned before the House of Peers for (sticking close to the Liberties and Privileges of this Nation, and those that stood for them) being one of those two or three Men, that first drew their Swords in *Westminster-Hall* against Col. *Lunsford* and some Scores of his Associates. At that time, it was supposed, they intended to cut the Throats of the chiefest Men then sitting in the House of Commons: I say, for this, and other things of the like nature, I was arraigned by the King's special Command and Order, the first of *May* 1641. I mention it to this end, that when I came before the House of Peers, where was about three or four-score Lords then sitting at the beginning of the Parliament, (who then were supposed the most arbitrary of any Power in *England*) yet I had from them free Liberty of Speech, to speak for my Life at their Bar, without check or controul, in the best manner all those Abilities God had given me would enable me. And when I was at *Oxford*, I was again arraigned as a Traitor before the Lord Chief Justice *Heath*, for levying War at the Command of the then Parliament against the Person of the King: and when I came before him in the *Guild-Hall* of *Oxford*,

he told me (there being present with him, as his Fellow-Judge, Mr. *Gardiner*, sometimes Recorder of the City of *London*, now Sir *Thomas Gardiner*, and others that sat by a special Commission of Oyer and Terminer from the King; the which Commission I did not so well then understand, as I hope I do now :) And my Lord Chief Justice *Heath* stood up, and in the face of all the Court, and in the face of all the Country present there, told me; Capt. *Lilburne*, you are brought here before us for High Treason, for levying War in *Oxfordshire* against your Sovereign Lord and King; and tho you be now in a Garrison, and were taken in Arms in open Hostility against the King, (yea Sir, and I must now tell you in such Hostility, that we were but about 700 Men at *Brentford*, that withstood the King's whole Army in the Field above five hours together, and fought it out to the very Sword's Point, and to the Butt-end of the Musket; and thereby hindred the King from his then possessing the Parliament's Train of Artillery, and by consequence the City of *London*, in which very Act I was taken a Prisoner, without Articles or Capitulation, and was by the King and his Party then look'd upon as one of the activest Men against them in the whole Company) yet said Judge *Heath*, we will not take advantage of that, to try you by the Rules of arbitrary Martial Laws, or any other arbitrary Ways; but we will try you by the Rules of the good old Laws of *England*: and whatsoever Privilege in your Trial the Laws of *England* will afford you, claim it as your Birth-right and Inheritance, and you shall enjoy it with as much Freedom and Willingness, as if you were in *Westminster Hall*, to be try'd amongst your own Party. And this we will do for that end, that so at *London* your Friends shall not have any just cause to say, we murdered you with Cruelty, or denied you the Benefit of the Law, in taking away your Life by the Rules of our own Wills. Nay, further said he, Capt. *Lilburne*, it is true I am a Judge, made by my Sovereign Lord the King, according to his Right by *

Law, and so in a special manner * See the 27 of Hen. 8. c. 24. am his Servant and Counsellor, and am to act for his Good, Benefit,

and Advantage: And yet notwithstanding, it is by the known Laws of this Land my Duty to be indifferent and free from Partiality betwixt my Master and you the Prisoner, and I am specially bound unto it also by my Oath. And therefore you shall have the utmost Privileges of the Law of *England*, which is a Law of Mercy, and not of Rigour, and hath the Life of a Man in tenderest and highest † Esti-

mation: And therefore it is the Duty of a Judge by Law, to be of Counsel with the Prisoner, in things wherein by his Ignorance he falls short of making use of the Benefit of the Law, especially when he is upon the Trial of his Life. Yea, and to exhort him to answer without fear, if he perceive him daunted or amazed at the Presence of the Court. Yea, it is my Duty to carry myself with all Fairness and Evenness of Hand towards you; and wherein that there shall seem any Mistakes to appear, in Circumstances or Formalities, to rectify you: For it's my Duty to help you, and not to use any boisterous or rough Lan-

† See the 2d part Inst. fol. 28, 30, 42, 43, 53, 315, 316, 591. or part 3. fol. 34.

Language to you in the least, to put you in fear, or any ways prevent the Freedom of your Defence; and according to the Laws of *England* this is my Duty, and this is the Law. And accordingly he gave me liberty to plead to the Errors of my Indictment, before ever I pleaded Not Guilty; yea, and also became willing to assign me what Counsel I pleased to nominate, freely to come to Prison to me, and to consult and advise with me, and help me in point of Law. This last he did immediately upon my pleading to the Indictment before any Fact was proved: all which is consonant to the declared Judgment of Sir *Edward Cooke*, that great Oracle of the Laws of *England*, whose

* Which Orders are dated May 12, 1641. and June 3, 1642. You may at large read at the last end of his *Instit.* part 2.

Books are published by special * Orders and Authority of Parliament for good Law; who in his third Part of his *Institutes*, Chap. of *High Treason*, fol. 29, 34, compared with fol. 137, 230, asserts the same.

Truly, Sir, I being now come before you to answer for my Life, and being no professed Lawyer, may through my own Ignorance of the practick part of the Law, especially in the Formalities, Niceties and Punctilio's thereof, run my self with over-much Hastiness in Snares and Dangers, that I shall not easily get out of. And therefore being all of a sudden bid to hold up my Hand at the Bar, I cannot chuse but a little demur upon it, and yet with all respect to you, to declare my Desirableness to keep within the Bounds of Reason, Moderation and Discretion, and so to carry my self as it doth become a Man, that knows what it is to answer for his Life.

And therefore in the first Place, I have something to say to the Court about the first Fundamental Liberty of an *Englishman* in order to his Trial; which is, That by the Laws of this Land all Courts of Justice always ought to be free and open for all sorts of peaceable People to see, behold and hear, and have free Access unto; and no Man whatsoever ought to be tried in Holes or Corners, or in any Place, where the Gates are shut and barr'd, and guarded with armed Men: And yet, Sir, as I came in, I found the Gates shut and guarded, which is contrary both to Law and Justice.

Sir, the Laws of *England*, and the Privileges thereof, are my Inheritance and Birth-right: And, Sir, I must acquaint you, that I was sometimes summoned before a Committee of Parliament, where Mr. *Corbet* and several others have had the Chair; and there I stood upon my Right by the Laws of *England*, and refused to proceed with the said Committee, till by special Order they caused their Doors to be wide thrown open, that the People might have free and uninterrupted Access to hear, see and consider of what they said to me; although I think the Pretence that I am now brought before you for, be the very same in Substance, that I was conveyed before Mr. *Corbet* for, which was about Books: and I am sure there I did argue the case with him and the rest of the Committee, soundly out in Law; proving that they were bound in Law and Justice freely to open their Doors, for the free Access of all sorts and kinds of Auditors: And I did refuse (as of Right) to proceed with them, till by special Order they did

open their Doors. For no Trial in such Cases ought to be in any Place, unless it be publick, open and free; and therefore if you please that I may enjoy that legal Right and Privilege which was granted unto me by Mr. *Miles Corbet*, and the rest of that Committee, (when I was brought before them in the like Case that now I am brought before you) which Privilege I know to be my Right by the Law of *England*; I shall, as it becomes an understanding *Englishman* (who in his Actions hates Deeds of Darkness, Holes or Corners) go on to a Trial. But if I be denied this undoubted Privilege, I shall rather die here than proceed any further. And therefore foreseeing this beforehand, and being willing to provide against all Jealousies of my Escape, the Fear of which I suppose might be objected against me as a Ground to deny me this my legal Right; and therefore before-hand I have given my Engagement to the Lieutenant of the Tower, that I will be a faithful and true Prisoner to him.

And I hope the Gentleman hath so much Experience of my Faithfulness to my Word, that he doth not in the least question or scruple it; I am sure he hath often so declared to me that he doth not.

Nay, I have not only engaged to be a true Prisoner in the Tower to him, but I have also solemnly engaged to him, that I will come civilly and peaceably with him, and that I will go civilly and peaceably back with him again: And that if any Tumult or Uproar shall arise in the Croud, of which I lose him, and he me; or in case I should be any ways by Force and Power rescued from him, I have also faithfully engaged to him, that I will come again to him (by the Assistance of God) as soon as ever I can get away from that Force or Rescue. And all this I entreated him to acquaint you with, that all Jealousies and Disputes might be avoided.

Judge *Keble*. Mr. *Lilburne*, look behind you, and see whether the Door stands open or no.

L. Col. *Lil*. Well then, Sir, I am satisfied as to that. But then in the next place, I have read the *Petition of Right*, I have read *Magna Charta*, and abundance of Laws made in Confirmation of it; and I have also read the *Act that abolisheth the Star-Chamber*, which was made in the Year 1641, which last recited Act expressly confirms those Statutes that were made in *Edward the Third's* Time, which declares all Acts, Laws and Statutes that were made against *Magna Charta*, to be null and void in Law, and holden for Error.

In the reading of which Laws I do not find a special Commission of *Oyer and Terminer* to be legal and warrantable. I beseech you, Sir, do not mistake me; for I put a vast difference betwixt an ordinary and common Commission of *Oyer and Terminer* for holding ordinary and common Assizes and Sessions, and betwixt an extraordinary and special Commission of *Oyer and Terminer* to try an individual Person or Persons, for a pretended extraordinary Crime. The Laws I last recited, and the Fundamental or Essential Basis of Freedom therein contained, knows no such Names or Commissions of special *Oyer and Terminer*.

And those Statutes in *Edward the First*, and *Edward the Third's* Time, that doth erect those special and extraordinary Commissions, and warrant the Usage of them, are merely

irrational (a) Innovations upon our indubitable Rights contained in *Magna Charta*, and mere Court and Prerogative-Devices to destroy the best of Men, by extraordinary Courts appointed to prejudice Proceedings that should manfully stand in the way of the Prince, or any of his great Favourites: for sure I am from the *Petition of Right*, no Ground or Foundation for any extraordinary or special Commission of *Oyer and Terminer*, upon any pretended, special or great Occasion, cannot be founded; but rather the absolute quite contrary, as to me clearly appears by the very plain Letter of that most excellent Law. And therefore such a special Commission upon any pretended special Occasion, being expressly against our indubitable Rights contained in *Magna Charta*, and the *Petition of Right*, viz. That no *Englishman* shall be subjected to any other Trial, but the ordinary, universal and common Trials at ordinary Assizes, Sessions or Goal-Deliveries, and not in the least to be tryed by extraordinary and special prejudged, packed, over-awing Commissions of *Oyer and Terminer*; and therefore all such extraordinary and dangerous Trials are absolutely abolished, by the late excellent Acts that confirm the *Petition of Right*, and all and every the Clauses therein contained, and abolisheth the *Star-Chamber*, both made *Anno 1641*.

And, Sir, with your favour, the then Parliaments that made the last cited Laws, were so far from countenancing any special Commissions of *Oyer and Terminer*, upon any special or pretended great Occasions whatsoever that I can read of, that I rather find and read the Parliaments Proceedings in the Year 1641, an extreme Out-cry of the House of Commons against special Commissions of *Oyer and Terminer*, with a great deal of Bitterness and Vehemency, as may fully and clearly be read in that excellent Argument of Mr. Hyde, April 1641, printed and published in a Book, called *Speeches and Passages of Parliament*, p. 409, to 417, which I have here at the Bar to produce; which Mr. Hyde was then the special and appointed Mouth of the House of Commons before the Lords, who unto them in conformity to his Commission from the then House of Commons, complains to the House of Lords extremely of a special Commission of *Oyer and Terminer* that was exercised in the five Northern Counties of *England*; and earnestly, in the name of the House of Commons, craves the special Assistance of the House of Lords to pluck up that Court by the very Roots, founded upon a special Commission of *Oyer and Terminer*, being so illegal and unjust in the very Foundation of it, as it is inconsistent with the People's Liberties, and as that which destroyed and disinherited all the People that were tryed, both of their Birth-right and Inheritance, viz. their Liberties and Freedoms contained in *Magna Charta*. And this, Sir, was the declared and avowed Judgment and Opinion of the House of Commons in April 1641, in their primitive Purity and Non-defilement, when they acted bravely and gallantly for the universal

Liberties and Freedom of this Nation (and not Self-interest) when they were in the Virginity of their Glory and Splendor, as he there fully and most excellently declares; and yet he there gives an extraordinary Reason for the original Erection of that Court founded upon a special Commission of *Oyer and Terminer*, as can be rendred.

The original Reason or Occasion of which, he there declares to be thus: That by reason of the Suppression of the Abbies in the 27th of *Henry the Eighth's Time*, in the North of *England* (through Discontent thereat) there did arise from the said 27th Year to the 30th no fewer than six grand Insurrections, most of them under the Command of some eminent Man of those Countries; which Insurrections and Rebellions occasioned the levying of great Armies, which had like to have set the whole Kingdom in an universal Flame: for the suppressing and preventing of which in future times, King *Henry VIII.* caused a special Court to be erected, by a special Commission of *Oyer and Terminer*; which Court also continued in *Edward the Sixth's Time*, Queen *Mary's*, and first and second of King *James*: The Basis of which Commission was founded upon those fore-mentioned innovating Statutes made in *Edward the Second's* and *Edward the Third's* (b) Time: Which special Commission of *Oyer and Terminer* was several times renewed by the late King *Charles*, as in the fifth, eighth, and thirteenth Year of his Reign. And the said Mr. Hyde there in his Argument or Speech, which I have here in Print, names several of the Presidents of that illegal Court of special Commission of *Oyer and Terminer*: And he there also declares in what an extraordinary Manner, and upon what an extraordinary Occasion it was granted; which was so great, as that a greater could not be imagined: and yet notwithstanding he declares, that this extraordinary Commission, which being granted to suppress and quiet those many extraordinary Insurrections and Rebellions, which do not admit of so long Delay as times of ordinary Trial, in times of Peace, when the ordinary, legal and common Courts of Justice are open and free, will do, when Peace and Quiet is in the Nation, as now it is; and yet for all that, he condemns it for illegal.

And therefore, Sir, admit my Actions in their Tendency, to be as dangerous and heinous as any of my Adversaries can imagine or declare them to be; yet they are but in the Ashes, but in the Hearth, they are not broke out into visible and violent hostile Actions. And therefore I say, if special Commissions of *Oyer and Terminer*, granted in such special and transcendent Cases as those in *Henry the Eighth's Time*, were illegal; much more must a special Commission of *Oyer and Terminer* granted to try me barely for Words, or at most for pretended Writings or Books, at such a time when there is no burning Flame of Insurrections or Rebellions in the Kingdom, but all in visible Peace, and all the ordinary Courts of Justice open: and I and my Friends have often

(a) And excellent to this purpose is Lieutenant-Colonel Lilburne's Argument, in his second Edition of his Picture of the Council of State, p. 8. against the Erection of extraordinary Courts, which thus followeth: He granting that the Parliament hath Power to erect a Court of Justice to administer the Law, provided that the Judges consist of Persons that are not Members of Parliament; and provided the Power they give them be universal; that is to say, to administer the Law to all the People of England indefinitely, who are all equally born free alike, and not to two or three particular Persons solely; the last of which for them to do is unjust, and altogether out of their power, &c. Which Argument or Reason is most notably illustrated and enlarged in the second Edition of the Legal Fundamental Liberties of England, revived of the 8th of June, 1649. p. 72.

(b) Which were Westminster, the second being the 13 of Ed. 1. c. 29. and 2 Ed. 3. c. 2. and 34 Ed. 3. c. 1.

sought to enjoy the Benefit of the Law in a legal Trial, from first to last, but could never enjoy it in the least measure, although many Assizes and Sessions have past over my Head since my first Commitment, now seven Months ago; at the first of which, in the County where my pretended Crime was committed, I ought by Law and Justice either to be tryed or acquitted. So that, Sir, by what I have already said, you may see the Judgment and Opinion of the House of Commons upon special Commissions of *Oyer and Terminer*, in their first Purity, when as a full House, there being constantly 400 or 500 of them sitting in the House, as the deputed and chosen Trustees of the People of *England*, whose Opinion was to damme them, and pluck them up by the Roots, as unjust and illegal in their original Institution, which they have accordingly done, and declared to the whole Nation in the Act that abolished the *Star-Chamber*; where that Court spoken against by Mr. *Hyde*, is totally dammed and pulled up by the Roots. So that now in Law I cannot see how special Commissions of *Oyer and Terminer* can be legal at this present, admit the Power never so just from whom it comes; but abundantly much more, seeing there is no actual Wars, nor popular Insurrections: which if lately there had been any, and yet were overcome, there is no Pretence or Ground by the good old Laws of *England*, for any extraordinary Proceedings against any Man, although he had been in Arms against you, but he ought to have the Benefit of the ordinary, accustomed and common Trials at the Common Law, as clearly appears by the express Words of *the Petition of Right* (c). But I was never in any hostile manner against those that are the present Governours of the Nation, but have been under their Command in several Battels in the Nation, and have hazarded my Life for them, and never yet in the least changed my original or first Principles; nor never was engaged in the least in any Hostility against them, but have always, since I five Years ago gave over my Command, lived in Peace and Quietness in mine own House and Abode: and was the same Day at the House of Commons Door that their Votes passed against me, declaring me in general (which in Law signifies nothing) to be a Traitor; and spake with a Gentleman that is now a Judge amongst your selves (*viz.* Mr. *Rigby*) at the House-door, who, in some Great Ones Names, proffered me large Matters, if I would do as I should be directed by them. After this, I went home to mine own House in *Southwark*, where I stayed in Peace and Quietness, well enough knowing the Votes that that Day passed against me, without either particular Accusation or Accuser, or any such thing; where I stayed, whenas I might easily have escaped the Hands of mine Enemies, and been gone: but having the sweet Peace of a good Conscience within me, which did assure me that I had done nothing that was against the Welfare of the Nation of *England* in general, nor against the Welfare of any one particular Man in *England*, but really wish'd it well, and all its Well-wishers:

I say that, notwithstanding my certain Know-

ledge of all that at the House had passed against me; and although I also knew that the further Design against me, which was, That the Council of State (as they are called) would take me away thereupon with armed Force the next Morning; yet notwithstanding all this, I stirred not out of my House, but remained there till about Five a-clock the next Morning; at which time 200 or 300 armed Horse and Foot (without so much as one Civil or Magisterial Officer with them) came by force of Arms, and haled me out of Bed from my Wife and Children, not according to the Law of *England*, as is expressly provided in two several Statutes, *viz.* the 1st of *Edw. 6. chap. 12.* and the 5th and 6th of *Edw. 6. chap. 11.* By which Rules of the Law, and no other, they ought to have proceeded against me from first to last; and I am sure they both expressly provide, That if any Man be accused of Treason, that he shall be accused first to one of the King's Counsel, or to one of the King's Justices of Assize, or else to one of the King's Justices of the Peace being of the *Quorum*, or to two Justices of the Peace within the Shire where the same Offence or Offences shall happen to be done or committed (d).

But contrary to these and other wholesom and good Laws (although there hath been an eight Years War in *England*, pretendedly, for the Preservation of the Laws and Liberties of *England*, yet, I say, contrary to the express Tenor of these Laws, as also of *the Petition of Right*, yea, and also of the express Letter of that excellent Law that abolished the *Star-Chamber* this Parliament) was I by force of Arms (that never fortified my House against the present Power, nor never disputed any of their Summons, though sent by the meanest Man that ever appertained to them; and who, if they had sent their Warrant for me by a Child, I would have gone to them) I was fetch'd out of my Bed in Terror and Affrightment, and to the Subversion of the Laws and Liberties of *England*, and led through *London-Streets* with Hundreds of armed Men (like an *Algier* Captive) to their Main-Guard at *Pauls*, where a mighty Guard staid for the further conducting me by fore of Arms to *White-hall*. Now, Sir, if I had committed Treason, I ought not to have been apprehended and proceeded against by armed mercenary Soldiers, but by Civil and Magisterial Officers, and no other; according to those excellent Privileges that the Parliament themselves in the Year 1641, in their own Book of Declarations, p. 36, 37, 76, 77. did claim for those six Members, *viz.* the Lord *Kimbolton*, Mr. *Pym*, Mr. *Hollis*, Mr. *Stroud*, Sir *Arthur Haslerig*, and Mr. *Hampden*: I say and aver, I ought to have had the Process of the Law of *England*, due Process of Law according to the forementioned Statutes and Precedents; for I never forcibly resisted or contended with the Parliament; and therefore ought to have had my Warrant served upon me by a Constable, or the like Civil Officer; and upon no Pretence whatsoever, ought I to have been forced out of my Bed and House by mercenary armed Officers and Soldiers. But, Sir, coming to *White-hall*, I was there also kept by armed Men, contrary

(c) Of which Judgment Sir Edward Coke is positively, in part 2. Instit. f. 48. and part 3. f. 52. in *Tho. Earl of Lancaster's Case*, which is singular well worth the reading. See also part 1. Instit. f. 13. a.

(d) See also to this purpose, part 3. of Coke's Instit. ch. High-Treason, f. 26, 27, 28. and part 1 Parl. Declar. in the Case of the Lord *Kimbolton* and the five Members, p. 38, 89, 76, 77.

to all Law and Justice; and by armed Men against Law, I was by force carried before a Company of Gentlemen sitting at *Derby-House*, that look'd upon themselves as authorized by the Parliament to be a Committee or Council of State, (who by the Law I am sure in any kind had nothing at all to do with me in Cases of pretended Treasons) where I was brought before Mr. *John Bradshaw*, sometimes a Counsellor for my self before the House of Lords, against my unjust *Star-Chamber* Judges; who there in my behalf, Feb. 1645, did urge against the Lords of the *Star-Chamber*, as the highest Crimes against the Liberties of the People that could be, as being illegal, arbitrary and tyrannical, that the Lords in *Star-Chamber* should censure me to be whip'd, pillory'd, &c. for no other Cause but for refusing to answer their Interrogatories against my self. And when I was brought before the said Council of State, I saw no Accuser, no Prosecutor, no Accusation, no Charge nor Indictment; but all the Crime that there was laid unto my Charge, was Mr. *Bradshaw's* very seriously examining me to Questions against my self: although I am confident he could not forget, that himself and Mr. *John Cook* were my Counsellors in February 1645, at the Bar of the House of Lords, where he did most vehemently aggravate, and with Detestations condemn the Lords of the *Star-Chamber's* unjust and wicked dealing with *English* Freeman, in censuring them for their refusing to answer to Questions concerning themselves; and yet notwithstanding walked with his dealing with me in the very Steps that formerly he had bitterly condemned in the *Star-Chamber* Lords; yea, and there for refusing to answer his Questions, (for any thing he declared to me to the contrary) committed me to Prison for Treason in general. And you know very well, better than I do, that by your own Law, Generals in Law signify nothing.

Judge *Jermin*. Mr. *Lilburne*, you very much abuse and wrong your self, for you very well know Mr. *Bradshaw* is now denominated by another Name, namely, *Lord President to the Council of State of England*; and it would well become you in your Condition so to have stiled him.

Lieut. Col. *Lilburne*. And although no Crime in Law (which ought to be particularly express'd) was laid unto my charge; yet when I was first imprisoned, there were thousands of my Friends (Well-wishers to the Freedoms of *England*, and to the common Cause in which they had been engaged in for these eight Years together) both old and young, both Masters of Families, young Men and Apprentices, and abundance of others of the Feminine Sex too, with abundance of cordial honest Men in several Countries, joined in several rational and fair Petitions, and delivered them to the House in the behalf of my self, and my three Fellow-Prisoners; in which they most earnestly intreated them, that they would not prejudice us before we were heard, and knew our Accusers and Accusations, but rather that they would release us, and take off their prejudging Votes against us, which they had caused to be proclaimed in all the public Places of the Nation against us, and let us have a fair and legal Trial, according to the Laws of *England*, and according to the undeniable Privileges of the due Process of the Law

from first to last; and they would put in any Security that they would require of them, that we should be forthcoming at all times to answer whatsoever in Law could be laid to our charge. Unto all which Petitions, which were very many, they could get no manner of satisfying Answer, but Slights, Abuses and Scorns.

But besides this, Gentlemen, that you may see that I am rational, and that you may see that I have an innocent and quiet Conscience within me, that does not accuse me, nor terrify me; therefore I must acquaint you, that I again and again proffered my chiefest Adversaries, and sent often to them, being earnestly desirous to chuse two Members of the House of Commons, and let them chuse two more, whom they please; and I would with all my Heart freely refer all manner of difference betwixt them and me, to the final Determination and Judgment of four of their Fellow-Members: but all this would do no good, and yet they would not in the least let me understand what was the Thing they desired of me; but, by their Power and Will, I had my Pockets and Chamber search'd to find out Advantages against me; and also lock'd up close Prisoner, with Centinels Night and Day set at my Door, and denied the Access and Sight of my Wife and Children for some certain time; and for about twenty Weeks together in the heat of Summer, kept close Prisoner, and denied the Liberty of the Prison, and my Estate with a strong Hand taken away from me, without any Pretence (or due Process) of Law, to the Value of almost three thousand Pounds, that was legally and justly invested in me, and in my Possession. But being I will avoid (at this time especially) Provocations as much as I can, I will name no Person by whose Power and Will it hath been done, although he be notoriously known; but the Gentleman that took it away by his pleasure, without all Rules of Law or Justice, told my Father to this purpose, That I was a Traitor, and under the Parliament's Displeasure; and therefore he would secure it from me, although I were not in the least convicted of any Crime, neither in Law then, or for many Months after had I the least Pretence of Crime laid unto my charge. And although my own Estate by force, against Law, was taken from me, yet was I also denied in my close Imprisonment that legal Allowance that should have kept me alive; for in all this miserable Condition I never yet received a Penny of my legal Allowance, but was positively denied that Testimony and legal Right that the late King constantly allowed to all the Members of the Parliament that were committed in the Third of his Reign, and several other times; unto whom for their Diet he allowed three, four and five Pounds a Week, according to their Quality, although they had great and large Estates peaceably in their possession. And one of them that is now beyond the Seas, a Colonel, I have forgot his Name, (but it was Colonel *Long*) confessed in the Lieutenant of the Tower's own Chamber, the last Year, that the King was so bountiful to him and the rest of his Fellow-Prisoners, that he let them enjoy the Allowance of about four or five Pounds a week for Diet; and that while he was Prisoner in the Tower, he spent the King about 1500*l.* for his own particular self in Provision. But notwithstanding I was denied all this, and to fill up the

the height of the insufferable Provocations put upon me, abundance of my own and antient Acquaintance were set upon me to calumniate, bespatter and reproach me; yea, and to endeavour to become Instruments to take away my Life, some of them confessing they were underhand set on by some Parliament-Men: All whose base and wicked Petitions, Papers and Books preferred and published against me, were hugged and imbraced; altho, for my own part, I do not know of any Man in this World that can justly tax me with any Action, or maintaining any Principles or Tenents, but what doth become a Man that doth believe all that is contained in the Law and the Gospel, and does believe the Resurrection of the Dead, and Life eternal; nay, that does believe that I my self shall arise and go to the Lord of Glory. Yet notwithstanding all these unparallel'd Provocations put upon me, especially by divers of my old Acquaintance, whom I had upon all Occasions faithfully served, but never wronged, injured nor provoked, being instigated (as they themselves confess in some of their own Congregations) by Parliament-Men so to do.

Truly, Sirs, I appeal to your own Judgments, and to your Consciences, and to all the People that hear me this Day, whether all these Provocations laid upon a poor Man, which is but Dust and Ashes, as well as other Men, be not too insupportable a Burden, and too much for the Causers of them to take advantage of the Fruits produced by them, to destroy me, and take away my Life.

And therefore, Sir, in the first place, I shall humbly crave that Favour and Right, seeing I am brought before you by a piece of Parchment that truly I could not read, neither could he do it that shewed it me, (I mean the Lieutenant of the Tower;) for admit that if I did well understand *Latin*, as indeed I do not, only some ordinary Words, yet was it in such an unusual strange Hand, that I could not read it. And therefore being I am brought before you implicitly, and not as I conceive an *Englishman* ought to be, who ought to see and read the Authority, by virtue of which he is convened before any Power. It's true, I know some of you, Gentlemen, that I see fit before me, yet not many of you; and truly I have nothing but a piece of unlegible Parchment, which cannot satisfy my Understanding of the Legalness of my Convention before you: but being I am not able to dispute that Power that compulsively brought me, but here I am; and therefore in order to the declaring of my self to be a true *Englishman*, I most humbly crave (and that I think is consonant to Reason, and I hope to Law too) that I may see, and hear read the Commission, by virtue of which you sit here this Day, and convene my Person before you, that so I may compare it to the Law; and consider whether or no, that by my pleading before you by virtue of it, I do not betray my Liberties. And therefore I humbly crave that you would let me hear your Commission read; for this Court is no ordinary and common Assizes, Sessions, or Goal-Delivery, the only proper Courts for trying me for all criminal Faults; yea, and those also ought to sit where the Crimes are committed: and I was imprisoned for a pretended Crime, pretended to be committed in the County of *Surrey*, where by the Common Law

of *England*, and express Statutes, I ought to be tried therefore, and no where else.

And therefore being brought in an extraordinary manner to such an extraordinary Place as this, which is no ordinary Assizes or Sessions, no, nor yet in mine own County; therefore I again humbly desire that you will be pleased to let me see and hear your extraordinary Commission, that so I may consider whether the Extent or Latitude of the Commission be consonant, or no, to the Petition of Right, and other the good old Laws of *England*. For those that now sit at *Westminster*, exercising the supreme Power, by two special Declarations, the one dated the 9th of *February* last, and the other the seventeenth of *March* last, have positively declared, and called God to witness, That they will maintain, preserve, and defend that excellentest of Laws, the Petition of Right, as in the seventh Page of the last Declaration they call it; and that the People of *England* shall enjoy all the Benefit therein contained, whether to Life, Liberty, or Estate, with all Things incident thereunto. And therefore I humbly beg and crave that Favour from you, that seeing to me you appear to be sent in an extraordinary manner, not according to the ordinary Customs of the Laws of *England*, that you will be pleased to let me hear your Commission read, that so I may consider the Consonancy thereof to the Petition of Right, and other the good old Laws of *England*: and after the reading of it, I hope I shall return you an Answer as doth become a rational and ingenious Man: Who though he hath Right to all the Privileges of the Laws of *England*, and hath read all the declared and plain Laws of *England*, that are to me the Fundamentals of all, yet the practick Part of the Law, which are in other Tongues besides the *English*, I cannot read, know, nor understand. And in the Petition of Right, and other the good old fundamental Laws of *England*, I can find no Foundation or Bottom for such an extraordinary Court, as this before my Eyes seems to be: And therefore I again make it my most humble Suit to hear your Commission read.

Judge Keble. Mr. *Lilburne*, you are fully heard.

Mr. *Prideaux* Attorney-General. My Lord, the Prisoner at the Bar, nor none else, have Cause to complain that he hath wanted your Patience in being fully heard. My Lord, that which at the beginning of his Arraignment you expected from him, which was to hold up his Hand, he denied; and upon his Denial desired Liberty of Speech to speak, and he hath enjoyed it. But, my Lord, how pertinent his Discourse is to what was proposed to him, the Court, and all that hear him, will judge. My Lord, I am not here to justify the Actings of those that here he hath complained against; but they are a Court, they are a Council, and my Thoughts are (and so ought his to be) honourable of them; and what they have done (my Lord) towards him, in ordering this Court to try him, is but Justice. My Lord, there is no special Commission of *Oyer and Terminer*, but a general Commission; and upon that general Commission here is a special Presentment of Mr. *Lilburne* here at the Bar: The general Commission is according to the Law of the Land; and upon that special Presentment it is expected he may be proceeded against according to Law. And for your Commission, my Lord,

that hath been read and published to the Court before Mr. *Lilburne* came to the Court, and the Court is satisfied with it, that it is in the ordinary way; and I hope the Judgment you will give, will declare it to be according to the Law, in the ordinary way. And as for the Commission it self, in the Form of it, it is not a Tittle varied from the ordinary accustomed Form. But, my Lord, the Petition of Right, *Magna Charta*, the Statutes, and all Declarations that have been spoken of, they are all confirmed in this, and all do confirm it; for in that ordinary Tract, that hath been practised in this Nation for five hundred Years, is Mr. *Lilburne* now to be tried, and that by the old good Laws of *England*, Mr. *Lilburne's* Birth-right, and every Man's else, he has his Trial; the beginning of which hath been Mr. *Lilburne's* Presentment, which is already found by the Grand Inquest, who are Men of Integrity, Men of Ability, Men of Knowledge. My Lord, he is now come to his Trial, not in an extraordinary way, but by a Jury of good and legal Men of the Neighbourhood; by Men that do know, my Lord, and understand what is Fact, what is (a) Law, and to do Justice indifferently between both.

And, my Lord, I do know, and publish to all that now hear me, that the Commission for Trial of Mr. *Lilburne* this Day, for those Differences that are between the State and Mr. *Lilburne*, is free in Law from all those Exceptions that he is pleased to put upon it, and is unquestionably legal, and used for these many hundred Years together. And as for Mr. *Lilburne's* declaring the Fact, for which he was originally imprisoned, for to be committed in *Surrey*, and therefore there in Law he ought to be tried, and not here in *London*, being another County; as for Mr. *Lilburne's* Crimes committed in *Surrey*, his own Conscience best knows what they are: But Mr. *Lilburne*, at most, can but yet guess at what we intend to try him here for, or lay unto his Charge.

But, my Lord, if Mr. *Lilburne* will please to put himself upon his Trial, according to Law, my Lord, I hope the Court, and all that hears and sees their Proceedings, will receive full Satisfaction in the Legality and Fairness of their Proceedings against him, and himself the Benefit of Justice and Law.

Lieut. Col. *Lilburne*. Sir, by your favour, in two Words, I shall not be tedious, I now perceive who is my Accuser and Prosecutor, the Gentleman that is a very unequal one; for he is one of the Creators (being a Member of the House) of you that sit here this Day to be my Judges; and therefore an over-awing and unfit Accuser or Prosecutor.

Ld *Keble*. Mr. *Lilburne*, I pray you hear me a Word; for now you speak not rationally nor discreetly: You have had a fair Respect and Hearing. What you speak of Liberties and Laws, we come here to maintain them for all, and for you too: And we also come for to vindicate our Actions. And as for that you speak of in reference to the Commission, I must let you know the Commission is warrantable by the Laws of *England* for this five hundred Years, nay, and before five hundred Years in substance. The second Thing that you speak to, is, That

you were apprehended in such an hostile Manner, understanding by Law you should have been taken in an ordinary way, by an ordinary Officer. But, Mr. *Lilburne*, in all Apprehensions of Traitors, Felons, and Murderers, is not the Power of the County to be raised, and the Sheriff is to call and take what Power he pleaseth.

Lieut. Col. *Lilburne*. By your favour, Sir, not unless I resist; which I did not. And besides, there was no Sheriff, nor no other Civil Officer, at my Apprehension.

Ld *Keble*. Mr. *Lilburne*, spare your self: It is as they are informed of the Danger of the Man; they may do it before ever they see him. The next Thing you are upon, is, The Wrong and Injustice that you received by the Proceedings in the Star-Chamber against you. You see the Proceedings there have been questioned, and you justified: If there be any thing else that hath been by others in the North, or elsewhere acted, there is no Man here that will justify them in their Evil. But for a private Man, as you are, to tell us of them here, and to come and tell us to our Faces that we are created and constituted by the Attorney-General, we will not suffer it, nor further hear of it. And therefore, Mr. *Lilburne*, although you have spoken fair Words, (and happily more than your Friends expected from you) I must tell you that Words are but Words; and it were well that you would do as well and as rationally as becomes a rational Man, as you have declared you will.

Lieut. Col. *Lilburne*. With your favour, but one Word more.

Judge *Jermin*. Mr. *Lilburne*, pray spare a Word, and hear the Court: This Court sits here by lawful Authority, and that is from the Parliament, that are the supreme Authority of *England*; so that our Power is not derived from those that have no rightful Authority to constitute us, but our Power is from the publick Authority of *England*, which is now, by an admirable Act of God's Providence, lately, but truly revived and settled by God upon them. By that Authority this Court doth now sit; and you are brought here before them that are most of us Judges of the Law, and we are sworn to do you and every Man Justice and Right, according as his Cause requires, according to Law, Judgment, Equity, and Reason. And it was said truly, that which my Brother *Heath* (who now is dead) did say, It's the Duty of the Judges to be of Counsel with the Prisoner at the Bar before him, and to do that which they are sworn to do: And that you shall have. And accordingly you have received more Favour than ever I heard of a Prisoner that was accused of Treason in my Life ever had. And as for the Commission, I must tell you it is usual to have Commissions of Oyer and Terminer, and that even in Term-time, for high Offences, and such as tend to the Destruction of the Nation, as *Overbury's* did, and those that tend to capital Treason, whereof you are now accused, by a Grand-Jury of *London*, that are Freemen of *London*, Citizens, able Men, Men of Religion, Men of Estate, Men of Conscience, Men of Quality: These are your Accusers; who have found you, upon their Oaths, guilty of Treason, and cry out to us the Judges

(a) Mark that well; for Judge Jermin called it a Damnable Doctrine, when Mr. *Lilburne* declared the Jury were Judges of Law as well as of Fact.

for Justice against you : And it is they, not we, that proceed against you. And as for our Commission, it is according to the good old Laws of the Land, founded upon the Statute made in *Edward the First's Time*, called *Westminster the Second*. That Statute authorizeth Commissions : According to that Commission we sit by here this Day. And *Edward the First* was a wise and a good Prince, and consented to the People, to let them have such Commissions as ours we sit by is, which the People had fought stoutly for in the Barons Wars in his Father's Time, and also in his; for he himself was taken Prisoner at *Lewes*, in the County of *Sussex*. And being a wise Prince, he knew that the Love of the People was not more to be got than by wholsom and safe Laws, that every Man's Life, and every Man's Estate, and every Man's Liberty, might be preserved by, and not be subject to any arbitrary Will or Power; but that the sober, and discreet, and wise Laws of the Kingdom, which our Ancestors won by their Swords, might be their Protectors. A special one of which was this Statute of *Westminster the Second*, made in *Edward the First's Time* : By vertue of which Statute is this Commission directed to the Justices of the one Bench and the other; and they be all here this Day, but only those that of necessity must attend at *Westminster*, only to preserve the Term. Now you are come to answer to that Charge, which hath been the greatest Opposition to the Settlement of Government that can be; I mean the Settlement of the supreme Authority of the Nation in the Commons now assembled in Parliament, not newly erected, but revived into the right Place and Hands; for it is the Law of *England* revived, that the supreme Authority is in the (a) Commons assembled in the Parliament of *England* : For so it was in the *Saxons Time*, and in the *Romans Time*, and in all Times (b) it hath been as it is now; which will sufficiently justify our present Proceedings against you. And therefore, I say, for the Commission it self, it is in general for the Trial of all Treasons whatsoever. But the Grand Inquest have found out no other Traitor, that they may accuse, but Master *John Lilburne*, who is now here at the Bar. But it is not a bare Accusation, but it is the solemn Verdict of almost a double Jury, that hath appeared upon the Roll; and upon their Oaths do conceive those Crimes of Treason that are laid against you, to be of so dangerous Consequence against the State and Commonwealth, that they do call for Justice against you as a Traitor already found guilty. And therefore I do require you, as you are an *Englishman*, and a rational Man, that you do conform your self, and tell us plainly what you will do, as in reference to the putting your self upon your Trial by the Law, and hear with Patience those Offences of Treason that are laid to your Charge.

Lieut. Col. *Lilburne*. May it please you, Sir, by your favour, I shall not now trouble you with many Words.

Ld Keble. You go improperly to work.

Lieut. Col. *Lilburne*. That Gentleman, I do not know his Name, (pointing to Judge *Jermyn* :) You were pleased to say, That I have had more Favour than ever you have heard of any before ever had, in the like Case. But, Sir, by your favour, I shall tell you of some that in the like Case have had as much, if not more; and that was *Throgmorton*, in Queen *Mary's Time*, who was impeached of higher Treason than now I am; and that in the Days of the commonly accounted bloodiest and cruellest Prince that this many hundred of Years hath reigned in *England* : And yet, Sir, I am sure in this very Place, and that by special Commission of Oyer and *Terminer*; who was accused for being one of the chiefest Confederates with *Wyat*, in his *Kentish Rebellion*; which *Wyat* marched with an Army against the Queen to *London* : For which actual War or Rebellion, **Throg-* * Trial V; *morton* was in this Place arraigned as a Traitor, and enjoyed as much, if not more Favour than I have now enjoyed, altho his then Judges and Prosecutor were bent to take away (c) his Life, right or wrong. And therefore, Sir, by your favour, it is no extraordinary Favour that you have afforded me; it is but only my Right by Law and Justice, and common Equity. But Sir, I shall be short, and put my Business to a plain Issue, which is this :

I have here at the Bar given in many strong Arguments against the Validity and Legality of a special Commission of Oyer and *Terminer*, and supposing that to be such an one by vertue of which you sit, and intend to try me for my Life; and therefore I have humbly desired (as in Reason, and I think in Law, I may justly do) to hear your Commission read; but you have positively denied me that. And therefore I desire all my Friends, and all the People that hear me this Day, to bear witness, and take notice, that you, contrary to Reason and common Equity, denied me to let me hear read your Commission, by vertue of which you go about to take away my Life; which I cannot chuse but desire them to take notice, I declare to be very hard Measure.

But, Sir, to save my self from your forelay'd Snares and desired Advantage against me, I will come a little closer to the Business. You demand I should hold up my Hand at the Bar; and I know not what it means, neither what in Law it signifies. It's true, I have read the most part of the Laws that are in *English*, which I take to be the Foundation of all our legal *English* Privileges; and in them I cannot find any thing that doth clearly declare unto me the full Signification or Meaning of a Man's holding up his Hand at the Bar. Therefore if you please but to explain what the Meaning and Signification of holding up the Hand at the Bar, is, I shall seriously consider of it, and, I hope, return you a rational and discreet Answer: For truly in those Laws which are in the *English* Tongue that

(a) But by his Favour, never before practised nor used without both King and Lords; a Precedent of which he is desired to shew and produce out of any of his Law-Books.

(b) But there was before the Conquest neither Inns of Court, Lawyers, nor Term-Judges in England, but only twelve good and legal Men, chosen in each Hundred, finally to decide all Controversies: Which lasted till William the Conqueror subdued that excellent Constitution, and instead thereof introduced by his Will and Sword (contrary to his solemn Oath, three several times taken) the intolerable Bondage of Westminster-Hall, or Term-Judges, and their Outlandish or Norman Law-Practice in the French Tongue; as all the English Chronicles universally and truly declare.

(c) Whose remarkable and excellent Defence you may at large read in Holingshed's Chronicle, in the Life of Queen Mary, which Discourse is excellently well worth the speedy Reprinting, especially seeing Men are made Traitors for Words; which Cruelty Queen Mary abhorred, as may clearly be read in that excellent Statute of hers, made in the first Year of her Reign, Chap. 1.

I have read, although I find mention made of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large Extent. And as for those Laws, or rather the practick Part of the Law, that are in *French* and *Latin*, I cannot read them, and therefore much less understand them. In which regard, for me to hold up my Hand at the Bar before I understand the true Signification of it in Law, (which tells me it is in it self a ticklish Thing) were for me to throw away my own Life upon a Punctilio or Nicety that I am ignorant of; and therefore, truly, I think I should be a very Fool, in my own Ignorance to run that Danger. And therefore, Sir, I humbly desire the clear Explanation of the Meaning of it in Law, and after that I shall give you a fair and rational Answer.

Ld Keble. Mr. *Lilburne*, you shall see we will deal very rationally with you, (and not insnare you in the least manner) if that be all. The holding up of your Hand, we will tell you what it means and signifies in Law: The calling to the Party to hold up his Hand at the Bar, is no more but for the special notice that the Party is the Man inquired for, or called on; and therefore if you be Mr. *John Lilburne*, and be the Man that we charge, do but say that you are the Man, and that you are there, and it shall suffice.

Lieut. Col. *Lilburne*. I am *John Lilburne*, Son of Mr. *Richard Lilburne* —

Ld Keble. Mr. *Lilburne*, what you have to say we will hear presently; only take notice that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man: You are called by your Name, you have come and answered to your Name, in order to your answering the Charge to be read against you; do but this, and it shall suffice, without holding up your Hand. Therefore let us have no more Discourse as to that.

Judge *Fermin*. Mr. *Lilburne*, pray spare me a Word; for you have been heard with Patience. You have desired to have the Right of the Law of *England*; and yet you do question a fundamental Thing, that hath been always used in case of criminal Offences. By the Law of *England*, that you desire to have the Meaning of it, is but just; but you must know that the Law of *England* is the Law of God; and if there be any thing in the Law of *England* but what was by admirable Constitution and Reason, we would not meddle with it. But I pray know this, that the Law of *England* is no written Law: It is the Law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime Laws of Nature; for it does not depend upon Statutes, or written and declared (a) Words or Lines. And this is our Laws, that have been maintained by our Ancestors, and is subordinate to the Law and Will of God: Therefore I say again, the Law of *England* is pure primitive Reason, uncorrupted and unpolluted by human Hu-

mours, or human Corruptions, Wits, or Wills: That's the Law of *England*. There be two Reasons why holding up the Hand hath been used always: First, for notice that those that are called for capital and criminal Offences, that they hold up their Hands, is to declare that they are the Men. My Lord hath given you this one Reason already; which I say is, that he be notified by holding up the Hand to all the Beholders, and those that be present, and hear him that he is the Man. But besides this, there is more in it; that's thus: A pure innocent Hand does set forth a clear unspotted Heart; that so the Heart and Hand together might betoken Innocency. And therefore hold up your Hand, that thereby you may declare you have a pure innocent Heart: If you refuse to do this, you do wilfully deprive your self of the Benefit of one of the main Proceedings and Customs of the Laws of *England*. Now for this, do what you think fit.

Lieut. Col. *Lilburne*. Well, then, Sir, (applying himself to Mr. *Keble*, as the President of the Court) I take your Explanation of it, and lay hold of that.

Ld Keble. You must answer positively, Sir, for you have had Advice enough, yea, good Advice if you embrace it, it is good Advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more Dispute you apply your self to answer according to that which you are advised unto. Do it if you will, and if you will but answer to it so as hath been declared to you, it shall suffice; but so far you must go to this, as to declare whether you be the Man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the Benefit of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, according to your own Explanation, I say my Name is *John Lilburne*, Son to Mr. *Richard Lilburne* of the County of *Durham*, a Freeman of the City of *London*, and sometimes Lieutenant-Colonel in the Parliament's Army: And if you will not believe that I am the Man, my Guardian the Lieutenant of the Tower there (pointing to him) will aver that I am.

Ld Keble. So then you are the Man.

Judge *Fermin*. Ask him again: Harken Mr. *Lilburne*, hearken what he says, and use that Moderation, and Temper, and Discretion that you have promised.

Lieut. Col. *Lilburne*. One word more, and I shall have done; and that is by the Law of *England* — [But being interrupted, he cry'd out] With your Favour, Sir, I will come to the main thing; I hope you do not go about to circumvent me, therefore hear me I beseech you.

Ld Keble. Hear the Court, Mr. *Lilburne*, there shall be nothing of Circumvention or Interruption: but as you have professed to be a rational and understanding Man in Words, let your Deeds so declare you.

(a) But saith Mr. Hyde, in his forementioned Argument, against the Northern Special Commission of Oyer and Terminer, Pag. 411. *Miseria servitus est, ubi jus est vagum aut incognitum*; that is to say, It is a miserable Servitude, where the Law is uncertain or unknown. And the very same saith that great Oracle of the Law, Sir Edward Coke, in the Proem to the third Part of his Institutes, and in the fourth Part, fol. 332. and in several Places besides. But the People may easily see hereby, that these present Judges drive to have no other Law in being in England, but what is in their own and their Masters Breasts; (that so by pretence of Law they may give away all the Liberties and Proprieties of the People of the Nation, as their Brother Judges did lately to the King, in the case of Ship-Money :) And then woe, and woe to the People, to be brought back again to that Faith, That Ignorance is the Mother of Devotion or Obedience.

Lieut. Col. *Lilburne*. Sir, I beseech you do not surprize me with Punctilio's or Niceties, which are hard things for me to lose my Life upon. I tell you again, my Name is *John Lilburne*, Son to Mr. *Richard Lilburne*.

Ld *Keble*. Talk not of Punctilio's with us, nor talk not of Judges made by the Laws, you shall not want Law: but if you talk of Punctilio's here in this Room, we will stop that Language.

Lieut. Col. *Lilburne*. Truly, Sir, I am upon my Life, and shall my Ignorance of the Formalities of the Law in the practick part thereof destroy me? God forbid! Therefore give me but leave to speak for my Life, or else knock me on the Head, and murder me where I stand, which is more righteous and just than to do it by pretence of Justice. Sir, I know that Mr. *Bradshaw* himself, President to the High Court of Justice, as it was called, gave Duke *Hamilton* (a hostile Enemy) leave to speak to the Punctilio's of the Law; yea, and to my knowledge again and again made an Engagement unto him and the rest try'd with him, that the Court nor he would not, by vertue of their Ignorance of the Niceties or Formalities of the Law, take advantage against them to destroy them; but did declare again and again, that all advantages of Formalities should be totally laid aside, and not in the least made use of against them to their Prejudice. And I hope you will grant me, that have often been in Arms for you, but never against you, as much Favour and Privilege as was granted to Duke *Hamilton*, never of your Party, but a General of a numerous Army against you.

Ld *Keble*. Take it as you will, we have had patience with you, and you must and shall have patience with us: we will pass over all that is by-past, but take heed by your surly Crossness you give not advantage in the face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own Eyes see. The Ceremony is for your advantage more than you are aware of: but if you confess your self to be Mr. *John Lilburne*, we have done as to that.

Judge *Fermin*. Mr. *Lilburne*, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your Actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal Prosecutor of you, because you say he was the (a) Creator of our Commission. Pray hear me, I heard you; and do not think to put Affronts upon us undeserv'd. And as for that Man that you call Mr. *Bradshaw*, I tell you again he is Lord President of the Council of State of the Commonwealth of *England*; and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend your self to be possessed with.

Ld *Keble*. Come, will you read the Indictment?

Mr. *Broughton* reads. *Hold up your Hand, John Lilburne, and hearken to your Charge.*

Thou standest indicted of High Treason by the Name of John Lilburne, late of London Gent.

for that thou as a false Traitor, not having the Fear of God before thy eyes, but being stirred up and moved by the Instigation of the Devil, &c. as it followeth verbatim, in the second Day's Proceedings, to which the Reader is referred.

Mr. *Broughton*. What say'st thou, *John Lilburne*, art thou guilty of this Treason whereof thou standest indicted, or not guilty?

Lieut. Col. *Lilburne*. Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.

Ld *Keble*. Mr. *Lilburne*, we shall deal with you according to Reason and Justice, and after such a manner as you your self shall judge rational and right.

Lieut. Col. *Lilburne*. Gentlemen, I shall speak but a few words; I beseech you hear me, for it is upon my Life.

Ld *Keble*. You say you will deal rationally in those ways; that is to be expected from you the first in Reason, is to answer, and plead; and before you so do, you cannot be heard.

Lieut. Col. *Lilburne*. Give me leave to speak, and I shall not speak six Lines: (which with much struggling being granted, Mr. *Lilburne* went on and said to this effect) Then Sir, thus, By the Laws of *England* I am not to answer to Questions against or concerning myself.

Ld *Keble*. You shall not be compell'd.

Another Judge. Mr. *Lilburne*, is this to answer against yourself, to say you are not guilty? By the Laws of the Land you are to plead to your Charge, and it is no accusing of yourself to say Guilty, or Not Guilty.

Lieut. Col. *Lilburne*. Sir, by your favour —

Judge *Keble*. To answer that you are Not guilty, is no great matter, nor definite in Law.

Lieut. Col. *Lilburne*. By the Law of *England* I am to be tried by a Rule, but I do not know, by the Rules of Law, what Benefit, in reference to my Exception against the Illegality of my Indictment, I may deprive my self of, in case I should answer before I except.

Ld *Keble*. The Law is plain, that you are positively to answer Guilty or Not Guilty, which you please.

Lieut. Col. *Lilburne*. Sir, by the Petition of Right, I am not to answer to any Questions concerning myself; therefore I humbly intreat you to afford me the Privileges of the Laws of *England*, and I will return a positive Answer to it; if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the Formalities of Law in the practick part of it, altho I here declare I own the good old Laws of *England*, and a legal Jury of twelve Men, yea, and a Trial by a Jury of legal Men. And I do humbly crave, Sir, a Copy of the Indictment, or so much of it as I may ground my Plea upon it; and reasonable Time to consult with my Counsel, altho it be but eight or nine days.

Ld *Keble*. You speak well, but you must do well, 'tis that we come for: the Reasonableness of it is this, that you should shortly answer, Sir, to that Question, and in a rational legal way.

(a) Mr. *Lilburne* here endeavoured to speak, and shew the Judge his Mistake; for he did not say that Mr. *Prideaux* was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that regard he was no competent Accuser or Prosecutor: but they would not suffer him to speak, but cry'd out, Hear the Court; which thing also they frequently did afterwards.

When you have answered it, you shall have liberty to make your Defence, to maintain that you say; but this that we now speak of, is a thing in your own Breast, in your own Knowledge, whether you be guilty of this that is laid to your charge, or no: And if you be clear, you cannot wrong yourself, nor your Conscience; for in saying Not Guilty, you know better what you say than any other doth.

Lieut. Col. *Lilburne*. Sir, I am ignorant of the Formalities of the Law, having no Books in *English* wherein I can read them; and as for other Tongues, I understand none: and therefore for you to take away my Life for my Ignorance, when the practick Part of the Law, or the Formalities thereof, is lock'd up in strange Language, that it is impossible for me to read or understand, is extreme hard.

It is true, in those *English* plain Laws which I have read, I find something spoken of it; but must aver, that I find there is a great deal of Nicety and Danger in locking a Man up to single Formalities, in answering Guilty, or Not Guilty: and therefore I beseech you to assign me Counsel, to inform my Ignorance, and give me but leave to consult with my Counsel, and I will return you an Answer according to your desire, without any Demur, as soon as it is possible for me to know what grounds I go upon.

Mr. *Broughton*. *John Lilburne*, what say'st thou, art thou Guilty of the Treason laid unto thy charge, or art thou not Guilty?

Lieut. Col. *Lilburne*. But under favour thus, for you to come to ensnare and entrap me with unknown Niceties and Formalities that are lock'd up in the *French* and *Latin* Tongue, and cannot be read in *English* Books, they being not expressed in any Law of the Kingdom, published in our own *English* Tongue: it is not fair Play according to the Law of *England*, plainly in *English* expressed in the Petition of Right, and other the good old Statute Laws of the Land. Therefore I again humbly desire to have Counsel assigned to me, to consult with, what these Formalities in Law signify; so that I may not throw away my Life ignorantly upon Forms.

Ld *Keble*. Mr. *Lilburne*, we cannot grant you that Favour, it is not consistent to the Law, whatsoever you say to the contrary.

Lieut. Col. *Lilburne*. I hope you will not go about to ensnare me, and take away my Life for Punctilio's.

Another Judge. Well then, you will not plead?

Lieut. Col. *Lilburne*. Yes, if I may be allowed that which I conceive to be my Birth-right and Privilege, to consult with Counsel; or that you please to make the same Engagement to me that Mr. *Bradshaw*, as the President of the High Court of Justice, made to Duke *Hamilton*; which was, that the Court would take no advantage at all of his Ignorance in the Niceties and Formalities of the Law in his Pleading: let me but enjoy this Engagement from you, and I will plead.

Ld *Keble*. You shall have that which is according to the Law; therefore, Mr. *Lilburne*, I advise you for to plead, and you shall have fair play, and no advantage taken against you by your Ignorance of the Formality of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, upon that Engagement, and because I see you are so positive in the thing——this is my Answer;

That I am not guilty of any of the Treasons in Manner and Form, as they are there laid down in that Indictment, (pointing to it.) And therefore now, Sir, having pleaded, I crave the Liberty of *England*, that you will assign me Counsel.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*, and a legal Jury of my Equals, constituted according to Law.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*; I mean, by the Liberties and Privileges of the Laws of *England*, and a Jury of my Equals legally chosen. And now, Sir, I again desire Counsel to be assigned me, to consult with in point of Law, that so I may not destroy myself through my Ignorance. This is but the same Privilege that was granted at *Oxford* unto me, and the rest of my Fellow-Prisoners arraigned with me.

One of the Clerks. You must say, by God and your Country; that's the Form of the Law.

Lieut. Col. *Lilburne*. Why must I say so?

Another Judge. This is the Form and Law of the Land: Will you plead, Mr. *Lilburne*, according to the Laws of *England*?

Lieut. Col. *Lilburne*. Truly I never read it, Sir, in the Laws of *England*, what it is to plead in this nature.

Ld *Keble*. You say you will be tried by the Laws of the Land, then it is by the Country, and so you may plead, and do yourself no harm; for by the Country is meant a Jury of your Equals.

Lieut. Col. *Lilburne*. Sir, I am doubtful of my Ignorance in the Laws, yet I will return you an Answer, you making good your already engaged Promises, that you will take no advantage against me, if through my Ignorance, and your Importunity, I plead in any Form, that in strictness of Acceptation may deprive me of any real Benefit the Law will afford me.

Judge *Thorp*. Mr. *Lilburne*, you will be tried by the Law, and by the Rules thereof: when you say so, you do really declare it to be by your Country. So that the true Signification of being tried by the Law, is the same thing in substance with being tried by the Rules of the Law.

Lieut. Col. *Lilburne*. Then I hope my answer is clear and fair, Sir.

Judge *Fermin*. The Formality is shortly this, to be tried by God and your Country; no more is meant by it than thus, by God, as God is every where present, yea in all Courts of Justice, and sits and knows all things that are acted, said, and done: The other part of it, by your Country, that is, by your Country or Neighbourhood; the Country is called *Patria*, because your Neighbour and your Equals, which you are willing to put yourself upon the Trial of. By force of that word, the Country, a Jury of the Neighbourhood for Trial of you are summoned. Now do what you will.

Lieut. Col. *Lilburne*. Sir, under your favour thus; then in the negative I say, God is not locally or corporally here present to try me, or pass upon me; but affirmative, I return this Answer, That I desire to be tried in the Presence of that God, that by his omnipotent Power is present every where, and beholds all the Actions that are done upon the Earth, and sees and knows

knows whether any of your Hearts be possessed with a premeditated Malice against me, or whether any of you come with so much Forethought of Malice against me, as that in your Hearts you intend to do the utmost you can, right or wrong, to destroy me: and before this all-seeing God I desire to be tried, and by my Country, that is to say, by a Jury of my Equals, according to the good old Laws of the Land.

Justice Thorp. You have spoken very well.

Ld Keble. You have done like an *Englishman* so far as you have gone; and I do assure, that in any Formality (as you express or call them) there shall be no advantage against you, if you mistake in them. Now what you have the next to think upon, is your Jury of your Countrymen, or Neighbours of your Equals; and I promise you we will take care of that, that they shall be good and lawful Men of *England*.

Lieut. Col. Lilburne. I thank you, Sir, but under your favour thus: Your Indictment is extreme long and of abundance of Particulars, it is impossible that my Memory, or of any one Man's in *England*, can contain it, or carry it in our heads; and therefore that I may make my Defence so as becomes a rational *Englishman*, I earnestly intreat you, that now you will be pleased to give me a Copy of my Indictment, or so much of it, as you expect a Plea from me upon, and an Answer unto, and Counsel assigned me, and Time to debate with my Counsel, and Subpoenas for Witnesses.

Ld Keble. For Counsel, you need none, Mr. Lilburne; for that Not Guilty which you have pleaded, is that which lies in your own Breast, which rests in your own Counsel, and you know how it is, and can best plead that yourself: Counsel lies in Matter of Law, not of Fact.

Lieut. Col. Lilburne. Under favour I desire Counsel for Matter of Law, and not for Matter of Fact. My Indictment I believe in Law, is all Matter of Law, and I have something to say to it in Law.

Ld Keble. If Matter of Law do arise upon the Proof of the Fact, you shall know it, and then shall have Counsel assigned to you.

Lieut. Col. Lilburne. I myself have before this been upon some Trials, and never before this was denied Counsel, no nor so much as ever disputed whether I should have it or no. I also was at a great part of the Earl of *Strafford's* Trial, who was supposed a most notorious Traitor; and yet if my Observation and Memory do not exceedingly fail me, he had Counsel assigned him at his first desire, and they were continually with him, not only at the Bar when he was there, but also had continual and free Access to him in Prison.

Besides, Sir, I being accused of Treason in such an extraordinary manner, and being but an ordinary Man myself; no eminent experienced Lawyer dare well meddle with my Business, no nor so much as bestow a Visit upon me, but he runs a hazard of being undone. And truly my Estate is in an extraordinary manner taken from me, so that I have not Money to send Messengers up and down privately to their Chambers: and therefore that I may be freely and allowedly able, without danger of Ruin to any Man that shall advise me, I shall humbly crave as my Right by Law, and I am sure by common Equity and Justice, that I may have Counsel and Solicitors also assigned me.

Ld Keble. Mr. Lilburne, speak rationally for yourself; when there comes a Matter of Law, that you are able to say, this is for Matter of Law, arising from Matter of Fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire: and withal, this that you say concerning your Memory, which you say is not able to carry away, or contain the Particulars of this Indictment; the Indictment, so much as will charge your Memory, will be very short: for it is the publishing of those Books charged upon you in the Indictment, that will be the Matter which will stick, and that Matter will be very short, which we must prove against you, which is only Matter of Fact, and not of Law. And therefore for Fact of Treason you can be allowed no Counsel, but must plead it yourself.

Lieut. Col. Lilburne. Sir, under favour, you expect from me Impossibilities; for seeing I have been seven Months in Prison for nothing, and could not in the least know perfectly what would be laid to my Charge, nor after what manner I should be proceeded against, (considering all Proceedings against me hithertoward have been so absolutely arbitrary, that it was impossible for me in Law exactly to come provided:) and therefore seeing I am now here, and you pretend to proceed with me according to the due Course of Law, and seeing the Form of the Proceedings in this manner with me is not expressly and exactly declared in Print in *English*, which Tongue only I can read and understand; and seeing by the Law, which is in *English*, which I have read, and clearly understand, that there are a great many Snares, and a great many Niceties in the Practick, that are formal Proceedings of the Law; and seeing I know not certainly, whether if I proceed to Matter of Proof, before in Law I make my Exceptions against your Indictment, as to Matter, Time, and Place, I be not in Law deprived of that Benefit, which I principally aim at for the preservation of my Life; therefore I beseech and most earnestly intreat you, to assign me Counsel to consult with, before I be too far insnared: and if you will not do it, and give me some reasonable time to prepare my Plea and Defence, then order me to be knock'd on the head immediately in the place where I stand, without any further Trial; for I must needs be destroyed, if you deny me all the Means of my Preservation.

Judge Fermin. Mr. Lilburne, it were reasonable to give you satisfaction, if you would receive it. You say you were present at my Lord of *Strafford's* Trial, and you say he had Counsel assigned him, not only to stand by him at the Bar, but to repair to Prison to instruct and advise: but that was not a Trial in such a way as this is; it was a Trial by way of Impeachment before the Peers assembled in Parliament, and his Attainder was made up into an Act of Parliament; but that is not a Trial at the Common Law *per Pares*, which is that which yourself have desired, a Trial by lawful Men, according to the Liberties of the Laws of *England*. After your Answer to your first Question, that is to say, whether you be guilty or not guilty of the things whereof you are accused, no Counsel in the world can follow, till the Fact be proved, and Matter of Law do arise thereupon. So that
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the first thing that must be done, the Matter of Fact must be proved against you; and then if it shall appear thereupon to the Court, that Matter of Law doth arise, and you do expect Counsel, we must and will perform it; the Court are of your Counsel so far as to Fact. And then in that case, that Law arise thereupon, you may and ought to have other Counsel assigned; and do not you doubt but the Court will be as careful of you, as you can be of yourself, and allow you more Favour, it may be, than your Friends do expect.

Lieut. Col. *Lilburne*. Under your favour, and by your good-liking; I was once arraigned at *Oxford* for my Life, upon the Matter of Treason, for levying War in *Oxfordshire* against the King, as their Indictment then said; and my Arraignment was by vertue of a Commission of *Oyer and Terminer*, that was (and in Law I am sure of it) as legal and as just as yours is: and my Lord Chief Justice *Heath*, the chief Commissioner or President, who was in the eye of the Law as legal a Judge as any of you, and yet he—

Ld *Keble*. Mr. *Lilburne*, we do remember it.

Lieut. Col. *Lilburne*. I beseech you give me leave to speak for myself, and to go on, for my Life lies upon it.

Ld *Keble*. Hear me one word, and you shall have two. This that you did speak but even now, do not you think that we have such bad Memories, as that we have already forgot it; your Life is by Law as dear as our Lives, and our Souls are at stake if we do you any wrong.

Lieut. Col. *Lilburne*. I wish you may be sensible of that, Sir.

Judge *Fermin*. Mr. *Lilburne*, you need not to say so, our Souls are upon it, and we are to stand or fall by Justice and Righteousness as well as yourself is.

Lieut. Col. *Lilburne*. I say, my Lord *Heath* and the Court at *Oxford* proffered me Counsel before any one Witness was produced to my face, or any Matter of Fact came to the Proof; yea, and gave me liberty to make my Exceptions to the Insufficiency of the Indictment, which was very short in comparison of yours. I crave the same Privilege from you (the Nation's pretended Friends) that I found at *Oxford* amongst its declared pretended Enemies, against whom in several Battels I had fought. And I hope you that pretend to be the Preservators of the Liberties of *England*, will not be more cruel and unrighteous than the declared Destroyers of them. If you will not allow me Counsel as I had there, I have no more to say to you; you may murder me if you please.

Judge *Fermin*. You were pleased to mention some Precedents of those that have been accused of High Treason, that have had Counsel assigned to them; and for one you mention that of my Lord *Strafford*, whose Trial I told you was Parliamentary before the House of Peers, upon the Impeachment of the Commons of *England* in Parliament assembled, and so it went on in a Parliamentary way: This Proceeding is in an ordinary Course of the ordinary *quondam* Court of Justice, according to the Common Law. Now for my Lord of *Strafford*, give me leave to observe this; he had no Counsel assigned him until such time as Questions of the Law did arise, which required Counsel, and then he had Counsel assigned him, but not before; for that my

Lord doth not say, that you shall have no Counsel, but that you shall have that which the Law allows. And as for that which you speak of Counsel at *Oxford*, it could not be. But when upon the Proof of Matter of Fact, it appears to the Court that there is any Question or Matter of Law arising upon the Fact; and when it doth so appear unto us, then you shall have Counsel for that. But (I beseech you) hear me on: You are now come before us, according to the Common Law, to be tried by your Country; there is now nothing in question, but whether that Matter, that Thing, those Words contained in the Indictment read to you, be true, yea or no; that is, whether they be done or no: for we will not give Counsel to plead to the Matter of Fact contained in your own Books, which you remember very well.

Lieut. Col. *Lilburne*. Those Books supposed mine: pray let me have fair play, and not be wound and skrew'd up into Hazards and Snares.

Ld *Keble*. If they be not yours upon good grounds proved before you, you are in no danger; and if upon the Proofs of the Words and Deeds done, there do appear Matter of Law, you must and shall have Counsel: stay till that be done. In the mean time the Court will take care that a Jury shall be returned, of honest and sufficient legal Men to judge of the Proofs.

Lieut. Col. *Lilburne*. There was arraigned with me at *Oxford* Colonel *Vivers* of *Banbury* now alive, and Captain *Catesby* who is dead: I will bring Colonel *Vivers* to depose here upon his Oath, That my Lord *Heath*, and the rest of the Commissioners of *Oyer and Terminer*, proffered me Counsel, and allowed me and him Counsel before ever so much as any Witnesses were produced, to prove the least Matter of Fact. And if you will not be so just towards me as the Cavaliers were, and allow me Counsel as they did, I have no more to say, but resolve upon this score to stand, and here to die upon the Principles of an *Englishman*. If you will not be so just as the Cavaliers were, with whom you and the Parliament set us together by the ears to fight with, pretendedly for their Injustice, let God and all righteous Men judge betwixt you and me.

Judge *Nichols*. If you will not be led by the Proceedings of Law, it will be worse for you; and you are to know this is not *Oxford*.

Lieut. Col. *Lilburne*. Sir, by what better Rules of the Law can I be led by, than those that I have before my eyes? I am sure at *Oxford*, as my Right by Law, I was, before any Fact was proved, proffered Counsel by my Judges, which were my Lord *Heath*, and Mr. *Gardiner*, now Sir *Thomas Gardiner*, who is now in *London*: if you please I will produce him to this Bar, to justify it upon his Oath, That the Lord Chief Justice *Heath* in his presence proffered me Counsel upon my Arraignment for Treason there, as my Right by the Privileges of the Laws of *England*, before the Fact came to be proved; yea, and also give me liberty to assign the Errors of my Indictment. He is now in *London*, and I will produce him here at this Bar (if you please) to justify what I say, if you will give me time, and enable me with Ability to summon him in.

Judge *Nichols*. Mr. *Lilburne*, whether Mr. *Gardiner* will justify it or no, it is nothing to us; for we are not to walk by *Oxford* Precedents, but by

by the Rules of the Law: and the Law will afford you no Counsel, but in Points of Law arising upon Proof of the Fact (a).

L. Col. *Lilb.* Under favour thus: I conceive the Precedents at *Oxford*, so far as they are righteous, are fit for your Imitation; and whether it be a righteous thing for you, when I am tried for Treason before you, to be more cruel towards me, who have fought for you, than the Cavaliers at *Oxford* in the like Case were, against whom I fought: And I must tell you, I further conceived it the most unequal and unjust thing in the World for me to have to do, upon the Trial of my Life, with all the Judges of the Land (who are all engaged Men) that have had above six Months time to beat their Brains together, with the Assistance of divers of my Adversaries, who are Parliament-Men, that were the Creators of their Power, and for one of them to be my Prosecutor; and in this so extraordinary Case, for me to be denied to consult with Counsel; I tell you, Sir, it is most unjust, and the most unrighteous thing, in my Apprehension, that I ever heard of, or saw in all my Life. O Lord! was there ever such a Pack of unjust and unrighteous Judges in the World? Sir, in plain *English* let me tell you, if I had thought you would have bound me up to a single Plea, and not have given me in my Plea the just Latitude of Law, Equity and Reason, but hold me thus close to your single Formalities, contrary to your Promises, I would rather have died in this very Court before I would have pleaded one Word unto you; for now you go about, by my own Ignorance and Folly, to make my self guilty of taking away my own Life: and therefore unless you will permit me Counsel, upon this Lock I am resolved to die.

Ld *Keble.* This is not the rational way you said you would go in.

L. Col. *Lilb.* Sir, my Life is before you, you may murder me, and take away my Blood, if you please.

Ld *Keble.* I will not be out-voiced by you, our Lives and our Souls are upon it, therefore you shall have Equity and Justice; yea, such as you desire your self: but you are now going to fly into Extravagancies and Heats, which will manifest the Rancour of the Distemper'dness and Invenom'dness of Spirit which is within you. And besides, if we should enter into it, we might aggravate your Crimes by your own Words at the Bar. Take heed of it, that you give not advantage against your self to your own Ruine.

L. Col. *Lilb.* Sir, I am in no Heats, I am but with Earnestness pleading for my Life, when you deny me all the just Means of my Preservation, which is my Right and Due by your own Law.

Judge *Thorp.* Mr. *Lilburne*, I desire to correct a Mistake of yours in the Law: You were pleased to condemn it as unjust, for the Attorney-General's speaking with me when your Indictment was a reading; you are to know, he is the Prosecutor for the State here against you, and he must confer with us upon several Occasions, and we with him, and this is Law.

L. Col. *Lilb.* Not upon the Bench, Sir, by your favour, unless it be openly, audibly and avowedly, and not in any clandestine and whispering way: And by your favour, for all you are a Judge, this is Law, or else Sir *Edward Coke* in his (b) 3d Part Inst. cap. High-Treason or Petty-Treason, hath published Falshoods, and the Parliament hath licensed them; for their Stamp in a special manner is to that Book.

Judge *Thorp.* Sir *Edward Coke* is Law, and he says, The Attorney-General, or any other Prosecutor may speak with us in open Court, to inform us about the Business before us in open Court.

L. Col. *Lilb.* Not in hugger-mugger, privately or whisperingly.

Judge *Thorp.* I tell you, Sir, the Attorney-General may talk with any in the Court, by Law, as he did with me.

L. Col. *Lilb.* I tell you, Sir, it is unjust, and not warrantable by Law, for him to talk with the Court, or any of the Judges thereof in my absence, or in hugger-mugger, or by private Whisperings.

Ld *Keble.* No, Sir, it is no hugger-mugger for him to do as he did; spare your Words, and burst not out into Passion; for thereby you will declare your self to be within the compass of your Indictment, without any further Proof: Look to it, that you behave your self according to the Bounds of Reason and Law, and hear me; for we must cause the Jury to be returned.

L. Col. *Lilb.* Sir, under favour, I crave but one Word more, hear me out: I know very well, and I read in your own Law-Books, such a Prerogative as that in Cases of Treason no Counsel shall plead against the King, hath been sometime challenged to be the King's Right by Law; but let me tell you, it was an usurp'd Prerogative of the late King, with all other arbitrary Prerogatives and unjust Usurpations upon the People's Rights and Freedoms, which has been pretended to be taken away with him. And, Sir, can it be just to allow me Counsel to help me to plead for my Estate, the lesser; and to deny me the help of Counsel to enable me to plead for my Life, the greater? Nay, Sir, can it be just in you Judges, to take up seven Years time in ending some Suits of Law for a little Money or Land, and deny me a few Days to consider what to plead for my Life? Sir, all these Pretences of yours, were but all the Prerogatives of the King's Will, to destroy the poor ignorant and harmless People by, which undoubtedly died with him; or else only the Name or Title is gone with him, but not the Power or hurtful Tyranny or Prerogative in the least. Therefore seeing all such pretended and hurtful Prerogatives are pretended to be taken away with the King, by those that took away his Life, I earnestly desire I may be assigned Counsel to consult with, knowing now especially no Pretence why I should be denied that Benefit and Privilege of the Law, of the just and equitable Law of *England*, having put myself upon a Trial according to the Privileges thereof. And it was declared to me at *Oxford*, upon the

(a) What a lying Judge is this Mr. Nichols! whenas he himself with Mr. John Maynard the Lawyer, was assigned by the President, Lord Chief Baron Wilde, to be of the Counsel with Major Rolfe upon his Desire; and that before ever the Grand Jury found his Indictment of Treason, as is fully declared in the next day's following Plea of Mr. *Lilburne*.

(b) Whose Words there, fol. 29, 30. are so plain and expresse to prove what Mr. *Lilburne* said to be good Law, as nothing in the World can be plainer. See also to the same purpose, the second Part. Inst. fol. 49, 103, 104.

Trial of my Life there, after I was taken Prisoner fighting against the King and his Party, even almost to Handy-gripes, and to the Sword Point, and to the But-end of our Muskets, being in Person one of that little Number that for many Hours together at *Brentford* fought with the King's whole Army, where in the manner, without any Articles or Composition, I was taken a Prisoner, and immediately thereupon arraigned at *Oxford*; where notwithstanding all this, it was declared to me by Judge *Heath* to be my Right, by the Law of *England*, to have Counsel assigned me to help me in point of Law, and I had it granted. I confess he is my best Authority that I have, and I am sure he was a Judge of the Law, or else I had never pleaded to him; and he was upon his Oath to do Justice and Right; and he was an able and understanding Lawyer, and yet did allow me (an hostile Enemy) Counsel to help me, as my Right by Law, before ever any Proof to Matter of Fact was produced: And I beg but the same legal Privilege from you, from whom I have more Cause to expect it.

Ld *Keble*. Were you there indicted for Treason?

L. Col. *Lilb*. Yes that I was, and for the highest of Treasons, by the Letter of the Law, for actual levying War against the King.

Judge *Thorp*. And yet, for all that, you know it was no Treason, and so did he too; for you know that you had committed no Treason at all in obeying the Parliament's Command: for what you have done, was done by the Parliament's special Authority and Command: and you had your Commission to justify you in your hostile Actions: and he knew it well enough your Act was no Treason, though he did offer you Counsel, or else he durst not allow you Counsel.

L. Col. *Lilb*. I had nothing to justify me in that Act, but the equitable Sense of the Law, the Letter of it being point-blank against me, and on the Cavaliers side, by which if they had prevail'd, they might have hanged both you and me for levying War against the King, notwithstanding our Parliament Commissions: and this I know, Sir, you know to be Law in the Letter or Punctilio's of it.

Judge *Thorp*. It was no Treason in you, and he that assigned you Counsel, knew it was no Treason; and this Arraignment of you was as illegal as his assigning you Counsel.

L. Col. *Lilb*. Sir, by your favour he was a Judge of the Law by legal Authority, being made by the King, in whom, by Law, that Power was invested; and he looked upon himself as a legal Judge, and so did I too: and as a legal Judge he arraigned me for doing that Act, that by the express Letter of the Law was Treason; and as a legal and honest Judge, according to his Duty in Law, he allowed me Counsel.

Judge *Fermin*. For that matter that you talk of, they knew it was no Treason, and therefore gave you more Privileges than was their right by Law, very well knowing, that whatsoever was done to any of you that did fight for the Laws, Religion and Liberties of their Country, there might be the like done to others that were Prisoners in the Parliament's Power: and this was the truth of it, and you know it very well; and therefore it is nothing to us, nor in Law his Willingness.

L. Col. *Lilb*. Upon my Letters, after the first Day of my Trial, that Declaration of *Lex Talionis* was made, as clearly appears by the Words and Date of it now in Print, which the Reader may peruse in the first Part of the Parliament's Declarations, p. 802, 803.

Judge *Thorp*. I wonder they did not proceed in the Prosecution of the Indictment, and find you guilty of Treason, and so to Execution.

L. Col. *Lilb*. Under your favour, thus; I appear'd at the Bar, I pleaded to my Indictment Not guilty, I made Exceptions against my Indictment; and my self, and the two other Gentlemen arraigned with me, had Counsel assigned us as our Right by Law: and the Judges most fairly and rationally further told us, Because we will not surprize you, we will give you a Week's time to consider (with what Counsel you please in *Oxford* to chuse to come to you) what to plead for your Lives; and whatsoever other Privileges you can claim by the Liberties of the Law of *England*, you shall enjoy them to the utmost. Upon which Promise I spoke in open Court to the Judge, shewing him the Irons upon my Hands, in which I was arraigned, and told him; My Lord, by the Laws of *England*, no Prisoner for any Crime whatsoever, that behaves himself civilly and peaceably in his Imprisonment, ought to be put in Irons, or to any other Pain or Torment before he be legally convicted; and therefore I desire, as my Right by Law, that my Irons may be taken off. And I said further, My Lord, I am shut up a close Prisoner in my Chamber, denied the use of Pen, Ink and Paper, which is contrary unto Law, especially in the time of my Trial. Why, says he, you shall be released from your Irons, from your close Imprisonment, and have the use of Pen, Ink and Paper: And Capt. *Lilburne*, I tell you, you shall enjoy whatsoever other Privilege you can challenge as your Right by Law; for the Law of *England* is a Law of Mercy, and I hope we shall appear just Judges of it: And therefore you shall freely have either Lawyer, or whom you will in *Oxford*, to come unto you to help you and advise you. And, says he, because you shall see that Law and Justice is of the King's side against the Parliament, and because they shall have no Cause to calumniate us at *Westminster*, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to murder you, the Court is freely willing to give you a Week's time, to consider with your Counsel in the mean time what this Day Sevensnight to plead for your Life. In which time, being freed of my Irons, and of my close Imprisonment, and enjoying Pen, Ink, and Paper at my Pleasure, by special Order from the other two Gentlemen, I writ a Letter to my Wife, and in it inclosed another to your Speaker, and another to young Sir *Henry Vane*, then my familiar Acquaintance; all which I sent in post-haste away to my Wife by the Hands of Capt. *Primrose's* Wife, which Capt. *Primrose* was Prisoner there; and his Wife, who brought up the Letter to my Wife, is now in *London*. Which Letter my Wife delivered to the Speaker, &c. and by her importunate Solicitation procured the Declaration of *Lex Talionis*; the Substance of which, in a Letter from Mr. Speaker, my Wife brought down to *Oxford*, and delivered to the Lord *Heath's* own Hands

Hands upon the Sunday after the first Day of our Arraignment. And the third Day before we were to appear again, my Wife arrived at *Oxford* with the Speaker's Letter, which she delivered to Judge *Heath* himself: Which Letter taking notice of our Trial, threaten'd them with *Lex Talionis*, to do the like to their Prisoners that they did to us, or any of us. And they having many of their great eminent Men Prisoners in the *Tower*, and in *Warwick-Castle*, and other Places, did induce them to stop all further Prosecution of Colonel *Vivers*, Captain *Catesby*, and my self. And if it had not been for this threatening Letter, in all likelihood we had all three been condemned by a Commission of *Oyer and Terminer*, and executed: For my Wife did hear Judge *Heath* say to some of his Associates, at the reading of the Letter, That as for all the threatening part of it, as to his particular self, I value it not; but, said he, we must be tender of the Lives of the Lords and Gentlemen that serve the King, and are in the Custody of those at *Westminster*. And that Clause of *Lex Talionis* put a stop to our Proceedings, and further Trials at Law.

Ld *Keble*. It was well for you, by your Story that you do tell, that you had so fair Play: You shall have with us, who are upon our Lives and Oaths, as much as the Law will afford you, and so much as our Judgments and Consciences can lead us to, without doing Injustice in granting more than the Laws of *England* will afford. What was done there, is nothing to us here; for we are not to walk by their Precedent, but by our own Judgments, according to the Rules of the Law. And here 'tis thus far just, That upon the Proof of Matter of Fact, if Law do arise, you are to have Counsel; if not, you are to have none. By your Allegation, you say you had Counsel assigned you before any Matter of Fact came to be proved, when as a Judge of the Law he could not but do it; but if he did, it is nothing to us, we cannot do it. Yet we have in this Place proceeded legally hitherto with you; and when that Matter of Law doth arise from the Fact, as you had Counsel there assigned you, so shall you have here, and you shall have fair Dealing, and fair Play, according to Law, which is absolutely as I tell you.

Lieut. Col. *Lilburne*. Sir, by your favour, I crave but one Word more; and that is this: Here is a Gentleman that is a By-stander, a Friend of mine, and my Solicitor, who by Law, as well as any By-stander, may (a) speak for the Prisoner at the Bar, in case he perceive Things urged against him contrary to Law; and therefore I desire he may speak two or three Words.

[Mr. *Sprat* beginning to speak.]

Ld *Keble*. Spare your self; when your Time comes, you shall speak.

Mr. *Sprat*. He asked leave for me first. And, Sir, it is easy to prove the whole Indictment to be Matter of Law.

Judge *Fermin*. What impudent Fellow is that, that dare be so bold as to speak in the Court without being called? Mr. *Lilburne*, by your own Words you say you were told at *Oxford*, That by Law you were to have Counsel; that is as true, that the Court is of Counsel for the Pri-

soner arraigned at the Bar; and so we ought, and shall permit you other Counsel, if Matter of Law, upon the Proof of the Fact, do arise: But for any other Counsel to be assigned you before that appear, is not by Law warranted: We shall tread the Rules of Justice. And we shall do Wrong to the whole Commonwealth, if we should allow you Counsel before Matter of Law doth arise from the Proof of the Fact; and to allow Counsel in any other Case, the Court commits Injustice.

Ld *Keble*. And this, Mr. *Lilburne*, I will promise you, that when there comes Matter in Law, let it be a Lawyer, or your self, he shall speak in your behalf; but before he cannot.

Lieut. Col. *Lilburne*. Sir, the whole Indictment, under favour, is Matter of Law; and the great Question that will arise (admit the Fact should be true, and admit it should be granted) is, Whether the Words be Treason in Law, yea or no? And also it is Matter of Law in the Indictment, whether the Matter in the Indictment be rightly alledged as to Matter, Time, and Place. And it is Matter of Law in the Indictment, where there are divers several pretended Treasons committed in divers and several Counties, put into one and the same Indictment, be legal, yea or no?

Ld *Keble*. Upon Proof of the Matter of Fact, you shall hear and know whether Matter of Law will arise; and till the Words be proved, we cannot say whether that be the Law that you suppose.

Lieut. Col. *Lilburne*. Truly, Sir, you promised me a fair Trial, and that you would not take advantages of my Ignorance in the Law's Formalities: But the Lord deliver me, and all true-hearted *Englishmen*, from such unjust and unrighteous Proceedings as I find at your hands, who go about, I now clearly see, by my Ignorance, in holding me to a single and naked Plea, which is purely as bad, if not worse, than all the Prerogatives; and for the worst and grossest of his Prerogatives, in a more rigorous manner than they were used in his Life-time, to be thus press'd upon me at this Day, after he hath lost his Life for pretended Tyranny and Injustice, Liberty and Freedom in publick Declarations declared to the Kingdom: I say, if there be Justice and Equity in this, I have lost my Understanding; and the good Lord God of Heaven deliver me from all such Justiciaries.

Ld *Keble*. Mr. *Lilburne*, you have been arraigned before us for High Treason, and we bid you forbear those Terms of yours long ago; speak that you do rationally, and you shall have fair and christian Answers and Replies, as ever any Man had at a Bar; and go on, you shall have it still, if you will be fair and rational, and not break out into Extravagancies and Bitterness of Spirit.

Lieut. Col. *Lilburne*. For my part, Sir, I must look upon my self as a lost and dead Man if I have not Counsel to help my Ignorance, to pitch upon those Things that tend to my Preservation. And therefore if you will not assign me Counsel to advise and consult with, I am resolved to go no further, tho I die for it; and my innocent Blood be upon your Heads.

(a) Coke, in his Instit. 3 par. cap. Petty-Treason, fol. 29. is express in this Particular: So he is in cap. 63. being his Cap. Of Counsel learned in Pleas of the Crown, fol. 137.

Justice *Fermin*. You have alledged part of the Law of *England* for your own Advantage; but every one that says so, does not prove it to be so. You have said you will be tried by the Laws of *England*; and yet against the Laws of *England* you have utterly refused, in that you would not hold up your Hand, which I do not know any *Englishman* that ever refused so to do, but your self. You have been told by the Court what the Law of *England* is; and yet you will not be satisfied. We are upon our Oaths, and therefore will discharge our Consciences, and that in a more eminent manner than my Brother *Heath* did, altho we do not deny you Liberty to speak for your self. But now you would have Counsel assigned before any Matter of Law doth appear upon the Proof of the Fact, which we cannot do; for it were to do Injustice, and to do against the Law, which the Court cannot justify.

Lieut. Col. *Lilburne*. Sir, under favour, whether or no I have transgress'd the Law, I will not judge: But I am sure the Law, in the Equity and Intention of it, would have all Trials to be equal, and not prejudicial. My Prosecutors have had time enough to consult with Counsel of all sorts and kinds to destroy me, yea, and with your selves; and I have not had any time at all, not knowing in the least what you would charge upon me, and therefore could provide no Defence for that which I knew not what it would be. And if by the Law of *England* I cannot have Counsel, then upon your own Grant, which is, That the Laws of God are the Laws of *England*, I desire to have the Privilege of the Law of God, which you your self said is the Law of *England*; and I am sure the Law of God is, That you should *do as you would be done to*. Now it cannot be according to the Law of God, for my Adversaries to have the Helps of all manner of Counsels, by Snares, Tricks, and Provocations, to take away my Life, and for me to be denied the Benefit to consult with any to preserve my innocent Life against potent Malice.

Ld *Keble*. You say well: The Law of God is the Law of *England*; and you have heard no Law else but what is consonant to the Law of Reason, which is the best Law of God; and here is none else urged against you.

Another Judge. The Laws of God, the Laws of Reason, and the Laws of the Land, are all joined in the Laws that you shall be tried by.

Justice *Fermin*. The Question is but this, Whether the Law of God, and the Law of Reason, and Law of Man, may be consonant to each other? And whether the Court or *John Lilburne* shall be Judges thereof? That is the Question.

Ld *Keble*. And that which you said, Mr. Attorney hath had so much Time against you, and Opportunity to consult with all manner of Counsel to destroy you, your secret Actions, though they are now come to publick View, are so heinous, as that they do require time to put them into the most sure way of Trial; we have proved the Clandestineness of them: You did this in secret; now it is come to the Face of the World. Now this being Matter of Fact, no

Matter of Law can appear till Proof pass upon it. You have had Times to complot your treasonable venomous Books, which shall be proved upon you; and till this be done, there is no Matter of Law to be looked at. This is the Law of God: When a Man hath done such treasonable Things, he shall answer directly and positively whether he be guilty of them or no; and if he answer Not guilty, and they be not fully proved against him, there needs no more to be said.

Justice *Thorp*. Mr. *Lilburne*, there fell some Words from you even now, wherein you think you have this Hardship put upon you, when you say the Judges and your Prosecutors have had six Months time to meet together, and consult together how to destroy you. First, I would not have you to believe, nor the rest that hear it, that that is true that you say; for I speak it for my own particular, that I never saw your Indictment till this time that I came here; and yet you say we have had six Months together to frame it. These are your Words: This was not rightly done of you; for it is not true. I speak in my own particular.

Lieut. Col. *Lilburne*. I am sure the Substance of it you might see many Months ago; and though all you Judges have not at one time met about it, yet the greatest part of you have, that commonly carry the Domination of the whole; and at *Serjeants-Inn*, with Mr. Attorney-General, the most of the Judges of *England* have had several Meetings, six, five, and four Months ago: for I have had Friends there that have seen it, and who have inquired into the Cause of such solemn Meetings, and your own Servants have told them it hath been about me and my Trial.

Justice *Thorp*. I speak as for my own particular, that I never was there, and that I never saw your Indictment till this time.

Justice *Fermin*. Why, Mr. *Lilburne*, might we not have such Meetings as those, your Business being a Matter of this Importance, as this is, through the Heinousness of your Offence? and that it might be so grounded as the Warrant of the Law is, the Judges did meet: And they ought to meet (a) to consider of it, that nothing should be done against you, or any Man else, contrary to the Law. But yet, for my part, my Dwelling is out of *London*, I heard not of it so soon as you speak of; but after I came to Town, I confess I heard of it, and have been present about some Debates about it.

Lieut. Col. *Lilburne*. Only this I say, If by your Prerogative you will destroy me, as *Nebuchadnezzar* did endeavour to destroy *Daniel* by his Prerogative, I am as willing to die, as he was to be thrown into the Lions Den: And if you will not allow me Counsel, to consult with what Plea to make for my Life, I have no more to say. Sir, it is but a vain Thing to spend any more Words.

Ld *Keble*. These are but Words and Flourishes, Sir, that you are so willing and ready to die, as you declare you are: But if you be, it is better for you. And also it is well you have not to do with Judges that would be austere upon you;

(a) But Coke, in his Chapter of Petty Treason, in 3 Par. Inst. fol. 29. expressly saith, and to the end, That the Trial may be the more indifferent, seeing the Safety of the Prisoner consisteth in the Indifferency of the Court, the Judges ought not to deliver their Opinions before-hand of any criminal Case that may come before them judicially. And he there cites *Humphrey Stratford's Case*, that Arch-Traitor, in which *Husley*, Chief Justice, besought Henry VII. not to demand of them their Opinions before-hand. And in 4 Par. Instit. cap. High Court of Parliament, fol. 37. he fully shews the Evil of asking Judges Opinions before-hand.

for you to term us to be Men that come hither to destroy you as *Nebuchadnezzar* went about to do *Daniel*: You may judge of what is within you; but of us, what is within us, you cannot judge. You shall have Justice here in the Face of the Country, and of all that hear us: These shall be Judges of our Proceedings towards you. Take heed, Mr. *Lilburne*, this Language is but the Sparks of that venomous Heat that is within you; and they may burst out to prove you guilty before us, and in our Presence, of that you are charged with, without any further Proof or Proceedings; for you may do it, you may do it where you stand: And therefore be advised, and take heed what you say.

Lieut. Col. *Lilburne*. Sir, I have cast up my Account, and I know what it can cost me: I bless God I have learned to die, having always carried my Life in my Hand, ready to lay it down for above this twelve Years together, having lived in the Favour and Bosom of God; and I bless his Name, I can as freely die as live.

Ld *Keble*. You shall not now lay it down, if you do not destroy nor cast away the Commonwealth; but if you go about to destroy the Commonwealth, the Commonwealth will spue you up, and destroy you.

Lieut. Col. *Lilburne*. I desire nothing but Counsel, and a little Time to consult with them, and to produce my Witnesses, and a Copy of my Indictment: If not, I am willing to die as the Object of your Indignation and Malice, do your Will and Pleasure.

Ld *Keble*. We are willing to die too.

Mr. *Attorney*. What is agreeable to the Law of *England*, the constant settled Practice of trying Prisoners, will not be denied Mr. *Lilburne*: But as for that Privilege that was granted him at *Oxford*, is no Tie in Law to us; neither was it ever heard of in *England* that any, that did understand the Law, did ever, as Mr. *Lilburne* now desires, allow Counsel to a Prisoner for such an Act as this is, or had the Copy of the Indictment. It shall not be denied Mr. *Lilburne*, which is his Right by Law, in its due place; but to make new Precedents and new Laws, which, my Lord, when done by such a Bench as this is, most of the Judges in *England* being present, runs to all criminal Cases whatsoever, whether in Treason, Murder, or other Felonies: It's true, Mr. *Lilburne* is now only concerned in it; but if granted to him, it would be a Precedent to all future Times; by means of which there would never be an end of Trials in criminal Cases. And it is a wonderful strange Thing to me, that when the Prisoner hath pleaded the usual way, you proceed not immediately to Trial. It's true, Mr. *Lilburne* hath pleaded his own Ignorance, and therefore desires longer Time: But, my Lord, to make a Precedent of this nature, that never was known by the Laws of *England*, is very dangerous, very perilous. My Lord, the Thing that I press is not in relation to Time, but in relation to the publick Justice; for the same Reason it's granted him, it ought not to be denied to any Man that asketh it, neither for Treason or Felony. And of what evil Consequences it would be, I leave your Lordship and the Court to judge.

My Lords, I do humbly desire that Mr. *Lilburne* may be dealt with all legal, just, and fair Proceedings from the Court. My Lord, I do

desire accordingly that Proceedings may for the Commonwealth be so too; and that Mr. *Lilburne* may be without Delay, according to Law, proceeded against for his notorious Treasons.

Lieut. Col. *Lilburne*. Sir, with your favour, I shall crave but one Word: This Gentleman declares unto you what an evil Precedent it would be to give me a little Time to consult with Counsel, to frame a Plea for my Life; and yet that Judge was pleased to say the Law of *England* is founded upon the Law of God, and the Laws of Reason, unspotted, uncorrupted, or undefiled. I am sure the Law of God, and the Law of uncorrupted Reason, is to do as you would be done to, and not to lay Snares for your Neighbour's Life: I am sure the Law of God would have all Trials indifferent, and no Man's Life surprized or taken away by Niceties or Formalities, tho never so notoriously accused. And, Sir, for Mr. *Prideaux*, and others of you, so often to call me notorious Traitor, as you do; I tell you, Sir, you reproach me: for though I am never so notoriously accused, yet in the Eye of the Law of *England* I am an innocent Man, yea, as innocent as any of those who call me Traitor, till such time as I be legally convicted of the Fact or Crime laid unto my Charge; and therefore, Sir, I beseech you cease your calumniating of me, for you thereby deal not fairly nor legally with me. And, Sir, I confidently hope I shall appear in the Eye of the Law, in the Eyes of you, and in the Eyes of all Men that hear me this Day, an innocent, a just, and a true *Englishman*, that really loves the Welfare of his native Country, if I may have fair Play, and the Scope of the Law. And therefore, Sir, blemish me not in the Ears of the Auditors, till the Law, and a Conviction by it, do blemish me; for I tell you I am in the Eye of the Law as innocent as any of your selves, till I be justly convicted. And therefore I pray cease the calling of me Traitor in this manner.

Ld *Keble*. What need we any more, when we are of your Opinion? We wish you may come as clearly off as you say you hope to do.

Mr. *Attorney*. My Lord, and that it may be so declared, and that the World may know whether Mr. *Lilburne* be an innocent Man, or no, I pray put it to the final issue, and let the Law judge.

Lieut. Col. *Lilburne*. Under favour, for me to be denied Law, which I conceive is done unto me when I am denied Counsel, and to put the Niceties and Formalities of the Law upon me, the Signification of which are writ in such Language and Tongues as I cannot read, much less understand; and would you destroy me for the not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extreme towards me. That Gentleman saith the Law of God is the Law of *England*; and it would have no Snares laid to take away a Man's Life: I pray let me have the Benefit of that.

Mr. *Attorney*. Once you had; and it is but just you should; and I am sure it will be granted unto you.

Ld *Keble*. Mr. *Lilburne*, you say well; the Prisoner doth not know the Law; you do not, and many others do not: But I tell you again, you know so much of the Law as is suitable to this Plea; you your self know whether your Conscience accuse you guilty of the Fact laid
unto

unto your Charge, or not. For our parts, we say no more than one and twenty Men upon their Oaths have informed us, upon sufficient Testimony of Witnesses, that what they had said we should further inform our selves of, before your Life be taken away; yea, such is the Law of *England*, the tenderest Law in the World of a Man's Life. I say again, that no such Trial for Life is to be found in the World, as in *England*. In any Place but in *England*, a Man's Life may be taken away upon two or three Witnesses; but in *England* two or three Witnesses do not do it: For there are two Juries besides, and you have four and twenty Men returned; you have one and twenty Men upon their Oaths and Consciences that have found you guilty: And yet when you have done that, it is not enough by the Law of *England*, but you are also to have twelve rational understanding Men of your Neighbours to hear all over again, and to pass upon your Life. This is not used in any Law in the World but in *England*, which hath the righteouflest and mercifullest Law in the World: And this we fit here to maintain, and let all the World know it, that according to the Rules thereof we have proceeded against you.

Judge *Michel*. Mr. *Lilburne*, you were speaking of the Laws being in other Tongues; those that we try you by are in *English*, and we proceed in *English* against you; and therefore you have no cause to complain of that.

Lieut. Col. *Lilburne*. By your Speeches you seem to bind me up to a single Plea: Truly I conceive that is not equitable by the Law of God, and the Laws of Reason. No Man's Life is to be destroyed by Niceties and Formalities; yet contrary to your solemn Promises, you take all Advantage against me by them, and make my ignorance in the ticklish Formalities of the Law to be the means of my own Destruction: although before I pleaded you ingaged unto me you would take no Advantage by my Ignorance in your Formalities, and my Mistakes in them should be no Disadvantage unto me; and yet now I have pleaded, you seem to hold me close to a single Plea. Truly, Sir, I think that is not just nor fair so to break your Promises, and by fair Words to smooth me on into Nets and Snares, and to make use of my Willingness to be tried by the Law of *England* to drill me on to my own Destruction. Truly, Sir, had I ever thought or believed I should have been denied Counsel, I would have died before ever I would in any manner have pleaded to your Charge, or have yielded to your smooth Insinuations.

Justice *Fermin*. Those Men that know the Laws of *England*, know well that it taketh away no Man's Life but upon clean Proof, and upon manifest Contempts of the Law. The Law is, Whosoever shall go such a way in a Court as evidently gives affront to the Law, that such one takes away his own Life. The Facts that you are charged with, if they had taken effect, would have taken away the innocent Lives of many: Therefore you are now before us charged with the Fact; and every Man's Conscience knows whether he committed the Thing charged upon him, or no; and your self does know whether you be guilty of that you are accused of, or no. But the Court must not spend any further time; for Mr. Attorney-General hath returned the Writ of *Venire facias*, for the call-

ing or summoning of a Jury of Life and Death.

Ld *Keble*. Mr. *Lilburne*, you say you well understand your self: You knew of your coming, and you knew of the Fact that you have committed.

Lieut. Col. *Lilburne*. Truly, Sir, six Months ago I heard much of my Trial; and I longed for it, but could not have it, but was still kept in Prison, and abundance of Provocations put upon me, to make me cry out of my Oppressions; and then to hang me therefore, by a Law made after my pretended Crime was committed, is not just. And truly, Sir, I heard but by uncertain common Fame of my Trial now. Some Parliament-Men told my Wife and Friends that my chiefest Crime was corresponding with the Prince; and to defend my self against that, I fitted my self, never dreaming that only Books should be laid to my Charge, and therefore I could not as to that come prepared: And therefore do humbly desire Counsel, a Copy of my Indictment, and Time to bring in my Witnesses.

Ld *Keble*. Hear what is said to you: For your Witnesses, you should have brought them with you; we'll give you leave to send for them: We will give you time to do, to consider with your self what to say for your self, you shall, till to-morrow Seven a-clock.

Lieut. Col. *Lilburne*. Sir, some of my Witnesses live an hundred or eighty Miles off; and yet I must bring them to-morrow Morning: How's that possible? And therefore I desire Time to bring them in, and also *Subpœna's*; for some of them are Parliament-Men, and some of them Officers of the Army, and they will not come in without Compulsion.

Ld *Keble*. That's the time we will give you longer; you knew of your coming long ago, and therefore ought to have come provided.

Lieut. Col. *Lilburne*. Sir, I beseech you give me a convenient time, eight or ten days, that so I may get them together; for how could I be provided before-hand for any thing, but for that which I was at the first imprisoned for, nothing of which is now laid to my charge? Could I divine upon what you would proceed against me? But, Sir, I have that within me, I bless God, that will be a Portion of Comfort with me, to carry me through all your Malice and Injustice.

Ld *Keble*. Never talk of that which is within you; God is in us, as well as in you: never make a flourish of what is in you; for the Fear of God is before our eyes as well as yours, and what we do we shall have comfort in, in that it is according to the Laws of *England*, the Rules of which we are sworn to observe, and every Man will do righteous things as well as you.

Lieut. Col. *Lilburne*. Pray will you give but eight days time then?

Ld. *Keble*. We will give you no more; you ought to have brought them with you, you knew of it long ago; and the Court cannot, nor will not wait upon you.

Lieut. Col. *Lilburne*. By your favour, Sir, thus; then let me have a little time to consult with Counsel.

Ld. *Keble*. I tell you that if the Matter be proved, there needs no Counsel.

Lieut. Col. *Lilburne*. Sir, I shall not much insist upon that, but the question is, Whether the Matter be Treason in Law or no, and whether in Law it be rightly expressed in the Indictment, as to Time and Place, with other Circumstances thereunto belonging? And I question the Legality of the Indictment, and that ought in Law to be disputed, before the Matter of Fact come to be spoken to.

Ld *Keble*. Sir, you said at first, you would speak as a rational and moderate Man, and yet you will not be answered. If Matter of Law do arise out of your Fact, that we have told you again and again, you shall have Counsel and Time.

Lieut. Col. *Lilburne*. Sir, by your Favour, it may be too late to desire Counsel after the Fact is proved. And besides, having legal Exceptions against the Indictment, why should you run me upon the Hazard of my Life, by ticklish Niceties and Formalities; and as my Prosecutor Mr. *Prideaux* saith—[*But being interrupted, cry'd out*] Sir, I beseech you, do but hear me.

Ld *Keble*. Your Distemper will break out; your Heart is so full of boiling Malice and Venom, you cannot contain yourself.

Lieut. Col. *Lilburne*. Mr. *Prideaux* is pleased to urge, that the granting of me my Desire in reference to Counsel, will be so inconvenient a Precedent, as will destroy the Commonwealth: therefore to avoid the danger of such a destroying Precedent, as he is pleased to call it, I desire to have some time assigned me to get my Witnesses together, and then I shall, I doubt not, but convincingly shew you the Hazard and destroying Mischief of that desperate Precedent in denying Men liberty to consult with Counsel, when they are upon Trials for their Lives. For my own Judgment, my own Conscience doth tell me, that it is my undoubted Right by the Law of *England*, by the Law of God, and the Law of Reason; and if it be totally denied me, I can but die: and upon that score, by the assistance of God, I am resolved to die.

Ld *Keble*. You speak great Words of your own Judgment, your own Conscience, your own Zeal, and the like: and I tell you, our Consciences, and our Religion, and our Zeal, and our Righteousness, I hope shall appear as much as yours. You would make your self Judge in your own Cause, which you are not, and so make Cyphers of us; but all your high Words of Conscience and Righteousness is but a Flourish, to make the People believe or be apprehensive as tho we had none, you had all: but you shall know, here we sit with as much Tenderness and Integrity as you stand there, and to do that uprightly which is according to Law and Justice.

Lieut. Col. *Lilburne*. I shall not in the least make any Comparisons, neither do I in that particular; I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy Content, Peace, and Quietness of Mind: and yet for my part I shall rather die than willingly go any further, except I have Counsel first.

Ld *Keble*. Well, Mr. *Lilburne*, the Court is very tender not to take up any of your time; you have heard what was declared to you there, that Mr. Attorney hath made Process against you returnable To-morrow at Seven of the Clock, and

therefore to spend more time will be but your Loss and Damage. The Sheriffs of *London* are to take care to return the Jury To-morrow Morning, and therefore the Court doth adjourn till Seven a Clock To-morrow in the Morning; and in the mean time they do commit the Prisoner at the Bar to the Lieutenant of the *Tower* again.

Lieut. Col. *Lilburne*. Sir, I did not hear you the first Words.

Ld *Keble*. You shall not be denied to hear it again, the Court desires to be good Husbands of Time for you; we could have sat long enough to have trifled away your Time that you may spend in your Meditations, and take your Friends Advice; do not stand upon and destroy your self by Words.

Just. *Jermin*. Mr. *Lilburne*, all that are here are to take notice of it, that the Prisoner at the Bar hath had more Favour already, than ever any Prisoner in *England* in the like case ever had: for by the Laws of *England*, in the matter of Treason, whereof you are indicted, you ought to have been try'd presently, immediately: But because all the World shall know with what Candor and Justice the Court do proceed against you, you have till To-morrow Morning; which is the Court's extraordinary Favour, and the Doors are wide open, that all the World may know it.

Lieut. Col. *Lilburne*. Sir, I can shew one hundred Precedents to the contrary in your own Books, to disprove what you say.

Ld *Keble*. Adjourn the Court.

Lieut. Col. *Lilburne*. I humbly thank you for what Favour I have already received.

The Court adjourned till the next Morning, and the Prisoner remanded to the Tower.

Guild-Hall, October 26, 1649, being Friday.
At the Trial of Lieut. Col. John Lilburne, the Second Day.

THE Prisoner being brought to the Bar, spake as followeth: Sir, I pray hear me a Word or two.

Ld *Keble*. Mr. *Lilburne*, I am afraid something troubles you; I will have no body stand there*, let all come out but one Man.

Lieut. Col. *Lilburne*. Here's none but my Brother and my Solicitor.

Ld *Keble*. Sir, your Brother shall not stand by you there; I will only have one hold your Papers and Books, and the rest not to trouble you: wherefore the rest are to come out.

Lieut. Col. *Lilburne*. Sir, I beg of you but one Word, tho I do not know any reason why of myself I should not have the Privilege of the Law, as well as any Man in *England*; yet besides what Yesterday I alledged for myself, for to have Counsel assigned, yet To-day give me leave to mention an unquestionable Precedent for my purpose, and that is Major *Rolfe*, who being an Officer in the Army, and being lately indicted for High Treason (before the Lord Chief Baron *Wilde*, that now is at *Hampshire* Assizes) for conspiring to poison and pistol the late King, which by Law was the highest of Treasons, did

* That was in the Bar, where his Brother Col. Robert Lilburne, his Solicitor Mr. Sprat, and other of his Friends stood.

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to all Law and Justice; and by armed Men against Law, I was by force carried before a Company of Gentlemen sitting at *Derby-House*, that look'd upon themselves as authorized by the Parliament to be a Committee or Council of State, (who by the Law I am sure in any kind had nothing at all to do with me in Cases of pretended Treasons) where I was brought before Mr. *John Bradshaw*, sometimes a Counsellor for my self before the House of Lords, against my unjust *Star-Chamber* Judges; who there in my behalf, Feb. 1645, did urge against the Lords of the *Star-Chamber*, as the highest Crimes against the Liberties of the People that could be, as being illegal, arbitrary and tyrannical, that the Lords in *Star-Chamber* should censure me to be whip'd, pillory'd, &c. for no other Cause but for refusing to answer their Interrogatories against my self. And when I was brought before the said Council of State, I saw no Accuser, no Prosecutor, no Accusation, no Charge nor Indictment; but all the Crime that there was laid unto my Charge, was Mr. *Bradshaw's* very seriously examining me to Questions against my self: although I am confident he could not forget, that himself and Mr. *John Cook* were my Counsellors in February 1645, at the Bar of the House of Lords, where he did most vehemently aggravate, and with Detestations condemn the Lords of the *Star-Chamber's* unjust and wicked dealing with *English* Freeman, in censuring them for their refusing to answer to Questions concerning themselves; and yet notwithstanding walked with his dealing with me in the very Steps that formerly he had bitterly condemned in the *Star-Chamber* Lords; yea, and there for refusing to answer his Questions, (for any thing he declared to me to the contrary) committed me to Prison for Treason in general. And you know very well, better than I do, that by your own Law, Generals in Law signify nothing.

Judge *Jermin*. Mr. *Lilburne*, you very much abuse and wrong your self, for you very well know Mr. *Bradshaw* is now denominated by another Name, namely, *Lord President to the Council of State of England*; and it would well become you in your Condition so to have stiled him.

Lieut. Col. *Lilburne*. And although no Crime in Law (which ought to be particularly express'd) was laid unto my charge; yet when I was first imprisoned, there were thousands of my Friends (Well-wishers to the Freedoms of *England*, and to the common Cause in which they had been engaged in for these eight Years together) both old and young, both Masters of Families, young Men and Apprentices, and abundance of others of the Feminine Sex too, with abundance of cordial honest Men in several Countries, joined in several rational and fair Petitions, and delivered them to the House in the behalf of my self, and my three Fellow-Prisoners; in which they most earnestly intreated them, that they would not prejudice us before we were heard, and knew our Accusers and Accusations, but rather that they would release us, and take off their prejudging Votes against us, which they had caused to be proclaimed in all the publick Places of the Nation against us, and let us have a fair and legal Trial, according to the Laws of *England*, and according to the undeniable Privileges of the due Process of the Law

from first to last; and they would put in any Security that they would require of them, that we should be forthcoming at all times to answer whatsoever in Law could be laid to our charge. Unto all which Petitions, which were very many, they could get no manner of satisfying Answer, but Slights, Abuses and Scorns.

But besides this, Gentlemen, that you may see that I am rational, and that you may see that I have an innocent and quiet Conscience within me, that does not accuse me, nor terrify me; therefore I must acquaint you, that I again and again proffered my chiefest Adversaries, and sent often to them, being earnestly desirous to chuse two Members of the House of Commons, and let them chuse two more, whom they please; and I would with all my Heart freely refer all manner of difference betwixt them and me, to the final Determination and Judgment of four of their Fellow-Members: but all this would do no good, and yet they would not in the least let me understand what was the Thing they desired of me; but, by their Power and Will, I had my Pockets and Chamber search'd to find out Advantages against me; and also lock'd up close Prisoner, with Centinels Night and Day set at my Door, and denied the Access and Sight of my Wife and Children for some certain time; and for about twenty Weeks together in the heat of Summer, kept close Prisoner, and denied the Liberty of the Prison, and my Estate with a strong Hand taken away from me, without any Pretence (or due Process) of Law, to the Value of almost three thousand Pounds, that was legally and justly invested in me, and in my Possession. But being I will avoid (at this time especially) Provocations as much as I can, I will name no Person by whose Power and Will it hath been done, although he be notoriously known; but the Gentleman that took it away by his pleasure, without all Rules of Law or Justice, told my Father to this purpose, That I was a Traitor, and under the Parliament's Displeasure; and therefore he would secure it from me, although I were not in the least convicted of any Crime, neither in Law then, or for many Months after had I the least Pretence of Crime laid unto my charge. And although my own Estate by force, against Law, was taken from me, yet was I also denied in my close Imprisonment that legal Allowance that should have kept me alive; for in all this miserable Condition I never yet received a Penny of my legal Allowance, but was positively denied that Testimony and legal Right that the late King constantly allowed to all the Members of the Parliament that were committed in the Third of his Reign, and several other times; unto whom for their Diet he allowed three, four and five Pounds a Week, according to their Quality, although they had great and large Estates peaceably in their possession. And one of them that is now beyond the Seas, a Colonel, I have forgot his Name, (but it was Colonel *Long*) confessed in the Lieutenant of the Tower's own Chamber, the last Year, that the King was so bountiful to him and the rest of his Fellow-Prisoners, that he let them enjoy the Allowance of about four or five Pounds a week for Diet; and that while he was Prisoner in the Tower, he spent the King about 1500*l.* for his own particular self in Provision. But notwithstanding I was denied all this, and to fill up
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the height of the insufferable Provocations put upon me, abundance of my own and antient Acquaintance were set upon me to calumniate, bespatter and reproach me; yea, and to endeavour to become Instruments to take away my Life, some of them confessing they were underhand set on by some Parliament-Men: All whose base and wicked Petitions, Papers and Books preferred and published against me, were hugged and imbraced; altho, for my own part, I do not know of any Man in this World that can justly tax me with any Action, or maintaining any Principles or Tenents, but what doth become a Man that doth believe all that is contained in the Law and the Gospel, and does believe the Resurrection of the Dead, and Life eternal; nay, that does believe that I my self shall arise and go to the Lord of Glory. Yet notwithstanding all these unparallel'd Provocations put upon me, especially by divers of my old Acquaintance, whom I had upon all Occasions faithfully served, but never wronged, injured nor provoked, being instigated (as they themselves confess in some of their own Congregations) by Parliament-Men so to do.

Truly, Sirs, I appeal to your own Judgments, and to your Consciences, and to all the People that hear me this Day, whether all these Provocations laid upon a poor Man, which is but Dust and Ashes, as well as other Men, be not too insupportable a Burden, and too much for the Causers of them to take advantage of the Fruits produced by them, to destroy me, and take away my Life.

And therefore, Sir, in the first place, I shall humbly crave that Favour and Right, seeing I am brought before you by a piece of Parchment that truly I could not read, neither could he do it that shewed it me, (I mean the Lieutenant of the Tower;) for admit that if I did well understand *Latin*, as indeed I do not, only some ordinary Words, yet was it in such an unusual strange Hand, that I could not read it. And therefore being I am brought before you implicitly, and not as I conceive an *Englishman* ought to be, who ought to see and read the Authority, by virtue of which he is convened before any Power. It's true, I know some of you, Gentlemen, that I see sit before me, yet not many of you; and truly I have nothing but a piece of unlegible Parchment, which cannot satisfy my Understanding of the Legality of my Convention before you: but being I am not able to dispute that Power that compulsively brought me, but here I am; and therefore in order to the declaring of my self to be a true *Englishman*, I most humbly crave (and that I think is consonant to Reason, and I hope to Law too) that I may see, and hear read the Commission, by virtue of which you sit here this Day, and convene my Person before you, that so I may compare it to the Law; and consider whether or no, that by my pleading before you by virtue of it, I do not betray my Liberties. And therefore I humbly crave that you would let me hear your Commission read; for this Court is no ordinary and common Assizes, Sessions, or Goal-Delivery, the only proper Courts for trying me for all criminal Faults; yea, and those also ought to sit where the Crimes are committed: and I was imprisoned for a pretended Crime, pretended to be committed in the County of *Surrey*, where by the Common Law

of *England*, and express Statutes, I ought to be tried therefore, and no where else.

And therefore being brought in an extraordinary manner to such an extraordinary Place as this, which is no ordinary Assizes or Sessions, no, nor yet in mine own County; therefore I again humbly desire that you will be pleased to let me see and hear your extraordinary Commission, that so I may consider whether the Extent or Latitude of the Commission be consonant, or no, to the Petition of Right, and other the good old Laws of *England*. For those that now sit at *Westminster*, exercising the supreme Power, by two special Declarations, the one dated the 9th of *February* last, and the other the seventeenth of *March* last, have positively declared, and called God to witness, That they will maintain, preserve, and defend that excellentest of Laws, the Petition of Right, as in the seventh Page of the last Declaration they call it; and that the People of *England* shall enjoy all the Benefit therein contained, whether to Life, Liberty, or Estate, with all Things incident thereunto. And therefore I humbly beg and crave that Favour from you, that seeing to me you appear to be sent in an extraordinary manner, not according to the ordinary Customs of the Laws of *England*, that you will be pleased to let me hear your Commission read, that so I may consider the Consonancy thereof to the Petition of Right, and other the good old Laws of *England*: and after the reading of it, I hope I shall return you an Answer as doth become a rational and ingenious Man: Who though he hath Right to all the Privileges of the Laws of *England*, and hath read all the declared and plain Laws of *England*, that are to me the Fundamentals of all, yet the practick Part of the Law, which are in other Tongues besides the *English*, I cannot read, know, nor understand. And in the Petition of Right, and other the good old fundamental Laws of *England*, I can find no Foundation or Bottom for such an extraordinary Court, as this before my Eyes seems to be: And therefore I again make it my most humble Suit to hear your Commission read.

Judge *Keble*. Mr. *Lilburne*, you are fully heard.

Mr. *Prideaux* Attorney-General. My Lord, the Prisoner at the Bar, nor none else, have Cause to complain that he hath wanted your Patience in being fully heard. My Lord, that which at the beginning of his Arraignment you expected from him, which was to hold up his Hand, he denied; and upon his Denial desired Liberty of Speech to speak, and he hath enjoyed it. But, my Lord, how pertinent his Discourse is to what was proposed to him, the Court, and all that hear him, will judge. My Lord, I am not here to justify the Actings of those that here he hath complained against; but they are a Court, they are a Council, and my Thoughts are (and so ought his to be) honourable of them; and what they have done (my Lord) towards him, in ordering this Court to try him, is but Justice. My Lord, there is no special Commission of Oyer and Terminer, but a general Commission; and upon that general Commission here is a special Presentment of Mr. *Lilburne* here at the Bar: The general Commission is according to the Law of the Land; and upon that special Presentment it is expected he may be proceeded against according to Law. And for your Commission, my Lord,

that hath been read and published to the Court before Mr. *Lilburne* came to the Court, and the Court is satisfied with it, that it is in the ordinary way; and I hope the Judgment you will give, will declare it to be according to the Law, in the ordinary way. And as for the Commission it self, in the Form of it, it is not a Tittle varied from the ordinary accustomed Form. But, my Lord, the Petition of Right, *Magna Charta*, the Statutes, and all Declarations that have been spoken of, they are all confirmed in this, and all do confirm it; for in that ordinary Tract, that hath been practised in this Nation for five hundred Years, is Mr. *Lilburne* now to be tried, and that by the old good Laws of *England*, Mr. *Lilburne's* Birth-right, and every Man's else, he has his Trial; the beginning of which hath been Mr. *Lilburne's* Presentment, which is already found by the Grand Inquest, who are Men of Integrity, Men of Ability, Men of Knowledge. My Lord, he is now come to his Trial, not in an extraordinary way, but by a Jury of good and legal Men of the Neighbourhood; by Men that do know, my Lord, and understand what is Fact, what is (a) Law, and to do Justice indifferently between both.

And, my Lord, I do know, and publish to all that now hear me, that the Commission for Trial of Mr. *Lilburne* this Day, for those Differences that are between the State and Mr. *Lilburne*, is free in Law from all those Exceptions that he is pleased to put upon it, and is unquestionably legal, and used for these many hundred Years together. And as for Mr. *Lilburne's* declaring the Fact, for which he was originally imprisoned, for to be committed in *Surrey*, and therefore there in Law he ought to be tried, and not here in *London*, being another County; as for Mr. *Lilburne's* Crimes committed in *Surrey*, his own Conscience best knows what they are: But Mr. *Lilburne*, at most, can but yet guess at what we intend to try him here for, or lay unto his Charge.

But, my Lord, if Mr. *Lilburne* will please to put himself upon his Trial, according to Law, my Lord, I hope the Court, and all that hears and sees their Proceedings, will receive full Satisfaction in the Legality and Fairness of their Proceedings against him, and himself the Benefit of Justice and Law.

Lieut. Col. *Lilburne*. Sir, by your favour, in two Words, I shall not be tedious, I now perceive who is my Accuser and Prosecutor, the Gentleman that is a very unequal one; for he is one of the Creators (being a Member of the House) of you that sit here this Day to be my Judges; and therefore an over-awing and unfit Accuser or Prosecutor.

Ld Keble. Mr. *Lilburne*, I pray you hear me a Word; for now you speak not rationally nor discreetly: You have had a fair Respect and Hearing. What you speak of Liberties and Laws, we come here to maintain them for all, and for you too: And we also come for to vindicate our Actions. And as for that you speak of in reference to the Commission, I must let you know the Commission is warrantable by the Laws of *England* for this five hundred Years, nay, and before five hundred Years in substance. The second Thing that you speak to, is, That

you were apprehended in such an hostile Manner, understanding by Law you should have been taken in an ordinary way, by an ordinary Officer. But, Mr. *Lilburne*, in all Apprehensions of Traitors, Felons, and Murderers, is not the Power of the County to be raised, and the Sheriff is to call and take what Power he pleaseth.

Lieut. Col. *Lilburne*. By your favour, Sir, not unless I resist; which I did not. And besides, there was no Sheriff, nor no other Civil Officer, at my Apprehension.

Ld Keble. Mr. *Lilburne*, spare your self: It is as they are informed of the Danger of the Man; they may do it before ever they see him. The next Thing you are upon, is, The Wrong and Injustice that you received by the Proceedings in the Star-Chamber against you. You see the Proceedings there have been questioned, and you justified: If there be any thing else that hath been by others in the North, or elsewhere acted, there is no Man here that will justify them in their Evil. But for a private Man, as you are, to tell us of them here, and to come and tell us to our Faces that we are created and constituted by the Attorney-General, we will not suffer it, nor further hear of it. And therefore, Mr. *Lilburne*, although you have spoken fair Words, (and happily more than your Friends expected from you) I must tell you that Words are but Words; and it were well that you would do as well and as rationally as becomes a rational Man, as you have declared you will.

Lieut. Col. *Lilburne*. With your favour, but one Word more.

Judge Jermin. Mr. *Lilburne*, pray spare a Word, and hear the Court: This Court sits here by lawful Authority, and that is from the Parliament, that are the supreme Authority of *England*; so that our Power is not derived from those that have no rightful Authority to constitute us, but our Power is from the publick Authority of *England*, which is now, by an admirable Act of God's Providence, lately, but truly revived and settled by God upon them. By that Authority this Court doth now sit; and you are brought here before them that are most of us Judges of the Law, and we are sworn to do you and every Man Justice and Right, according as his Cause requires, according to Law, Judgment, Equity, and Reason. And it was said truly, that which my Brother *Heath* (who now is dead) did say, It's the Duty of the Judges to be of Counsel with the Prisoner at the Bar before him, and to do that which they are sworn to do: And that you shall have. And accordingly you have received more Favour than ever I heard of a Prisoner that was accused of Treason in my Life ever had. And as for the Commission, I must tell you it is usual to have Commissions of Oyer and Terminer, and that even in Term-time, for high Offences, and such as tend to the Destruction of the Nation, as *Overbury's* did, and those that tend to capital Treason, whereof you are now accused, by a Grand-Jury of *London*, that are Freemen of *London*, Citizens, able Men, Men of Religion, Men of Estate, Men of Conscience, Men of Quality: These are your Accusers; who have found you, upon their Oaths, guilty of Treason, and cry out to us the Judges

(a) Mark that well; for Judge Jermin called it a Damnable Doctrine, when Mr. *Lilburne* declared the Jury were Judges of Law as well as of Fact.

for Justice against you : And it is they, not we, that proceed against you. And as for our Commission, it is according to the good old Laws of the Land, founded upon the Statute made in *Edward the First's Time*, called *Westminster the Second*. That Statute authorizeth Commissions : According to that Commission we sit by here this Day. And *Edward the First* was a wise and a good Prince, and consented to the People, to let them have such Commissions as ours we sit by is, which the People had fought stoutly for in the Barons Wars in his Father's Time, and also in his ; for he himself was taken Prisoner at *Lewes*, in the County of *Sussex*. And being a wise Prince, he knew that the Love of the People was not more to be got than by wholsom and safe Laws, that every Man's Life, and every Man's Estate, and every Man's Liberty, might be preserved by, and not be subject to any arbitrary Will or Power ; but that the sober, and discreet, and wise Laws of the Kingdom, which our Ancestors won by their Swords, might be their Protectors. A special one of which was this Statute of *Westminster the Second*, made in *Edward the First's Time* : By vertue of which Statute is this Commission directed to the Justices of the one Bench and the other ; and they be all here this Day, but only those that of necessity must attend at *Westminster*, only to preserve the Term. Now you are come to answer to that Charge, which hath been the greatest Opposition to the Settlement of Government that can be ; I mean the Settlement of the supreme Authority of the Nation in the Commons now assembled in Parliament, not newly erected, but revived into the right Place and Hands ; for it is the Law of *England* revived, that the supreme Authority is in the (a) Commons assembled in the Parliament of *England* : For so it was in the *Saxons Time*, and in the *Romans Time*, and in all Times (b) it hath been as it is now ; which will sufficiently justify our present Proceedings against you. And therefore, I say, for the Commission it self, it is in general for the Trial of all Treasons whatsoever. But the Grand Inquest have found out no other Traitor, that they may accuse, but Master *John Lilburne*, who is now here at the Bar. But it is not a bare Accusation, but it is the solemn Verdict of almost a double Jury, that hath appeared upon the Roll ; and upon their Oaths do conceive those Crimes of Treason that are laid against you, to be of so dangerous Consequence against the State and Commonwealth, that they do call for Justice against you as a Traitor already found guilty. And therefore I do require you, as you are an *Englishman*, and a rational Man, that you do conform your self, and tell us plainly what you will do, as in reference to the putting your self upon your Trial by the Law, and hear with Patience those Offences of Treason that are laid to your Charge.

Lieut. Col. *Lilburne*. May it please you, Sir, by your favour, I shall not now trouble you with many Words.

Ld Keble. You go improperly to work.

Lieut. Col. *Lilburne*. That Gentleman, I do not know his Name, (pointing to Judge *Jermin* :) You were pleased to say, That I have had more Favour than ever you have heard of any before ever had, in the like Case. But, Sir, by your favour, I shall tell you of some that in the like Case have had as much, if not more ; and that was *Throgmorton*, in Queen *Mary's Time*, who was impeached of higher Treason than now I am ; and that in the Days of the commonly accounted bloodiest and cruellest Prince that this many hundred of Years hath reigned in *England* : And yet, Sir, I am sure in this very Place, and that by special Commission of Oyer and Terminer ; who was accused for being one of the chiefest Confederates with *Wyat*, in his *Kentish Rebellion* ; which *Wyat* marched with an Army against the Queen to *London* : For which actual War or Rebellion, **Throg-* * Trial V. *morton* was in this Place arraigned as a Traitor, and enjoyed as much, if not more Favour than I have now enjoyed, altho his then Judges and Prosecutor were bent to take away (c) his Life, right or wrong. And therefore, Sir, by your favour, it is no extraordinary Favour that you have afforded me ; it is but only my Right by Law and Justice, and common Equity. But Sir, I shall be short, and put my Business to a plain Issue, which is this :

I have here at the Bar given in many strong Arguments against the Validity and Legality of a special Commission of Oyer and Terminer, and supposing that to be such an one by vertue of which you sit, and intend to try me for my Life ; and therefore I have humbly desired (as in Reason, and I think in Law, I may justly do) to hear your Commission read ; but you have positively denied me that. And therefore I desire all my Friends, and all the People that hear me this Day, to bear witness, and take notice, that you, contrary to Reason and common Equity, denied me to let me hear read your Commission, by vertue of which you go about to take away my Life ; which I cannot chuse but desire them to take notice, I declare to be very hard Measure.

But, Sir, to save my self from your forelay'd Snares and desired Advantage against me, I will come a little closer to the Business. You demand I should hold up my Hand at the Bar ; and I know not what it means, neither what in Law it signifies. It's true, I have read the most part of the Laws that are in *English*, which I take to be the Foundation of all our legal *English Privileges* ; and in them I cannot find any thing that doth clearly declare unto me the full Signification or Meaning of a Man's holding up his Hand at the Bar. Therefore if you please but to explain what the Meaning and Signification of holding up the Hand at the Bar, is, I shall seriously consider of it, and, I hope, return you a rational and discreet Answer : For truly in those Laws which are in the *English Tongue* that

(a) But by his Favour, never before practised nor used without both King and Lords ; a Precedent of which he is desired to shew and produce out of any of his Law-Books.

(b) But there was before the Conquest neither Inns of Court, Lawyers, nor Term-Judges in *England*, but only twelve good and legal Men, chosen in each Hundred, finally to decide all Controversies : Which lasted till William the Conqueror subdued that excellent Constitution, and instead thereof introduced by his Will and Sword (contrary to his solemn Oath, three several times taken) the intolerable Bondage of *Westminster-Hall*, or Term-Judges, and their Outlandish or Norman Law-Practice in the French Tongue ; as all the *English Chronicles* universally and truly declare.

(c) Whose remarkable and excellent Defence you may at large read in *Holingshed's Chronicle*, in the Life of Queen *Mary*, which Discourse is excellently well worth the speedy Reprinting, especially seeing Men are made Traitors for Words ; which Cruelty Queen *Mary* abhorred, as may clearly be read in that excellent Statute of hers, made in the first Year of her Reign, Chap. 1.

I have read, although I find mention made of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large Extent. And as for those Laws, or rather the practick Part of the Law, that are in *French* and *Latin*, I cannot read them, and therefore much less understand them. In which regard, for me to hold up my Hand at the Bar before I understand the true Signification of it in Law, (which tells me it is in it self a ticklish Thing) were for me to throw away my own Life upon a Punctilio or Nicety that I am ignorant of; and therefore, truly, I think I should be a very Fool, in my own Ignorance to run that Danger. And therefore, Sir, I humbly desire the clear Explanation of the Meaning of it in Law, and after that I shall give you a fair and rational Answer.

Ld Keble. Mr. *Lilburne*, you shall see we will deal very rationally with you, (and not insnare you in the least manner) if that be all. The holding up of your Hand, we will tell you what it means and signifies in Law: The calling to the Party to hold up his Hand at the Bar, is no more but for the special notice that the Party is the Man inquired for, or called on; and therefore if you be Mr. *John Lilburne*, and be the Man that we charge, do but say that you are the Man, and that you are there, and it shall suffice.

Lieut. Col. *Lilburne*. I am *John Lilburne*, Son of Mr. *Richard Lilburne* —

Ld Keble. Mr. *Lilburne*, what you have to say we will hear presently; only take notice that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man: You are called by your Name, you have come and answered to your Name, in order to your answering the Charge to be read against you; do but this, and it shall suffice, without holding up your Hand. Therefore let us have no more Discourse as to that.

Judge *Fermin*. Mr. *Lilburne*, pray spare me a Word; for you have been heard with Patience. You have desired to have the Right of the Law of *England*; and yet you do question a fundamental Thing, that hath been always used in case of criminal Offences. By the Law of *England*, that you desire to have the Meaning of it, is but just; but you must know that the Law of *England* is the Law of God; and if there be any thing in the Law of *England* but what was by admirable Constitution and Reason, we would not meddle with it. But I pray know this, that the Law of *England* is no written Law: It is the Law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime Laws of Nature; for it does not depend upon Statutes, or written and declared (a) Words or Lines. And this is our Laws, that have been maintained by our Ancestors, and is subordinate to the Law and Will of God: Therefore I say again, the Law of *England* is pure primitive Reason, uncorrupted and unpolluted by human Hu-

mours, or human Corruptions, Wits, or Wills: That's the Law of *England*. There be two Reasons why holding up the Hand hath been used always: First, for notice that those that are called for capital and criminal Offences, that they hold up their Hands, is to declare that they are the Men. My Lord hath given you this one Reason already; which I say is, that he be notified by holding up the Hand to all the Beholders, and those that be present, and hear him that he is the Man. But besides this, there is more in it; that's thus: A pure innocent Hand does set forth a clear unspotted Heart; that so the Heart and Hand together might betoken Innocency. And therefore hold up your Hand, that thereby you may declare you have a pure innocent Heart: If you refuse to do this, you do wilfully deprive your self of the Benefit of one of the main Proceedings and Customs of the Laws of *England*. Now for this, do what you think fit.

Lieut. Col. *Lilburne*. Well, then, Sir, (applying himself to Mr. *Keble*, as the President of the Court) I take your Explanation of it, and lay hold of that.

Ld Keble. You must answer positively, Sir, for you have had Advice enough, yea, good Advice if you embrace it, it is good Advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more Dispute you apply your self to answer according to that which you are advised unto. Do it if you will, and if you will but answer to it so as hath been declared to you, it shall suffice; but so far you must go to this, as to declare whether you be the Man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the Benefit of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, according to your own Explanation, I say my Name is *John Lilburne*, Son to Mr. *Richard Lilburne* of the County of *Durham*, a Freeman of the City of *London*, and sometimes Lieutenant-Colonel in the Parliament's Army: And if you will not believe that I am the Man, my Guardian the Lieutenant of the Tower there (pointing to him) will aver that I am.

Ld Keble. So then you are the Man.

Judge *Fermin*. Ask him again: Harken Mr. *Lilburne*, hearken what he says, and use that Moderation, and Temper, and Discretion that you have promised.

Lieut. Col. *Lilburne*. One word more, and I shall have done; and that is by the Law of *England* — [But being interrupted, he cry'd out] With your Favour, Sir, I will come to the main thing; I hope you do not go about to circumvent me, therefore hear me I beseech you.

Ld Keble. Hear the Court, Mr. *Lilburne*, there shall be nothing of Circumvention or Interruption: but as you have professed to be a rational and understanding Man in Words, let your Deeds so declare you.

(a) But saith Mr. Hyde, in his forementioned Argument, against the Northern special Commission of Oyer and Terminer, Pag. 411. *Miseria servitus est, ubi jus est vagum aut incognitum; that is to say, It is a miserable Servitude, where the Law is uncertain or unknown.* And the very same saith that great Oracle of the Law, Sir Edward Coke, in the Proem to the third Part of his Institutes, and in the fourth Part, fol. 332. and in several Places besides. But the People may easily see hereby, that these present Judges drive to have no other Law in being in England, but what is in their own and their Masters Breasts; (that so by pretence of Law they may give away all the Liberties and Proprieties of the People of the Nation, as their Brother Judges did lately to the King, in the case of Ship-Money:) And then wee, and wee to the People, to be brought back again to that Faith, That Ignorance is the Mother of Devotion or Obedience.

Lieut. Col. *Lilburne*. Sir, I beseech you do not surprize me with Punctilio's or Niceties, which are hard things for me to lose my Life upon. I tell you again, my Name is *John Lilburne*, Son to Mr. *Richard Lilburne*.

Ld *Keble*. Talk not of Punctilio's with us, nor talk not of Judges made by the Laws, you shall not want Law: but if you talk of Punctilio's here in this Room, we will stop that Language.

Lieut. Col. *Lilburne*. Truly, Sir, I am upon my Life, and shall my Ignorance of the Formalities of the Law in the practick part thereof destroy me? God forbid! Therefore give me but leave to speak for my Life, or else knock me on the Head, and murder me where I stand, which is more righteous and just than to do it by pretence of Justice. Sir, I know that Mr. *Bradshaw* himself, President to the High Court of Justice, as it was called, gave Duke *Hamilton* (a hostile Enemy) leave to speak to the Punctilio's of the Law; yea, and to my knowledge again and again made an Engagement unto him and the rest try'd with him, that the Court nor he would not, by vertue of their Ignorance of the Niceties or Formalities of the Law, take advantage against them to destroy them; but did declare again and again, that all advantages of Formalities should be totally laid aside, and not in the least made use of against them to their Prejudice. And I hope you will grant me, that have often been in Arms for you, but never against you, as much Favour and Privilege as was granted to Duke *Hamilton*, never of your Party, but a General of a numerous Army against you.

Ld *Keble*. Take it as you will, we have had patience with you, and you must and shall have patience with us: we will pass over all that is by-past, but take heed by your surly Crossness you give not advantage in the face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own Eyes see. The Ceremony is for your advantage more than you are aware of: but if you confess your self to be Mr. *John Lilburne*, we have done as to that.

Judge *Fermin*. Mr. *Lilburne*, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your Actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal Prosecutor of you, because you say he was the (a) Creator of our Commission. Pray hear me, I heard you; and do not think to put Affronts upon us undeserv'd. And as for that Man that you call Mr. *Bradshaw*, I tell you again he is Lord President of the Council of State of the Commonwealth of *England*; and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend your self to be possessed with.

Ld *Keble*. Come, will you read the Indictment?

Mr. *Broughton* reads. *Hold up your Hand, John Lilburne, and hearken to your Charge.*

Thou standest indicted of High Treason by the Name of John Lilburne, late of London Gent.

for that thou as a false Traitor, not having the Fear of God before thy eyes, but being stirred up and moved by the Instigation of the Devil, &c. as it followeth verbatim, in the second Day's Proceedings, to which the Reader is referred.

Mr. *Broughton*. What say'st thou, *John Lilburne*, art thou guilty of this Treason whereof thou standest indicted, or not guilty?

Lieut. Col. *Lilburne*. Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.

Ld *Keble*. Mr. *Lilburne*, we shall deal with you according to Reason and Justice, and after such a manner as you your self shall judge rational and right.

Lieut. Col. *Lilburne*. Gentlemen, I shall speak but a few words; I beseech you hear me, for it is upon my Life.

Ld *Keble*. You say you will deal rationally in those ways; that is to be expected from you the first in Reason, is to answer, and plead; and before you so do, you cannot be heard.

Lieut. Col. *Lilburne*. Give me leave to speak, and I shall not speak six Lines: (which with much struggling being granted, Mr. *Lilburne* went on and said to this effect) Then Sir, thus, By the Laws of *England* I am not to answer to Questions against or concerning myself.

Ld *Keble*. You shall not be compell'd.

Another Judge. Mr. *Lilburne*, is this to answer against yourself, to say you are not guilty? By the Laws of the Land you are to plead to your Charge, and it is no accusing of yourself to say Guilty, or Not Guilty.

Lieut. Col. *Lilburne*. Sir, by your favour —

Judge *Keble*. To answer that you are Not guilty, is no great matter, nor definite in Law.

Lieut. Col. *Lilburne*. By the Law of *England* I am to be tried by a Rule, but I do not know, by the Rules of Law, what Benefit, in reference to my Exception against the Illegality of my Indictment, I may deprive my self of, in case I should answer before I except.

Ld *Keble*. The Law is plain, that you are positively to answer Guilty or Not Guilty, which you please.

Lieut. Col. *Lilburne*. Sir, by the Petition of Right, I am not to answer to any Questions concerning myself; therefore I humbly intreat you to afford me the Privileges of the Laws of *England*, and I will return a positive Answer to it; if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the Formalities of Law in the practick part of it, altho I here declare I own the good old Laws of *England*, and a legal Jury of twelve Men, yea, and a Trial by a Jury of legal Men. And I do humbly crave, Sir, a Copy of the Indictment, or so much of it as I may ground my Plea upon it; and reasonable Time to consult with my Counsel, altho it be but eight or nine days.

Ld *Keble*. You speak well, but you must do well, 'tis that we come for: the Reasonableness of it is this, that you should shortly answer, Sir, to that Question, and in a rational legal way.

(a) Mr. *Lilburne* here endeavoured to speak, and shew the Judge his Mistake; for he did not say that Mr. *Prideaux* was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that regard he was no competent Accuser or Prosecutor: but they would not suffer him to speak, but cry'd out, Hear the Court; which thing also they frequently did afterwards.

When you have answered it, you shall have liberty to make your Defence, to maintain that you say; but this that we now speak of, is a thing in your own Breast, in your own Knowledge, whether you be guilty of this that is laid to your charge, or no: And if you be clear, you cannot wrong yourself, nor your Conscience; for in saying Not Guilty, you know better what you say than any other doth.

Lieut. Col. *Lilburne*. Sir, I am ignorant of the Formalities of the Law, having no Books in *English* wherein I can read them; and as for other Tongues, I understand none: and therefore for you to take away my Life for my Ignorance, when the practick Part of the Law, or the Formalities thereof, is lock'd up in strange Language, that it is impossible for me to read or understand, is extreme hard.

It is true, in those *English* plain Laws which I have read, I find something spoken of it; but must aver, that I find there is a great deal of Nicety and Danger in locking a Man up to single Formalities, in answering Guilty, or Not Guilty: and therefore I beseech you to assign me Counsel, to inform my Ignorance, and give me but leave to consult with my Counsel, and I will return you an Answer according to your desire, without any Demur, as soon as it is possible for me to know what grounds I go upon.

Mr. *Broughton*. *John Lilburne*, what say'st thou, art thou Guilty of the Treason laid unto thy charge, or art thou not Guilty?

Lieut. Col. *Lilburne*. But under favour thus, for you to come to ensnare and entrap me with unknown Niceties and Formalities that are lock'd up in the *French* and *Latin* Tongue, and cannot be read in *English* Books, they being not expressed in any Law of the Kingdom, published in our own *English* Tongue: it is not fair Play according to the Law of *England*, plainly in *English* expressed in the Petition of Right, and other the good old Statute Laws of the Land. Therefore I again humbly desire to have Counsel assigned to me, to consult with, what these Formalities in Law signify; so that I may not throw away my Life ignorantly upon Forms.

Ld *Keble*. Mr. *Lilburne*, we cannot grant you that Favour, it is not consistent to the Law, whatsoever you say to the contrary.

Lieut. Col. *Lilburne*. I hope you will not go about to ensnare me, and take away my Life for Punctilio's.

Another Judge. Well then, you will not plead?

Lieut. Col. *Lilburne*. Yes, if I may be allowed that which I conceive to be my Birth-right and Privilege, to consult with Counsel; or that you please to make the same Engagement to me that Mr. *Bradshaw*, as the President of the High Court of Justice, made to Duke *Hamilton*; which was, that the Court would take no advantage at all of his Ignorance in the Niceties and Formalities of the Law in his Pleading: let me but enjoy this Engagement from you, and I will plead.

Ld *Keble*. You shall have that which is according to the Law; therefore, Mr. *Lilburne*, I advise you for to plead, and you shall have fair play, and no advantage taken against you by your Ignorance of the Formality of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, upon that Engagement, and because I see you are so positive in the thing ——— this is my Answer;

That I am not guilty of any of the Treasons in Manner and Form, as they are there laid down in that Indictment, (pointing to it.) And therefore now, Sir, having pleaded, I crave the Liberty of *England*, that you will assign me Counsel.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*, and a legal Jury of my Equals, constituted according to Law.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*; I mean, by the Liberties and Privileges of the Laws of *England*, and a Jury of my Equals legally chosen. And now, Sir, I again desire Counsel to be assigned me, to consult with in point of Law, that so I may not destroy myself through my Ignorance. This is but the same Privilege that was granted at *Oxford* unto me, and the rest of my Fellow-Prisoners arraigned with me.

One of the Clerks. You must say, by God and your Country; that's the Form of the Law.

Lieut. Col. *Lilburne*. Why must I say so?

Another Judge. This is the Form and Law of the Land: Will you plead, Mr. *Lilburne*, according to the Laws of *England*?

Lieut. Col. *Lilburne*. Truly I never read it, Sir, in the Laws of *England*, what it is to plead in this nature.

Ld *Keble*. You say you will be tried by the Laws of the Land, then it is by the Country, and so you may plead, and do yourself no harm; for by the Country is meant a Jury of your Equals.

Lieut. Col. *Lilburne*. Sir, I am doubtful of my Ignorance in the Laws, yet I will return you an Answer, you making good your already engaged Promises, that you will take no advantage against me, if through my Ignorance, and your Importunity, I plead in any Form, that in strictness of Acceptation may deprive me of any real Benefit the Law will afford me.

Judge *Thorp*. Mr. *Lilburne*, you will be tried by the Law, and by the Rules thereof: when you say so, you do really declare it to be by your Country. So that the true Signification of being tried by the Law, is the same thing in substance with being tried by the Rules of the Law.

Lieut. Col. *Lilburne*. Then I hope my answer is clear and fair, Sir.

Judge *Fermin*. The Formality is shortly this, to be tried by God and your Country; no more is meant by it than thus, by God, as God is every where present, yea in all Courts of Justice, and sits and knows all things that are acted, said, and done: The other part of it, by your Country, that is, by your Country or Neighbourhood; the Country is called *Patria*, because your Neighbour and your Equals, which you are willing to put yourself upon the Trial of. By force of that word, the Country, a Jury of the Neighbourhood for Trial of you are summoned. Now do what you will.

Lieut. Col. *Lilburne*. Sir, under your favour thus; then in the negative I say, God is not locally or corporally here present to try me, or pass upon me; but affirmative, I return this Answer, That I desire to be tried in the Presence of that God, that by his omnipotent Power is present every where, and beholds all the Actions that are done upon the Earth, and sees and knows

knows whether any of your Hearts be possessed with a premeditated Malice against me, or whether any of you come with so much Forethought of Malice against me, as that in your Hearts you intend to do the utmost you can, right or wrong, to destroy me: and before this all-seeing God I desire to be tried, and by my Country, that is to say, by a Jury of my Equals, according to the good old Laws of the Land.

Justice *Thorp*. You have spoken very well.

Ld *Keble*. You have done like an *Englishman* so far as you have gone; and I do assure, that in any Formality (as you express or call them) there shall be no advantage against you, if you mistake in them. Now what you have the next to think upon, is your Jury of your Countrymen, or Neighbours of your Equals; and I promise you we will take care of that, that they shall be good and lawful Men of *England*.

Lieut. Col. *Lilburne*. I thank you, Sir, but under your favour thus: Your Indictment is extreme long and of abundance of Particulars, it is impossible that my Memory, or of any one Man's in *England*, can contain it, or carry it in our heads; and therefore that I may make my Defence so as becomes a rational *Englishman*, I earnestly intreat you, that now you will be pleased to give me a Copy of my Indictment, or so much of it, as you expect a Plea from me upon, and an Answer unto, and Counsel assigned me, and Time to debate with my Counsel, and Subpoenas for Witnesses.

Ld *Keble*. For Counsel, you need none, Mr. *Lilburne*; for that Not Guilty which you have pleaded, is that which lies in your own Breast, which rests in your own Counsel, and you know how it is, and can best plead that yourself: Counsel lies in Matter of Law, not of Fact.

Lieut. Col. *Lilburne*. Under favour I desire Counsel for Matter of Law, and not for Matter of Fact. My Indictment I believe in Law, is all Matter of Law, and I have something to say to it in Law.

Ld *Keble*. If Matter of Law do arise upon the Proof of the Fact, you shall know it, and then shall have Counsel assigned to you.

Lieut. Col. *Lilburne*. I myself have before this been upon some Trials, and never before this was denied Counsel, no nor so much as ever disputed whether I should have it or no. I also was at a great part of the Earl of *Strafford's* Trial, who was supposed a most notorious Traitor; and yet if my Observation and Memory do not exceedingly fail me, he had Counsel assigned him at his first desire, and they were continually with him, not only at the Bar when he was there, but also had continual and free Access to him in Prison.

Besides, Sir, I being accused of Treason in such an extraordinary manner, and being but an ordinary Man myself; no eminent experienced Lawyer dare well meddle with my Business, no nor so much as bestow a Visit upon me, but he runs a hazard of being undone. And truly my Estate is in an extraordinary manner taken from me, so that I have not Money to send Messengers up and down privately to their Chambers: and therefore that I may be freely and allowedly able, without danger of Ruin to any Man that shall advise me, I shall humbly crave as my Right by Law, and I am sure by common Equity and Justice, that I may have Counsel and Solicitors also assigned me.

Ld *Keble*. Mr. *Lilburne*, speak rationally for yourself; when there comes a Matter of Law, that you are able to say, this is for Matter of Law, arising from Matter of Fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire: and withal, this that you say concerning your Memory, which you say is not able to carry away, or contain the Particulars of this Indictment; the Indictment, so much as will charge your Memory, will be very short: for it is the publishing of those Books charged upon you in the Indictment, that will be the Matter which will stick, and that Matter will be very short, which we must prove against you, which is only Matter of Fact, and not of Law. And therefore for Fact of Treason you can be allowed no Counsel, but must plead it yourself.

Lieut. Col. *Lilburne*. Sir, under favour, you expect from me Impossibilities; for seeing I have been seven Months in Prison for nothing, and could not in the least know perfectly what would be laid to my Charge, nor after what manner I should be proceeded against, (considering all Proceedings against me hithertoward have been so absolutely arbitrary, that it was impossible for me in Law exactly to come provided:) and therefore seeing I am now here, and you pretend to proceed with me according to the due Course of Law, and seeing the Form of the Proceedings in this manner with me is not expressly and exactly declared in Print in *English*, which Tongue only I can read and understand; and seeing by the Law, which is in *English*, which I have read, and clearly understand, that there are a great many Snares, and a great many Niceties in the Practick, that are formal Proceedings of the Law; and seeing I know not certainly, whether if I proceed to Matter of Proof, before in Law I make my Exceptions against your Indictment, as to Matter, Time, and Place, I be not in Law deprived of that Benefit, which I principally aim at for the preservation of my Life; therefore I beseech and most earnestly intreat you, to assign me Counsel to consult with, before I be too far insnared: and if you will not do it, and give me some reasonable time to prepare my Plea and Defence, then order me to be knock'd on the head immediately in the place where I stand, without any further Trial; for I must needs be destroyed, if you deny me all the Means of my Preservation.

Judge *Fermin*. Mr. *Lilburne*, it were reasonable to give you satisfaction, if you would receive it. You say you were present at my Lord of *Strafford's* Trial, and you say he had Counsel assigned him, not only to stand by him at the Bar, but to repair to Prison to instruct and advise: but that was not a Trial in such a way as this is; it was a Trial by way of Impeachment before the Peers assembled in Parliament, and his Attainder was made up into an Act of Parliament; but that is not a Trial at the Common Law *per Pares*, which is that which yourself have desired, a Trial by lawful Men, according to the Liberties of the Laws of *England*. After your Answer to your first Question, that is to say, whether you be guilty or not guilty of the things whereof you are accused, no Counsel in the world can follow, till the Fact be proved, and Matter of Law do arise thereupon. So that

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the first thing that must be done, the Matter of Fact must be proved against you; and then if it shall appear thereupon to the Court, that Matter of Law doth arise, and you do expect Counsel, we must and will perform it; the Court are of your Counsel so far as to Fact. And then in that case, that Law arise thereupon, you may and ought to have other Counsel assigned; and do not you doubt but the Court will be as careful of you, as you can be of yourself, and allow you more Favour, it may be, than your Friends do expect.

Lieut. Col. *Lilburne*. Under your favour, and by your good-liking; I was once arraigned at *Oxford* for my Life, upon the Matter of Treason, for levying War in *Oxfordshire* against the King, as their Indictment then said; and my Arraignment was by vertue of a Commission of *Oyer and Terminer*, that was (and in Law I am sure of it) as legal and as just as yours is: and my Lord Chief Justice *Heath*, the chief Commissioner or President, who was in the eye of the Law as legal a Judge as any of you, and yet he—

Ld *Keble*. Mr. *Lilburne*, we do remember it.

Lieut. Col. *Lilburne*. I beseech you give me leave to speak for myself, and to go on, for my Life lies upon it.

Ld *Keble*. Hear me one word, and you shall have two. This that you did speak but even now, do not you think that we have such bad Memories, as that we have already forgot it; your Life is by Law as dear as our Lives, and our Souls are at stake if we do you any wrong.

Lieut. Col. *Lilburne*. I wish you may be sensible of that, Sir.

Judge *Fermin*. Mr. *Lilburne*, you need not to say so, our Souls are upon it, and we are to stand or fall by Justice and Righteousness as well as yourself is.

Lieut. Col. *Lilburne*. I say, my Lord *Heath* and the Court at *Oxford* proffered me Counsel before any one Witness was produced to my face, or any Matter of Fact came to the Proof; yea, and gave me liberty to make my Exceptions to the Insufficiency of the Indictment, which was very short in comparison of yours. I crave the same Privilege from you (the Nation's pretended Friends) that I found at *Oxford* amongst its declared pretended Enemies, against whom in several Battels I had fought. And I hope you that pretend to be the Preservators of the Liberties of *England*, will not be more cruel and unrighteous than the declared Destroyers of them. If you will not allow me Counsel as I had there, I have no more to say to you; you may murder me if you please.

Judge *Fermin*. You were pleased to mention some Precedents of those that have been accused of High Treason, that have had Counsel assigned to them; and for one you mention that of my Lord *Strafford*, whose Trial I told you was Parliamentary before the House of Peers, upon the Impeachment of the Commons of *England* in Parliament assembled, and so it went on in a Parliamentary way: This Proceeding is in an ordinary Course of the ordinary *quondam* Court of Justice, according to the Common Law. Now for my Lord of *Strafford*, give me leave to observe this; he had no Counsel assigned him until such time as Questions of the Law did arise, which required Counsel, and then he had Counsel assigned him, but not before; for that my

Lord doth not say, that you shall have no Counsel, but that you shall have that which the Law allows. And as for that which you speak of Counsel at *Oxford*, it could not be. But when upon the Proof of Matter of Fact, it appears to the Court that there is any Question or Matter of Law arising upon the Fact; and when it doth so appear unto us, then you shall have Counsel for that. But (I beseech you) hear me on: You are now come before us, according to the Common Law, to be tried by your Country; there is now nothing in question, but whether that Matter, that Thing, those Words contained in the Indictment read to you, be true, yea or no; that is, whether they be done or no: for we will not give Counsel to plead to the Matter of Fact contained in your own Books, which you remember very well.

Lieut. Col. *Lilburne*. Those Books supposed mine: pray let me have fair play, and not be wound and skrew'd up into Hazards and Snares.

Ld *Keble*. If they be not yours upon good grounds proved before you, you are in no danger; and if upon the Proofs of the Words and Deeds done, there do appear Matter of Law, you must and shall have Counsel: stay till that be done. In the mean time the Court will take care that a Jury shall be returned, of honest and sufficient legal Men to judge of the Proofs.

Lieut. Col. *Lilburne*. There was arraigned with me at *Oxford* Colonel *Vivers* of *Banbury* now alive, and Captain *Catesby* who is dead: I will bring Colonel *Vivers* to depose here upon his Oath, That my Lord *Heath*, and the rest of the Commissioners of *Oyer and Terminer*, proffered me Counsel, and allowed me and him Counsel before ever so much as any Witnesses were produced, to prove the least Matter of Fact. And if you will not be so just towards me as the Cavaliers were, and allow me Counsel as they did, I have no more to say, but resolve upon this score to stand, and here to die upon the Principles of an *Englishman*. If you will not be so just as the Cavaliers were, with whom you and the Parliament set us together by the ears to fight with, pretendedly for their Injustice, let God and all righteous Men judge betwixt you and me.

Judge *Nichols*. If you will not be led by the Proceedings of Law, it will be worse for you; and you are to know this is not *Oxford*.

Lieut. Col. *Lilburne*. Sir, by what better Rules of the Law can I be led by, than those that I have before my eyes? I am sure at *Oxford*, as my Right by Law, I was, before any Fact was proved, proffered Counsel by my Judges, which were my Lord *Heath*, and Mr. *Gardiner*, now Sir *Thomas Gardiner*, who is now in *London*: if you please I will produce him to this Bar, to justify it upon his Oath, That the Lord Chief Justice *Heath* in his presence proffered me Counsel upon my Arraignment for Treason there, as my Right by the Privileges of the Laws of *England*, before the Fact came to be proved; yea, and also give me liberty to assign the Errors of my Indictment. He is now in *London*, and I will produce him here at this Bar (if you please) to justify what I say, if you will give me time, and enable me with Ability to summon him in.

Judge *Nichols*. Mr. *Lilburne*, whether Mr. *Gardiner* will justify it or no, it is nothing to us; for we are not to walk by *Oxford* Precedents, but by

by the Rules of the Law: and the Law will afford you no Counsel, but in Points of Law arising upon Proof of the Fact (a).

L. Col. *Lilb.* Under favour thus: I conceive the Precedents at *Oxford*, so far as they are righteous, are fit for your Imitation; and whether it be a righteous thing for you, when I am tried for Treason before you, to be more cruel towards me, who have fought for you, than the Cavaliers at *Oxford* in the like Case were, against whom I fought: And I must tell you, I further conceived it the most unequal and unjust thing in the World for me to have to do, upon the Trial of my Life, with all the Judges of the Land (who are all engaged Men) that have had above six Months time to beat their Brains together, with the Assistance of divers of my Adversaries, who are Parliament-Men, that were the Creators of their Power, and for one of them to be my Prosecutor; and in this so extraordinary Case, for me to be denied to consult with Counsel; I tell you, Sir, it is most unjust, and the most unrighteous thing, in my Apprehension, that I ever heard of, or saw in all my Life. O Lord! was there ever such a Pack of unjust and unrighteous Judges in the World? Sir, in plain *English* let me tell you, if I had thought you would have bound me up to a single Plea, and not have given me in my Plea the just Latitude of Law, Equity and Reason, but hold me thus close to your single Formalities, contrary to your Promises, I would rather have died in this very Court before I would have pleaded one Word unto you; for now you go about, by my own Ignorance and Folly, to make my self guilty of taking away my own Life: and therefore unless you will permit me Counsel, upon this Lock I am resolved to die.

Ld *Keble.* This is not the rational way you said you would go in.

L. Col. *Lilb.* Sir, my Life is before you, you may murder me, and take away my Blood, if you please.

Ld *Keble.* I will not be out-voiced by you, our Lives and our Souls are upon it, therefore you shall have Equity and Justice; yea, such as you desire your self: but you are now going to fly into Extravagancies and Heats, which will manifest the Rancour of the Distemper'dness and Invenom'dness of Spirit which is within you. And besides, if we should enter into it, we might aggravate your Crimes by your own Words at the Bar. Take heed of it, that you give not advantage against your self to your own Ruine.

L. Col. *Lilb.* Sir, I am in no Heats, I am but with Earnestness pleading for my Life, when you deny me all the just Means of my Preservation, which is my Right and Due by your own Law.

Judge *Thorp.* Mr. *Lilburne*, I desire to correct a Mistake of yours in the Law: You were pleas'd to condemn it as unjust, for the Attorney-General's speaking with me when your Indictment was a reading; you are to know, he is the Prosecutor for the State here against you, and he must confer with us upon several Occasions, and we with him, and this is Law.

L. Col. *Lilb.* Not upon the Bench, Sir, by your favour, unless it be openly, audibly and avowedly, and not in any clandestine and whispering way: And by your favour, for all you are a Judge, this is Law, or else Sir *Edward Coke* in his (b) 3d Part Inst. cap. High-Treason or Petty-Treason, hath published Falshoods, and the Parliament hath licensed them; for their Stamp in a special manner is to that Book.

Judge *Thorp.* Sir *Edward Coke* is Law, and he says, The Attorney-General, or any other Prosecutor may speak with us in open Court, to inform us about the Business before us in open Court.

L. Col. *Lilb.* Not in hugger-mugger, privately or whisperingly.

Judge *Thorp.* I tell you, Sir, the Attorney-General may talk with any in the Court, by Law, as he did with me.

L. Col. *Lilb.* I tell you, Sir, it is unjust, and not warrantable by Law, for him to talk with the Court, or any of the Judges thereof in my absence, or in hugger-mugger, or by private Whisperings.

Ld *Keble.* No, Sir, it is no hugger-mugger for him to do as he did; spare your Words, and burst not out into Passion; for thereby you will declare your self to be within the compass of your Indictment, without any further Proof: Look to it, that you behave your self according to the Bounds of Reason and Law, and hear me; for we must cause the Jury to be returned.

L. Col. *Lilb.* Sir, under favour, I crave but one Word more, hear me out: I know very well, and I read in your own Law-Books, such a Prerogative as that in Cases of Treason no Counsel shall plead against the King, hath been sometime challenged to be the King's Right by Law; but let me tell you, it was an usurp'd Prerogative of the late King, with all other arbitrary Prerogatives and unjust Usurpations upon the People's Rights and Freedoms, which has been pretended to be taken away with him. And, Sir, can it be just to allow me Counsel to help me to plead for my Estate, the lesser; and to deny me the help of Counsel to enable me to plead for my Life, the greater? Nay, Sir, can it be just in you Judges, to take up seven Years time in ending some Suits of Law for a little Money or Land, and deny me a few Days to consider what to plead for my Life? Sir, all these Pretences of yours, were but all the Prerogatives of the King's Will, to destroy the poor ignorant and harmless People by, which undoubtedly died with him; or else only the Name or Title is gone with him, but not the Power or hurtful Tyranny or Prerogative in the least. Therefore seeing all such pretended and hurtful Prerogatives are pretended to be taken away with the King, by those that took away his Life, I earnestly desire I may be assigned Counsel to consult with, knowing now especially no Pretence why I should be denied that Benefit and Privilege of the Law, of the just and equitable Law of *England*, having put my self upon a Trial according to the Privileges thereof. And it was declared to me at *Oxford*, upon the

(a) What a lying Judge is this Mr. Nichols! whenas he himself with Mr. John Maynard the Lawyer, was assigned by the President, Lord Chief Baron Wilde, to be of the Counsel with Major Rolfe upon his Desire; and that before ever the Grand Jury found his Indictment of Treason, as is fully declared in the next day's following Plea of Mr. *Lilburne*.

(b) Whose Words there, fol. 29, 30. are so plain and express to prove what Mr. *Lilburne* said to be good Law, as nothing in the World can be plainer. See also to the same purpose, the second Part, Inst. fol. 49, 103, 104.

Trial of my Life there, after I was taken Prisoner fighting against the King and his Party, even almost to Handy-gripes, and to the Sword Point, and to the But-end of our Muskets, being in Person one of that little Number that for many Hours together at *Brentford* fought with the King's whole Army, where in the manner, without any Articles or Composition, I was taken a Prisoner, and immediately thereupon arraigned at *Oxford*; where notwithstanding all this, it was declared to me by Judge *Heath* to be my Right, by the Law of *England*, to have Counsel assigned me to help me in point of Law, and I had it granted. I confess he is my best Authority that I have, and I am sure he was a Judge of the Law, or else I had never pleaded to him; and he was upon his Oath to do Justice and Right; and he was an able and understanding Lawyer, and yet did allow me (an hostile Enemy) Counsel to help me, as my Right by Law, before ever any Proof to Matter of Fact was produced: And I beg but the same legal Privilege from you, from whom I have more Cause to expect it.

Ld *Keble*. Were you there indicted for Treason?

L. Col. *Lilb*. Yes that I was, and for the highest of Treasons, by the Letter of the Law, for actual levying War against the King.

Judge *Thorpe*. And yet, for all that, you know it was no Treason, and so did he too; for you know that you had committed no Treason at all in obeying the Parliament's Command: for what you have done, was done by the Parliament's special Authority and Command: and you had your Commission to justify you in your hostile Actions: and he knew it well enough your Act was no Treason, though he did offer you Counsel, or else he durst not allow you Counsel.

L. Col. *Lilb*. I had nothing to justify me in that Act, but the equitable Sense of the Law, the Letter of it being point-blank against me, and on the Cavaliers side, by which if they had prevail'd, they might have hanged both you and me for levying War against the King, notwithstanding our Parliament Commissions: and this I know, Sir, you know to be Law in the Letter or Punctilio's of it.

Judge *Thorpe*. It was no Treason in you, and he that assigned you Counsel, knew it was no Treason; and this Arraignment of you was as illegal as his assigning you Counsel.

L. Col. *Lilb*. Sir, by your favour he was a Judge of the Law by legal Authority, being made by the King, in whom, by Law, that Power was invested; and he looked upon himself as a legal Judge, and so did I too: and as a legal Judge he arraigned me for doing that Act, that by the express Letter of the Law was Treason; and as a legal and honest Judge, according to his Duty in Law, he allowed me Counsel.

Judge *Fermin*. For that matter that you talk of, they knew it was no Treason, and therefore gave you more Privileges than was their right by Law, very well knowing, that whatsoever was done to any of you that did fight for the Laws, Religion and Liberties of their Country, there might be the like done to others that were Prisoners in the Parliament's Power: and this was the truth of it, and you know it very well; and therefore it is nothing to us, nor in Law his Willingness.

L. Col. *Lilb*. Upon my Letters, after the first Day of my Trial, that Declaration of *Lex Talionis* was made, as clearly appears by the Words and Date of it now in Print, which the Reader may peruse in the first Part of the Parliament's Declarations, p. 802, 803.

Judge *Thorpe*. I wonder they did not proceed in the Prosecution of the Indictment, and find you guilty of Treason, and so to Execution.

L. Col. *Lilb*. Under your favour, thus; I appear'd at the Bar, I pleaded to my Indictment Not guilty, I made Exceptions against my Indictment; and my self, and the two other Gentlemen arraigned with me, had Counsel assigned us as our Right by Law: and the Judges most fairly and rationally further told us, Because we will not surprize you, we will give you a Week's time to consider (with what Counsel you please in *Oxford* to chuse to come to you) what to plead for your Lives; and whatsoever other Privileges you can claim by the Liberties of the Law of *England*, you shall enjoy them to the utmost. Upon which Promise I spoke in open Court to the Judge, shewing him the Irons upon my Hands, in which I was arraigned, and told him; My Lord, by the Laws of *England*, no Prisoner for any Crime whatsoever, that behaves himself civilly and peaceably in his Imprisonment, ought to be put in Irons, or to any other Pain or Torment before he be legally convicted; and therefore I desire, as my Right by Law, that my Irons may be taken off. And I said further, My Lord, I am shut up a close Prisoner in my Chamber, denied the use of Pen, Ink and Paper, which is contrary unto Law, especially in the time of my Trial. Why, says he, you shall be released from your Irons, from your close Imprisonment, and have the use of Pen, Ink and Paper: And Capt. *Lilburne*, I tell you, you shall enjoy whatsoever other Privilege you can challenge as your Right by Law; for the Law of *England* is a Law of Mercy, and I hope we shall appear just Judges of it: And therefore you shall freely have either Lawyer, or whom you will in *Oxford*, to come unto you to help you and advise you. And, says he, because you shall see that Law and Justice is of the King's side against the Parliament, and because they shall have no Cause to calumniate us at *Westminster*, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to murder you, the Court is freely willing to give you a Week's time, to consider with your Counsel in the mean time what this Day Sevensnight to plead for your Life. In which time, being freed of my Irons, and of my close Imprisonment, and enjoying Pen, Ink, and Paper at my Pleasure, by special Order from the other two Gentlemen, I writ a Letter to my Wife, and in it inclosed another to your Speaker, and another to young Sir *Henry Vane*, then my familiar Acquaintance; all which I sent in post-haste away to my Wife by the Hands of Capt. *Primrose's* Wife, which Capt. *Primrose* was Prisoner there; and his Wife, who brought up the Letter to my Wife, is now in *London*. Which Letter my Wife delivered to the Speaker, &c. and by her importunate Sollicitation procured the Declaration of *Lex Talionis*; the Substance of which, in a Letter from Mr. Speaker, my Wife brought down to *Oxford*, and delivered to the Lord *Heath's* own Hands

Hands upon the Sunday after the first Day of our Arraignment. And the third Day before we were to appear again, my Wife arrived at Oxford with the Speaker's Letter, which she delivered to Judge Heath himself: Which Letter taking notice of our Trial, threaten'd them with *Lex Talionis*, to do the like to their Prisoners that they did to us, or any of us. And they having many of their great eminent Men Prisoners in the Tower, and in Warwick-Castle, and other Places, did induce them to stop all further Prosecution of Colonel Vivers, Captain Catesby, and my self. And if it had not been for this threatening Letter, in all likelihood we had all three been condemned by a Commission of Oyer and Terminer, and executed: For my Wife did hear Judge Heath say to some of his Associates, at the reading of the Letter, That as for all the threatening part of it, as to his particular self, I value it not; but, said he, we must be tender of the Lives of the Lords and Gentlemen that serve the King, and are in the Custody of those at Westminster. And that Clause of *Lex Talionis* put a stop to our Proceedings, and further Trials at Law.

Ld Keble. It was well for you, by your Story that you do tell, that you had so fair Play: You shall have with us, who are upon our Lives and Oaths, as much as the Law will afford you, and so much as our Judgments and Consciences can lead us to, without doing Injustice in granting more than the Laws of England will afford. What was done there, is nothing to us here; for we are not to walk by their Precedent, but by our own Judgments, according to the Rules of the Law. And here 'tis thus far just, That upon the Proof of Matter of Fact, if Law do arise, you are to have Counsel; if not, you are to have none. By your Allegation, you say you had Counsel assigned you before any Matter of Fact came to be proved, when as a Judge of the Law he could not but do it; but if he did, it is nothing to us, we cannot do it. Yet we have in this Place proceeded legally hitherto with you; and when that Matter of Law doth arise from the Fact, as you had Counsel there assigned you, so shall you have here, and you shall have fair Dealing, and fair Play, according to Law, which is absolutely as I tell you.

Lieut. Col. Lilburne. Sir, by your favour, I crave but one Word more; and that is this: Here is a Gentleman that is a By-stander, a Friend of mine, and my Solicitor, who by Law, as well as any By-stander, may (a) speak for the Prisoner at the Bar, in case he perceive Things urged against him contrary to Law; and therefore I desire he may speak two or three Words.

[Mr. Sprat beginning to speak.]

Ld Keble. Spare your self; when your Time comes, you shall speak.

Mr. Sprat. He asked leave for me first. And, Sir, it is easy to prove the whole Indictment to be Matter of Law.

Judge Jermin. What impudent Fellow is that, that dare be so bold as to speak in the Court without being called? Mr. Lilburne, by your own Words you say you were told at Oxford, That by Law you were to have Counsel; that is as true, that the Court is of Counsel for the Pri-

soner arraigned at the Bar; and so we ought, and shall permit you other Counsel, if Matter of Law, upon the Proof of the Fact, do arise: But for any other Counsel to be assigned you before that appear, is not by Law warranted: We shall tread the Rules of Justice. And we shall do Wrong to the whole Commonwealth, if we should allow you Counsel before Matter of Law doth arise from the Proof of the Fact; and to allow Counsel in any other Case, the Court commits Injustice.

Ld Keble. And this, Mr. Lilburne, I will promise you, that when there comes Matter in Law, let it be a Lawyer, or your self, he shall speak in your behalf; but before he cannot.

Lieut. Col. Lilburne. Sir, the whole Indictment, under favour, is Matter of Law; and the great Question that will arise (admit the Fact should be true, and admit it should be granted) is, Whether the Words be Treason in Law, yea or no? And also it is Matter of Law in the Indictment, whether the Matter in the Indictment be rightly alledged as to Matter, Time, and Place. And it is Matter of Law in the Indictment, where there are divers several pretended Treasons committed in divers and several Counties, put into one and the same Indictment, be legal, yea or no?

Ld Keble. Upon Proof of the Matter of Fact, you shall hear and know whether Matter of Law will arise; and till the Words be proved, we cannot say whether that be the Law that you suppose.

Lieut. Col. Lilburne. Truly, Sir, you promised me a fair Trial, and that you would not take advantages of my Ignorance in the Law's Formalities: But the Lord deliver me, and all true-hearted Englishmen, from such unjust and unrighteous Proceedings as I find at your hands, who go about, I now clearly see, by my Ignorance, in holding me to a single and naked Plea, which is purely as bad, if not worse, than all the Prerogatives; and for the worst and grossest of his Prerogatives, in a more rigorous manner than they were used in his Life-time, to be thus press'd upon me at this Day, after he hath lost his Life for pretended Tyranny and Injustice, Liberty and Freedom in publick Declarations declared to the Kingdom: I say, if there be Justice and Equity in this, I have lost my Understanding; and the good Lord God of Heaven deliver me from all such Justiciaries.

Ld Keble. Mr. Lilburne, you have been arraigned before us for High Treason, and we bid you forbear those Terms of yours long ago; speak that you do rationally, and you shall have fair and christian Answers and Replies, as ever any Man had at a Bar; and go on, you shall have it still, if you will be fair and rational, and not break out into Extravagancies and Bitterness of Spirit.

Lieut. Col. Lilburne. For my part, Sir, I must look upon my self as a lost and dead Man if I have not Counsel to help my Ignorance, to pitch upon those Things that tend to my Preservation. And therefore if you will not assign me Counsel to advise and consult with, I am resolved to go no further, tho I die for it; and my innocent Blood be upon your Heads.

(a) Coke, in his Instit. 3 par. cap. Petty-Treason, fol. 29. is express in this Particular: So he is in cap. 63. being his Cap. Of Counsel learned in Pleas of the Crown, fol. 137.

Justice *Fermin*. You have alledged part of the Law of *England* for your own Advantage; but every one that says so, does not prove it to be so. You have said you will be tried by the Laws of *England*; and yet against the Laws of *England* you have utterly refused, in that you would not hold up your Hand, which I do not know any *Englisman* that ever refused so to do, but your self. You have been told by the Court what the Law of *England* is; and yet you will not be satisfied. We are upon our Oaths, and therefore will discharge our Consciences, and that in a more eminent manner than my Brother *Heath* did, altho we do not deny you Liberty to speak for your self. But now you would have Counsel assigned before any Matter of Law doth appear upon the Proof of the Fact, which we cannot do; for it were to do Injustice, and to do against the Law, which the Court cannot justify.

Lieut. Col. *Lilburne*. Sir, under favour, whether or no I have transgress'd the Law, I will not judge: But I am sure the Law, in the Equity and Intention of it, would have all Trials to be equal, and not prejudicial. My Prosecutors have had time enough to consult with Counsel of all sorts and kinds to destroy me, yea, and with your selves; and I have not had any time at all, not knowing in the least what you would charge upon me, and therefore could provide no Defence for that which I knew not what it would be. And if by the Law of *England* I cannot have Counsel, then upon your own Grant, which is, That the Laws of God are the Laws of *England*, I desire to have the Privilege of the Law of God, which you your self said is the Law of *England*; and I am sure the Law of God is, That you should do as you would be done to. Now it cannot be according to the Law of God, for my Adversaries to have the Helps of all manner of Counsels, by Snares, Tricks, and Provocations, to take away my Life, and for me to be denied the Benefit to consult with any to preserve my innocent Life against potent Malice.

Ld *Keble*. You say well: The Law of God is the Law of *England*; and you have heard no Law else but what is consonant to the Law of Reason, which is the best Law of God; and here is none else urged against you.

Another Judge. The Laws of God, the Laws of Reason, and the Laws of the Land, are all joined in the Laws that you shall be tried by.

Justice *Fermin*. The Question is but this, Whether the Law of God, and the Law of Reason, and Law of Man, may be consonant to each other? And whether the Court or *John Lilburne* shall be Judges thereof? That is the Question.

Ld *Keble*. And that which you said, Mr. Attorney hath had so much Time against you, and Opportunity to consult with all manner of Counsel to destroy you, your secret Actions, though they are now come to publick View, are so heinous, as that they do require time to put them into the most sure way of Trial; we have proved the Clandestineness of them: You did this in secret; now it is come to the Face of the World. Now this being Matter of Fact, no

Matter of Law can appear till Proof pass upon it. You have had Times to complot your treasonable venomous Books, which shall be proved upon you; and till this be done, there is no Matter of Law to be looked at. This is the Law of God: When a Man hath done such treasonable Things, he shall answer directly and positively whether he be guilty of them or no; and if he answer Not guilty, and they be not fully proved against him, there needs no more to be said.

Justice *Thorp*. Mr. *Lilburne*, there fell some Words from you even now, wherein you think you have this Hardship put upon you, when you say the Judges and your Prosecutors have had six Months time to meet together, and consult together how to destroy you. First, I would not have you to believe, nor the rest that hear it, that that is true that you say; for I speak it for my own particular, that I never saw your Indictment till this time that I came here; and yet you say we have had six Months together to frame it. These are your Words: This was not rightly done of you; for it is not true. I speak in my own particular.

Lieut. Col. *Lilburne*. I am sure the Substance of it you might see many Months ago; and though all you Judges have not at one time met about it, yet the greatest part of you have, that commonly carry the Domination of the whole; and at *Serjeants-Inn*, with Mr. Attorney-General, the most of the Judges of *England* have had several Meetings, six, five, and four Months ago: for I have had Friends there that have seen it, and who have inquired into the Cause of such solemn Meetings, and your own Servants have told them it hath been about me and my Trial.

Justice *Thorp*. I speak as for my own particular, that I never was there, and that I never saw your Indictment till this time.

Justice *Fermin*. Why, Mr. *Lilburne*, might we not have such Meetings as those, your Business being a Matter of this Importance, as this is, through the Heinousness of your Offence? and that it might be so grounded as the Warrant of the Law is, the Judges did meet: And they ought to meet (a) to consider of it, that nothing should be done against you, or any Man else, contrary to the Law. But yet, for my part, my Dwelling is out of *London*, I heard not of it so soon as you speak of; but after I came to Town, I confess I heard of it, and have been present about some Debates about it.

Lieut. Col. *Lilburne*. Only this I say, If by your Prerogative you will destroy me, as *Nebuchadnezzar* did endeavour to destroy *Daniel* by his Prerogative, I am as willing to die, as he was to be thrown into the Lions Den: And if you will not allow me Counsel, to consult with what Plea to make for my Life, I have no more to say. Sir, it is but a vain Thing to spend any more Words.

Ld *Keble*. These are but Words and Flourishes, Sir, that you are so willing and ready to die, as you declare you are: But if you be, it is better for you. And also it is well you have not to do with Judges that would be austere upon you;

(a) But Coke, in his Chapter of Petty Treason, in 3 Par. Inst. fol. 29, expressly saith, and to the end, That the Trial may be the more indifferent, seeing the Safety of the Prisoner consisteth in the Indifferency of the Court, the Judges ought not to deliver their Opinions before-hand of any criminal Case that may come before them judicially. And he there cites *Humphrey Stratford's Case*, that Arch-Traitor, in which *Hussey*, Chief Justice, besought *Henry VII.* not to demand of them their Opinions before-hand. And in 4 Par. Instit. cap. High Court of Parliament, fol. 37. he fully shews the Evil of asking Judges Opinions before-hand.

for you to term us to be Men that come hither to destroy you as *Nebuchadnezzar* went about to do *Daniel*: You may judge of what is within you; but of us, what is within us, you cannot judge. You shall have Justice here in the Face of the Country, and of all that hear us: These shall be Judges of our Proceedings towards you. Take heed, Mr. *Lilburne*, this Language is but the Sparks of that venomous Heat that is within you; and they may burst out to prove you guilty before us, and in our Presence, of that you are charged with, without any further Proof or Proceedings; for you may do it, you may do it where you stand: And therefore be advised, and take heed what you say.

Lieut. Col. *Lilburne*. Sir, I have cast up my Account, and I know what it can cost me: I bless God I have learned to die, having always carried my Life in my Hand, ready to lay it down for above this twelve Years together, having lived in the Favour and Bosom of God; and I bless his Name, I can as freely die as live.

Ld *Keble*. You shall not now lay it down, if you do not destroy nor cast away the Commonwealth; but if you go about to destroy the Commonwealth, the Commonwealth will spue you up, and destroy you.

Lieut. Col. *Lilburne*. I desire nothing but Counsel, and a little Time to consult with them, and to produce my Witnesses, and a Copy of my Indictment: If not, I am willing to die as the Object of your Indignation and Malice, do your Will and Pleasure.

Ld *Keble*. We are willing to die too.

Mr. *Attorney*. What is agreeable to the Law of *England*, the constant settled Practice of trying Prisoners, will not be denied Mr. *Lilburne*: But as for that Privilege that was granted him at *Oxford*, is no Tie in Law to us; neither was it ever heard of in *England* that any, that did understand the Law, did ever, as Mr. *Lilburne* now desires, allow Counsel to a Prisoner for such an Act as this is, or had the Copy of the Indictment. It shall not be denied Mr. *Lilburne*, which is his Right by Law, in its due place; but to make new Precedents and new Laws, which, my Lord, when done by such a Bench as this is, most of the Judges in *England* being present, runs to all criminal Cases whatsoever, whether in Treason, Murder, or other Felonies: It's true, Mr. *Lilburne* is now only concerned in it; but if granted to him, it would be a Precedent to all future Times; by means of which there would never be an end of Trials in criminal Cases. And it is a wonderful strange Thing to me, that when the Prisoner hath pleaded the usual way, you proceed not immediately to Trial. It's true, Mr. *Lilburne* hath pleaded his own Ignorance, and therefore desires longer Time: But, my Lord, to make a Precedent of this nature, that never was known by the Laws of *England*, is very dangerous, very perilous. My Lord, the Thing that I press is not in relation to Time, but in relation to the publick Justice; for the same Reason it's granted him, it ought not to be denied to any Man that asketh it, neither for Treason or Felony. And of what evil Consequences it would be, I leave your Lordship and the Court to judge.

My Lords, I do humbly desire that Mr. *Lilburne* may be dealt with all legal, just, and fair Proceedings from the Court. My Lord, I do

desire accordingly that Proceedings may for the Commonwealth be so too; and that Mr. *Lilburne* may be without Delay, according to Law, proceeded against for his notorious Treasons.

Lieut. Col. *Lilburne*. Sir, with your favour, I shall crave but one Word: This Gentleman declares unto you what an evil Precedent it would be to give me a little Time to consult with Counsel, to frame a Plea for my Life; and yet that Judge was pleased to say the Law of *England* is founded upon the Law of God, and the Laws of Reason, unspotted, uncorrupted, or undefiled. I am sure the Law of God, and the Law of uncorrupted Reason, is to do as you would be done to, and not to lay Snares for your Neighbour's Life: I am sure the Law of God would have all Trials indifferent, and no Man's Life surprized or taken away by Niceties or Formalities, tho never so notoriously accused. And, Sir, for Mr. *Prideaux*, and others of you, so often to call me notorious Traitor, as you do; I tell you, Sir, you reproach me: for though I am never so notoriously accused, yet in the Eye of the Law of *England* I am an innocent Man, yea, as innocent as any of those who call me Traitor, till such time as I be legally convicted of the Fact or Crime laid unto my Charge; and therefore, Sir, I beseech you cease your calumniating of me, for you thereby deal not fairly nor legally with me. And, Sir, I confidently hope I shall appear in the Eye of the Law, in the Eyes of you, and in the Eyes of all Men that hear me this Day, an innocent, a just, and a true *Englishman*, that really loves the Welfare of his native Country, if I may have fair Play, and the Scope of the Law. And therefore, Sir, blemish me not in the Ears of the Auditors, till the Law, and a Conviction by it, do blemish me; for I tell you I am in the Eye of the Law as innocent as any of your selves, till I be justly convicted. And therefore I pray cease the calling of me Traitor in this manner.

Ld *Keble*. What need we any more, when we are of your Opinion? We wish you may come as clearly off as you say you hope to do.

Mr. *Attorney*. My Lord, and that it may be so declared, and that the World may know whether Mr. *Lilburne* be an innocent Man, or no, I pray put it to the final issue, and let the Law judge.

Lieut. Col. *Lilburne*. Under favour, for me to be denied Law, which I conceive is done unto me when I am denied Counsel, and to put the Niceties and Formalities of the Law upon me, the Signification of which are writ in such Language and Tongues as I cannot read, much less understand; and would you destroy me for the not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extreme towards me. That Gentleman saith the Law of God is the Law of *England*; and it would have no Snares laid to take away a Man's Life: I pray let me have the Benefit of that.

Mr. *Attorney*. Once you had; and it is but just you should; and I am sure it will be granted unto you.

Ld. *Keble*. Mr. *Lilburne*, you say well; the Prisoner doth not know the Law; you do not, and many others do not: But I tell you again, you know so much of the Law as is suitable to this Plea; you your self know whether your Conscience accuse you guilty of the Fact laid unto

unto your Charge, or not. For our parts, we say no more than one and twenty Men upon their Oaths have informed us, upon sufficient Testimony of Witnesses, that what they had said we should further inform our selves of, before your Life be taken away; yea, such is the Law of *England*, the tenderest Law in the World of a Man's Life. I say again, that no such Trial for Life is to be found in the World, as in *England*. In any Place but in *England*, a Man's Life may be taken away upon two or three Witnesses; but in *England* two or three Witnesses do not do it: For there are two Juries besides, and you have four and twenty Men returned; you have one and twenty Men upon their Oaths and Consciences that have found you guilty: And yet when you have done that, it is not enough by the Law of *England*, but you are also to have twelve rational understanding Men of your Neighbours to hear all over again, and to pass upon your Life. This is not used in any Law in the World but in *England*, which hath the righteousest and mercifullest Law in the World: And this we sit here to maintain, and let all the World know it, that according to the Rules thereof we have proceeded against you.

Judge *Michel*. Mr. *Lilburne*, you were speaking of the Laws being in other Tongues; those that we try you by are in *English*, and we proceed in *English* against you; and therefore you have no cause to complain of that.

Lieut. Col. *Lilburne*. By your Speeches you seem to bind me up to a single Plea: Truly I conceive that is not equitable by the Law of God, and the Laws of Reason. No Man's Life is to be destroyed by Niceties and Formalities; yet contrary to your solemn Promises, you take all Advantage against me by them, and make my ignorance in the ticklish Formalities of the Law to be the means of my own Destruction: although before I pleaded you ingaged unto me you would take no Advantage by my Ignorance in your Formalities, and my Mistakes in them should be no Disadvantage unto me; and yet now I have pleaded, you seem to hold me close to a single Plea. Truly, Sir, I think that is not just nor fair so to break your Promises, and by fair Words to smooth me on into Nets and Snares, and to make use of my Willingness to be tried by the Law of *England* to drill me on to my own Destruction. Truly, Sir, had I ever thought or believed I should have been denied Counsel, I would have died before ever I would in any manner have pleaded to your Charge, or have yielded to your smooth Insinuations.

Justice *Fermin*. Those Men that know the Laws of *England*, know well that it taketh away no Man's Life but upon clean Proof, and upon manifest Contempts of the Law. The Law is, Whosoever shall go such a way in a Court as evidently gives affront to the Law, that such one takes away his own Life. The Facts that you are charged with, if they had taken effect, would have taken away the innocent Lives of many: Therefore you are now before us charged with the Fact; and every Man's Conscience knows whether he committed the Thing charged upon him, or no; and your self does know whether you be guilty of that you are accused of, or no. But the Court must not spend any further time; for Mr. Attorney-General hath returned the Writ of *Venire facias*, for the call-

ing or summoning of a Jury of Life and Death.

Ld *Keble*. Mr. *Lilburne*, you say you well understand your self: You knew of your coming, and you knew of the Fact that you have committed.

Lieut. Col. *Lilburne*. Truly, Sir, six Months ago I heard much of my Trial; and I longed for it, but could not have it, but was still kept in Prison, and abundance of Provocations put upon me, to make me cry out of my Oppressions; and then to hang me therefore, by a Law made after my pretended Crime was committed, is not just. And truly, Sir, I heard but by uncertain common Fame of my Trial now. Some Parliament-Men told my Wife and Friends that my chiefest Crime was corresponding with the Prince; and to defend my self against that, I fitted my self, never dreaming that only Books should be laid to my Charge, and therefore I could not as to that come prepared: And therefore do humbly desire Counsel, a Copy of my Indictment, and Time to bring in my Witnesses.

Ld *Keble*. Hear what is said to you: For your Witnesses, you should have brought them with you; we'll give you leave to send for them: We will give you time to do, to consider with your self what to say for your self, you shall, till to-morrow Seven a-clock.

Lieut. Col. *Lilburne*. Sir, some of my Witnesses live an hundred or eighty Miles off; and yet I must bring them to-morrow Morning: How's that possible? And therefore I desire Time to bring them in, and also *Sub-pœna's*; for some of them are Parliament-Men, and some of them Officers of the Army, and they will not come in without Compulsion.

Ld *Keble*. That's the time we will give you longer; you knew of your coming long ago, and therefore ought to have come provided.

Lieut. Col. *Lilburne*. Sir, I beseech you give me a convenient time, eight or ten days, that so I may get them together; for how could I be provided before-hand for any thing, but for that which I was at the first imprisoned for, nothing of which is now laid to my charge? Could I divine upon what you would proceed against me? But, Sir, I have that within me, I bless God, that will be a Portion of Comfort with me, to carry me through all your Malice and Injustice.

Ld *Keble*. Never talk of that which is within you; God is in us, as well as in you: never make a flourish of what is in you; for the Fear of God is before our eyes as well as yours, and what we do we shall have comfort in, in that it is according to the Laws of *England*, the Rules of which we are sworn to observe, and every Man will do righteous things as well as you.

Lieut. Col. *Lilburne*. Pray will you give but eight days time then?

Ld. *Keble*. We will give you no more; you ought to have brought them with you, you knew of it long ago; and the Court cannot, nor will not wait upon you.

Lieut. Col. *Lilburne*. By your favour, Sir, thus; then let me have a little time to consult with Counsel.

Ld. *Keble*. I tell you that if the Matter be proved, there needs no Counsel.

Lieut. Col. *Lilburne*. Sir, I shall not much insist upon that, but the question is, Whether the Matter be Treason in Law or no, and whether in Law it be rightly expressed in the Indictment, as to Time and Place, with other Circumstances thereunto belonging? And I question the Legality of the Indictment, and that ought in Law to be disputed, before the Matter of Fact come to be spoken to.

Ld *Keble*. Sir, you said at first, you would speak as a rational and moderate Man, and yet you will not be answered. If Matter of Law do arise out of your Fact, that we have told you again and again, you shall have Counsel and Time.

Lieut. Col. *Lilburne*. Sir, by your Favour, it may be too late to desire Counsel after the Fact is proved. And besides, having legal Exceptions against the Indictment, why should you run me upon the Hazard of my Life, by ticklish Niceties and Formalities; and as my Prosecutor Mr. *Prideaux* saith — [But being interrupted, cry'd out] Sir, I beseech you, do but hear me.

Ld *Keble*. Your Distemper will break out; your Heart is so full of boiling Malice and Venom, you cannot contain yourself.

Lieut. Col. *Lilburne*. Mr. *Prideaux* is pleased to urge, that the granting of me my Desire in reference to Counsel, will be so inconvenient a Precedent, as will destroy the Commonwealth: therefore to avoid the danger of such a destroying Precedent, as he is pleased to call it, I desire to have some time assigned me to get my Witnesses together, and then I shall, I doubt not, but convincingly shew you the Hazard and destroying Mischief of that desperate Precedent in denying Men liberty to consult with Counsel, when they are upon Trials for their Lives. For my own Judgment, my own Conscience doth tell me, that it is my undoubted Right by the Law of *England*, by the Law of God, and the Law of Reason; and if it be totally denied me, I can but die: and upon that score, by the assistance of God, I am resolved to die.

Ld *Keble*. You speak great Words of your own Judgment, your own Conscience, your own Zeal, and the like: and I tell you, our Consciences, and our Religion, and our Zeal, and our Righteousness, I hope shall appear as much as yours: You would make your self Judge in your own Cause, which you are not, and so make Cyphers of us; but all your high Words of Conscience and Righteousness is but a Flourish, to make the People believe or be apprehensive as tho we had none, you had all: but you shall know, here we sit with as much Tenderness and Integrity as you stand there, and to do that uprightly which is according to Law and Justice.

Lieut. Col. *Lilburne*. I shall not in the least make any Comparisons, neither do I in that particular; I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy Content, Peace, and Quietness of Mind: and yet for my part I shall rather die than willingly go any further, except I have Counsel first.

Ld *Keble*. Well, Mr. *Lilburne*, the Court is very tender not to take up any of your time; you have heard what was declared to you there, that Mr. Attorney hath made Process against you returnable To-morrow at Seven of the Clock, and

therefore to spend more time will be but your Loss and Damage. The Sheriffs of *London* are to take care to return the Jury To-morrow Morning, and therefore the Court doth adjourn till Seven a Clock To-morrow in the Morning; and in the mean time they do commit the Prisoner at the Bar to the Lieutenant of the *Tower* again.

Lieut. Col. *Lilburne*. Sir, I did not hear you the first Words.

Ld *Keble*. You shall not be denied to hear it again, the Court desires to be good Husbands of Time for you; we could have sat long enough to have trifled away your Time that you may spend in your Meditations, and take your Friends Advice; do not stand upon and destroy your self by Words.

Just. *Jermin*. Mr. *Lilburne*, all that are here are to take notice of it, that the Prisoner at the Bar hath had more Favour already, than ever any Prisoner in *England* in the like case ever had: for by the Laws of *England*, in the matter of Treason, whereof you are indicted, you ought to have been try'd presently, immediately: But because all the World shall know with what Candor and Justice the Court do proceed against you, you have till To-morrow Morning; which is the Court's extraordinary Favour, and the Doors are wide open, that all the World may know it.

Lieut. Col. *Lilburne*. Sir, I can shew one hundred Precedents to the contrary in your own Books, to disprove what you say.

Ld *Keble*. Adjourn the Court.

Lieut. Col. *Lilburne*. I humbly thank you for what Favour I have already received.

The Court adjourned till the next Morning, and the Prisoner remanded to the Tower.

Guild-Hall, October 26, 1649, being Friday.
At the Trial of Lieut. Col. John Lilburne, the Second Day.

THE Prisoner being brought to the Bar, spake as followeth: Sir, I pray hear me a Word or two.

Ld *Keble*. Mr. *Lilburne*, I am afraid something troubles you; I will have no body stand there*, let all come out but one Man.

Lieut. Col. *Lilburne*. Here's none but my Brother and my Solicitor.

Ld *Keble*. Sir, your Brother shall not stand by you there; I will only have one hold your Papers and Books, and the rest not to trouble you: wherefore the rest are to come out.

Lieut. Col. *Lilburne*. Sir, I beg of you but one Word, tho I do not know any reason why of myself I should not have the Privilege of the Law, as well as any Man in *England*; yet besides what Yesterday I alledged for myself, for to have Counsel assigned, yet To-day give me leave to mention an unquestionable Precedent for my purpose, and that is Major *Rolfe*, who being an Officer in the Army, and being lately indicted for High Treason (before the Lord Chief Baron *Wilde*, that now is at *Hampshire* Assizes) for conspiring to poison and pistol the late King, which by Law was the highest of Treasons, did

* That was in the Bar, where his Brother Col. Robert Lilburne, his Solicitor Mr. Sprat, and other of his Friends stood.

conceive himself, in regard of his Ignorance, unable to defend himself singly against his Enemies Design, which was to take away his Life: whereupon he becomes an humble Suitor to the Lord Chief Baron *Wilde*, that he might have Counsel assigned him; and the Court, before ever the Grand Jury received any Testimony against him to find the Bill, assigned him Counsel, who as I understand were one Mr. *Nichols*, now a Judge of this Bench, and sitting there; and Mr. *Maynard* of the *Temple*: they were both assigned his Counsel, and from Mr. *Maynard* himself I have it, yea, from his own Mouth; who being assigned his Counsel, they came into the Court, where the Grand Jury was called before the Judge. Mr. *Maynard*, and Mr. *Nichols*, now a Judge here, had liberty there to be in the open Court, where the Witnesses, before the Indictment was found, was called, and in open Court was sworn, and in open Court gave in their Evidence before the Grand Jury; Major *Rolfe's* Counsel being by in open Court, to hear all the Evidence that was given against Major *Rolfe*, who in his Indictment was indicted for two Matters of Fact; the first was, That he had declared that in such a Month, and at such a Place, he had an intent to Pistol the late King, which by the Letter of the Law of 25 *Edw. 3. chap. 2.* was Treason. Then there was another Charge, That such a Day he had so said or declared to Poison him, in the Presence of such a one; and they were both put into one Indictment. Whereupon Mr. *Maynard* being assigned by the Lord Chief Baron *Wilde*, that now is, to be of Counsel for *Rolfe* in the same Case (but with abundance of more advantage to him, than I am now in) Mr. *Maynard* was then of Counsel to the Prisoner, and had liberty to hear what the Witnesses swore against him, and to make his best Advantage of it, and that in open Court, before the Indictment was found by the Grand Inquest; and altho there were two express Witnesses against him, yet but one of them swore to one thing, and another to another. Mr. *Maynard* being one that knew the Law better than Major *Rolfe* did himself, he apply'd the two Statutes of *Edward VI. viz. the 1 Edw. 6. chap. 12. and 5 & 6 Edw. 6. chap. 11. to Rolfe's Case*; which Statutes do expressly declare, That no Man ought to be convicted of Treason, but by two sufficient Witnesses upon plain and clear Evidence to each Fact of Treason: which Evidence, as Sir *Edward Coke* says in the third Part of his *Institutes*, ought to be as clear as the Sun at Noon-day, and not upon one single Witness, and upon conjectural Presumptions, or Inferences, or Strains of Wit. Now, Sir, I am an *Englishman* as well as Major *Rolfe*, and I have been an Officer in the Parliament-Army as well as he, and there fought for them as heartily as ever he did in his Life, and he was accused for the highest of *English* Treasons. And therefore I humbly crave, that in regard there are many particular Errors in the Indictment, as to Matter, Time, and Place, that therefore in reference to the Illegality of the Indictment, according to this Precedent by one of your own Fellow-Judges, that you would, according to my Birth-right declared in Major *Rolfe's* Case, assign me Counsel as he had, to help my Ignorance, that so I may not be destroyed by Surprizal, and illegal and unjust Prerogatives.

Ld *Keble*. You see with what a great deal of Favour, instead of a few Words, we have heard you many; this is a Privilege: but this that you say upon it, it may be it was done; but that we do, shall be according to that you and we shall find to be according to the Laws of the Land, and our Conscience, and the Privilege of the Subject: that that they did before the Grand Jury, and the Witnesses, the Witnesses are here sworn in Court in Presence of the Grand Jury, so far we go with them; that of Mr. *Maynard* and Mr. Justice *Nichols* being assigned Counsel, for what cause it was then they best know, it is nothing that doth now concern us, tho the Treason was against those Laws that then were in being; we must come to Proof, it may be he confess'd his Fact; if you will do so too, it alters the Case.

Lieut. Col. *Lilburne*. No, Sir, he never confess'd it, for if he had, he had been found guilty; but he was saved merely by the Skill and Honesty of his Counsel Mr. *Maynard*, and his Indictment null'd and evaded before ever the Grand Jury found it, and that upon this Point of Law, because by the two Statutes of *Edward VI.* there ought to be two plain and clear Witnesses to every Part of Treason; and tho *Rolfe* was accused by two Witnesses, yet there were two Facts, and but one Witness to the Proof of each of them.

Ld *Keble*. When you come to Trial, if we see there be need of Counsel, the Court will be instead of Counsel to you; nay the Court, if they see any Matter of Law for Counsel, tho you do not ask it, they will give you it. And therefore set your Heart at rest, for if there be any thing rational in Law that we can spy out, as well as your Counsel, we will help you in it.

Lieut. Col. *Lilburne*. Sweet Sir, I crave but one Word more; I am upon my Life, and if you deny me what the Law affords me, and that which hath been granted to be Law by Cavalier Judges, yea and by your Fellow-Judges, who are now in Power at this Day; the Lord deliver me from standing in need of you to be my Counsellors.

Ld *Keble*. We are upon our Lives too, as well as you.

Lieut. Col. *Lilburne*. No, by your Favour, not in so imminent a manner as I am.

Ld *Keble*. We are upon our Lives and our Souls to all Eternity.

Lieut. Col. *Lilburne*. Sir, I beseech you hear me one Word.

Ld *Keble*. I will hear no more.

Mr. *Prideaux*. My Lord, I desire the Court would proceed, and not prolong Time, seeing he has pleaded Not Guilty, and confessed something.

Lieut. Col. *Lilburne*. No, Sir, you do me wrong, and abuse me: I never confessed any thing, neither did I plead Not Guilty; for my Plea was conditional, grounded upon your Promises, not to take any Advantage of my Ignorance in your Formalities.

Ld *Keble*. Go on; be silent, Mr. *Lilburne*.

Lieut. Col. *Lilburne*. If you take away my Life without affording me the Benefit of the Law, my innocent Blood be upon your Heads.

Ld *Keble*. Sir, these passionate Words will do you no good, you had better forbear them.

Lieut. Col. *Lilburne*. Pray hear me then.

Ld *Keble*.

Ld Keble. Do you say that we do offer to take away your Life, Sir? if we do take it away contrary to Law, we are liable to answer for it: but we shall judge what you have done. [*The Lieutenant-Colonel pressing to speak, was not suffered, but bid be silent.*] Sir, I advise you, Sir, spare yourself with Patience, and hear the Court.

Justice Jermin. Be quiet, Sir.

Lieut. Col. Lilburne. I beseech you, Sir, let me hear but the Grand Jury speak; for I understand from some of themselves, they never found me guilty of Treason, but do conceive themselves wronged by some Words Yesterday, that passed from some of the Judges: I pray let me hear them speak.

Ld Keble. Mr. Lilburne, you said you would be rational, you would be moderate; you do break out; you will do yourself more Hurt than any here can do you: you must be silent and hear the Court, we can lose no more Time to hear you. Cryer, call the Jury.

Cryer. The Jury called—[*And Mr. Lilburne earnestly pressed to be heard, but could not.*] Cryer. Miles Petty, William Wormwell.

Lieut. Col. Lilburne. Sir, I beseech you let me but see these Gentlemens Faces.

Ld Keble. You Master Sprat, you must not talk to the Prisoner; you may stand and hold the Books: you did offend Yesterday, but you shall not do so To-day, for you shall not stand near the Prisoner to talk to him.

Lieut. Col. Lilburne. My Lord, the Law says a Stander-by may speak in the Prisoner's Behalf at the Bar, much more whisper to him; but especially if he be his Solicitor.

Cryer. John Sherman, Thomas Dainty, Ralph Ely, Edmund Keyzer, Edward Perkins, Ralph Packman, Francis Woodall, William Commins, Henry Hanson, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevill, John Mayo, Henry Jooley, Arthur Due, Roger Sears.

Clerk. You good Men of the City of London appear. Stephen Ives, John Sherman, Ralph Ely, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevill, Roger Sears, John Mayo, Nicholas Murren.

Clerk. You Prisoner at the Bar, these good Men that are here presented before the Court, are to be of your Jury of Life and Death; if therefore you will challenge them, or any of them, you must challenge them before they go to be sworn, and then you shall be heard.

Cryer. Every Man that can inform my Lords the Justices, and the Attorney-General of this Commonwealth, against Master John Lilburne Prisoner at the Bar, of any Treason or Felony committed by him, let them come forth, and they shall be heard, for the Prisoner stands upon his Deliverance; and all others bound to give their Attendance here upon pain of Forfeiture of your Recognizance, are to come in.

Lieut. Col. Lilburne. Sir, I beseech you give me leave to speak.

Ld Keble. You cannot be heard.

Lieut. Col. Lilburne. Truly, Sir, I must then make my Protest against your unjust and bloody Proceedings with me, before all this People; and desire them to take notice, that yesterday I pleaded to my Bill conditionally, that no advantage should be taken against me for my Ignorance in your Formalities, and you promised me you would not.

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Ld Keble. We give you too much time; you will speak words that will undo you: is this your Reason? You shall talk in your legal time, and take your legal Exceptions, we will hear you till midnight.

Lieut. Col. Lilburne. Then it will be too late, Sir.

Justice Jermin. You have given a great Slander, and that doth not become a Man of your Profession; you speak very black words.

Lieut. Col. Lilburne. I beseech you, do but hear me one word; I do not know the Faces of two of the Men that were read unto me, I hope you will give me time to consider of them.

Ld Keble. No, Sir, you ought not to have it.

Lieut. Col. Lilburne. Will you let me have some Friends by me that are Citizens of London, that know them, to give me information of their Qualities and Conditions? for without this, truly you may as well hang me without a Trial, as to bring me here to a Trial and deny me all my legal Privileges to save myself by.

Ld Keble. If you be your own Judge, you will judge so; go on.

[Mr. Sprat, or Col. Robert Lilburne, whispers to the Prisoner to challenge one of the Jury, which the Judge excepted against.]

Lieut. Col. Lilburne. Sir, by your favour, any Man that is a By-stander may help the Prisoner, by the Law of England.

Ld Keble. It cannot be granted: and that Fellow come out there, with the white Cap, pull him out.

Lieut. Col. Lilburne. You go not according to your own Law in dealing thus with me.

Justice Jermin. Your words were never a Slander, nor never will be; hold your peace. Cryer, go on.

Cryer. Stephen Blyth, look upon the Prisoner. Abraham Seal, John King, Nicholas Murren, (Thomas Dariel) [the Prisoner excepted against him] Edward Perkins, Francis Peale.

Justice Jermin. Was he recorded and sworn before he spake, or no?

Cryer. No, my Lord.

Justice Jermin. Then let him continue, if he be right recorded.

Cryer. The Oath was not given quite out.

Justice Jermin. Then he hath challenged in time; let him have all the lawful Favour that may be afforded him by Law.

William Commins sworn, Simon Weedon sworn.

Lieut. Col. Lilburne. He's an honest Man, and looks with an honest Face, let him go.

Henry Tooley sworn, Arthur Due excepted against.

Ld Keble. Take away Mr. Due, let him stand a little by.

Henry Hanson put by, being sick; one that could not hear, excepted against; John Sherman, Ralph Head, Roger Jenkinson, Josias Hamond, Richard Allen, John Mayo, Roger Sears, Henry Hanson excepted against, Edmond Keyzer sworn.

The Jury called.

Clerk. Twelve good Men and true, stand together, and hear your Evidence.

Justice Jermin. Cryer of the Court, let the Jury stand six of the one side, and six of the other.

G

Clerk.

- Clerk. 1. Miles Petty, 7. Ed. Perkins,
 2. Stephen Ives, 8. Ralph Packman,
 3. John King, 9. William Comins,
 4. Nicholas Murren, 10. Simon Weedon,
 5. Thomas Dainty, 11. Henry Tooley,
 6. Edmond Keyzer, 12. Abraham Smith.

Of the Jury, six live about Smithfield, one in Gosling-street, two in Cheapside, two in Bread-street, and one in Friday-street.

Justice Jermin. It's well done.

Cryer. The Lords the Justices do straitly charge and command all manner of Persons to keep silence, while the Prisoner is in Trial.

Mr. Broughton, *John Lilburne*, hold up thy Hand.

Lieut. Col. *Lilburne*. As I did yesterday, I acknowledge myself to be *John Lilburne* Freeman of London, Son to Mr. *Richard Lilburne*, of the County of *Durham*, and some time Lieutenant-Colonel in the Parliament-Army.

Justice Jermin. You refuse to hold up your Hand; and tho' you break the Law of England, the Court will not break it.

Lieut. Col. *Lilburne*. I do what the Court declares is my Right and Duty to do; I do no more than declare my Name to be so as it is.

Ld Keble. Read the Indictment.

Mr. Broughton reads. Hold up thy Hand, *John Lilburne*; thou standest here indicted of High Treason by the Name of *John Lilburne*, late of London Gentleman, for that thou, as a false Traitor, not having the Fear of God before thine eyes, but being stirred and moved up by the Instigation of the Devil, didst endeavour not only to disturb the Peace and Tranquillity of this Nation, but also the Government thereof to subvert, now established without King or House of Lords, in the way of a Commonwealth, and a Free-State, and happily established; and the Commons in Parliament assembled, being the Supreme Authority of this Nation of England, to disgrace, and into Hatred, base Esteem, Infamy and Scandal, with all the good, true, and honest Persons of England, to bring. That is to say, that thou the said *John Lilburne*, on the first Day of October in the Year of our Lord 1649, and in divers other Days and Times, both before and after, in the Parish of *Mary the Arches*, in the Ward of *Cheap*, London, aforesaid, of thy wicked and devilish Mind and Imagination, falsely, maliciously, advisedly, and traitorously, as a false Traitor, by writing and imprinting, and openly declaring, that is to say, by a certain scandalous, poisonous, and traitorous Writing in Paper, intituled, *A salva Libertate*; and by another scandalous, poisonous, and traitorous Book, intituled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton Esqs; late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true, and zealous Affections to the Liberties of this Nation*: And by another scandalous, poisonous, and traitorous Book, imprinted, and intituled, *An Outcry of the Young-men and Apprentices of London, or an Inquisition after the lost fundamental Laws and Liberties of England*, directed Aug. 29. 1649.

in an Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the fifth of June 1647. but more especially the private Soldiers of the General's Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traitorously defeated at Burford, the fifteenth of May 1649. And also by another scandalous, poisonous, and traitorous Book, intituled, *The legal fundamental Liberties of the People of England, revived, asserted, and vindicated*; didst publish that the Government aforesaid is tyrannical, usurped, and unlawful; and that the Commons assembled in Parliament are not the Supreme Authority of this Nation. And further, that thou the said *John Lilburne*, as a false Traitor, God before thine eyes not having, but being moved and led by the Instigation of the Devil, endeavouring, and maliciously intending to subvert the Government aforesaid, as is aforesaid, well and happily established; thou the said *John Lilburne*, afterwards (that is to say) the aforesaid first Day of October (a) in the Year of our Lord 1649 aforesaid, and divers other Days and Times, as well before as after, at London aforesaid, that is to say, in the Parish and Ward aforesaid, at London aforesaid, maliciously, advisedly, and traitorously didst plot, contrive, and endeavour to stir up, and to raise Force against the aforesaid Government, and for the Subverting and Alteration of the said Government, and those wicked, malicious, and traitorous Advise-ments to put in execution, &c. And thou the said *John Lilburne* afterwards, that is to say, the aforesaid first Day of October in the Year of our Lord 1649 aforesaid, and divers Days and Times as well before as after, at London aforesaid, that is to say, in the Parish and Ward aforesaid, of thy depraved Mind, and most wicked Imagination, in and by the aforesaid scandalous, poisonous, and traitorous Book, intituled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton Esqs; late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true, and zealous Affection to the Liberties of his native Country*: falsely, maliciously, advisedly, and traitorously, didst publicly declare, amongst other things in the said Book, these false, scandalous, malicious, and traitorous Words following; 'But my true Friends, (meaning the Friends of the said *John Lilburne*) 'I (meaning the aforesaid *John Lilburne*) 'shall here 'take upon * me the Boldness, * This Passage is in p. 5.
 'considering the great Distractions
 'of the present Times, to give a
 'little further Advice to our Friends aforesaid,
 'from whose Company or Society, or from
 'some of them, hath been begun and issued out
 'the most transcendent, clear, rational and just
 'things, for the Peoples Liberties and Free-
 'doms, that the foresaid *John Lilburne* hath
 'seen or read in this Nation, as your notable
 'and excellent Petition of May the 20th, 1647.
 'burnt by the hands of the common Hangman,
 'recorded in my Book called *Rash Oaths unwar-
 'rantable*, pag. 29, 30, 31, 32, 33, 34, 35. with
 'divers Petitions of that nature, and the Petition

(a) Note that Mr. Lilburne was imprisoned by the Council of State as a Traitor, the 28th of March, 1649. and they there came, and after arraign him as a Traitor, for Actions done above five Months after, waving all the pretended Crimes for which they first imprisoned him.

‘ of the 19th of *January* 1648. recorded in the
 ‘ following Discourse, pag. 45, 46, 47, 48. and
 ‘ the Masculine Petition of the 11th of *Septem-*
 ‘ *ber* 1648. so much owned by Petitions out of
 ‘ several Counties; yea, and by the Officers of
 ‘ the Army’s large Remonstrance from *St. Al-*
 ‘ *bans*, the 16th of *November* 1648. pag. 67, 68,
 ‘ 69. The Substance of all which, I (thou the
 ‘ foresaid *John Lilburne* meaning) ‘ conceive is
 ‘ contained in the printed Sheet of Paper, sign-
 ‘ ed by my Fellow-Prisoners, Mr. *William Wal-*
 ‘ *vin*, Mr. *Richard Overton*, and Mr. *Thomas*
 ‘ *Prince* and myself, dated the 1st of *May* 1649.
 ‘ and intitled, *The Agreement of the Free People of*
 ‘ *England.* Which false, scandalous, and trai-
 ‘ torous Book, called, *The Agreement of the People*
 ‘ *of England*, tends to the Alteration and Subver-
 ‘ sion of the Government aforesaid. ‘ The Prin-
 ‘ ciples of the foresaid Agreement, I (meaning
 ‘ yourself the said *John Lilburne*) ‘ hope and de-
 ‘ sire you (the Friends of the aforesaid *John Lil-*
 ‘ *burne* meaning) ‘ will make the final Centre, and
 ‘ unwavering Standard of all your Desires, Ha-
 ‘ zards and Endeavours, as to the future Settle-
 ‘ ment of the Peace and Government of this di-
 ‘ stressed, wasted, and divided Nation: the firm
 ‘ establishing of the Principles therein contain-
 ‘ ed, being that only which will really and in
 ‘ good earnest marry and knit that Interest, what-
 ‘ ever it be, that dwells upon them, unto the
 ‘ distressed or oppressed Commons of this Nation.

‘ But the Principles of the foresaid Agreement
 ‘ being so detestable and abomina-
 ‘ ble to the present * ruling Men,
 ‘ as that which they know will put a
 ‘ full end to their Tyranny and Usurpation, and
 ‘ really ease and free the People from Oppression
 ‘ and Bondage; that it is something dangerous
 ‘ to those that go about the Promotion of it:
 ‘ yet I shall advise and exhort you, (meaning the
 ‘ Friends of him the aforesaid *John Lilburne*) vi-
 ‘ gorously to lay all Fear aside, and to set on
 ‘ foot the Promotion of it (meaning the said A-
 ‘ greement) ‘ in the same method we took for the
 ‘ promotion of the foresaid Petition of the 9th
 ‘ of *January* 1647. laid down in the following
 ‘ Discourse, pag. 23, 24, 25. and write to all your
 ‘ Friends in all the Counties of *England*, to chuse
 ‘ out from amongst themselves, and send up some
 ‘ Agents to you (two at least for each County,
 ‘ with Money in their pockets to bear their Char-
 ‘ ges) to consider with your called and chosen
 ‘ Agents, of some effectual Course speedily to be
 ‘ taken for the settling of the Principles thereof,
 ‘ (meaning the aforesaid false Agreement, devised
 ‘ by yourself the aforesaid *John Lilburne*) ‘ and to
 ‘ set up the promoting of, (the foresaid feigned
 ‘ Agreement meaning) ‘ as that only which in an
 ‘ earthly Government can make you (the aforesaid
 ‘ Friends of the said *John Lilburne*) ‘ happier:
 ‘ at least to know one another’s Minds, in own-
 ‘ ing and approving the Principles of the fore-
 ‘ said false ‘ Agreement, that so it may become to
 ‘ you (meaning the foresaid Friends of the fore-
 ‘ said *John Lilburne*) ‘ and all your Friends, your
 ‘ Centre, Standard, and Banner, to flock toge-
 ‘ ther to, in time of those foreign Innovations,
 ‘ and domestick Insurrections, that are like spee-
 ‘ dily to bring Miseries enough upon this poor
 ‘ distressed Nation, (the aforesaid Nation of *Eng-*
 ‘ *land* again meaning) ‘ and unanimously resolve and
 ‘ engage one to another, neither to side with, or
 ‘ fight for, the Chimera’s, Fooleries, and Pride

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‘ of the present Men in Power, (the aforesaid
 ‘ Parliament of *England* meaning) ‘ nor for the
 ‘ Prince’s Will, nor any other base Interest what-
 ‘ soever: the which if you (the aforesaid Friends
 ‘ of the said *John Lilburne* meaning) ‘ should fight
 ‘ for, it would be but an absolute Murder of
 ‘ your Brethren and Countrymen you know not
 ‘ wherefore, unless he or they will come up to
 ‘ those just, righteous, and equitable Principles
 ‘ therein contained, and give rational and good
 ‘ Security for the constant adhering thereunto.

‘ And upon such Terms, I do not see but you
 ‘ may justifiably, before God or Man, join with
 ‘ the Prince himself; yea, I am sure, a thousand
 ‘ times more justly, than the present ruling Men
 ‘ (upon a large and serious Debate) joined with
 ‘ *Owen Roe O-Neale*, the grand bloody Rebel in
 ‘ *Ireland*; who, if we must have a King, I
 ‘ (meaning he the aforesaid *John Lilburne*) ‘ for
 ‘ my part I had rather have the Prince, (meaning
 ‘ *Charles Stuart*, Son to the late King) ‘ than any
 ‘ Man in the World, because of his large Pre-
 ‘ tence of Right, which if he come not in by
 ‘ Conquest, by the hands of Foreigners (the bare
 ‘ attempting of which, may apparently hazard
 ‘ him the Loss of all at once) by gluing toge-
 ‘ ther the now divided People, to join as one
 ‘ Man against him; but by the hands of *Englisch-*
 ‘ *men*, by Contract upon the Premises aforesaid,
 ‘ (which is easy to be done) the People will easily
 ‘ see, that presently thereupon they will enjoy this
 ‘ transcendent Benefit, (he being at peace with
 ‘ all foreign Nations, and having no regal pre-
 ‘ tended Competitor) viz. The immediately
 ‘ disbanding of all Armies and Garrisons, saving
 ‘ the old Cinque-Ports: and so those three grand
 ‘ Plagues of the People will cease, viz. Free-
 ‘ Quarters, Taxations, and Excise; by means of
 ‘ which, the People may once again really say,
 ‘ They enjoy something they can in good earnest
 ‘ call their own. Whereas for the present
 ‘ Army to set up the pretended false Saint *Oliver*,
 ‘ (or any other) as their elected King, there will
 ‘ be nothing thereby from the beginning of the
 ‘ Chapter to the end thereof, but Wars, and the
 ‘ cutting of Throats, year after year; yea, and
 ‘ the absolute keeping up of a perpetual and e-
 ‘ verlasting Army, under which the People are
 ‘ absolute and perfect Slaves and Vassals, as by
 ‘ woful and lamentable Experience they now see
 ‘ they perfectly are; which Slavery and absolute
 ‘ Bondage is like daily to encrease, under the
 ‘ present tyrannical and arbitrary new-erected
 ‘ robbing Government. And therefore rouse up
 ‘ your Spirits before it be too late, to a vigorous
 ‘ Promotion, and settling of the Principles of the
 ‘ foresaid Agreement, as the only absolute and
 ‘ perfect Means to carry you off all your Mala-
 ‘ dies and Distempers.’

Here Lieutenant-Colonel *Lilburne*, in the first
 Day’s reading the Indictment, taking notice of
 the Judge *Thorp* and Mr. *Prideaux* to whisper to-
 gether, cry’d out, and said to this effect:

L. Col. *Lilb.* Hold a while, hold a while, let
 there be no Discourse but openly; for my Adver-
 saries or Prosecutors whispering with the Judges,
 is contrary to the Law of *England*, and extreme-
 ly foul and dishonest Play: and therefore I pray
 let me have no more of that Injustice.

Mr. Attorney. It is nothing concerning you
 (let me give him satisfaction) it is nothing con-
 cerning you, Mr. *Lilburne*.

G 2

L. Col.

L. Col. *Lilb.* By your favour, Mr. *Prideaux*, that is more than I do know; but whether it be or not, by the express Law of *England*, it ought not to be; therefore I pray let me have no more of it.

Mr. *Broughton*. And further, thou the said *John Lilburne* stand'st indicted, for that thou the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers Days and Times, as well before as after, in *London* aforesaid, and in the Parish and Ward aforesaid, didst maliciously, advisedly and traitorously publish another false, poisonous, traitorous and scandalous Book, intituled, *An Out-cry of the Young Men and Apprentices of London, or an Inquisition after the lost Fundamental Laws and Liberties of England*: having these traitorous and scandalous Words (amongst other things) following; that is to say, *We* (meaning the Young Men and Apprentices

* Which Words are in pag. 11.

of *London*) considering what is before premised, * are necessitated and compelled to do the utmost we can for our own Preservations, and for the Preservation of the Land of our Nativity, and never, by popular Petitions, address our selves to the Men sitting at *Westminster* any more, or to take any more notice of them, than as of so many Tyrants and Usurpers; and for the time to come to hinder (as much and as far as our poor despised Interest will extend to) all other whatsoever from subscribing or presenting any more popular Petitions to them; and only now as our last Refuge, mightily to cry out to each other, of our intolerable Oppressions, in Letters and Remonstrances signed in the behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able by the Strength of God to lay down their very Lives for the maintaining of that which they set their Hands to. And further, That thou the aforesaid *John Lilburne* afterwards, that is to say, the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers other Days and Times, as well before as after, not being an Officer or Soldier, or Member of the Army aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, as a false Traitor, did maliciously, advisedly and traitorously endeavour to stir up a dangerous, mutinous and traitorous Distemper, Mutiny and Rebellion in the Army, now under the Command of *Thomas Lord Fairfax*, and didst endeavour to draw *Thomas Lewis*, *John Skinner*, and *John Toppe* from their Obedience to their superior Officers, &c. and further, didst deliver unto the three Soldiers before-named, the said Book, intituled, *An Out-cry of the Young Men and Apprentices of London*; having these Words following contained in them: ' Surely all Sense and Compunction of Conscience is not totally departed from you; hear us therefore in the earnest Bowels of Love and Kindness, we intreat and beseech you with Patience, and do not abuse us, for complaining and crying out, for the Knife hath been very long at the very Throats of our Liberties and Freedoms; and our Burdens are too great and many for us, we are not able to bear them and contain our selves; our Oppressions are even ready to make us despair (or forthwith to fly to the prime Laws of Nature, viz. the next violent Remedy at hand, light where it will, or upon whom it will) they are become as devouring Fire in our Bosoms ready to burn us up, rendring us

desperate and careless of our Lives, prizing those that are already dead, above those that are yet alive, who are rid of that Pain and Torment that we do and must endure, by sensible seeing and beholding, not only the dying, but the daily Burial of our native Liberties and Freedoms, that we care not what becomes of us, seeing that we are put into that original State or Chaos of Confusion, wherein Lust is become a Law; Envy and Malice are become Laws, and the strongest Sword rules and governs all by Will and Pleasure; all our ancient Boundaries and Land-marks are pulled up by the Roots, and all the Ties and Bonds of human Society in our *English* Horizon totally destroyed and extirpated. Alas for pity! we had rather die than live this Life of a languishing Death, in which our Masters possess nothing (to buy themselves or us Bread to keep us alive) that they can call their own; therefore it's no boot to serve out our Times, and continue at our drudging and toiling Trades, whilst these Oppressions, Cruelties and Inhumanities are upon us, and the rest of the People, exposing thereby the Nation, not only to domestick Broils, Wars and Blood-sheds (wherein we are sure our Bodies must be the principal Buts) but to foreign Invasions by *France*, *Spain*, *Denmark*, *Swethland*, &c. as was well observed by an endeared and faithful Friend of the forementioned late treacherously defeated Party at *Burford*, in their Book of the 20th of *August* 1649, intituled, *The Levellers vindicated, or the Case of the Twelve Troops truly stated*, pag. 11, and 12. which we cannot but seriously recommend with them, to your serious Perusal and Judgment, and desire to know of you (but especially the private Soldiers of the Gen. Regiment of Horse, who we understand had a hand in seizing upon, and plundering our true Friends at *Burford*) whether you do own the abominable and palpable treacherous Dealings of your General and Lieutenant-General *Cromwell*, and their perfidious Officers with them, or no? (that so we may not condemn the Innocent with the Guilty, and may know our Friends from our Foes:) as also to tell us, Whether you do approve of the total Defection of your Army, under which it now lieth, from their Faith and fall'n Engagement made at *Newmarket-Heath*, the 5th of *June* 1647. not one of those righteous Ends, in behalf of the Parliament and People, on which your Vow was made, being yet fulfilled or obtained; but on the contrary (as we have before-rehearsed) a whole Flood-gate of Tyrannies are let in upon us, and overwhelm us; and whether you [*the aforesaid private Soldiers meaning*] justify all those Actions done in the name of the Army, upon your Account, and under the Pretence of that Engagement, since the Engagement it self was broken, and your Council of Adjutors dissolved? And whether you will hold up your Swords to maintain the total Dissolution of the People's choicest Interest of Freedom, viz. frequent and successive Parliaments, by an Agreement of the People, or obstruct the annual Succession? Whether you do allow of the late shedding the Blood of War in time of Peace, to the Subversion of all our Laws and Liberties? And whether you do countenance

‘ nance the Extirpation of the Fundamental
 ‘ Freedoms of this Commonwealth, as the Re-
 ‘ vocation and Nullity of the great Charter of
 ‘ England, the *Petition of Right*, &c.? And whe-
 ‘ ther you do assent to the Erection of Arbitrary
 ‘ Prerogative Courts, that have or shall over-
 ‘ rule, or make void our antient way of Trials
 ‘ in Criminal Cases by a Jury of Twelve Men of
 ‘ the Neighbourhood? And whether you will
 ‘ assist or join in the forcible Obstruction of this
 ‘ martial and tyrannical Rule over us? Also whe-
 ‘ ther you will fight against and destroy those
 ‘ our Friends that shall endeavour the Compo-
 ‘ sure of our Differences, together with the
 ‘ Procurement of our Freedoms, and Settlement
 ‘ of our Peace (your Plenty and Prosperity) ac-
 ‘ cording as it was offered by the four Gentlemen
 ‘ Prisoners in the Tower of London, upon the
 ‘ first Day of May 1649, as a Peace-offering to
 ‘ the Nation, by the Agreement of the People,
 ‘ [the *aforesaid feigned Agreement meaning*.] Lastly,
 ‘ We [the *aforesaid Young Men and Apprentices of*
 ‘ London *meaning*] earnestly beseech you [the *a-*
 ‘ *forsaid private Soldiers again meaning*] to ac-
 ‘ quaint us, whether from your Hands, to your
 ‘ Power, we may expect any Help or Assistance
 ‘ in this our miserable, distressed Condition, to
 ‘ the Removal of those Iron Bonds and Yokes
 ‘ of Oppression [the *aforesaid Government in way*
 ‘ of a Commonwealth and Council of State *mean-*
 ‘ *ing*] that have thus enforced us to complain,
 ‘ and address our selves thus to your Considera-
 ‘ tion; for we [the *aforesaid Young Men and Ap-*
 ‘ *prentices again meaning*] cannot chuse but ac-
 ‘ quaint you [the *aforesaid private Soldiers again*
 ‘ *meaning*] that we are seriously resolved, through
 ‘ the Strength and Assistance of God, with all
 ‘ the Interest we have in the World, to adhere
 ‘ to the righteous things contained in our
 ‘ treacherously defeated forementioned Friends
 ‘ Vindication, [the *aforesaid traitorous Book, in-*
 ‘ *titled, The Levellers Vindicated, or the Case*
 ‘ of the Twelve Troops truly stated, again
 ‘ *meaning*.]

And further, thou the said John Lilburne, as a
 false Traitor, by most wicked traitorous Con-
 spiracies, Designs and Endeavours of thine afore-
 said, afterwards, that is to say, the *aforesaid* first
 Day of October, in the Year of our Lord 1649,
 above said, and divers other Days and Times, as
 well before as after, didst in the Parish and Ward
 of London afore said, in and by the *aforesaid* scan-
 dalous, poisonous and traitorous Book, intituled,
An Impeachment of High Treason against Oliver
Cromwell, and his Son-in-law Henry Ireton, &c.
 most falsely, maliciously and traitorously publish,
 and openly declare, amongst other things, in the
 said Book, these following scandalous, treache-
 rous, tumultuous and traitorous Clauses and
 Words following; that is to say, ‘ But I [mean-
 ‘ ing thy self the said John Lilburne] and many
 ‘ other Persons [meaning the *aforesaid Friends*]
 ‘ intreat you seriously to consider that I cannot
 ‘ advise you to make Addresses to him [mean-
 ‘ ing the *aforesaid Thomas Lord Fairfax, Cap-*
 ‘ *tain-General*] as the General of the Nation’s
 ‘ Forces [the *Forces of this Nation of England*
 ‘ *meaning*] for he [the *aforesaid Captain-General*
 ‘ *meaning*] is no General, but is merely a great
 ‘ Tyrant [meaning the *aforesaid Captain-General*]
 ‘ standing by the Power of his own Will, and
 ‘ a strong Sword borne by his Vassals, Slaves

‘ and Creatures [the *Soldiers of the Army afore-*
 ‘ *said meaning*] having no Commission to be Ge-
 ‘ neral, either from the Law or the Parliament,
 ‘ nor from the prime Laws of Nature and Rea-
 ‘ son. For First, when he was made General
 ‘ by both Houses of Parliament, it was expres-
 ‘ ly against the Letter of the Laws. And Se-
 ‘ condly, when he refused to disband, &c. he
 ‘ hath rebelled against his Parliament-Commis-
 ‘ sion, and thereby destroyed and annihilated it,
 ‘ &c.

[The Reader is desired to take notice, That in
 the Indictment it self there was a great many
 other things than in this is expressed; as parti-
 cularly divers Passages out of a Book, called
 Mr. Lilburne’s, intituled, *The Legal Fundamen-*
tal Liberties of England revived, &c. as also
 out of another Book, intituled, *A Prepara-*
tive to an Hue and Cry after Sir Arthur Hasle-
rig, &c. as also out of *The Agreement of the*
People, of the first of May 1649. with several
 other remarkable Things in Matter and Form,
 that were more neglected to be taken than the
 Pleadings; because it was not supposed, but
 the Indictment (being a Record) a true Copy
 of it might easily be had; considering that by
 Law all Records ought freely to be used by
 any Freeman of England, and Copies of them
 denied to none that desire to take them: But
 that Privilege being in this Cause already dis-
 puted and denied; in which regard, the Rea-
 der must at present accept of the best imper-
 fect Notes that the Publisher could pick up.]
 But to go on.

And further, That thou the said John Lilburne,
 as a false Traitor, all and singular the Clauses and
 English Words above said, and many other trai-
 torous, poisonous and malicious Expressions in
 and by the *aforesaid* Writings, and by the afore-
 said several Books, as *aforesaid* recorded, and by
 thee the *aforesaid* John Lilburne published, and
 openly declared in the several Books so as afore-
 said printed, and by the *aforesaid* Writings, and
 by thee the *aforesaid* John Lilburne, in Manner
 and Form afore said, published, and openly di-
 vulged and declared divers other scandalous, ma-
 licious, tumultuous and treacherous Clauses and
 Words in the said Books contained, falsely, ma-
 liciously, advisedly and traitorously, hast pub-
 lished and openly declared, to the intent to stir
 up, and raise Forces against the Government
 afore said, in the way of a Commonwealth, and
 free State as afore said established; and for the
 suppressing and Alteration of the said Govern-
 ment, and to stir up Mutiny in the Army a-
 fore said; and also to withdraw the said John
 Tooke, Thomas Lewis and John Skinner, and many
 other Soldiers, from their Obedience to their su-
 perior Officers and Commanders, and to set them
 in Mutiny and Rebellion against the publick
 Peace, and to manifest Contempt of the Laws
 of this Commonwealth and free State, and a-
 gainst the Form of the Statutes in this Case
 made and provided.

The Indictment being reading, and the Noise
 of the People in the Hall great, the Prisoner
 said he could not hear, and had some few Lines
 before read over to him.

L. Col. *Lilb.* Pray hold your peace, Gentlemen; I beseech you be quiet. [*speaking to the People.*]

Ld *Keble.* Quiet your self, we will quiet them for you.

Broughton. Which Country are you? so that you are to find whether he is guilty or no, he having already pleaded, Not Guilty. If you find that he is guilty of any the High Treasons laid to his Charge, then you are to enquire what Goods, Lands or Chattels he stood possessed of, when he committed the said High Treasons; but if you find Not Guilty, you shall then enquire whether he did not fly for it; and if he did not fly for it, then you are to say so and no more: therefore hearken to your Evidence.

Lieut. Col. *Lilburne.* May it please your Honour.

Cryer. If any Man can give any Evidence to my Lords, the Justices of Oyer and Terminer, against Mr. *John Lilburne*, let him come in, and he shall be heard.

Lieut. Col. *Lilburne.* I desire to be heard to speak two or three Words. I humbly desire the Favour to speak two or three Words. I humbly desire the Favour to be heard two Words.

Ld *Keble.* It is not a fit time; you shall be heard in your due time: but hear what the Witnesses say first.

Lieut. Col. *Lilburne.* I conceive I am much wronged, in saying that I pleaded Not Guilty, for I pleaded no such Plea; I appeal to the Court, and to all that heard me, whether I pleaded any such Plea: for before I pleaded, the Court became engaged to me, to take no Advantage of my Ignorance of the Formalities of the Law; and promised to give me as much Privilege as my Lord Duke of *Hamilton* and others enjoyed before the Court of Justice.

Ld *Keble.* We know all this.

Lieut. Col. *Lilburne.* Sir, by your favour, I pleaded conditionally, and now I make my absolute Plea to the Indictment, which is this; That I except against the Matter and Form of it, Matter, Time and Place, and humbly crave Counsel to assign and plead to the Errors thereof.

Ld *Keble.* You must hear us, we hear you; a word is a great deal; these things we have taken perfect notice of, the Court is not ignorant of them; therefore they need not so suddenly be repeated to us again; you need not repeat these things, for I tell you again, they are all fresh in our Memories, and that we have done we must maintain, or we have done nothing.

Lieut. Col. *Lilburne.* Truly it is requisite for me to say, that I am wronged, I had no such single Plea; I plead a Plea at large to the Errors of the Indictment; and first now crave liberty of the Law of *England* to have Time and Counsel assigned me.

Ld *Keble.* You shall have the Laws of *England*, although you refuse to own them in not holding up your Hand; for the holding up of the Hand hath been used as a part of the Law of *England* these 500 Years. Go on.

My Lord, the Prisoner at the Bar stands indicted as a Traitor, for that he contriving, and maliciously intending not only to disturb the publick Peace, but also to bring the Government of the Nation, happily settled in a free

Mr. the
Counsel that
was an Assis-
tant to Mr.
Prideaux.

State or Commonwealth, without a King, or an House of Lords, and the Commons in Parliament assembled to bring in Disgrace and Contempt amongst all good Men; he did the first of this Instant *October*, and divers times before and since in this City, falsely and maliciously, advisedly and traitorously, by writing, printing and openly declaring, in and by one Paper of his, called *A Salva Libertate*, and by divers other Papers and Books, whereof one he calls, *An Impeachment of High Treason against Oliver Cromwell and his Son-in-law Henry Ireton*; and another Book of his, entitled, *An Out-cry of the Young Men and Apprentices of London*, directed to all the private Soldiers of the Army, &c. A third, *A Preparative to an Hue and Cry after Sir Arthur Haslerig*; and a fourth, *The Legal Fundamental Liberties of the People of England revived*: That he did in these Books publish, That the said Government is tyrannical, usurped and unlawful; and that the Commons in Parliament assembled, are not the Supreme Authority of this Nation. He stands further indicted, That he, as a false Traitor, did maliciously, advisedly and traitorously, plot and contrive to raise Force against the present Government, and for the Subversion and Alteration of it; and for the fulfilling of his most malicious and traitorous Designs, he did, in and by the said traitorous Books, falsely, maliciously and advisedly, utter and declare several most false and scandalous, malicious and traitorous Words and Writings, that in the Indictment are particularly named and expressed. And thirdly, That as a Traitor, not being an Officer, nor a Soldier, or a Member of the Army under the Command of the now Lord General *Fairfax*, he did most maliciously and traitorously endeavour to withdraw certain Soldiers of that Army from their Obedience to their superior Officers, which are particularly named in the Indictment: And that for the full Accomplishment of his Contrivances and Endeavours, he did maliciously, advisedly and traitorously, publish and deliver the poisonous Book, called *An Impeachment*; and in particular directed by the Title of the Book, to all the People of *England*, being for that end published by him to publick View: In which Book are contained most false and scandalous, malicious, mutinous and traitorous Expressions, as in the Indictment are set forth. And further, That in the said Book, which he called *An Impeachment*, That the present Government is tyrannical and usurped; and that the Commons of *England* in Parliament assembled, are not the Supreme Authority. And he further stands indicted, and the Jury further finds and presents, that by all these and other Expressions written by him, and published by him in written Papers and printed Books, he hath falsely, maliciously and traitorously stirred up strife on purpose, and to the intent, to stir up and raise Force against the present Government, settled in the way of a Commonwealth and free State, without King and Lords, on purpose it to subvert and destroy. And further, he hath also most traitorously endeavoured to withdraw the private Soldiers from their Obedience and Subjection to their superior Officers: And all this in manifest Contempt of the Laws of this Commonwealth, in that behalf made and provided, and to the hazard of the Overthrow and utter Subversion of the said Government.

To this Indictment the Gentleman hath pleaded Not Guilty, and hath put himself upon his Country; and if we can prove this against his Plea, it is at an Issue.

Lieut. Col. *Lilburne*. I deny that, Sir, I never pleaded any such single Plea as Not Guilty: and you Gentlemen of the Jury, I beseech you take notice he extremely wrongs me in saying so; for my Plea was a conditional Plea, and as a Plea at large.

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you have heard the Indictment read unto you, and you have heard it opened unto you; and you have heard what Mr. *Lilburne* says, That he did not plead Not Guilty: and I hope he is ashamed of his Plea now he hears the Indictment opened unto him. My Lord, in this Indictment there are contained these several Grand Treasons.

The first is, That he hath advisedly, traitorously and maliciously published, That the Government that is now established, by way of a free State or Commonwealth, without either King or House of Lords, is tyrannical, usurped and unlawful. And further, That the present Parliament now assembled, are not the Supreme Authority of the Nation.

The second is, That he hath plotted, contrived and endeavoured to stir up, and raise Forces against the present Government, and for the Subversion and Alteration of the same.

The third is this that relates to the Army; you have heard what his Expressions have been, and they have been read unto you, concerning them and the rest, That he, not being an Officer, or Soldier, or Member of the present Army, hath offered to stir up Mutiny in the Army, and to withdraw the Soldiers from their Obedience and Subjection to their superior Officers, and thereby to stir them up to Mutiny and Discontent.

These are the main Parts and Substance of what I intend to charge him with in the Evidence, to prove that which was contained in the Indictment. My Lord, you have heard, in what hath been read out of the Indictment, what Expressions they are; those that are traitorous to the Publick, and have been so declared, so judged, so executed, these are here Mr. *Lilburne's* engaged true Friends: The Parliament, the Government, the Authority of both Parliament and Army, they are Tyrants, Usurpers, Mercenaries, Janisaries, Murderers, Traitors, standing by their own Power and Swords, and over-ruling all by their Wills: These are the Expressions that he hath used. My Lords, I shall not trouble you with any thing of Aggravation; for, my Lords, I do conceive, that the reading of the Books themselves aggravates every thing against him; and I think there is no *Englishman* (as Mr. *Lilburne* so often styles himself to be) will own such Words or Acts as these are.

And truly, my Lord, if I had read the Books, and not known the Person, I should not have thought he had been either a Christian, or a Gentleman, or a civil Man, to have given such base and bitter Language; but, my Lords, and you of the Jury, I shall hold you no longer, the Evidence being so plain, and the Matter so foul, that it will not admit over-much, or stand in need of any Dispute; and to make it plain and clear to your Judgments and Consciences, there

are Witnesses in the Court evidently to prove every thing that will stand in need to be proved for the Indictment.

My Lords, the Words are maliciously, advisedly, and traitorously: I shall not catch at Words, but, as himself says, what he prints is of mature and deliberate Consideration; and such are his Books in print, that himself hath either printed, or caused to be published.

The first that he is charged withal, is that which is called *An Outcry*: It hath a very dangerous Title, and in the Direction especially to the Soldiers of the Army; but especially to the private Soldiers of the General's Regiment of Horse, that helped to plunder the true-hearted *Englishmen*, traitorously defeated at *Burford*; so that the Rebels at *Burford* were Mr. *Lilburne's* dear Friends. My Lords, it hath not only a dangerous Title, but was published at a dangerous Time, yea, and for a dangerous End, which was to stir up the great Mutiny that was in the City of *Oxford*. My Lord, for the Proof of this we shall offer this, That Mr. *Lilburne* himself was Captain *Jones's* Associate in the publishing that Book: For Mr. *Lilburne* and this Captain *Jones* brought this Book to the Press to be printed. We shall offer unto you where he hath published it to Soldiers of the Army, to engage them in a Mutiny and Discontent against their superior Officers. Therefore in the first place call *Thomas Newcombe*.

Thomas Newcombe sworn.

Justice *Jermin*. Before you speak look upon the Prisoner first, whether you know him, or not.

Mr. Attorney. My Lord, if you please, he may take the Book in his Hand, and see whether he printed it, and when he printed it, and who brought it to the Press.

Mr. *Newcombe*. I printed of this Book only the last Sheet, not knowing where the former part of it was done; which Book was brought to me by Lieut. Col. *Lilburne* and Capt. *Jones*, which Capt. *Jones* did agree with me in the Price: I was stop'd in the Proceedings in it. I say that Capt. *Jones*, together with Lieut. Col. *Lilburne*, did bring it to me, and that Capt. *Jones* did agree with me in the Price; but I was taken before I did perfect it: But Capt. *Jones* did indent with me for the Price. But this I must say, Lieut. Col. *Lilburne* came alone with the Copy; and afterwards at Night he came again, and had a Proof of it; and that he was present when it was corrected.

Mr. Attorney. And when the first Sheet was printed, then they came at Night again, and examined the Proof with Capt. *Jones* and his Corrector?

Ld *Keble*. And he brought the Copy of the whole Draught of the Book unto you?

Lieut. Col. *Lilburne*. Sir, by your favour, if Mr. *Prideaux* have done with the Witness, I crave my Right by Law to ask him some Questions. In the first place, I desire he may be asked, Whether I was either Reader of the original Copy, or the Over-looker of the printed Proof?

Mr. *Newcombe*. You had a printed Sheet of it, and that was all.

Lieut.

Lieut. Col. *Lilburne*. I desire to know whether I was either the Reader of that he printed, or the Looker upon the written Copy?

Mr. *Newcombe*. You look'd upon the Sheet that was printed, Capt. *Jones* read the Manuscript.

Lieut. Col. *Lilburne*. Ask him the Question thus, Whether was I the Corrector of the Thing printed, or the Looker-on upon the printed Copy? And whether, or no, he can swear that that printed Sheet, that he says I had, was corrected and revised, and was a true and perfect Sheet, according to the Original?

Mr. *Newcombe*. It was a Copy of the Sheet before it was corrected or revised.

Mr. *Attorney*. And Mr. *Jones* did read the Original, and Lieut. Col. *Lilburne* corrected the Copy.

Lieut. Col. *Lilburne*. Under favour, you are mistaken: He says that I cast my Eye upon the Copy; but doth not in the least say that I corrected it. And therefore, Sir, you do abuse me, in going about to make him say more than his own Conscience tells him is Truth.

Ld *Keble*. While the Examination was, he saith you read the Proof.

Lieut. Col. *Lilburne*. Sir, he says no such Thing, by your favour.

Ld *Keble*. Mr. *Newcombe*, was not Mr. *Lilburne* there the second time at Night, and did he not look upon the Copy?

Mr. *Newcombe*. That he did, my Lord: But, my Lord, I shall tell you the Manner of our Trade in this particular. The Manner is, That after we have set a Form of the Letter, we make a Proof of it, which Proof we have a Corrector does read: My Corrector he had one, being he corrected it, and Capt. *Jones* look'd upon the Manuscript. And Lieut. Col. *Lilburne* had a Copy of the same Sheet uncorrected; but he did not correct it, nor read to the Corrector. There was two pulled off; the Corrector had one, and Mr. *Lilburne* had the other; and Capt. *Jones* look'd upon the Manuscript, and read it to the Corrector.

Lieut. Col. *Lilburne*. He has declared unto you, That he was taken printing the Thing before it was perfected: I desire to know whether I was at his House to give any further Directions at all after it was taken?

Mr. *Attorney*. That's no Thanks neither to you nor him.

Lieut. Col. *Lilburne*. I pray let him answer the Thing: Let me have fair Play above board. Sir, I beseech you let me hold him close to the Question. He says he was taken before the Sheet was perfected: Truly I think they are his very Words.

Mr. *Newcombe*. I said in my Examination that it was a Proof of that printed which you had.

Lieut. Col. *Lilburne*. I desire again to know this of him, whether before he had printed or perfected that Sheet he had doing, he was not taken, and both the Forms?

Ld *Keble*. Mr. *Lilburne*, you must desire us to ask him the Question; and not you to demand it of your self.

Lieut. Col. *Lilburne*. I shall, Sir.

Mr. *Newcombe*. It was before the Forms were taken.

Lieut. Col. *Lilburne*. I ask you, whether before the Things were compleat and perfect, your

Forms were not both taken, and your Person seized upon?

Mr. *Newcombe*. There were only some few Copies printed, and then I was seized upon, and the Forms taken away before I had perfected the Sheet. But this I say, He did not indent with me for the Price; neither had I the Copy from Mr. *Lilburne*'s Hands, but from Capt. *Jones*'s Hands.

Justice *Fermin*. You say that he had one Proof, and *Jones* another: When was this you speak of? Give us the Time as near as you can.

Mr. *Newcombe*. I cannot justly say the Time; but as I remember, it was about seven or eight Weeks since.

Mr. *Attorney*. Stand you aside; and call *John Tooke*, *John Skinner*, *Thomas Lewis*, *John Hawkins*, and *John Merriman*, Witnesses sworn.

Mr. *Attorney*. *John Tooke*, do you declare now your Knowledge. That which I call him for, is to this purpose, That Mr. *Tooke* being a Soldier of the Army, one of them mentioned in the Indictment, Mr. *Lilburne* delivered him one of the *Outcries*, on purpose to draw him from his Obedience to his superior Officers.

Ld *Keble*. Shew him the Book.

Mr. *Tooke*. I have seen the Book; but I had not the Book in my Hand before.

Mr. *Attorney*. Tell what you know; that's all we ask you.

Mr. *Tooke*. About seven Weeks ago, being at Dinner with *Thomas Lewis* and *John Smith*, all Soldiers, after Dinner we met with Lieut. Col. *Lilburne* in *Ivy-Lane*; and *Thomas Lewis* knowing of him, took acquaintance of him.

Justice *Fermin*. All Soldiers under my Lord General *Fairfax*?

Mr. *Tooke*. Yes, Sir.

Justice *Fermin*. Go on.

Mr. *Tooke*. Mr. *Lilburne* asked me to go and drink a Cup of Beer: We did so. And so when we went in, he asked whether we had seen such a Book as the *Apprentices Outcry*? And Mr. *Lewis* answered, That he had seen it in a Man's Hand. Then Lieut. Col. *Lilburne* said he had one in his Pocket, that was given him; and if he pleased to accept of it, he would give it him. So told him he had thought to buy one of them, for he heard they were sold in the City; but he would accept of his. So Mr. *Lilburne* delivered it to Mr. *Lewis*.

Mr. *Attorney*. What did Master *Lilburne* say further unto you?

Mr. *Tooke*. He said, That you Soldiers keep us all in Slavery.

Lieut. Col. *Lilburne*. I beseech you, let me ask him one Question.

Mr. *Tooke*. There was some to be sold; but I forgot the Place.

Mr. *Attorney*. Did he name a Place and Person to you, where you might have some of them?

Mr. *Tooke*. He did name a Place, but I have forgot it, where there were more Books to be sold.

Lieut. Col. *Lilburne*. Sir, I beseech you let me ask you one Question----

Ld *Keble*. Mr. *Lilburne*, for your Direction, you must make your Question to us, and require us to ask him the Question; and then if your Question be fair, it shall not be denied you.----

Lieut.

Lieut. Col. *Lilburne*. Then thus: Whatsoever this Gentleman says of meeting him in *Ivy-Lane*, and desiring him to go to drink with me, yet I desire you to ask him whether I did take Notice or Cognizance of any of them first? or whether they did speak to me before, before ever I said any thing to them?

Ld *Keble*. To what end do you ask this?

Lieut. Col. *Lilburne*. Because in your Indictment I am charged that I went among the Soldiers to seduce them from their Obedience to their Superior Officers; when I have made it my Endeavour to shun them as much as I can, and not to come nigh the Place where I know they are, if I can avoid it; no, although I meet with them, not to discourse with any of them, unless they begin first.

Ld *Keble*. I tell you this, which may direct you afterwards: Whosoever began to discourse first, if you did give them the Book afterwards, it is all one.

Lieut. Col. *Lilburne*. But, shall please you, I am upon my Life; and by Law I ought not to be denied to ask the Witnesses that swear against me any Question that I please, that I my self judge pertinent for my Advantage.

Mr. Attorney. Call *Thomas Lewis*.

Thomas Lewis. And it shall please you, I am upon my Oath to speak the Truth; and I shall desire by the Help of God so to do, and no more. One Day, which I conceive, to my Remembrance, was the 6th Day of September last, we being upon a Guard at *Paul's*, went to an House to refresh our selves; and when I came forth I met with Lieut. Col. *John Lilburne*, whom I had formerly known, and sometimes visited in his Imprisonment, and whom I was very glad to see, having a little before heard as though some sudden Accident or Mischance had befallen him; and I did ask of him how he did. He said unto me he was well: And so with that says he, What are you upon the Guard? To my best Remembrance this was his Expression; yet see whether it was he, or another that said it. As I take it these were his Words: Says he, I have almost forgotten you. Sir, I was known to you formerly, having sometimes been with you in the *Tower*. Says he, Will you go drink? If you please, we will: And so upon that we went to a Place called the *Red-Cross* in *Newgate-Market*. And there we sitting down to drink, having not much Discourse for the present, we sitting still, he asked me at length, Have you heard of a Book called the *Outcry of the Apprentices*? Sir, said I, I have heard of it, and have a longing Desire to buy one of them to read it; and my Reason why I so said was, because I did understand it was to be sold at the *Exchange*; there I intended to go to get one of them. Says he, I had one given to me; and if you will, I will give it unto you. So I received the Book with Thankfulness; and further expressing, which was something mean, it would save me a Penny in buying of it. And I further entreated him, if he could direct me where I might buy some more of them. I have a Friend, says he, in such a Place; if you would go to him, and tell him that I am here, I should think my self beholden to you. Now the Place's Name was *Martin's-Lane*, but the Man's Name, whither I went, I have forgot, and the Man too: I never heard of the Man before nor since; so I told Mr. *Lil-*

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burne. Now he said to me, Peradventure where you find that Man, you may have some more of the Books. Now these were the Words, to my best Remembrance and Knowledge, as I desire to speak with a pure Conscience.

Mr. Attorney. Mr. *Lilburne* gave you one of those Books?

Mr. *Lewis*. Yes, Sir; and I put it into my Pocket, and when I had done, Mr. ---- he will deliver him ----

Whether there was any Books or Passages betwixt them? And upon which he told him, Yes; there is a Book that Mr. *Lewis* has, that has such a Title.

Mr. Attorney. What did you with the Book?

Mr. *Lewis*. I delivered it to the Lieutenant.

Mr. Attorney. The same Book that you received from Mr. *Lilburne*, you delivered to the Lieutenant.

Mr. Attorney. What did Lieutenant-Colonel *Lilburne* say to you concerning your Pay? Did not he ask you, &c.

Lieut. Col. *Lilburne*. I pray, Sir, do not direct him what to say, but leave him to his own Conscience and Memory, and make him not for fear to swear more than his own Conscience freely tells him is true.

Mr. *Lewis*. The Discourse was thus: Says he, You Soldiers (to my best Remembrance) are the Men that keep us all in Slavery. Now what to conceive of that Expression, I must leave that unto you. And as concerning our Pay, he asked us, How is your Pay? These were the Words, or to that effect. But there was Money come for us, and ready to be delivered out unto us.

Mr. Attorney. Call *John Skinner*: He was one of those that was in Company, and can speak to it.

Mr. *Skinner*. To my best Remembrance, and it shall please you, 'twas the beginning of September, I cannot justly tell what Day, that I met with Mr. *Lilburne* in *Ivy-Lane*, near unto *Paul's*; and meeting with him, I was going towards the Guard, and so was Mr. *Lewis* with me, being walking forth of the Lane, having been refreshing our selves. And near the end of the Lane we met Lieutenant-Colonel *Lilburne*, which Lieutenant-Colonel Mr. *Lewis* very well knew; and knowing of him, asked him how he did, and how it went with him, in regard he had heard before he was in Prison; and so I did not take any heed what he said further. Neither do I know whether Mr. *Lewis* asked Mr. *Lilburne* to go with him to drink, or Mr. *Lilburne* asked him; but to the *Red-Cross* in *Newgate-Market* we went to drink. And Mr. *Lilburne* did ask Mr. *Lewis* whether or no he had seen the Book which was called the *Apprentices Outcry*. Mr. *Lewis* answered him, That he had not seen the Book, (as I remember;) but he had heard of that Book that it was forth, and he did intend to buy one of them, in regard they were publickly sold abroad. Says Mr. *Lilburne*, I have such a Book in my Pocket, which was given me even now; and I will give it you, if you will.

Lieut. Col. *Lilburne*. I pray let me hear two or three Lines before.

Mr. *Skinner*. Whereupon you answered, and said, I have the Book in my Pocket, and it was given me, and I will give it you. And Mr. *Lewis* received it; and that was all. And presently I went away.

H

Mr.

Mr. *Prideaux*. You hear, Gentlemen of the Jury, that it is the same Book that he received from the Hands of Lieut. Col. *John Lilburne*.

Lieut. Col. *Lilburne*. My Lord, I beseech you hear me before the Witnesses go: And he that was sworn before, I desire to ask him this Question, Whether or no that this is the very Book that is mentioned in the Indictment? And whether or no they have examined the Words of it with the Indictment?

Mr. *Prideaux*. You need not; that shall be proved presently. Mr. *Skinner*, That Book which Mr. *Lilburne* gave you, what did you with it?

Mr. *Skinner*. It was delivered unto my Lieutenant, who stands there.

Lieut. It was delivered unto my Captain upon the Guard.

Capt. *Merriman* took the Book into his Hand, and said, This individual Book, signed in several Places by me, I delivered to Mr. *Frost*, Secretary to the Council of State; and Mr. *Frost* caused me to sign it in several Places, whereby it could not be mistaken; and that is the very individual Book.

Mr. *Prideaux*. My Lords, and you Gentlemen of the Jury, we have thus far gone in the Evidence; That Mr. *Lilburne* brought the last Sheet of it to the Press the first Time he came with Capt. *Jones*; and he came the second Time with him to examine it, that is, he had a printed Copy, that was then printing, to be printed, and was the Corrector for the Press, reading the Original Copy: So far is he privy to the printing of the Book. In the next Place, three Witnesses (Soldiers of the Army) swear he gave them one of those Books, and one of them gave it to his Lieutenant, and the Lieutenant to the Captain; and the Captain swears this individual Book is that which Master *Lilburne* gave into the Hands of Mr. *Lewis*. What can be more plain than this? I pray you judge. For here is plain Testimony of Mr. *Lilburne's* delivering this Outcry to the three Soldiers, and one of them to his Lieutenant, and his Lieutenant to his Captain, and his Captain to Mr. *Frost*, with Marks upon it: So this is by consequence proved unto you, this is the individual Book that Mr. *Lilburne*, Prisoner at the Bar, gave to the three Soldiers; and which is to be made use of when you have occasion upon the Evidence, to read it as now it is in the Court with you.

Lieut. Col. *Lilburne*. By your Favour, I have had no Answer to the Question, that I humbly craved an Answer to; which is, Whether the Soldiers are positively able to swear that this is the individual Book which they say they had from my Hands? And whether they are able to swear that this individual Book is a true and exact Copy, without Addition or Subscription, of that original Manuscript that the Printer saith Captain *Jones* delivered to his Hands, which, he saith, I had an uncorrected Sheet of.

Mr. *Prideaux*. We shall clear that to you when we come to make use of it.

Lieut. Col. *Lilburne*. I beseech you, Gentlemen of the Jury, to take notice of my Question, and what I am denied.

Mr. *Prideaux*. The next Thing that is charged upon him is a Paper written and entitled, *A Salva & Libertate*. My Lord, I shall open the Thing to you, being directed (my Lord) for the

Prosecution of Mr. *Lilburne*. And having Things of very high Concernment that are charged against him, I did by Word of Mouth send to have him come to me; which I understood he did decline, because the Lieutenant had no Warrant. The Lieutenant of the Tower was pleased to acquaint me with it; and I thereupon directed my Warrant to the Lieutenant to bring him before me. And Mr. *Lilburne*, &c.

Lieut. Col. *Lilburne*. My * Lord, and please your Honours, thus; If we be upon Matter of Fact, let us come to it: Let us have no Introduction to teach the Witnesses what to say, beyond what their own Consciences dictate unto them.

* This was the first or second Time that Mr. *Lilburne's* Tongue slipp'd the calling him Lord.

Mr. *Prideaux*. I shall go no further in it; let the Lieutenant of the Tower speak himself.

The Lieutenant of the Tower sworn.

Mr. *Prideaux*. Lieutenant of the Tower, you are questioned about the *Salva Libertate* that Mr. *Lilburne* delivered unto you: Have you the Original?

Lieut. Tower. Yes, Sir, I have.

Mr. *Prideaux*. How came you by it?

Lieut. Tower. I shall be short in what I say, because I will not trouble the Court.

Lieut. Col. *Lilburne*. Let me hear you then.

Lieut. Tower. Being abroad, there was a Message left with my Servants, That I should bring up Lieutenant-Colonel *Lilburne* to Mr. Attorney's Chamber in the Temple; and when I came in, I had notice of it. I did then send to Lieutenant-Colonel *John Lilburne*, to let him know what Command I had received from the Attorney-General, the next Day to carry up Lieutenant-Colonel *John Lilburne* to the Attorney-General's Chamber. But Lieutenant-Colonel *Lilburne* not well understanding whether I had a written Warrant, or no; but before he came at home he recalled himself, and came back, and desired the Sight of my Warrant. I told you before I had no Warrant, but by Word of Mouth. Why, says he, do you think I will go upon a Verbal Warrant? Saith he, I will not go unless you force me. But the next Day Mr. Attorney-General was acquainted that he refused to come without a Warrant. When the Warrant was made, I met with Lieutenant-Colonel *Lilburne* about Ten of the Clock in the Tower, who intreated me to let him see it. I shew'd it him, he read it, he desired a Copy of it, takes it; which when he had, he went from me, and about two Hours after he came to me, about One of the Clock, and said, I pray receive this from me, for (says he) I do intend not to own the Authority and Power of that Gentleman that sent me the Warrant. Whereupon I told him I would shew this same to the Attorney-General: Why, says he, I give you it to that Purpose. When the time came, Lieut. Col. *Lilburne* did go along with me in an orderly civil way: I had no body but my Man, for I told him, I will take no body but my Man, if you will engage yourself to me that you will return peaceably: which he did, and so we went very orderly to Mr. Attorney's Chamber; which is all for that I can say.

Mr. Attorney. If you please that the Lieutenant may upon his Oath declare, whether that be the true Original he had from Mr. *Lilburne's* own Hands or no?

Lieut.

Lieut. Tower. It was never out of my Custody since he gave it me.

Ld Keble. Mr. *Lilburne*, you do acknowledge it to be your own Hand-writing; shew it him.

Lieut. Col. Lilburne. I am too old with such simple Ginns to be catch'd; I will cast mine Eyes upon none of your Papers, neither shall I answer to any Questions that concern myself: I have learned more Law out of the Petition of Right, and Christ pleading before *Pilate*, than so.

Mr. Attorney. Would you had learnt more Gospel.

Judge Jermin. You may answer a Question whether it be true or false, and confess, and glorify God.

Lieut. Col. Lilburne. I have said, Sir; prove it: I am not to be catch'd with such Fooleries.

Ld Keble. You see the Man, and the Quality of the Man; this is the Paper that he delivered into his own Hand, and that is sufficient, as well as if it was of his own Hand-writing.

Lieut. Col. Lilburne. Good Sir, your Verbal Bench-Law is far short of your written Text in your own Law-Books.

Judge Jermin. Put it into the Court.

Ld Keble. Your writing or not writing is nothing; you delivered the Book.

Lieut. Col. Lilburne. Sir, I desire to know in what Place, whereabouts in the Tower of *London*, the Lieutenant of the Tower saith he received this Paper.

Ld Keble. Let him name the Place where it was delivered.

Lieut. Tower. The Place was at the Steps, at the bottom of the narrow Passage at my Garden-end, in the Cart-way where the Carriages come up.

Lieut. Col. Lilburne. Whether is that Place in the Liberties of *London*, or is it part of the County of *Middlesex*?

Lieut. Tower. The Tower is in * *London*, some part of it, and some part in *Middlesex*; but unto which Place that part of the Tower belongs, I am not able certainly to say, but it hath commonly been reputed in *Middlesex*.

Mr. Attorney. My Lord, you may see the Valiantness of this Champion for the People's Liberties, that will not own his own Hand; altho I must desire you Gentlemen of the Jury to observe, that Mr. *Lilburne* implicitly confesseth it.

Lieut. Col. Lilburne. Sir, I deny nothing: and what now can be proved mine, I have a Life to lay down for the Justification of it, but prove it first.

Mr. Attorney. My Lord, the next thing to prove the Charge against him is a very high one, it is styled Master *Lilburne's*, and his Name is to it: it is intitled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton, Esq; late Members of the late forcibly dissolved House of Commons, presented to publick View by Lieut. Col. John Lilburne, close Prisoner in the Tower of London.* My Lord, I doubt he will not own it; but yet, my Lord, he may be asked the Question.

Lieut. Col. Lilburne. I shall deny nothing I do: And yet I have read the Petition of Right,

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Sir, that teacheth me to answer to no Questions against or concerning myself, and I have read of the same to be practised by Christ and his Apostles.

Mr. Attorney. You will not own it, the Book you have read?

Lieut. Col. Lilburne. You may make your Advantage of it.

Mr. Attorney. We shall prove it, call Witnesses.

Thomas Daffern, Richard Lander Marshal, Major Hawksworth, Governour of Warwick-Castle; all sworn.

Mr. Attorney. Mr. *Daffern*, if you please he may be asked where he met Mr. *Lilburne*, the Time when, what Book was given him, and to what Purpose it was given him.

Mr. Daffern. Why, it was upon the 12th of *August* last. Having been in *Southwark*, I met with Lieut. Col. *Lilburne* upon the Bridge, I went back with him to his House at *Winchester-house* in *Southwark*: He had leave to visit his Family at that time, being very sick, and I told him I was going into *Warwickshire* the next Day; and he having heard that Col. *Ayres* was then removed from *Oxford* to *Warwick-Castle*, he gave me a Book to carry to him, and I delivered it to him at *Warwick-Castle*.

Mr. Attorney. The Book that he gave you, you gave to the Governour: did you see any more of them?

Mr. Daffern. I never saw any of them but that, which was both the first and the last I have seen of them.

Mr. Attorney. *Lander* the Marshal was present at that Time, was he not?

Mr. Lander. That I was, and I had it from him, and I delivered the Book to Major *Hawksworth* the Governour.

Mr. Attorney. Major *Hawksworth*, what did you do with the Book?

Major Hawksworth. I sent it to Colonel *Purefoy*, in a Paper sealed with three or four Seals.

Mr. Attorney. Call Col. *Purefoy*.

[Col. *Purefoy* sworn.]

Lieut. Col. Lilburne. I hear not one Word: Under Favour but one Word, I crave but one Word, I have an Exception. First, Col. *Purefoy* is one of those that call themselves the Keepers of the Liberties of *England*; and for committing Crimes against them I am indicted, and he is one of them, and therefore a Party, and in that respect in Law he can be no Witness against me. It would have been very hard for the King to have been a Witness against that Man that was indicted for committing Crimes against him; such a thing in all his Reign was never known.

Col. Purefoy. I received this Book, sealed in a Letter, from the Governour of *Warwick-Castle*, Major *Hawksworth*; I know his Hand, and I know the Day he sent me this very individual Book, and my Hand is at it, and the Governour who sent it up to me, which I declare to be the very individual Book that I received from him.

Mr. Attorney. Mr. *Lilburne*, you are mistaken; Col. *Purefoy* is a Member of Parliament, he is none of the Keepers of the Liberties of *England*.

When the Duke came to the Scaffold, perceiving greater Silence than he expected, tho' he had resolv'd to make no publick Speech, yet being invited by the Attention he observ'd, he spoke to the People; but as he had not premeditated it, no Copy remains but what was printed from the Notes of the Hearers, and therefore Dr. Burnet says he only gives us the Heads of it; as follows,

He address'd himself to the Sheriff, and told him, he judg'd it not very necessary for him to speak much, his Voice was so weak and low, that few of the Croud that look'd on would hear him; nor was he ever so much in love with speaking, or with any thing he had to say, that he took much Delight in it: Yet since this was his last, he being by the Divine Providence of Almighty God brought justly to that End for his Sins, he would speak a little to the Sheriff, for his Voice could not reach others. He was now to suffer as a Traitor to the Kingdom of *England*, a Country which he had ever lov'd equally with his own, not having intended any general Prejudice to it, or to any particular Person in it: His late Actings were the Commands of his own Country, which he could not disobey. It is true, it had pleased God so to dispose of the Army under his Command, that it was ruin'd, and he for being cloath'd with a Commission to be General, stood now ready to die. He would not repent what he had pleaded for his own Defence, God was just; nor would he say any thing of his Sentence, but that he did willingly submit to God's Providence, acknowledging that on many Accounts he deserv'd Punishment in this Life, as well as in the next, for he confess'd himself a great Sinner: Yet for his Comfort he knew there was a God in Heaven, who was very merciful, and that his Redeemer did sit at his right Hand, and he was confident that he was mediating for him at that very Instant, being hopeful, thro his all-sufficient Merits, to be pardon'd all his Sins, and to be receiv'd into his Mercy, trusting only to the free Grace of God thro Jesus Christ. He declar'd he had never been tainted in the Religion profess'd and establish'd in the Land, in which he had been bred from his Infancy: It was not this or that Mode or Fancy of Religion that was to be built on, but one that was right and sure, and came from God.

Here observing some were taking Notes, he said he did not expect that, or he had digested what he had said into a better Method: But desir'd that what he had said might not be publish'd to his Disadvantage, since he had not intended to speak any thing when he came to that Place. Then he went on and said, Many dreadful Aspersions had been cast on him, as if his Intentions had not been such as he pretended; but he thank'd God he was unjustly blam'd: That for the King he had ever lov'd him, both as he was his King and his Master, with whom he had been bred many Years, and had been his Domestick-Servant, and that there was nothing the Parliament of *Scotland* declar'd for the King, that was not really intended by himself; and as he hazard'd his Life for him one Way, so he now was to lose it another; and that his Design of Leading in the Army to *England* was really that which was publish'd in the Declaration, in so far as concern'd the King: He was not then to speak of the rest of the Declaration, which had many other Particulars in it; and for what he said of his Duty to the King, there was no Reason to suspect

him of Flattery, or any other End in saying it (God having now so dispos'd of his Majesty) but tho he could gain nothing by it, yet he ow'd the freeing himself of that Calumny to Truth, by which all Men shall gain for ever. There had been many Discourses founded on a Part of the *Scotish* Declaration, which mention'd an Invitation to come to *England*, upon which he had been much labour'd for discovering the Inviters; but he had and did still remit himself to the Declaration, without any other Answer. He was ever willing to serve this Nation in any thing was in his Power, which was known to many worthy Persons in it; and he would still have continued in those Resolutions, had those, in whose Hands the Power was then, thought fit to have preserv'd his Life. But since he was thenceforth to be of no more use, all he could do, was to wish the Kingdom Happiness and Peace, and to pray that his Blood might be the last should be shed: And tho perhaps he had some Reluctance within himself at the Suffering for this Fact, yet he freely forgave all Men, and carried no Rancour with him to the Grave; but did submit to the Will of him who created Heaven and Earth, and himself, a poor sinful Creature then speaking before him: He conceiv'd it could contribute to no End for him to speak of State Business, of the Government of the Kingdom, or things of that Nature; his own Inclinations had been still for Peace. He was never an ill Instrument betwixt the King and his People, nor had he acted to the Prejudice of the Parliament. And as he had not meddled much in those Wars, so he was never wanting in his Prayers to Almighty God for his King's Happiness, and he earnestly prayed God to direct his Majesty (who then reigned) that he might do what should tend to his Glory, and the Peace and Happiness of the Kingdoms. He said he was of the establish'd Religion, which he had profess'd in his own Country where he was born and bred; but for particular Opinions he was not rigid, he knew many godly Men had Scruples about divers things, wherein he had never concern'd himself; nor did Difference of Opinion (which was never more than at this time) move him. His own was clear. He pray'd the Lord to forgive him his Sins, as he freely forgave even those against whom he had the greatest Grounds of Animosity, remembering that Prayer, *Forgive us our Trespases, as we forgive them that trespass against us.*

He discover'd a great Composure by his Looks and Manner of Expression; and when he was desir'd to change the Posture he stood in, since the Sun shin'd full in his Face: He answer'd presently, no, it would not burn it; and he hop'd to see a brighter Sun than that very speedily.

After the Duke had done speaking, he call'd for the Executioner, and desir'd to know how he should sit his Body for the Blow, and told him his Servants would give him Satisfaction. Then he called to his Servants, and commanded them to remember him kindly to divers of his Friends in *England*, particularly to his Mother-in-law, the Countess of *Denbigh*, to whom he had ever paid a filial Respect, and to the old Countess of *Devonshire*: He bid them tell her she would no more question his Loyalty (which she had done sometimes in Raillery) since he was now to seal it with his Blood: Then he kneel'd down and pray'd, after which Dr. *Sibbald* entertain'd him with some pious Discourses; then the Duke pray'd a short

short Prayer himself, and with a chearful Countenance embrac'd the Doctor, and said, *Truly I bless God I do not fear, I have an Assurance that is grounded here (laying his Hand on his Heart) that gives me more true Joy than ever I had. I pass out of a miserable World, to go to an eternal and glorious Kingdom; and tho' I have been a most sinful Creature, yet I know God's Mercy is infinite; and I bless my God I go with so clear a Conscience, that I know not the Man I have personally injur'd.* Then embracing his Servants, he said to every one of them, *You have been very faithful to me, the Lord bless you.* He turn'd next to the Executioner, and after he had observ'd how he should lay his Body, he told him he was to say a short Prayer to his God while he lay all along, and should give a Sign by stretching out his right Hand,

and then he was to do his Duty; *whom he freely forgave, as he did all the World.* And then he stretched himself out on the Ground, and having plac'd his Head right, he lay a little while praying, with great Appearance of Devotion, and then gave the Sign: Upon which the Executioner, at one Blow, sever'd his Head from his Body, which was receiv'd in a Crimson Taffety Scarf by two of his Servants, kneeling by him, and was, together with his Body, immediately put in a Coffin, which was ready on the Scaffold, and from thence convey'd to a House in the *Meuse*, from whence it was, according to the Orders he had given, sent down by Sea to *Scotland*, and inter'd in the Burial-place of his Family.



XLV. *The Trial of Lieutenant-Colonel JOHN LILBURNE*, at the Guild-Hall of London, for High-Treason, the 24th, 25th, and 26th of October 1649. 1 Car. II.*



THE Commissioners Names of the extraordinary Commission of Oyer and Terminer, for the Trial of Lieutenant-Colonel John Lilburne, follow.

Thomas Andrews, Lord-Mayor.
 Richard Keble, Lord Commissioner.
 Philip Jermin, Justice of the Upper Bench.
 Tho. Gates, Baron.
 John Puleston, Justice of the Common-Pleas.
 Francis Thorpe, Baron and Member.
 Rob. Nicolas, Member, } Justices of the Upper
 Richard Aske, } Bench.
 Peter Warburton, Justice of the Common-Pleas.
 Alexander Rigby, Baron; but absent.
 Sir Thomas Fowler.
 Sir Henry Holcroft.
 Sir William Row.
 Sir Richard Saltonstall.
 Sir Richard Sprignall.
 Sir John Woolifson.
 Sir William Roberts.
 John Green, }
 John Clarke, } Serjeants at Law.
 John Parker, }
 William Steel, Recorder.
 John Fowke, }
 Thomas Foote, }
 John Kendrick, }
 Thomas Cullum, }
 Simon Edmonds, } Aldermen.
 Samuel Avery, }
 John Dethicke, }
 Rob. Titchburn, }
 John Hayes, }
 Henry Proby, Common Serjeant.

Thomas Brigandine.

Nathaniel Snape.

Edward Rich.

Owen Roe.

Tobias Lisle.

Austin Wingfield.

Richard Downton.

Daniel Taylor.

William Wibend.

Silvanus Taylor.

At the Guild-Hall of London, the 24th of October 1649, being Thursday, at the Trial of Lient. Col. John Lilburne.

O Yes made; all Persons that were adjourned to the Court, requir'd to make their Appearance.

The Lieutenant of the Tower of London, Col. Francis West, called to bring forth his Prisoner, according to the Precept.

Whereupon Col. West, Lieutenant of the Tower, brought up the Prisoner out of the *Irish* Chamber, where he had been some time before the sitting of the Court, and was guarded by the said Lieutenant, and a special Guard of Soldiers besides. And being brought to the Bar, the Sheriffs of London were directed to take the Prisoner into their custody.

Silence commanded.

Cryer. John Lilburne hold up thy Hand.

Lieutenant-Col. Lilburne directed himself to Mr. Keble, one of the Keepers of the Great Seal, as the President of the Court, and said to this purpose: Sir, will it please you to hear me?

* See Clar. Hist. Vol. III. p. 390. The Notes subjoined to this Trial were inserted in the first Edition of it.

and if so, by your favour thus. All the Privilege for my part that I shall crave this day at your Hands, is no more but that which is properly and singly the Liberty of every free-born *Englishman*, viz. The Benefit of the Laws and Liberties thereof, which by my Birth-right and Inheritance is due unto me; the which I have fought for as well as others have done, with a single and upright Heart; And if I cannot have and enjoy this, I shall leave this Testimony behind me, That I died for the Laws and Liberties of this Nation; and upon this Score I stand, and if I perish I perish. And if the Fact that I have done, cannot be justified by the Law of *England*, let me perish. I mention none of this for the gaining of Mercy, or by way of Merit; no, I scorn it: for Mercy I crave from none, but from the hands of my God alone, with whom I hope, and am assured one day to rest; whom I have set before my eyes, and so walked, as believing I am always in his Presence, in whose Power my Confidence is fixed, whom I take and own to be my Stay, my Staff, my Strength and Support, and in whom I rest as the Life of my Life, and whom I hope to meet with Joy, when this fading and uncertain Life shall have an end, to live with him in Glory and Blessedness for evermore. And therefore, because I would not willingly trouble you with many Words, to cause you to spend your time impertinently; therefore, Sir, in reference to the Court, I shall crave but so much Liberty from you as was given to *Paul* when he pleaded for his Life before the Heathen *Roman* Judges, which was free Liberty of Speech to speak for himself; the which I now humbly crave as my Right, not only by the Law of God and Man, but also by the Law and Light of Nature. And I shall do it with that Respect, Reason, and Judgment, that doth become a Man that knows what it is to plead for his Life. I hope God hath given me Ability to be Master of my own Passion, and endow'd me with that Reason, that will dictate unto me what is for my own good and benefit.

I have several times been arraigned for my Life already. I was once arraigned before the House of Peers for (sticking close to the Liberties and Privileges of this Nation, and those that stood for them) being one of those two or three Men, that first drew their Swords in *Westminster-Hall* against Col. *Lunsford* and some Scores of his Associates. At that time, it was supposed, they intended to cut the Throats of the chiefest Men then sitting in the House of Commons: I say, for this, and other things of the like nature, I was arraigned by the King's special Command and Order, the first of *May* 1641. I mention it to this end, that when I came before the House of Peers, where was about three or four-score Lords then sitting at the beginning of the Parliament, (who then were supposed the most arbitrary of any Power in *England*) yet I had from them free Liberty of Speech, to speak for my Life at their Bar, without check or controul, in the best manner all those Abilities God had given me would enable me. And when I was at *Oxford*, I was again arraigned as a Traitor before the Lord Chief Justice *Heath*, for levying War at the Command of the then Parliament against the Person of the King: and when I came before him in the *Guild-Hall* of *Oxford*,

he told me (there being present with him, as his Fellow-Judge, Mr. *Gardiner*, sometimes Recorder of the City of *London*, now Sir *Thomas Gardiner*, and others that sat by a special Commission of *Oyer* and *Terminer* from the King; the which Commission I did not so well then understand, as I hope I do now :) And my Lord Chief Justice *Heath* stood up, and in the face of all the Court, and in the face of all the Country present there, told me; Capt. *Lilburne*, you are brought here before us for High Treason, for levying War in *Oxfordshire* against your Sovereign Lord and King; and tho you be now in a Garrison, and were taken in Arms in open Hostility against the King, (yea Sir, and I must now tell you in such Hostility, that we were but about 700 Men at *Brentford*, that withstood the King's whole Army in the Field above five hours together, and fought it out to the very Sword's Point, and to the Butt-end of the Musket; and thereby hindred the King from his then possessing the Parliament's Train of Artillery, and by consequence the City of *London*, in which very Act I was taken a Prisoner, without Articles or Capitulation, and was by the King and his Party then look'd upon as one of the activest Men against them in the whole Company) yet said Judge *Heath*, we will not take advantage of that, to try you by the Rules of arbitrary Martial Laws, or any other arbitrary Ways; but we will try you by the Rules of the good old Laws of *England*: and whatsoever Privilege in your Trial the Laws of *England* will afford you, claim it as your Birth-right and Inheritance, and you shall enjoy it with as much Freedom and Willingness, as if you were in *Westminster-Hall*, to be try'd amongst your own Party. And this we will do for that end, that so at *London* your Friends shall not have any just cause to say, we murdered you with Cruelty, or denied you the Benefit of the Law, in taking away your Life by the Rules of our own Wills. Nay, further said he, Capt. *Lilburne*, it is true I am a Judge, made by my Sovereign Lord the King, according to his Right by *

Law, and so in a special manner am his Servant and Counsellor, and am to act for his Good, Benefit, and Advantage: And yet notwithstanding, it is by the known Laws of this Land my Duty to be indifferent and free from Partiality betwixt my Master and you the Prisoner, and I am specially bound unto it also by my Oath. And therefore you shall have the utmost Privileges of the Law of *England*, which is a Law of Mercy, and not of Rigour, and hath the Life of a Man in tenderest and highest Estimation: And therefore it is the Duty of a Judge by Law, to be of Counsel with the Prisoner, in things wherein by his Ignorance he falls short of making use of the Benefit of the Law, especially when he is upon the Trial of his Life. Yea, and to exhort him to answer without fear, if he perceive him daunted or amazed at the Presence of the Court. Yea, it is my Duty to carry myself with all Fairness and Evenness of Hand towards you; and wherein that there shall seem any Mistakes to appear, in Circumstances or Formalities, to rectify you: For it's my Duty to help you, and not to use any boisterous or rough Lan-

* See the 27 of Hen. 8. c. 24.

† See the 2d part Inst. fol. 28, 30, 42, 43, 53, 319, 316, 591. or part 3. fol. 34.

Language to you in the least, to put you in fear, or any ways prevent the Freedom of your Defence; and according to the Laws of *England* this is my Duty, and this is the Law. And accordingly he gave me liberty to plead to the Errors of my Indictment, before ever I pleaded Not Guilty; yea, and also became willing to assign me what Counsel I pleased to nominate, freely to come to Prison to me, and to consult and advise with me, and help me in point of Law. This last he did immediately upon my pleading to the Indictment before any Fact was proved: all which is consonant to the declared Judgment of Sir *Edward Cooke*, that great Oracle of the Laws of *England*, whose

* Which Orders are dated May 12, 1641. and June 3, 1642. You may at large read at the last end of his *Instit.* part 2.

Books are published by special * Orders and Authority of Parliament for good Law; who in his third Part of his *Institutes*, Chap. of *High Treason*, fol. 29, 34, compared with fol. 137, 230, asserts the same.

Truly, Sir, I being now come before you to answer for my Life, and being no professed Lawyer, may through my own Ignorance of the practick part of the Law, especially in the Formalities, Niceties and Punctilio's thereof, run my self with over-much Hastiness in Snares and Dangers, that I shall not easily get out of. And therefore being all of a sudden bid to hold up my Hand at the Bar, I cannot chuse but a little demur upon it, and yet with all respect to you, to declare my Desirableness to keep within the Bounds of Reason, Moderation and Discretion, and so to carry my self as it doth become a Man, that knows what it is to answer for his Life.

And therefore in the first Place, I have something to say to the Court about the first Fundamental Liberty of an *Englishman* in order to his Trial; which is, That by the Laws of this Land all Courts of Justice always ought to be free and open for all sorts of peaceable People to see, behold and hear, and have free Access unto; and no Man whatsoever ought to be tried in Holes or Corners, or in any Place, where the Gates are shut and barr'd, and guarded with armed Men: And yet, Sir, as I came in, I found the Gates shut and guarded, which is contrary both to Law and Justice.

Sir, the Laws of *England*, and the Privileges thereof, are my Inheritance and Birth-right: And, Sir, I must acquaint you, that I was sometimes summoned before a Committee of Parliament, where Mr. *Corbet* and several others have had the Chair; and there I stood upon my Right by the Laws of *England*, and refused to proceed with the said Committee, till by special Order they caused their Doors to be wide thrown open, that the People might have free and uninterrupted Access to hear, see and consider of what they said to me; although I think the Pretence that I am now brought before you for, be the very same in Substance, that I was conveyed before Mr. *Corbet* for, which was about Books: and I am sure there I did argue the case with him and the rest of the Committee, soundly out in Law; proving that they were bound in Law and Justice freely to open their Doors, for the free Access of all sorts and kinds of Auditors: And I did refuse (as of Right) to proceed with them, till by special Order they did

open their Doors. For no Trial in such Cases ought to be in any Place, unless it be publick, open and free; and therefore if you please that I may enjoy that legal Right and Privilege which was granted unto me by Mr. *Miles Corbet*, and the rest of that Committee, (when I was brought before them in the like Case that now I am brought before you) which Privilege I know to be my Right by the Law of *England*; I shall, as it becomes an understanding *Englishman* (who in his Actions hates Deeds of Darkness, Holes or Corners) go on to a Trial. But if I be denied this undoubted Privilege, I shall rather die here than proceed any further. And therefore foreseeing this beforehand, and being willing to provide against all Jealousies of my Escape, the Fear of which I suppose might be objected against me as a Ground to deny me this my legal Right; and therefore before-hand I have given my Engagement to the Lieutenant of the Tower, that I will be a faithful and true Prisoner to him.

And I hope the Gentleman hath so much Experience of my Faithfulness to my Word, that he doth not in the least question or scruple it; I am sure he hath often so declared to me that he doth not.

Nay, I have not only engaged to be a true Prisoner in the Tower to him, but I have also solemnly engaged to him, that I will come civilly and peaceably with him, and that I will go civilly and peaceably back with him again: And that if any Tumult or Uproar shall arise in the Croud, of which I lose him, and he me; or in case I should be any ways by Force and Power rescued from him, I have also faithfully engaged to him, that I will come again to him (by the Assistance of God) as soon as ever I can get away from that Force or Rescue. And all this I entreated him to acquaint you with, that all Jealousies and Disputes might be avoided.

Judge *Keble*. Mr. *Lilburne*, look behind you, and see whether the Door stands open or no.

L. Col. *Lil*. Well then, Sir, I am satisfied as to that. But then in the next place, I have read the *Petition of Right*, I have read *Magna Charta*, and abundance of Laws made in Confirmation of it; and I have also read the *Act that abolisheth the Star-Chamber*, which was made in the Year 1641, which last recited Act expressly confirms those Statutes that were made in *Edward the Third's* Time, which declares all Acts, Laws and Statutes that were made against *Magna Charta*, to be null and void in Law, and holden for Error.

In the reading of which Laws I do not find a special Commission of *Oyer and Terminer* to be legal and warrantable. I beseech you, Sir, do not mistake me; for I put a vast difference betwixt an ordinary and common Commission of *Oyer and Terminer* for holding ordinary and common Assizes and Sessions, and betwixt an extraordinary and special Commission of *Oyer and Terminer* to try an individual Person or Persons, for a pretended extraordinary Crime. The Laws I last recited, and the Fundamental or Essential Basis of Freedom therein contained, knows no such Names or Commissions of special *Oyer and Terminer*.

And those Statutes in *Edward the First*, and *Edward the Third's* Time, that doth erect those special and extraordinary Commissions, and warrant the Usage of them, are merely

irrational (a) Innovations upon our indubitable Rights contained in *Magna Charta*, and mere Court and Prerogative-Devices to destroy the best of Men, by extraordinary Courts appointed to prejudge Proceedings that should manfully stand in the way of the Prince, or any of his great Favourites: for sure I am from the *Petition of Right*, no Ground or Foundation for any extraordinary or special Commission of *Oyer and Terminer*, upon any pretended, special or great Occasion, cannot be founded; but rather the absolute quite contrary, as to me clearly appears by the very plain Letter of that most excellent Law. And therefore such a special Commission upon any pretended special Occasion, being expressly against our indubitable Rights contained in *Magna Charta*, and the *Petition of Right*, viz. That no *Englishman* shall be subjected to any other Trial, but the ordinary, universal and common Trials at ordinary Assizes, Sessions or Goal-Deliveries, and not in the least to be tryed by extraordinary and special prejudged, packed, over-awing Commissions of *Oyer and Terminer*; and therefore all such extraordinary and dangerous Trials are absolutely abolished, by the late excellent Acts that confirm the *Petition of Right*, and all and every the Clauses therein contained, and abolisheth the *Star-Chamber*, both made Anno 1641.

And, Sir, with your favour, the then Parliaments that made the last cited Laws, were so far from countenancing any special Commissions of *Oyer and Terminer*, upon any special or pretended great Occasions whatsoever that I can read of, that I rather find and read the Parliaments Proceedings in the Year 1641, an extreme Out-cry of the House of Commons against special Commissions of *Oyer and Terminer*, with a great deal of Bitterness and Vehemency, as may fully and clearly be read in that excellent Argument of Mr. Hyde, April 1641, printed and published in a Book, called *Speeches and Passages of Parliament*, p. 409, to 417, which I have here at the Bar to produce; which Mr. Hyde was then the special and appointed Mouth of the House of Commons before the Lords, who unto them in conformity to his Commission from the then House of Commons, complains to the House of Lords extremely of a special Commission of *Oyer and Terminer* that was exercised in the five Northern Counties of *England*; and earnestly, in the name of the House of Commons, craves the special Assistance of the House of Lords to pluck up that Court by the very Roots, founded upon a special Commission of *Oyer and Terminer*, being so illegal and unjust in the very Foundation of it, as it is inconsistent with the People's Liberties, and as that which destroyed and disinherited all the People that were tryed, both of their Birth-right and Inheritance, viz. their Liberties and Freedoms contained in *Magna Charta*. And this, Sir, was the declared and avowed Judgment and Opinion of the House of Commons in April 1641, in their primitive Purity and Non-defilement, when they acted bravely and gallantly for the universal

Liberties and Freedom of this Nation (and not Self-interest) when they were in the Virginity of their Glory and Splendor, as he there fully and most excellently declares; and yet he there gives an extraordinary Reason for the original Erection of that Court founded upon a special Commission of *Oyer and Terminer*, as can be rendred.

The original Reason or Occasion of which, he there declares to be thus: That by reason of the Suppression of the Abbies in the 27th of *Henry the Eighth's* Time, in the North of *England* (through Discontent thereat) there did arise from the said 27th Year to the 30th no fewer than six grand Insurrections, most of them under the Command of some eminent Man of those Countries; which Insurrections and Rebellions occasioned the levying of great Armies, which had like to have set the whole Kingdom in an universal Flame: for the suppressing and preventing of which in future times, King *Henry VIII.* caused a special Court to be erected, by a special Commission of *Oyer and Terminer*; which Court also continued in *Edward the Sixth's* Time, Queen *Mary's*, and first and second of King *James*: The Basis of which Commission was founded upon those fore-mentioned innovating Statutes made in *Edward the Second's* and *Edward the Third's* (b) Time: Which special Commission of *Oyer and Terminer* was several times renewed by the late King *Charles*, as in the fifth, eighth, and thirteenth Year of his Reign. And the said Mr. Hyde there in his Argument or Speech, which I have here in Print, names several of the Presidents of that illegal Court of special Commission of *Oyer and Terminer*: And he there also declares in what an extraordinary Manner, and upon what an extraordinary Occasion it was granted; which was so great, as that a greater could not be imagined: and yet notwithstanding he declares, that this extraordinary Commission, which being granted to suppress and quiet those many extraordinary Insurrections and Rebellions, which do not admit of so long Delay as times of ordinary Trial, in times of Peace, when the ordinary, legal and common Courts of Justice are open and free, will do, when Peace and Quiet is in the Nation, as now it is; and yet for all that, he condemns it for illegal.

And therefore, Sir, admit my Actions in their Tendency, to be as dangerous and heinous as any of my Adversaries can imagine or declare them to be; yet they are but in the Ashes, but in the Hearth, they are not broke out into visible and violent hostile Actions. And therefore I say, if special Commissions of *Oyer and Terminer*, granted in such special and transcendent Cases as those in *Henry the Eighth's* Time, were illegal; much more must a special Commission of *Oyer and Terminer* granted to try me barely for Words, or at most for pretended Writings or Books, at such a time when there is no burning Flame of Insurrections or Rebellions in the Kingdom, but all in visible Peace, and all the ordinary Courts of Justice open: and I and my Friends have often

(a) And excellent to this purpose is Lieutenant-Colonel Lilburne's Argument, in his second Edition of his Picture of the Council of State, p. 8. against the Erection of extraordinary Courts, which thus followeth: He granting that the Parliament hath Power to erect a Court of Justice to administer the Law, provided that the Judges consist of Persons that are not Members of Parliament; and provided the Power they give them be universal; that is to say, to administer the Law to all the People of England indefinitely, who are all equally born free alike, and not to two or three particular Persons solely; the last of which for them to do is unjust, and altogether out of their power, &c. Which Argument or Reason is most notably illustrated and enlarged in the second Edition of the Legal Fundamental Liberties of England, revived of the 8th of June, 1649. p. 72.

(b) Which were Westminster, the second being the 13 of Ed. 1. c. 29. and 2 Ed. 3. c. 2. and 34 Ed. 3. c. 1.

sought to enjoy the Benefit of the Law in a legal Trial, from first to last, but could never enjoy it in the least measure, although many Assizes and Sessions have past over my Head since my first Commitment, now seven Months ago; at the first of which, in the County where my pretended Crime was committed, I ought by Law and Justice either to be tryed or acquitted. So that, Sir, by what I have already said, you may see the Judgment and Opinion of the House of Commons upon special Commissions of Oyer and Terminer, in their first Purity, when as a full House, there being constantly 400 or 500 of them sitting in the House, as the deputed and chosen Trustees of the People of England, whose Opinion was to damm them, and pluck them up by the Roots, as unjust and illegal in their original Institution, which they have accordingly done, and declared to the whole Nation in the Act that abolished the *Star-Chamber*; where that Court spoken against by Mr. Hyde, is totally dammed and pulled up by the Roots. So that now in Law I cannot see how special Commissions of Oyer and Terminer can be legal at this present, admit the Power never so just from whom it comes; but abundantly much more, seeing there is no actual Wars, nor popular Insurrections: which if lately there had been any, and yet were overcome, there is no Pretence or Ground by the good old Laws of England, for any extraordinary Proceedings against any Man, although he had been in Arms against you, but he ought to have the Benefit of the ordinary, accustomed and common Trials at the Common Law, as clearly appears by the express Words of *the Petition of Right* (c). But I was never in any hostile manner against those that are the present Governours of the Nation, but have been under their Command in several Battels in the Nation, and have hazarded my Life for them, and never yet in the least changed my original or first Principles; nor never was engaged in the least in any Hostility against them, but have always, since I five Years ago gave over my Command, lived in Peace and Quietness in mine own House and Abode: and was the same Day at the House of Commons Door that their Votes passed against me, declaring me in general (which in Law signifies nothing) to be a Traitor; and spake with a Gentleman that is now a Judge amongst your selves (*viz.* Mr. Rigby) at the House-door, who, in some Great Ones Names, proffered me large Matters, if I would do as I should be directed by them. After this, I went home to mine own House in *Southwark*, where I stayed in Peace and Quietness, well enough knowing the Votes that that Day passed against me, without either particular Accusation or Accuser, or any such thing; where I stayed, whenas I might easily have escaped the Hands of mine Enemies, and been gone: but having the sweet Peace of a good Conscience within me, which did assure me that I had done nothing that was against the Welfare of the Nation of England in general, nor against the Welfare of any one particular Man in England, but really wish'd it well, and all its Well-wishers:

I say that, notwithstanding my certain Know-

ledge of all that at the House had passed against me; and although I also knew that the further Design against me, which was, That the Council of State (as they are called) would take me away thereupon with armed Force the next Morning; yet notwithstanding all this, I stirred not out of my House, but remained there till about Five a-clock the next Morning; at which time 200 or 300 armed Horse and Foot (without so much as one Civil or Magisterial Officer with them) came by force of Arms, and haled me out of Bed from my Wife and Children, not according to the Law of England, as is expressly provided in two several Statutes, *viz.* the 1st of *Edw. 6. chap. 12.* and the 5th and 6th of *Edw. 6. chap. 11.* By which Rules of the Law, and no other, they ought to have proceeded against me from first to last; and I am sure they both expressly provide, That if any Man be accused of Treason, that he shall be accused first to one of the King's Counsel, or to one of the King's Justices of Assize, or else to one of the King's Justices of the Peace being of the *Quorum*, or to two Justices of the Peace within the Shire where the same Offence or Offences shall happen to be done or committed (d).

But contrary to these and other wholesom and good Laws (although there hath been an eight Years War in England, pretendedly, for the Preservation of the Laws and Liberties of England, yet, I say, contrary to the express Tenor of these Laws, as also of *the Petition of Right*, yea, and also of the express Letter of that excellent Law that abolished the *Star-Chamber* this Parliament) was I by force of Arms (that never fortified my House against the present Power, nor never disputed any of their Summons, though sent by the meanest Man that ever appertained to them; and who, if they had sent their Warrant for me by a Child, I would have gone to them) I was fetch'd out of my Bed in Terror and Affrightment, and to the Subversion of the Laws and Liberties of England, and led through *London-Streets* with Hundreds of armed Men (like an *Algier* Captive) to their Main-Guard at *Pauls*, where a mighty Guard staid for the further conducting me by fore of Arms to *White-hall*. Now, Sir, if I had committed Treason, I ought not to have been apprehended and proceeded against by armed mercenary Soldiers, but by Civil and Magisterial Officers, and no other; according to those excellent Privileges that the Parliament themselves in the Year 1641, in their own Book of Declarations, p. 36, 37, 76, 77. did claim for those six Members, *viz.* the Lord Kimbolton, Mr. Pym, Mr. Hollis, Mr. Stroud, Sir Arthur Haslerig, and Mr. Hampden: I say and aver, I ought to have had the Process of the Law of England, due Process of Law according to the forementioned Statutes and Precedents; for I never forcibly resisted or contended with the Parliament; and therefore ought to have had my Warrant served upon me by a Constable, or the like Civil Officer; and upon no Pretence whatsoever, ought I to have been forced out of my Bed and House by mercenary armed Officers and Soldiers. But, Sir, coming to *White-hall*, I was there also kept by armed Men, contrary

(c) Of which Judgment Sir Edward Coke is positively, in part 2. Instit. f. 48. and part 3. f. 52. in *Tho. Earl of Lancaster's Case*, which is singular well worth the reading. See also part 1. Instit. f. 13. a.
(d) See also to this purpose, part 3. of Coke's Instit. ch. High-Treason, f. 26, 27, 28. and part 1. Parl. Declar. in the Case of the Lord Kimbolton and the five Members, p. 38, 39, 76, 77.

to all Law and Justice; and by armed Men against Law, I was by force carried before a Company of Gentlemen sitting at *Derby-House*, that look'd upon themselves as authorized by the Parliament to be a Committee or Council of State, (who by the Law I am sure in any kind had nothing at all to do with me in Cases of pretended Treasons) where I was brought before Mr. *John Bradshaw*, sometimes a Counsellor for my self before the House of Lords, against my unjust *Star-Chamber* Judges; who there in my behalf, Feb. 1645, did urge against the Lords of the *Star-Chamber*, as the highest Crimes against the Liberties of the People that could be, as being illegal, arbitrary and tyrannical, that the Lords in *Star-Chamber* should censure me to be whip'd, pillory'd, &c. for no other Cause but for refusing to answer their Interrogatories against my self. And when I was brought before the said Council of State, I saw no Accuser, no Prosecutor, no Accusation, no Charge nor Indictment; but all the Crime that there was laid unto my Charge, was Mr. *Bradshaw's* very seriously examining me to Questions against my self: although I am confident he could not forget, that himself and Mr. *John Cook* were my Counsellors in February 1645, at the Bar of the House of Lords, where he did most vehemently aggravate, and with Detestations condemn the Lords of the *Star-Chamber's* unjust and wicked dealing with *English* Freemen, in censuring them for their refusing to answer to Questions concerning themselves; and yet notwithstanding walked with his dealing with me in the very Steps that formerly he had bitterly condemned in the *Star-Chamber* Lords; yea, and there for refusing to answer his Questions, (for any thing he declared to me to the contrary) committed me to Prison for Treason in general. And you know very well, better than I do, that by your own Law, Generals in Law signify nothing.

Judge *Jermin*. Mr. *Lilburne*, you very much abuse and wrong your self, for you very well know Mr. *Bradshaw* is now denominated by another Name, namely, *Lord President to the Council of State of England*; and it would well become you in your Condition so to have stiled him.

Lieut. Col. *Lilburne*. And although no Crime in Law (which ought to be particularly express'd) was laid unto my charge; yet when I was first imprisoned, there were thousands of my Friends (Well-wishers to the Freedoms of *England*, and to the common Cause in which they had been engaged in for these eight Years together) both old and young, both Masters of Families, young Men and Apprentices, and abundance of others of the Feminine Sex too, with abundance of cordial honest Men in several Countries, joined in several rational and fair Petitions, and delivered them to the House in the behalf of my self, and my three Fellow-Prisoners; in which they most earnestly intreated them, that they would not prejudice us before we were heard, and knew our Accusers and Accusations, but rather that they would release us, and take off their prejudging Votes against us, which they had caused to be proclaimed in all the publick Places of the Nation against us, and let us have a fair and legal Trial, according to the Laws of *England*, and according to the undeniable Privileges of the due Process of the Law

from first to last; and they would put in any Security that they would require of them, that we should be forthcoming at all times to answer whatsoever in Law could be laid to our charge. Unto all which Petitions, which were very many, they could get no manner of satisfying Answer, but Slights, Abuses and Scorns.

But besides this, Gentlemen, that you may see that I am rational, and that you may see that I have an innocent and quiet Conscience within me, that does not accuse me, nor terrify me; therefore I must acquaint you, that I again and again proffered my chiefest Adversaries, and sent often to them, being earnestly desirous to chuse two Members of the House of Commons, and let them chuse two more, whom they please; and I would with all my Heart freely refer all manner of difference betwixt them and me, to the final Determination and Judgment of four of their Fellow-Members: but all this would do no good, and yet they would not in the least let me understand what was the Thing they desired of me; but, by their Power and Will, I had my Pockets and Chamber search'd to find out Advantages against me; and also lock'd up close Prisoner, with Centinels Night and Day set at my Door, and denied the Access and Sight of my Wife and Children for some certain time; and for about twenty Weeks together in the heat of Summer, kept close Prisoner, and denied the Liberty of the Prison, and my Estate with a strong Hand taken away from me, without any Pretence (or due Process) of Law, to the Value of almost three thousand Pounds, that was legally and justly invested in me, and in my Possession. But being I will avoid (at this time especially) Provocations as much as I can, I will name no Person by whose Power and Will it hath been done, although he be notoriously known; but the Gentleman that took it away by his pleasure, without all Rules of Law or Justice, told my Father to this purpose, That I was a Traitor, and under the Parliament's Displeasure; and therefore he would secure it from me, although I were not in the least convicted of any Crime, neither in Law then, or for many Months after had I the least Pretence of Crime laid unto my charge. And although my own Estate by force, against Law, was taken from me, yet was I also denied in my close Imprisonment that legal Allowance that should have kept me alive; for in all this miserable Condition I never yet received a Penny of my legal Allowance, but was positively denied that Testimony and legal Right that the late King constantly allowed to all the Members of the Parliament that were committed in the Third of his Reign, and several other times; unto whom for their Diet he allowed three, four and five Pounds a Week, according to their Quality, although they had great and large Estates peaceably in their possession. And one of them that is now beyond the Seas, a Colonel, I have forgot his Name, (but it was Colonel *Long*) confessed in the Lieutenant of the Tower's own Chamber, the last Year, that the King was so bountiful to him and the rest of his Fellow-Prisoners, that he let them enjoy the Allowance of about four or five Pounds a week for Diet; and that while he was Prisoner in the Tower, he spent the King about 1500*l.* for his own particular self in Provision. But notwithstanding I was denied all this, and to fill up the

the height of the insufferable Provocations put upon me, abundance of my own and antient Acquaintance were set upon me to calumniate, bespatter and reproach me; yea, and to endeavour to become Instruments to take away my Life, some of them confessing they were underhand set on by some Parliament-Men: All whose base and wicked Petitions, Papers and Books preferred and published against me, were hugged and imbraced; altho, for my own part, I do not know of any Man in this World that can justly tax me with any Action, or maintaining any Principles or Tenents, but what doth become a Man that doth believe all that is contained in the Law and the Gospel, and does believe the Resurrection of the Dead, and Life eternal; nay, that does believe that I my self shall arise and go to the Lord of Glory. Yet notwithstanding all these unparallel'd Provocations put upon me, especially by divers of my old Acquaintance, whom I had upon all Occasions faithfully served, but never wronged, injured nor provoked, being instigated (as they themselves confess in some of their own Congregations) by Parliament-Men so to do.

Truly, Sirs, I appeal to your own Judgments, and to your Consciences, and to all the People that hear me this Day, whether all these Provocations laid upon a poor Man, which is but Dust and Ashes, as well as other Men, be not too insupportable a Burden, and too much for the Causers of them to take advantage of the Fruits produced by them, to destroy me, and take away my Life.

And therefore, Sir, in the first place, I shall humbly crave that Favour and Right, seeing I am brought before you by a piece of Parchment that truly I could not read, neither could he do it that shewed it me, (I mean the Lieutenant of the Tower;) for admit that if I did well understand *Latin*, as indeed I do not, only some ordinary Words, yet was it in such an unusual strange Hand, that I could not read it. And therefore being I am brought before you implicitly, and not as I conceive an *Englishman* ought to be, who ought to see and read the Authority, by virtue of which he is convened before any Power. It's true, I know some of you, Gentlemen, that I see sit before me, yet not many of you; and truly I have nothing but a piece of unlegible Parchment, which cannot satisfy my Understanding of the Legalness of my Convention before you: but being I am not able to dispute that Power that compulsively brought me, but here I am; and therefore in order to the declaring of my self to be a true *Englishman*, I most humbly crave (and that I think is consonant to Reason, and I hope to Law too) that I may see, and hear read the Commission, by virtue of which you sit here this Day, and convene my Person before you, that so I may compare it to the Law; and consider whether or no, that by my pleading before you by virtue of it, I do not betray my Liberties. And therefore I humbly crave that you would let me hear your Commission read; for this Court is no ordinary and common Assizes, Sessions, or Goal-Delivery, the only proper Courts for trying me for all criminal Faults; yea, and those also ought to sit where the Crimes are committed: and I was imprisoned for a pretended Crime, pretended to be committed in the County of *Surrey*, where by the Common Law

of *England*, and express Statutes, I ought to be tried therefore, and no where else.

And therefore being brought in an extraordinary manner to such an extraordinary Place as this, which is no ordinary Assizes or Sessions, no, nor yet in mine own County; therefore I again humbly desire that you will be pleased to let me see and hear your extraordinary Commission, that so I may consider whether the Extent or Latitude of the Commission be consonant, or no, to the Petition of Right, and other the good old Laws of *England*. For those that now sit at *Westminster*, exercising the supreme Power, by two special Declarations, the one dated the 9th of *February* last, and the other the seventeenth of *March* last, have positively declared, and called God to witness, That they will maintain, preserve, and defend that excellentest of Laws, the Petition of Right, as in the seventh Page of the last Declaration they call it; and that the People of *England* shall enjoy all the Benefit therein contained, whether to Life, Liberty, or Estate, with all Things incident thereunto. And therefore I humbly beg and crave that Favour from you, that seeing to me you appear to be sent in an extraordinary manner, not according to the ordinary Customs of the Laws of *England*, that you will be pleased to let me hear your Commission read, that so I may consider the Consonancy thereof to the Petition of Right, and other the good old Laws of *England*: and after the reading of it, I hope I shall return you an Answer as doth become a rational and ingenious Man: Who though he hath Right to all the Privileges of the Laws of *England*, and hath read all the declared and plain Laws of *England*, that are to me the Fundamentals of all, yet the practick Part of the Law, which are in other Tongues besides the *English*, I cannot read, know, nor understand. And in the Petition of Right, and other the good old fundamental Laws of *England*, I can find no Foundation or Bottom for such an extraordinary Court, as this before my Eyes seems to be: And therefore I again make it my most humble Suit to hear your Commission read.

Judge Keble. Mr. *Lilburne*, you are fully heard.

Mr. *Prideaux* Attorney-General. My Lord, the Prisoner at the Bar, nor none else, have Cause to complain that he hath wanted your Patience in being fully heard. My Lord, that which at the beginning of his Arraignment you expected from him, which was to hold up his Hand, he denied; and upon his Denial desired Liberty of Speech to speak, and he hath enjoyed it. But, my Lord, how pertinent his Discourse is to what was proposed to him, the Court, and all that hear him, will judge. My Lord, I am not here to justify the Actings of those that here he hath complained against; but they are a Court, they are a Council, and my Thoughts are (and so ought his to be) honourable of them; and what they have done (my Lord) towards him, in ordering this Court to try him, is but Justice. My Lord, there is no special Commission of *Oyer and Terminer*, but a general Commission; and upon that general Commission here is a special Presentment of Mr. *Lilburne* here at the Bar: The general Commission is according to the Law of the Land; and upon that special Presentment it is expected he may be proceeded against according to Law. And for your Commission, my Lord,

that hath been read and published to the Court before Mr. *Lilburne* came to the Court, and the Court is satisfied with it, that it is in the ordinary way; and I hope the Judgment you will give, will declare it to be according to the Law, in the ordinary way. And as for the Commission it self, in the Form of it, it is not a Tittle varied from the ordinary accustomed Form. But, my Lord, the Petition of Right, *Magna Charta*, the Statutes, and all Declarations that have been spoken of, they are all confirmed in this, and all do confirm it; for in that ordinary Tract, that hath been practised in this Nation for five hundred Years, is Mr. *Lilburne* now to be tried, and that by the old good Laws of *England*, Mr. *Lilburne*'s Birth-right, and every Man's else, he has his Trial; the beginning of which hath been Mr. *Lilburne*'s Presentment, which is already found by the Grand Inquest, who are Men of Integrity, Men of Ability, Men of Knowledge. My Lord, he is now come to his Trial, not in an extraordinary way, but by a Jury of good and legal Men of the Neighbourhood; by Men that do know, my Lord, and understand what is Fact, what is (a) Law, and to do Justice indifferently between both.

And, my Lord, I do know, and publish to all that now hear me, that the Commission for Trial of Mr. *Lilburne* this Day, for those Differences that are between the State and Mr. *Lilburne*, is free in Law from all those Exceptions that he is pleased to put upon it, and is unquestionably legal, and used for these many hundred Years together. And as for Mr. *Lilburne*'s declaring the Fact, for which he was originally imprisoned, for to be committed in *Surrey*, and therefore there in Law he ought to be tried, and not here in *London*, being another County; as for Mr. *Lilburne*'s Crimes committed in *Surrey*, his own Conscience best knows what they are: But Mr. *Lilburne*, at most, can but yet guess at what we intend to try him here for, or lay unto his Charge.

But, my Lord, if Mr. *Lilburne* will please to put himself upon his Trial, according to Law, my Lord, I hope the Court, and all that hears and sees their Proceedings, will receive full Satisfaction in the Legality and Fairness of their Proceedings against him, and himself the Benefit of Justice and Law.

Lieut. Col. *Lilburne*. Sir, by your favour, in two Words, I shall not be tedious, I now perceive who is my Accuser and Prosecutor, the Gentleman that is a very unequal one; for he is one of the Creators (being a Member of the House) of you that sit here this Day to be my Judges; and therefore an over-awing and unfit Accuser or Prosecutor.

Ld *Keble*. Mr. *Lilburne*, I pray you hear me a Word; for now you speak not rationally nor discreetly: You have had a fair Respect and Hearing. What you speak of Liberties and Laws, we come here to maintain them for all, and for you too: And we also come for to vindicate our Actions. And as for that you speak of in reference to the Commission, I must let you know the Commission is warrantable by the Laws of *England* for this five hundred Years, nay, and before five hundred Years in substance. The second Thing that you speak to, is, That

you were apprehended in such an hostile Manner, understanding by Law you should have been taken in an ordinary way, by an ordinary Officer. But, Mr. *Lilburne*, in all Apprehensions of Traitors, Felons, and Murderers, is not the Power of the County to be raised, and the Sheriff is to call and take what Power he pleaseth.

Lieut. Col. *Lilburne*. By your favour, Sir, not unless I resist; which I did not. And besides, there was no Sheriff, nor no other Civil Officer, at my Apprehension.

Ld *Keble*. Mr. *Lilburne*, spare your self: It is as they are informed of the Danger of the Man; they may do it before ever they see him. The next Thing you are upon, is, The Wrong and Injustice that you received by the Proceedings in the Star-Chamber against you. You see the Proceedings there have been questioned, and you justified: If there be any thing else that hath been by others in the North, or elsewhere acted, there is no Man here that will justify them in their Evil. But for a private Man, as you are, to tell us of them here, and to come and tell us to our Faces that we are created and constituted by the Attorney-General, we will not suffer it, nor further hear of it. And therefore, Mr. *Lilburne*, although you have spoken fair Words, (and happily more than your Friends expected from you) I must tell you that Words are but Words; and it were well that you would do as well and as rationally as becomes a rational Man, as you have declared you will.

Lieut. Col. *Lilburne*. With your favour, but one Word more.

Judge *Jermin*. Mr. *Lilburne*, pray spare a Word, and hear the Court: This Court sits here by lawful Authority, and that is from the Parliament, that are the supreme Authority of *England*; so that our Power is not derived from those that have no rightful Authority to constitute us, but our Power is from the publick Authority of *England*, which is now, by an admirable Act of God's Providence, lately, but truly revived and settled by God upon them. By that Authority this Court doth now sit; and you are brought here before them that are most of us Judges of the Law, and we are sworn to do you and every Man Justice and Right, according as his Cause requires, according to Law, Judgment, Equity, and Reason. And it was said truly, that which my Brother *Heath* (who now is dead) did say, It's the Duty of the Judges to be of Counsel with the Prisoner at the Bar before him, and to do that which they are sworn to do: And that you shall have. And accordingly you have received more Favour than ever I heard of a Prisoner that was accused of Treason in my Life ever had. And as for the Commission, I must tell you it is usual to have Commissions of Oyer and Terminer, and that even in Term-time, for high Offences, and such as tend to the Destruction of the Nation, as *Overbury*'s did, and those that tend to capital Treason, whereof you are now accused, by a Grand-Jury of *London*, that are Freemen of *London*, Citizens, able Men, Men of Religion, Men of Estate, Men of Conscience, Men of Quality: These are your Accusers; who have found you, upon their Oaths, guilty of Treason, and cry out to us the Judges

(a) Mark that well; for Judge *Jermin* called it a Damnable Doctrine, when Mr. *Lilburne* declared the Jury were Judges of Law as well as of Fact.

for Justice against you : And it is they, not we, that proceed against you. And as for our Commission, it is according to the good old Laws of the Land, founded upon the Statute made in *Edward the First's Time*, called *Westminster the Second*. That Statute authorizeth Commissions : According to that Commission we sit by here this Day. And *Edward the First* was a wise and a good Prince, and consented to the People, to let them have such Commissions as ours we sit by is, which the People had fought stoutly for in the Barons Wars in his Father's Time, and also in his; for he himself was taken Prisoner at *Lewes*, in the County of *Suffex*. And being a wise Prince, he knew that the Love of the People was not more to be got than by wholsom and safe Laws, that every Man's Life, and every Man's Estate, and every Man's Liberty, might be preserved by, and not be subject to any arbitrary Will or Power; but that the sober, and discreet, and wise Laws of the Kingdom, which our Ancestors won by their Swords, might be their Protectors. A special one of which was this Statute of *Westminster the Second*, made in *Edward the First's Time* : By vertue of which Statute is this Commission directed to the Justices of the one Bench and the other; and they be all here this Day, but only those that of necessity must attend at *Westminster*, only to preserve the Term. Now you are come to answer to that Charge, which hath been the greatest Opposition to the Settlement of Government that can be; I mean the Settlement of the supreme Authority of the Nation in the Commons now assembled in Parliament, not newly erected, but revived into the right Place and Hands; for it is the Law of *England* revived, that the supreme Authority is in the (a) Commons assembled in the Parliament of *England* : For so it was in the *Saxons Time*, and in the *Romans Time*, and in all Times (b) it hath been as it is now; which will sufficiently justify our present Proceedings against you. And therefore, I say, for the Commission it self, it is in general for the Trial of all Treasons whatsoever. But the Grand Inquest have found out no other Traitor, that they may accuse, but Master *John Lilburne*, who is now here at the Bar. But it is not a bare Accusation, but it is the solemn Verdict of almost a double Jury, that hath appeared upon the Roll; and upon their Oaths do conceive those Crimes of Treason that are laid against you, to be of so dangerous Consequence against the State and Commonwealth, that they do call for Justice against you as a Traitor already found guilty. And therefore I do require you, as you are an *Englishman*, and a rational Man, that you do conform your self, and tell us plainly what you will do, as in reference to the putting your self upon your Trial by the Law, and hear with Patience those Offences of Treason that are laid to your Charge.

Lieut. Col. *Lilburne*. May it please you, Sir, by your favour, I shall not now trouble you with many Words.

(a) But by his Favour, never before practised nor used without both King and Lords; a Precedent of which he is desired to shew and produce out of any of his Law-Books.

(b) But there was before the Conquest neither Inns of Court, Lawyers, nor Term-Judges in England, but only twelve good and legal Men, chosen in each Hundred, finally to decide all Controversies: Which lasted till William the Conqueror subdued that excellent Constitution, and instead thereof introduced by his Will and Sword (contrary to his solemn Oath, three several times taken) the intolerable Bondage of Westminster-Hall, or Term-Judges, and their Outlandish or Norman Law-Practise in the French Tongue; as all the English Chronicles universally and truly declare.

(c) Whose remarkable and excellent Defence you may at large read in Holingshed's Chronicle, in the Life of Queen Mary, which Discourse is excellently well worth the speedy Reprinting, especially seeing Men are made Traitors for Words; which Cruelty Queen Mary abhorred, as may clearly be read in that excellent Statute of hers, made in the first Year of her Reign, Chap. 1.

Ld Keble. You go improperly to work.

Lieut. Col. *Lilburne*. That Gentleman, I do not know his Name, (pointing to Judge *Jermyn* :) You were pleased to say, That I have had more Favour than ever you have heard of any before ever had, in the like Case. But, Sir, by your favour, I shall tell you of some that in the like Case have had as much, if not more; and that was *Throgmorton*, in Queen *Mary's Time*, who was impeached of higher Treason than now I am; and that in the Days of the commonly accounted bloodiest and cruellest Prince that this many hundred of Years hath reigned in *England*: And yet, Sir, I am sure in this very Place, and that by special Commission of Oyer and Terminer; who was accused for being one of the chiefest Confederates with *Wyat*, in his *Kentish Rebellion*; which *Wyat* marched with an Army against the Queen to *London*: For which actual War or Rebellion, **Throg-* * Trial V; *morton* was in this Place arraigned as a Traitor, and enjoyed as much, if not more Favour than I have now enjoyed, altho his then Judges and Prosecutor were bent to take away (c) his Life, right or wrong. And therefore, Sir, by your favour, it is no extraordinary Favour that you have afforded me; it is but only my Right by Law and Justice, and common Equity. But Sir, I shall be short, and put my Business to a plain Issue, which is this:

I have here at the Bar given in many strong Arguments against the Validity and Legality of a special Commission of Oyer and Terminer, and supposing that to be such an one by vertue of which you sit, and intend to try me for my Life; and therefore I have humbly desired (as in Reason, and I think in Law, I may justly do) to hear your Commission read; but you have positively denied me that. And therefore I desire all my Friends, and all the People that hear me this Day, to bear witness, and take notice, that you, contrary to Reason and common Equity, denied me to let me hear read your Commission, by vertue of which you go about to take away my Life; which I cannot chuse but desire them to take notice, I declare to be very hard Measure.

But, Sir, to save my self from your forelay'd Snares and desired Advantage against me, I will come a little closer to the Business. You demand I should hold up my Hand at the Bar; and I know not what it means, neither what in Law it signifies. It's true, I have read the most part of the Laws that are in *English*, which I take to be the Foundation of all our legal *English* Privileges; and in them I cannot find any thing that doth clearly declare unto me the full Signification or Meaning of a Man's holding up his Hand at the Bar. Therefore if you please but to explain what the Meaning and Signification of holding up the Hand at the Bar, is, I shall seriously consider of it, and, I hope, return you a rational and discreet Answer: For truly in those Laws which are in the *English Tongue* that

I have read, although I find mention made of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large Extent. And as for those Laws, or rather the practick Part of the Law, that are in *French* and *Latin*, I cannot read them, and therefore much less understand them. In which regard, for me to hold up my Hand at the Bar before I understand the true Signification of it in Law, (which tells me it is in it self a ticklish Thing) were for me to throw away my own Life upon a Punctilio or Nicety that I am ignorant of; and therefore, truly, I think I should be a very Fool, in my own Ignorance to run that Danger. And therefore, Sir, I humbly desire the clear Explanation of the Meaning of it in Law, and after that I shall give you a fair and rational Answer.

Ld Keble. Mr. *Lilburne*, you shall see we will deal very rationally with you, (and not insnare you in the least manner) if that be all. The holding up of your Hand, we will tell you what it means and signifies in Law: The calling to the Party to hold up his Hand at the Bar, is no more but for the special notice that the Party is the Man inquired for, or called on; and therefore if you be Mr. *John Lilburne*, and be the Man that we charge, do but say that you are the Man, and that you are there, and it shall suffice.

Lieut. Col. *Lilburne*. I am *John Lilburne*, Son of Mr. *Richard Lilburne* —

Ld Keble. Mr. *Lilburne*, what you have to say we will hear presently; only take notice that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man: You are called by your Name, you have come and answered to your Name, in order to your answering the Charge to be read against you; do but this, and it shall suffice, without holding up your Hand. Therefore let us have no more Discourse as to that.

Judge *Fermin*. Mr. *Lilburne*, pray spare me a Word; for you have been heard with Patience. You have desired to have the Right of the Law of *England*; and yet you do question a fundamental Thing, that hath been always used in case of criminal Offences. By the Law of *England*, that you desire to have the Meaning of it, is but just; but you must know that the Law of *England* is the Law of God; and if there be any thing in the Law of *England* but what was by admirable Constitution and Reason, we would not meddle with it. But I pray know this, that the Law of *England* is no written Law: It is the Law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime Laws of Nature; for it does not depend upon Statutes, or written and declared (a) Words or Lines. And this is our Laws, that have been maintained by our Ancestors, and is subordinate to the Law and Will of God: Therefore I say again, the Law of *England* is pure primitive Reason, uncorrupted and unpolluted by human Hu-

mours, or human Corruptions, Wits, or Wills: That's the Law of *England*. There be two Reasons why holding up the Hand hath been used always: First, for notice that those that are called for capital and criminal Offences, that they hold up their Hands, is to declare that they are the Men. My Lord hath given you this one Reason already; which I say is, that he be notified by holding up the Hand to all the Beholders, and those that be present, and hear him that he is the Man. But besides this, there is more in it; that's thus: A pure innocent Hand does set forth a clear unspotted Heart; that so the Heart and Hand together might betoken Innocency. And therefore hold up your Hand, that thereby you may declare you have a pure innocent Heart: If you refuse to do this, you do wilfully deprive your self of the Benefit of one of the main Proceedings and Customs of the Laws of *England*. Now for this, do what you think fit.

Lieut. Col. *Lilburne*. Well, then, Sir, (applying himself to Mr. *Keble*, as the President of the Court) I take your Explanation of it, and lay hold of that.

Ld Keble. You must answer positively, Sir, for you have had Advice enough, yea, good Advice if you embrace it, it is good Advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more Dispute you apply your self to answer according to that which you are advised unto. Do it if you will, and if you will but answer to it so as hath been declared to you, it shall suffice; but so far you must go to this, as to declare whether you be the Man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the Benefit of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, according to your own Explanation, I say my Name is *John Lilburne*, Son to Mr. *Richard Lilburne* of the County of *Durham*, a Freeman of the City of *London*, and sometimes Lieutenant-Colonel in the Parliament's Army: And if you will not believe that I am the Man, my Guardian the Lieutenant of the Tower there (pointing to him) will aver that I am.

Ld Keble. So then you are the Man.

Judge *Fermin*. Ask him again: Hearken Mr. *Lilburne*, hearken what he says, and use that Moderation, and Temper, and Discretion that you have promised.

Lieut. Col. *Lilburne*. One word more, and I shall have done; and that is by the Law of *England* — [But being interrupted, he cry'd out] With your Favour, Sir, I will come to the main thing; I hope you do not go about to circumvent me, therefore hear me I beseech you.

Ld Keble. Hear the Court, Mr. *Lilburne*, there shall be nothing of Circumvention or Interruption: but as you have professed to be a rational and understanding Man in Words, let your Deeds so declare you.

(a) But saith Mr. Hyde, in his forementioned Argument, against the Northern special Commission of Oyer and Terminer, Pag. 411. Misera servitus est, ubi jus est vagum aut incognitum; that is to say, It is a miserable Servitude, where the Law is uncertain or unknown. And the very same saith that great Oracle of the Law, Sir Edward Coke, in the Proem to the third Part of his Institutes, and in the fourth Part, fol. 332. and in several Places besides. But the People may easily see hereby, that these present Judges drive to have no other Law in being in England, but what is in their own and their Masters Breasts; (that so by pretence of Law they may give away all the Liberties and Proprieties of the People of the Nation, as their Brother Judges did lately to the King, in the case of Ship-Money:) And then woe, and woe to the People, to be brought back again to that Faith, That Ignorance is the Mother of Devotion or Obedience.

Lieut. Col. *Lilburne*. Sir, I beseech you do not surprize me with Punctilio's or Niceties, which are hard things for me to lose my Life upon. I tell you again, my Name is *John Lilburne*, Son to Mr. *Richard Lilburne*.

Ld *Keble*. Talk not of Punctilio's with us, nor talk not of Judges made by the Laws, you shall not want Law: but if you talk of Punctilio's here in this Room, we will stop that Language.

Lieut. Col. *Lilburne*. Truly, Sir, I am upon my Life, and shall my Ignorance of the Formalities of the Law in the practick part thereof destroy me? God forbid! Therefore give me but leave to speak for my Life, or else knock me on the Head, and murder me where I stand, which is more righteous and just than to do it by pretence of Justice. Sir, I know that Mr. *Bradshaw* himself, President to the High Court of Justice, as it was called, gave Duke *Hamilton* (a hostile Enemy) leave to speak to the Punctilio's of the Law; yea, and to my knowledge again and again made an Engagement unto him and the rest try'd with him, that the Court nor he would not, by vertue of their Ignorance of the Niceties or Formalities of the Law, take advantage against them to destroy them; but did declare again and again, that all advantages of Formalities should be totally laid aside, and not in the least made use of against them to their Prejudice. And I hope you will grant me, that have often been in Arms for you, but never against you, as much Favour and Privilege as was granted to Duke *Hamilton*, never of your Party, but a General of a numerous Army against you.

Ld *Keble*. Take it as you will, we have had patience with you, and you must and shall have patience with us: we will pass over all that is by-past, but take heed by your surly Crossness you give not advantage in the face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own Eyes see. The Ceremony is for your advantage more than you are aware of: but if you confess your self to be Mr. *John Lilburne*, we have done as to that.

Judge *Fermin*. Mr. *Lilburne*, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your Actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal Prosecutor of you, because you say he was the (a) Creator of our Commission. Pray hear me, I heard you; and do not think to put Affronts upon us undeserv'd. And as for that Man that you call Mr. *Bradshaw*, I tell you again he is Lord President of the Council of State of the Commonwealth of *England*; and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend your self to be possessed with.

Ld *Keble*. Come, will you read the Indictment?

Mr. *Broughton* reads. *Hold up your Hand, John Lilburne, and hearken to your Charge.*

Thou standest indicted of High Treason by the Name of John Lilburne, late of London Gent.

for that thou as a false Traitor, not having the Fear of God before thy eyes, but being stirred up and moved by the Instigation of the Devil, &c. as it followeth verbatim, in the second Day's Proceedings, to which the Reader is referred.

Mr. *Broughton*. What say'st thou, *John Lilburne*, art thou guilty of this Treason whereof thou standest indicted, or not guilty?

Lieut. Col. *Lilburne*. Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.

Ld *Keble*. Mr. *Lilburne*, we shall deal with you according to Reason and Justice, and after such a manner as you your self shall judge rational and right.

Lieut. Col. *Lilburne*. Gentlemen, I shall speak but a few words; I beseech you hear me, for it is upon my Life.

Ld *Keble*. You say you will deal rationally in those ways; that is to be expected from you the first in Reason, is to answer, and plead; and before you so do, you cannot be heard.

Lieut. Col. *Lilburne*. Give me leave to speak, and I shall not speak six Lines: (which with much struggling being granted, Mr. *Lilburne* went on and said to this effect) Then Sir, thus, By the Laws of *England* I am not to answer to Questions against or concerning myself.

Ld *Keble*. You shall not be compell'd.

Another Judge. Mr. *Lilburne*, is this to answer against yourself, to say you are not guilty? By the Laws of the Land you are to plead to your Charge, and it is no accusing of yourself to say Guilty, or Not Guilty.

Lieut. Col. *Lilburne*. Sir, by your favour—

Judge *Keble*. To answer that you are Not guilty, is no great matter, nor definite in Law.

Lieut. Col. *Lilburne*. By the Law of *England* I am to be tried by a Rule, but I do not know, by the Rules of Law, what Benefit, in reference to my Exception against the Illegality of my Indictment, I may deprive my self of, in case I should answer before I except.

Ld *Keble*. The Law is plain, that you are positively to answer Guilty or Not Guilty, which you please.

Lieut. Col. *Lilburne*. Sir, by the Petition of Right, I am not to answer to any Questions concerning myself; therefore I humbly intreat you to afford me the Privileges of the Laws of *England*, and I will return a positive Answer to it; if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the Formalities of Law in the practick part of it, altho I here declare I own the good old Laws of *England*, and a legal Jury of twelve Men, yea, and a Trial by a Jury of legal Men. And I do humbly crave, Sir, a Copy of the Indictment, or so much of it as I may ground my Plea upon it; and reasonable Time to consult with my Counsel, altho it be but eight or nine days.

Ld *Keble*. You speak well, but you must do well, 'tis that we come for: the Rationableness of it is this, that you should shortly answer, Sir, to that Question, and in a rational legal way.

(a) Mr. *Lilburne* here endeavoured to speak, and shew the Judge his Mistake; for he did not say that Mr. *Prideaux* was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that regard he was no competent Accuser or Prosecutor: but they would not suffer him to speak, but cry'd out, Hear the Court, which thing also they frequently did afterwards.

I have read, although I find mention made of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large Extent. And as for those Laws, or rather the practick Part of the Law, that are in *French* and *Latin*, I cannot read them, and therefore much less understand them. In which regard, for me to hold up my Hand at the Bar before I understand the true Signification of it in Law, (which tells me it is in it self a ticklish Thing) were for me to throw away my own Life upon a Punctilio or Nicety that I am ignorant of; and therefore, truly, I think I should be a very Fool, in my own Ignorance to run that Danger. And therefore, Sir, I humbly desire the clear Explanation of the Meaning of it in Law, and after that I shall give you a fair and rational Answer.

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Ld Keble. Mr. *Lilburne*, what you have to say we will hear presently; only take notice that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man: You are called by your Name, you have come and answered to your Name, in order to your answering the Charge to be read against you; do but this, and it shall suffice, without holding up your Hand. Therefore let us have no more Discourse as to that.

Judge *Fermin*. Mr. *Lilburne*, pray spare me a Word; for you have been heard with Patience. You have desired to have the Right of the Law of *England*; and yet you do question a fundamental Thing, that hath been always used in case of criminal Offences. By the Law of *England*, that you desire to have the Meaning of it, is but just; but you must know that the Law of *England* is the Law of God; and if there be any thing in the Law of *England* but what was by admirable Constitution and Reason, we would not meddle with it. But I pray know this, that the Law of *England* is no written Law: It is the Law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime Laws of Nature; for it does not depend upon Statutes, or written and declared (a) Words or Lines. And this is our Laws, that have been maintained by our Ancestors, and is subordinate to the Law and Will of God: Therefore I say again, the Law of *England* is pure primitive Reason, uncorrupted and unpolluted by human Hu-

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Lieut. Col. *Lilburne*. Well, then, Sir, (applying himself to Mr. *Keble*, as the President of the Court) I take your Explanation of it, and lay hold of that.

Ld Keble. You must answer positively, Sir, for you have had Advice enough, yea, good Advice if you embrace it, it is good Advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more Dispute you apply your self to answer according to that which you are advised unto. Do it if you will, and if you will but answer to it so as hath been declared to you, it shall suffice; but so far you must go to this, as to declare whether you be the Man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the Benefit of the Law.

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Ld Keble. So then you are the Man.

Judge *Fermin*. Ask him again: Hearken Mr. *Lilburne*, hearken what he says, and use that Moderation, and Temper, and Discretion that you have promised.

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Ld *Keble*. Take it as you will, we have had patience with you, and you must and shall have patience with us: we will pass over all that is by-past, but take heed by your surly Crossness you give not advantage in the face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own Eyes see. The Ceremony is for your advantage more than you are aware of: but if you confess your self to be Mr. *John Lilburne*, we have done as to that.

Judge *Fermin*. Mr. *Lilburne*, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your Actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal Prosecutor of you, because you say he was the (a) Creator of our Commission. Pray hear me, I heard you; and do not think to put Affronts upon us undeserv'd. And as for that Man that you call Mr. *Bradshaw*, I tell you again he is Lord President of the Council of State of the Commonwealth of *England*; and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend your self to be possessed with.

Ld *Keble*. Come, will you read the Indictment?

Mr. *Broughton* reads. *Hold up your Hand, John Lilburne, and hearken to your Charge.*

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Mr. *Broughton*. What say'st thou, *John Lilburne*, art thou guilty of this Treason whereof thou standest indicted, or not guilty?

Lieut. Col. *Lilburne*. Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.

Ld *Keble*. Mr. *Lilburne*, we shall deal with you according to Reason and Justice, and after such a manner as you your self shall judge rational and right.

Lieut. Col. *Lilburne*. Gentlemen, I shall speak but a few words; I beseech you hear me, for it is upon my Life.

Ld *Keble*. You say you will deal rationally in those ways; that is to be expected from you the first in Reason, is to answer, and plead; and before you so do, you cannot be heard.

Lieut. Col. *Lilburne*. Give me leave to speak, and I shall not speak six Lines: (which with much struggling being granted, Mr. *Lilburne* went on and said to this effect) Then Sir, thus, By the Laws of *England* I am not to answer to Questions against or concerning myself.

Ld *Keble*. You shall not be compell'd.

Another Judge. Mr. *Lilburne*, is this to answer against yourself, to say you are not guilty? By the Laws of the Land you are to plead to your Charge, and it is no accusing of yourself to say Guilty, or Not Guilty.

Lieut. Col. *Lilburne*. Sir, by your favour —

Judge *Keble*. To answer that you are Not guilty, is no great matter, nor definite in Law.

Lieut. Col. *Lilburne*. By the Law of *England* I am to be tried by a Rule, but I do not know, by the Rules of Law, what Benefit, in reference to my Exception against the Illegality of my Indictment, I may deprive my self of, in case I should answer before I except.

Ld *Keble*. The Law is plain, that you are positively to answer Guilty or Not Guilty, which you please.

Lieut. Col. *Lilburne*. Sir, by the Petition of Right, I am not to answer to any Questions concerning myself; therefore I humbly intreat you to afford me the Privileges of the Laws of *England*, and I will return a positive Answer to it; if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the Formalities of Law in the practick part of it, altho I here declare I own the good old Laws of *England*, and a legal Jury of twelve Men, yea, and a Trial by a Jury of legal Men. And I do humbly crave, Sir, a Copy of the Indictment, or so much of it as I may ground my Plea upon it; and reasonable Time to consult with my Counsel, altho it be but eight or nine days.

Ld *Keble*. You speak well, but you must do well, 'tis that we come for: the Rationableness of it is this, that you should shortly answer, Sir, to that Question, and in a rational legal way.

(a) Mr. *Lilburne* here endeavoured to speak, and shew the Judge his Mistake; for he did not say that Mr. *Prideaux* was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that regard he was no competent Accuser or Prosecutor: but they would not suffer him to speak, but cry'd out, Hear the Court, which thing also they frequently did afterwards.

When you have answered it, you shall have liberty to make your Defence, to maintain that you say; but this that we now speak of, is a thing in your own Breast, in your own Knowledge, whether you be guilty of this that is laid to your charge, or no: And if you be clear, you cannot wrong yourself, nor your Conscience; for in saying Not Guilty, you know better what you say than any other doth.

Lieut. Col. *Lilburne*. Sir, I am ignorant of the Formalities of the Law, having no Books in *English* wherein I can read them; and as for other Tongues, I understand none: and therefore for you to take away my Life for my Ignorance, when the practick Part of the Law, or the Formalities thereof, is lock'd up in strange Language, that it is impossible for me to read or understand, is extreme hard.

It is true, in those *English* plain Laws which I have read, I find something spoken of it; but must aver, that I find there is a great deal of Nicety and Danger in locking a Man up to single Formalities, in answering Guilty, or Not Guilty: and therefore I beseech you to assign me Counsel, to inform my Ignorance, and give me but leave to consult with my Counsel, and I will return you an Answer according to your desire, without any Demur, as soon as it is possible for me to know what grounds I go upon.

Mr. *Broughton*. *John Lilburne*, what say'st thou, art thou Guilty of the Treason laid unto thy charge, or art thou not Guilty?

Lieut. Col. *Lilburne*. But under favour thus, for you to come to ensnare and entrap me with unknown Niceties and Formalities that are lock'd up in the *French* and *Latin* Tongue, and cannot be read in *English* Books, they being not expressed in any Law of the Kingdom, published in our own *English* Tongue: it is not fair Play according to the Law of *England*, plainly in *English* expressed in the Petition of Right, and other the good old Statute Laws of the Land. Therefore I again humbly desire to have Counsel assigned to me, to consult with, what these Formalities in Law signify; so that I may not throw away my Life ignorantly upon Forms.

Ld *Keble*. Mr. *Lilburne*, we cannot grant you that Favour, it is not consistent to the Law, whatsoever you say to the contrary.

Lieut. Col. *Lilburne*. I hope you will not go about to ensnare me, and take away my Life for Punctilio's.

Another Judge. Well then, you will not plead?

Lieut. Col. *Lilburne*. Yes, if I may be allowed that which I conceive to be my Birth-right and Privilege, to consult with Counsel; or that you please to make the same Engagement to me that Mr. *Bradshaw*, as the President of the High Court of Justice, made to Duke *Hamilton*; which was, that the Court would take no advantage at all of his Ignorance in the Niceties and Formalities of the Law in his Pleading: let me but enjoy this Engagement from you, and I will plead.

Ld *Keble*. You shall have that which is according to the Law; therefore, Mr. *Lilburne*, I advise you for to plead, and you shall have fair play, and no advantage taken against you by your Ignorance of the Formality of the Law.

Lieut. Col. *Lilburne*. Well then, Sir, upon that Engagement, and because I see you are so positive in the thing——this is my Answer;

That I am not guilty of any of the Treasons in Manner and Form, as they are there laid down in that Indictment, (pointing to it.) And therefore now, Sir, having pleaded, I crave the Liberty of *England*, that you will assign me Counsel.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*, and a legal Jury of my Equals, constituted according to Law.

Mr. *Broughton*. By whom wilt thou be tried?

Lieut. Col. *Lilburne*. By the known Laws of *England*; I mean, by the Liberties and Privileges of the Laws of *England*, and a Jury of my Equals legally chosen. And now, Sir, I again desire Counsel to be assigned me, to consult with in point of Law, that so I may not destroy myself through my Ignorance. This is but the same Privilege that was granted at *Oxford* unto me, and the rest of my Fellow-Prisoners arraigned with me.

One of the Clerks. You must say, by God and your Country; that's the Form of the Law.

Lieut. Col. *Lilburne*. Why must I say so?

Another Judge. This is the Form and Law of the Land: Will you plead, Mr. *Lilburne*, according to the Laws of *England*?

Lieut. Col. *Lilburne*. Truly I never read it, Sir, in the Laws of *England*, what it is to plead in this nature.

Ld *Keble*. You say you will be tried by the Laws of the Land, then it is by the Country, and so you may plead, and do yourself no harm; for by the Country is meant a Jury of your Equals.

Lieut. Col. *Lilburne*. Sir, I am doubtful of my Ignorance in the Laws, yet I will return you an Answer, you making good your already engaged Promises, that you will take no advantage against me, if through my Ignorance, and your Importunity, I plead in any Form, that in strictness of Acceptation may deprive me of any real Benefit the Law will afford me.

Judge *Thorp*. Mr. *Lilburne*, you will be tried by the Law, and by the Rules thereof: when you say so, you do really declare it to be by your Country. So that the true Signification of being tried by the Law, is the same thing in substance with being tried by the Rules of the Law.

Lieut. Col. *Lilburne*. Then I hope my answer is clear and fair, Sir.

Judge *Fermin*. The Formality is shortly this, to be tried by God and your Country; no more is meant by it than thus, by God, as God is every where present, yea in all Courts of Justice, and sits and knows all things that are acted, said, and done: The other part of it, by your Country, that is, by your Country or Neighbourhood; the Country is called *Patria*, because your Neighbour and your Equals, which you are willing to put yourself upon the Trial of. By force of that word, the Country, a Jury of the Neighbourhood for Trial of you are summoned. Now do what you will.

Lieut. Col. *Lilburne*. Sir, under your favour thus; then in the negative I say, God is not locally or corporally here present to try me, or pass upon me; but affirmative, I return this Answer, That I desire to be tried in the Presence of that God, that by his omnipotent Power is present every where, and beholds all the Actions that are done upon the Earth, and sees and knows

knows whether any of your Hearts be possessed with a premeditated Malice against me, or whether any of you come with so much Forethought of Malice against me, as that in your Hearts you intend to do the utmost you can, right or wrong, to destroy me: and before this all-seeing God I desire to be tried, and by my Country, that is to say, by a Jury of my Equals, according to the good old Laws of the Land.

Justice *Thorp*. You have spoken very well.

Ld *Keble*. You have done like an *Englishman* so far as you have gone; and I do assure, that in any Formality (as you express or call them) there shall be no advantage against you, if you mistake in them. Now what you have the next to think upon, is your Jury of your Countrymen, or Neighbours of your Equals; and I promise you we will take care of that, that they shall be good and lawful Men of *England*.

Lieut. Col. *Lilburne*. I thank you, Sir, but under your favour thus: Your Indictment is extreme long and of abundance of Particulars, it is impossible that my Memory, or of any one Man's in *England*, can contain it, or carry it in our heads; and therefore that I may make my Defence so as becomes a rational *Englishman*, I earnestly intreat you, that now you will be pleased to give me a Copy of my Indictment, or so much of it, as you expect a Plea from me upon, and an Answer unto, and Counsel assigned me, and Time to debate with my Counsel, and Subpoenas for Witnesses.

Ld *Keble*. For Counsel, you need none, Mr. *Lilburne*; for that Not Guilty which you have pleaded, is that which lies in your own Breast, which rests in your own Counsel, and you know how it is, and can best plead that yourself: Counsel lies in Matter of Law, not of Fact.

Lieut. Col. *Lilburne*. Under favour I desire Counsel for Matter of Law, and not for Matter of Fact. My Indictment I believe in Law, is all Matter of Law, and I have something to say to it in Law.

Ld *Keble*. If Matter of Law do arise upon the Proof of the Fact, you shall know it, and then shall have Counsel assigned to you.

Lieut. Col. *Lilburne*. I myself have before this been upon some Trials, and never before this was denied Counsel, no nor so much as ever disputed whether I should have it or no. I also was at a great part of the Earl of *Strafford's* Trial, who was supposed a most notorious Traitor; and yet if my Observation and Memory do not exceedingly fail me, he had Counsel assigned him at his first desire, and they were continually with him, not only at the Bar when he was there, but also had continual and free Access to him in Prison.

Besides, Sir, I being accused of Treason in such an extraordinary manner, and being but an ordinary Man myself; no eminent experienced Lawyer dare well meddle with my Business, no nor so much as bestow a Visit upon me, but he runs a hazard of being undone. And truly my Estate is in an extraordinary manner taken from me, so that I have not Money to send Messengers up and down privately to their Chambers: and therefore that I may be freely and allowedly able, without danger of Ruin to any Man that shall advise me, I shall humbly crave as my Right by Law, and I am sure by common Equity and Justice, that I may have Counsel and Solicitors also assigned me.

Ld *Keble*. Mr. *Lilburne*, speak rationally for yourself; when there comes a Matter of Law, that you are able to say, this is for Matter of Law, arising from Matter of Fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire: and withal, this that you say concerning your Memory, which you say is not able to carry away, or contain the Particulars of this Indictment; the Indictment, so much as will charge your Memory, will be very short: for it is the publishing of those Books charged upon you in the Indictment, that will be the Matter which will stick, and that Matter will be very short, which we must prove against you, which is only Matter of Fact, and not of Law. And therefore for Fact of Treason you can be allowed no Counsel, but must plead it yourself.

Lieut. Col. *Lilburne*. Sir, under favour, you expect from me Impossibilities; for seeing I have been seven Months in Prison for nothing, and could not in the least know perfectly what would be laid to my Charge, nor after what manner I should be proceeded against, (considering all Proceedings against me hithertoward have been so absolutely arbitrary, that it was impossible for me in Law exactly to come provided:) and therefore seeing I am now here, and you pretend to proceed with me according to the due Course of Law, and seeing the Form of the Proceedings in this manner with me is not expressly and exactly declared in Print in *English*, which Tongue only I can read and understand; and seeing by the Law, which is in *English*, which I have read, and clearly understand, that there are a great many Snares, and a great many Niceties in the Practick, that are formal Proceedings of the Law; and seeing I know not certainly, whether if I proceed to Matter of Proof, before in Law I make my Exceptions against your Indictment, as to Matter, Time, and Place, I be not in Law deprived of that Benefit, which I principally aim at for the preservation of my Life; therefore I beseech and most earnestly intreat you, to assign me Counsel to consult with, before I be too far insnared: and if you will not do it, and give me some reasonable time to prepare my Plea and Defence, then order me to be knock'd on the head immediately in the place where I stand, without any further Trial; for I must needs be destroyed, if you deny me all the Means of my Preservation.

Judge *Fermin*. Mr. *Lilburne*, it were reasonable to give you satisfaction, if you would receive it. You say you were present at my Lord of *Strafford's* Trial, and you say he had Counsel assigned him, not only to stand by him at the Bar, but to repair to Prison to instruct and advise: but that was not a Trial in such a way as this is; it was a Trial by way of Impeachment before the Peers assembled in Parliament, and his Attainder was made up into an Act of Parliament; but that is not a Trial at the Common Law *per Pares*, which is that which yourself have desired, a Trial by lawful Men, according to the Liberties of the Laws of *England*. After your Answer to your first Question, that is to say, whether you be guilty or not guilty of the things whereof you are accused, no Counsel in the world can follow, till the Fact be proved, and Matter of Law do arise thereupon. So that

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the first thing that must be done, the Matter of Fact must be proved against you; and then if it shall appear thereupon to the Court, that Matter of Law doth arise, and you do expect Counsel, we must and will perform it; the Court are of your Counsel so far as to Fact. And then in that case, that Law arise thereupon, you may and ought to have other Counsel assigned; and do not you doubt but the Court will be as careful of you, as you can be of yourself, and allow you more Favour, it may be, than your Friends do expect.

Lieut. Col. *Lilburne*. Under your favour, and by your good-liking; I was once arraigned at *Oxford* for my Life, upon the Matter of Treason, for levying War in *Oxfordshire* against the King, as their Indictment then said; and my Arraignment was by vertue of a Commission of *Oyer and Terminer*, that was (and in Law I am sure of it) as legal and as just as yours is: and my Lord Chief Justice *Heath*, the chief Commissioner or President, who was in the eye of the Law as legal a Judge as any of you, and yet he—

Ld *Keble*. Mr. *Lilburne*, we do remember it.

Lieut. Col. *Lilburne*. I beseech you give me leave to speak for myself, and to go on, for my Life lies upon it.

Ld *Keble*. Hear me one word, and you shall have two. This that you did speak but even now, do not you think that we have such bad Memories, as that we have already forgot it; your Life is by Law as dear as our Lives, and our Souls are at stake if we do you any wrong.

Lieut. Col. *Lilburne*. I wish you may be sensible of that, Sir.

Judge *Fermin*. Mr. *Lilburne*, you need not to say so, our Souls are upon it, and we are to stand or fall by Justice and Righteousness as well as yourself is.

Lieut. Col. *Lilburne*. I say, my Lord *Heath* and the Court at *Oxford* proffered me Counsel before any one Witness was produced to my face, or any Matter of Fact came to the Proof; yea, and gave me liberty to make my Exceptions to the Insufficiency of the Indictment, which was very short in comparison of yours. I crave the same Privilege from you (the Nation's pretended Friends) that I found at *Oxford* amongst its declared pretended Enemies, against whom in several Battels I had fought. And I hope you that pretend to be the Preservators of the Liberties of *England*, will not be more cruel and unrighteous than the declared Destroyers of them. If you will not allow me Counsel as I had there, I have no more to say to you; you may murder me if you please.

Judge *Fermin*. You were pleased to mention some Precedents of those that have been accused of High Treason, that have had Counsel assigned to them; and for one you mention that of my Lord *Strafford*, whose Trial I told you was Parliamentary before the House of Peers, upon the Impeachment of the Commons of *England* in Parliament assembled, and so it went on in a Parliamentary way: This Proceeding is in an ordinary Course of the ordinary *quondam* Court of Justice, according to the Common Law. Now for my Lord of *Strafford*, give me leave to observe this; he had no Counsel assigned him until such time as Questions of the Law did arise, which required Counsel, and then he had Counsel assigned him, but not before; for that my

Lord doth not say, that you shall have no Counsel, but that you shall have that which the Law allows. And as for that which you speak of Counsel at *Oxford*, it could not be. But when upon the Proof of Matter of Fact, it appears to the Court that there is any Question or Matter of Law arising upon the Fact; and when it doth so appear unto us, then you shall have Counsel for that. But (I beseech you) hear me on: You are now come before us, according to the Common Law, to be tried by your Country; there is now nothing in question, but whether that Matter, that Thing, those Words contained in the Indictment read to you, be true, yea or no; that is, whether they be done or no: for we will not give Counsel to plead to the Matter of Fact contained in your own Books, which you remember very well.

Lieut. Col. *Lilburne*. Those Books supposed mine: pray let me have fair play, and not be wound and skrew'd up into Hazards and Snares.

Ld *Keble*. If they be not yours upon good grounds proved before you, you are in no danger; and if upon the Proofs of the Words and Deeds done, there do appear Matter of Law, you must and shall have Counsel: stay till that be done. In the mean time the Court will take care that a Jury shall be returned, of honest and sufficient legal Men to judge of the Proofs.

Lieut. Col. *Lilburne*. There was arraigned with me at *Oxford* Colonel *Vivers* of *Banbury* now alive, and Captain *Catesby* who is dead: I will bring Colonel *Vivers* to depose here upon his Oath, That my Lord *Heath*, and the rest of the Commissioners of *Oyer and Terminer*, proffered me Counsel, and allowed me and him Counsel before ever so much as any Witnesses were produced, to prove the least Matter of Fact. And if you will not be so just towards me as the Cavaliers were, and allow me Counsel as they did, I have no more to say, but resolve upon this score to stand, and here to die upon the Principles of an *Englishman*. If you will not be so just as the Cavaliers were, with whom you and the Parliament set us together by the ears to fight with, pretendedly for their Injustice, let God and all righteous Men judge betwixt you and me.

Judge *Nichols*. If you will not be led by the Proceedings of Law, it will be worse for you; and you are to know this is not *Oxford*.

Lieut. Col. *Lilburne*. Sir, by what better Rules of the Law can I be led by, than those that I have before my eyes? I am sure at *Oxford*, as my Right by Law, I was, before any Fact was proved, proffered Counsel by my Judges, which were my Lord *Heath*, and Mr. *Gardiner*, now Sir *Thomas Gardiner*, who is now in *London*: if you please I will produce him to this Bar, to justify it upon his Oath, That the Lord Chief Justice *Heath* in his presence proffered me Counsel upon my Arraignment for Treason there, as my Right by the Privileges of the Laws of *England*, before the Fact came to be proved; yea, and also give me liberty to assign the Errors of my Indictment. He is now in *London*, and I will produce him here at this Bar (if you please) to justify what I say, if you will give me time, and enable me with Ability to summon him in.

Judge *Nichols*. Mr. *Lilburne*, whether Mr. *Gardiner* will justify it or no, it is nothing to us; for we are not to walk by *Oxford* Precedents, but by

by the Rules of the Law: and the Law will afford you no Counsel, but in Points of Law arising upon Proof of the Fact (a).

L. Col. *Lilb.* Under favour thus: I conceive the Precedents at *Oxford*, so far as they are righteous, are fit for your Imitation; and whether it be a righteous thing for you, when I am tried for Treason before you, to be more cruel towards me, who have fought for you, than the Cavaliers at *Oxford* in the like Case were, against whom I fought: And I must tell you, I further conceived it the most unequal and unjust thing in the World for me to have to do, upon the Trial of my Life, with all the Judges of the Land (who are all engaged Men) that have had above six Months time to beat their Brains together, with the Assistance of divers of my Adversaries, who are Parliament-Men, that were the Creators of their Power, and for one of them to be my Prosecutor; and in this so extraordinary Case, for me to be denied to consult with Counsel; I tell you, Sir, it is most unjust, and the most unrighteous thing, in my Apprehension, that I ever heard of, or saw in all my Life. O Lord! was there ever such a Pack of unjust and unrighteous Judges in the World? Sir, in plain *English* let me tell you, if I had thought you would have bound me up to a single Plea, and not have given me in my Plea the just Latitude of Law, Equity and Reason, but hold me thus close to your single Formalities, contrary to your Promises, I would rather have died in this very Court before I would have pleaded one Word unto you; for now you go about, by my own Ignorance and Folly, to make my self guilty of taking away my own Life: and therefore unless you will permit me Counsel, upon this Lock I am resolved to die.

Ld *Keble.* This is not the rational way you said you would go in.

L. Col. *Lilb.* Sir, my Life is before you, you may murder me, and take away my Blood, if you please.

Ld *Keble.* I will not be out-voiced by you, our Lives and our Souls are upon it, therefore you shall have Equity and Justice; yea, such as you desire your self: but you are now going to fly into Extravagancies and Heats, which will manifest the Rancour of the Distemper'dness and Invenom'dness of Spirit which is within you. And besides, if we should enter into it, we might aggravate your Crimes by your own Words at the Bar. Take heed of it, that you give not advantage against your self to your own Ruine.

L. Col. *Lilb.* Sir, I am in no Heats, I am but with Earnestness pleading for my Life, when you deny me all the just Means of my Preservation, which is my Right and Due by your own Law.

Judge *Thorp.* Mr. *Lilburne*, I desire to correct a Mistake of yours in the Law: You were pleased to condemn it as unjust, for the Attorney-General's speaking with me when your Indictment was a reading; you are to know, he is the Prosecutor for the State here against you, and he must confer with us upon several Occasions, and we with him, and this is Law.

L. Col. *Lilb.* Not upon the Bench, Sir, by your favour, unless it be openly, audibly and avowedly, and not in any clandestine and whispering way: And by your favour, for all you are a Judge, this is Law, or else Sir *Edward Coke* in his (b) 3d Part *Inst. cap. High-Treason or Petty-Treason*, hath published Falshoods, and the Parliament hath licensed them; for their Stamp in a special manner is to that Book.

Judge *Thorp.* Sir *Edward Coke* is Law, and he says, The Attorney-General, or any other Prosecutor may speak with us in open Court, to inform us about the Business before us in open Court.

L. Col. *Lilb.* Not in hugger-mugger, privately or whisperingly.

Judge *Thorp.* I tell you, Sir, the Attorney-General may talk with any in the Court, by Law, as he did with me.

L. Col. *Lilb.* I tell you, Sir, it is unjust, and not warrantable by Law, for him to talk with the Court, or any of the Judges thereof in my absence, or in hugger-mugger, or by private Whisperings.

Ld *Keble.* No, Sir, it is no hugger-mugger for him to do as he did; spare your Words, and burst not out into Passion; for thereby you will declare your self to be within the compass of your Indictment, without any further Proof: Look to it, that you behave your self according to the Bounds of Reason and Law, and hear me; for we must cause the Jury to be returned.

L. Col. *Lilb.* Sir, under favour, I crave but one Word more, hear me out: I know very well, and I read in your own Law-Books, such a Prerogative as that in Cases of Treason no Counsel shall plead against the King, hath been sometime challenged to be the King's Right by Law; but let me tell you, it was an usurp'd Prerogative of the late King, with all other arbitrary Prerogatives and unjust Usurpations upon the People's Rights and Freedoms, which has been pretended to be taken away with him. And, Sir, can it be just to allow me Counsel to help me to plead for my Estate, the lesser; and to deny me the help of Counsel to enable me to plead for my Life, the greater? Nay, Sir, can it be just in you Judges, to take up seven Years time in ending some Suits of Law for a little Money or Land, and deny me a few Days to consider what to plead for my Life? Sir, all these Pretences of yours, were but all the Prerogatives of the King's Will, to destroy the poor ignorant and harmless People by, which undoubtedly died with him; or else only the Name or Title is gone with him, but not the Power or hurtful Tyranny or Prerogative in the least. Therefore seeing all such pretended and hurtful Prerogatives are pretended to be taken away with the King, by those that took away his Life, I earnestly desire I may be assigned Counsel to consult with, knowing now especially no Pretence why I should be denied that Benefit and Privilege of the Law, of the just and equitable Law of *England*, having put myself upon a Trial according to the Privileges thereof. And it was declared to me at *Oxford*, upon the

(a) What a lying Judge is this Mr. Nichols! whenas he himself with Mr. John Maynard the Lawyer, was assigned by the President, Lord Chief Baron Wilde, to be of the Counsel with Major Rolfe upon his Desire; and that before ever the Grand Jury found his Indictment of Treason, as is fully declared in the next day's following Plea of Mr. *Lilburne*.

(b) Whose Words there, fol. 29, 30. are so plain and express to prove what Mr. *Lilburne* said to be good Law, as nothing in the World can be plainer. See also to the same purpose, the second Part. *Inst.* fol. 49, 103, 104.

Trial of my Life there, after I was taken Prisoner fighting against the King and his Party, even almost to Handy-gripes, and to the Sword Point, and to the But-end of our Muskets, being in Person one of that little Number that for many Hours together at *Brentford* fought with the King's whole Army, where in the manner, without any Articles or Composition, I was taken a Prisoner, and immediately thereupon arraigned at *Oxford*; where notwithstanding all this, it was declared to me by Judge *Heath* to be my Right, by the Law of *England*, to have Counsel assigned me to help me in point of Law, and I had it granted. I confess he is my best Authority that I have, and I am sure he was a Judge of the Law, or else I had never pleaded to him; and he was upon his Oath to do Justice and Right; and he was an able and understanding Lawyer, and yet did allow me (an hostile Enemy) Counsel to help me, as my Right by Law, before ever any Proof to Matter of Fact was produced: And I beg but the same legal Privilege from you, from whom I have more Cause to expect it.

Ld *Keble*. Were you there indicted for Treason?

L. Col. *Lilb*. Yes that I was, and for the highest of Treasons, by the Letter of the Law, for actual levying War against the King.

Judge *Thorp*. And yet, for all that, you know it was no Treason, and so did he too; for you know that you had committed no Treason at all in obeying the Parliament's Command: for what you have done, was done by the Parliament's special Authority and Command: and you had your Commission to justify you in your hostile Actions: and he knew it well enough your Act was no Treason, though he did offer you Counsel, or else he durst not allow you Counsel.

L. Col. *Lilb*. I had nothing to justify me in that Act, but the equitable Sense of the Law, the Letter of it being point-blank against me, and on the Cavaliers side, by which if they had prevail'd, they might have hanged both you and me for levying War against the King, notwithstanding our Parliament Commissions: and this I know, Sir, you know to be Law in the Letter or Punctilio's of it.

Judge *Thorp*. It was no Treason in you, and he that assigned you Counsel, knew it was no Treason; and this Arraignment of you was as illegal as his assigning you Counsel.

L. Col. *Lilb*. Sir, by your favour he was a Judge of the Law by legal Authority, being made by the King, in whom, by Law, that Power was invested; and he looked upon himself as a legal Judge, and so did I too: and as a legal Judge he arraigned me for doing that Act, that by the express Letter of the Law was Treason; and as a legal and honest Judge, according to his Duty in Law, he allowed me Counsel.

Judge *Fermin*. For that matter that you talk of, they knew it was no Treason, and therefore gave you more Privileges than was their right by Law, very well knowing, that whatsoever was done to any of you that did fight for the Laws, Religion and Liberties of their Country, there might be the like done to others that were Prisoners in the Parliament's Power: and this was the truth of it, and you know it very well; and therefore it is nothing to us, nor in Law his Willingness.

L. Col. *Lilb*. Upon my Letters, after the first Day of my Trial, that Declaration of *Lex Talionis* was made, as clearly appears by the Words and Date of it now in Print, which the Reader may peruse in the first Part of the Parliament's Declarations, p. 802, 803.

Judge *Thorp*. I wonder they did not proceed in the Prosecution of the Indictment, and find you guilty of Treason, and so to Execution.

L. Col. *Lilb*. Under your favour, thus; I appear'd at the Bar, I pleaded to my Indictment Not guilty, I made Exceptions against my Indictment; and my self, and the two other Gentlemen arraigned with me, had Counsel assigned us as our Right by Law: and the Judges most fairly and rationally further told us, Because we will not surprize you, we will give you a Week's time to consider (with what Counsel you please in *Oxford* to chuse to come to you) what to plead for your Lives; and whatsoever other Privileges you can claim by the Liberties of the Law of *England*, you shall enjoy them to the utmost. Upon which Promise I spoke in open Court to the Judge, shewing him the Irons upon my Hands, in which I was arraigned, and told him; My Lord, by the Laws of *England*, no Prisoner for any Crime whatsoever, that behaves himself civilly and peaceably in his Imprisonment, ought to be put in Irons, or to any other Pain or Torment before he be legally convicted; and therefore I desire, as my Right by Law, that my Irons may be taken off. And I said further, My Lord, I am shut up a close Prisoner in my Chamber, denied the use of Pen, Ink and Paper, which is contrary unto Law, especially in the time of my Trial. Why, says he, you shall be released from your Irons, from your close Imprisonment, and have the use of Pen, Ink and Paper: And Capt. *Lilburne*, I tell you, you shall enjoy whatsoever other Privilege you can challenge as your Right by Law; for the Law of *England* is a Law of Mercy, and I hope we shall appear just Judges of it: And therefore you shall freely have either Lawyer, or whom you will in *Oxford*, to come unto you to help you and advise you. And, says he, because you shall see that Law and Justice is of the King's side against the Parliament, and because they shall have no Cause to calumniate us at *Westminster*, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to murder you, the Court is freely willing to give you a Week's time, to consider with your Counsel in the mean time what this Day Sevensnight to plead for your Life. In which time, being freed of my Irons, and of my close Imprisonment, and enjoying Pen, Ink, and Paper at my Pleasure, by special Order from the other two Gentlemen, I writ a Letter to my Wife, and in it inclosed another to your Speaker, and another to young Sir *Henry Vane*, then my familiar Acquaintance; all which I sent in post-haste away to my Wife by the Hands of Capt. *Primrose's* Wife, which Capt. *Primrose* was Prisoner there; and his Wife, who brought up the Letter to my Wife, is now in *London*. Which Letter my Wife delivered to the Speaker, &c. and by her importunate Solicitation procured the Declaration of *Lex Talionis*; the Substance of which, in a Letter from Mr. Speaker, my Wife brought down to *Oxford*, and delivered to the Lord *Heath's* own Hands

Hands upon the Sunday after the first Day of our Arraignment. And the third Day before we were to appear again, my Wife arrived at Oxford with the Speaker's Letter, which she delivered to Judge Heath himself: Which Letter taking notice of our Trial, threaten'd them with *Lex Talionis*, to do the like to their Prisoners that they did to us, or any of us. And they having many of their great eminent Men Prisoners in the Tower, and in Warwick-Castle, and other Places, did induce them to stop all further Prosecution of Colonel *Vivers*, Captain *Catesby*, and my self. And if it had not been for this threatening Letter, in all likelihood we had all three been condemned by a Commission of Oyer and Terminer, and executed: For my Wife did hear Judge Heath say to some of his Associates, at the reading of the Letter, That as for all the threatening part of it, as to his particular self, I value it not; but, said he, we must be tender of the Lives of the Lords and Gentlemen that serve the King, and are in the Custody of those at Westminster. And that Clause of *Lex Talionis* put a stop to our Proceedings, and further Trials at Law.

Ld Keble. It was well for you, by your Story that you do tell, that you had so fair Play: You shall have with us, who are upon our Lives and Oaths, as much as the Law will afford you, and so much as our Judgments and Consciences can lead us to, without doing Injustice in granting more than the Laws of England will afford. What was done there, is nothing to us here; for we are not to walk by their Precedent, but by our own Judgments, according to the Rules of the Law. And here 'tis thus far just, That upon the Proof of Matter of Fact, if Law do arise, you are to have Counsel; if not, you are to have none. By your Allegation, you say you had Counsel assigned you before any Matter of Fact came to be proved, when as a Judge of the Law he could not but do it; but if he did, it is nothing to us, we cannot do it. Yet we have in this Place proceeded legally hitherto with you; and when that Matter of Law doth arise from the Fact, as you had Counsel there assigned you, so shall you have here, and you shall have fair Dealing, and fair Play, according to Law, which is absolutely as I tell you.

Lieut. Col. Lilburne. Sir, by your favour, I crave but one Word more; and that is this: Here is a Gentleman that is a By-stander, a Friend of mine, and my Solicitor, who by Law, as well as any By-stander, may (a) speak for the Prisoner at the Bar, in case he perceive Things urged against him contrary to Law; and therefore I desire he may speak two or three Words.

[Mr. Sprat beginning to speak.]

Ld Keble. Spare your self; when your Time comes, you shall speak.

Mr. Sprat. He asked leave for me first. And, Sir, it is easy to prove the whole Indictment to be Matter of Law.

Judge Jermin. What impudent Fellow is that, that dare be so bold as to speak in the Court without being called? Mr. Lilburne, by your own Words you say you were told at Oxford, That by Law you were to have Counsel; that is as true, that the Court is of Counsel for the Pri-

soner arraigned at the Bar; and so we ought, and shall permit you other Counsel, if Matter of Law, upon the Proof of the Fact, do arise: But for any other Counsel to be assigned you before that appear, is not by Law warranted: We shall tread the Rules of Justice. And we shall do Wrong to the whole Commonwealth, if we should allow you Counsel before Matter of Law doth arise from the Proof of the Fact; and to allow Counsel in any other Case, the Court commits Injustice.

Ld Keble. And this, Mr. Lilburne, I will promise you, that when there comes Matter in Law, let it be a Lawyer, or your self, he shall speak in your behalf; but before he cannot.

Lieut. Col. Lilburne. Sir, the whole Indictment, under favour, is Matter of Law; and the great Question that will arise (admit the Fact should be true, and admit it should be granted) is, Whether the Words be Treason in Law, yea or no? And also it is Matter of Law in the Indictment, whether the Matter in the Indictment be rightly alledged as to Matter, Time, and Place. And it is Matter of Law in the Indictment, where there are divers several pretended Treasons committed in divers and several Counties, put into one and the same Indictment, be legal, yea or no?

Ld Keble. Upon Proof of the Matter of Fact, you shall hear and know whether Matter of Law will arise; and till the Words be proved, we cannot say whether that be the Law that you suppose.

Lieut. Col. Lilburne. Truly, Sir, you promised me a fair Trial, and that you would not take advantages of my Ignorance in the Law's Formalities: But the Lord deliver me, and all true-hearted Englishmen, from such unjust and unrighteous Proceedings as I find at your hands, who go about, I now clearly see, by my Ignorance, in holding me to a single and naked Plea, which is purely as bad, if not worse, than all the Prerogatives; and for the worst and grossest of his Prerogatives, in a more rigorous manner than they were used in his Life-time, to be thus press'd upon me at this Day, after he hath lost his Life for pretended Tyranny and Injustice, Liberty and Freedom in publick Declarations declared to the Kingdom: I say, if there be Justice and Equity in this, I have lost my Understanding; and the good Lord God of Heaven deliver me from all such Justiciaries.

Ld Keble. Mr. Lilburne, you have been arraigned before us for High Treason, and we bid you forbear those Terms of yours long ago; speak that you do rationally, and you shall have fair and christian Answers and Replies, as ever any Man had at a Bar; and go on, you shall have it still, if you will be fair and rational, and not break out into Extravagancies and Bitterness of Spirit.

Lieut. Col. Lilburne. For my part, Sir, I must look upon my self as a lost and dead Man if I have not Counsel to help my Ignorance, to pitch upon those Things that tend to my Preservation. And therefore if you will not assign me Counsel to advise and consult with, I am resolved to go no further, tho I die for it; and my innocent Blood be upon your Heads.

(a) Coke, in his Instit. 3 par. cap. Petty-Treason, fol. 29. is express in this Particular: So he is in cap. 63. being his Cap. Of Counsel learned in Pleas of the Crown, fol. 137.

Justice *Jermin*. You have alledged part of the Law of *England* for your own Advantage; but every one that says so, does not prove it to be so. You have said you will be tried by the Laws of *England*; and yet against the Laws of *England* you have utterly refused, in that you would not hold up your Hand, which I do not know any *Englishman* that ever refused so to do, but your self. You have been told by the Court what the Law of *England* is; and yet you will not be satisfied. We are upon our Oaths, and therefore will discharge our Consciences, and that in a more eminent manner than my Brother *Heath* did, altho we do not deny you Liberty to speak for your self. But now you would have Counsel assigned before any Matter of Law doth appear upon the Proof of the Fact, which we cannot do; for it were to do Injustice, and to do against the Law, which the Court cannot justify.

Lieut. Col. *Lilburne*. Sir, under favour, whether or no I have transgress'd the Law, I will not judge: But I am sure the Law, in the Equity and Intention of it, would have all Trials to be equal, and not prejudicial. My Prosecutors have had time enough to consult with Counsel of all sorts and kinds to destroy me, yea, and with your selves; and I have not had any time at all, not knowing in the least what you would charge upon me, and therefore could provide no Defence for that which I knew not what it would be. And if by the Law of *England* I cannot have Counsel, then upon your own Grant, which is, That the Laws of God are the Laws of *England*, I desire to have the Privilege of the Law of God, which you your self said is the Law of *England*; and I am sure the Law of God is, That you should do as you would be done to. Now it cannot be according to the Law of God, for my Adversaries to have the Helps of all manner of Counsels, by Snares, Tricks, and Provocations, to take away my Life, and for me to be denied the Benefit to consult with any to preserve my innocent Life against potent Malice.

Ld *Keble*. You say well: The Law of God is the Law of *England*; and you have heard no Law else but what is consonant to the Law of Reason, which is the best Law of God; and here is none else urged against you.

Another Judge. The Laws of God, the Laws of Reason, and the Laws of the Land, are all joined in the Laws that you shall be tried by.

Justice *Jermin*. The Question is but this, Whether the Law of God, and the Law of Reason, and Law of Man, may be consonant to each other? And whether the Court or *John Lilburne* shall be Judges thereof? That is the Question.

Ld *Keble*. And that which you said, Mr. Attorney hath had so much Time against you, and Opportunity to consult with all manner of Counsel to destroy you, your secret Actions, though they are now come to publick View, are so heinous, as that they do require time to put them into the most sure way of Trial; we have proved the Clandestineness of them: You did this in secret; now it is come to the Face of the World. Now this being Matter of Fact, no

Matter of Law can appear till Proof pass upon it. You have had Times to complot your treasonable venomous Books, which shall be proved upon you; and till this be done, there is no Matter of Law to be looked at. This is the Law of God: When a Man hath done such treasonable Things, he shall answer directly and positively whether he be guilty of them or no; and if he answer Not guilty, and they be not fully proved against him, there needs no more to be said.

Justice *Thorp*. Mr. *Lilburne*, there fell some Words from you even now, wherein you think you have this Hardship put upon you, when you say the Judges and your Prosecutors have had six Months time to meet together, and consult together how to destroy you. First, I would not have you to believe, nor the rest that hear it, that that is true that you say; for I speak it for my own particular, that I never saw your Indictment till this time that I came here; and yet you say we have had six Months together to frame it. These are your Words: This was not rightly done of you; for it is not true. I speak in my own particular.

Lieut. Col. *Lilburne*. I am sure the Substance of it you might see many Months ago; and though all you Judges have not at one time met about it, yet the greatest part of you have, that commonly carry the Domination of the whole; and at *Serjeants-Inn*, with Mr. Attorney-General, the most of the Judges of *England* have had several Meetings, six, five, and four Months ago: for I have had Friends there that have seen it, and who have inquired into the Cause of such solemn Meetings, and your own Servants have told them it hath been about me and my Trial.

Justice *Thorp*. I speak as for my own particular, that I never was there, and that I never saw your Indictment till this time.

Justice *Jermin*. Why, Mr. *Lilburne*, might we not have such Meetings as those, your Business being a Matter of this Importance, as this is, through the Heinousness of your Offence? and that it might be so grounded as the Warrant of the Law is, the Judges did meet: And they ought to meet (a) to consider of it, that nothing should be done against you, or any Man else, contrary to the Law. But yet, for my part, my Dwelling is out of *London*, I heard not of it so soon as you speak of; but after I came to Town, I confess I heard of it, and have been present about some Debates about it.

Lieut. Col. *Lilburne*. Only this I say, If by your Prerogative you will destroy me, as *Nebuchadnezzar* did endeavour to destroy *Daniel* by his Prerogative, I am as willing to die, as he was to be thrown into the Lions Den: And if you will not allow me Counsel, to consult with what Plea to make for my Life, I have no more to say. Sir, it is but a vain Thing to spend any more Words.

Ld *Keble*. These are but Words and Flourishes, Sir, that you are so willing and ready to die, as you declare you are: But if you be, it is better for you. And also it is well you have not to do with Judges that would be austere upon you;

(a) But Coke, in his Chapter of Petty Treason, in 3 Par. Inst. fol. 29, expressly saith, and to the end, That the Trial may be the more indifferent, seeing the Safety of the Prisoner consisteth in the Indifferency of the Court, the Judges ought not to deliver their Opinions before-hand of any criminal Case that may come before them judicially. And he there cites *Humphrey Stratford's Case*, that Arch-Traitor, in which *Hussey*, Chief Justice, besought Henry VII. not to demand of them their Opinions before-hand. And in 4 Par. Instit. cap. High Court of Parliament, fol. 37. he fully shews the Evil of asking Judges Opinions before-hand.

for you to term us to be Men that come hither to destroy you as *Nebuchadnezzar* went about to do *Daniel*: You may judge of what is within you; but of us, what is within us, you cannot judge. You shall have Justice here in the Face of the Country, and of all that hear us: These shall be Judges of our Proceedings towards you. Take heed, Mr. *Lilburne*, this Language is but the Sparks of that venomous Heat that is within you; and they may burst out to prove you guilty before us, and in our Presence, of that you are charged with, without any further Proof or Proceedings; for you may do it, you may do it where you stand: And therefore be advised, and take heed what you say.

Lieut. Col. *Lilburne*. Sir, I have cast up my Account, and I know what it can cost me: I bless God I have learned to die, having always carried my Life in my Hand, ready to lay it down for above this twelve Years together, having lived in the Favour and Bosom of God; and I bless his Name, I can as freely die as live.

Ld *Keble*. You shall not now lay it down, if you do not destroy nor cast away the Commonwealth; but if you go about to destroy the Commonwealth, the Commonwealth will spue you up, and destroy you.

Lieut. Col. *Lilburne*. I desire nothing but Counsel, and a little Time to consult with them, and to produce my Witnesses, and a Copy of my Indictment: If not, I am willing to die as the Object of your Indignation and Malice, do your Will and Pleasure.

Ld *Keble*. We are willing to die too.

Mr. *Attorney*. What is agreeable to the Law of *England*, the constant settled Practice of trying Prisoners, will not be denied Mr. *Lilburne*: But as for that Privilege that was granted him at *Oxford*, is no Tie in Law to us; neither was it ever heard of in *England* that any, that did understand the Law, did ever, as Mr. *Lilburne* now desires, allow Counsel to a Prisoner for such an Act as this is, or had the Copy of the Indictment. It shall not be denied Mr. *Lilburne*, which is his Right by Law, in its due place; but to make new Precedents and new Laws, which, my Lord, when done by such a Bench as this is, most of the Judges in *England* being present, runs to all criminal Cases whatsoever, whether in Treason, Murder, or other Felonies: It's true, Mr. *Lilburne* is now only concerned in it; but if granted to him, it would be a Precedent to all future Times; by means of which there would never be an end of Trials in criminal Cases. And it is a wonderful strange Thing to me, that when the Prisoner hath pleaded the usual way, you proceed not immediately to Trial. It's true, Mr. *Lilburne* hath pleaded his own Ignorance, and therefore desires longer Time: But, my Lord, to make a Precedent of this nature, that never was known by the Laws of *England*, is very dangerous, very perilous. My Lord, the Thing that I press is not in relation to Time, but in relation to the publick Justice; for the same Reason it's granted him, it ought not to be denied to any Man that asketh it, neither for Treason or Felony. And of what evil Consequences it would be, I leave your Lordship and the Court to judge.

My Lords, I do humbly desire that Mr. *Lilburne* may be dealt with all legal, just, and fair Proceedings from the Court. My Lord, I do

desire accordingly that Proceedings may for the Commonwealth be so too; and that Mr. *Lilburne* may be without Delay, according to Law, proceeded against for his notorious Treasons.

Lieut. Col. *Lilburne*. Sir, with your favour, I shall crave but one Word: This Gentleman declares unto you what an evil Precedent it would be to give me a little Time to consult with Counsel, to frame a Plea for my Life; and yet that Judge was pleased to say the Law of *England* is founded upon the Law of God, and the Laws of Reason, unspotted, uncorrupted, or undefiled. I am sure the Law of God, and the Law of uncorrupted Reason, is to do as you would be done to, and not to lay Snares for your Neighbour's Life: I am sure the Law of God would have all Trials indifferent, and no Man's Life surprized or taken away by Niceties or Formalities, tho never so notoriously accused. And, Sir, for Mr. *Prideaux*, and others of you, so often to call me notorious Traitor, as you do; I tell you, Sir, you reproach me: for though I am never so notoriously accused, yet in the Eye of the Law of *England* I am an innocent Man, yea, as innocent as any of those who call me Traitor, till such time as I be legally convicted of the Fact or Crime laid unto my Charge; and therefore, Sir, I beseech you cease your calumniating of me, for you thereby deal not fairly nor legally with me. And, Sir, I confidently hope I shall appear in the Eye of the Law, in the Eyes of you, and in the Eyes of all Men that hear me this Day, an innocent, a just, and a true *Englishman*, that really loves the Welfare of his native Country, if I may have fair Play, and the Scope of the Law. And therefore, Sir, blemish me not in the Ears of the Auditors, till the Law, and a Conviction by it, do blemish me; for I tell you I am in the Eye of the Law as innocent as any of your selves, till I be justly convicted. And therefore I pray cease the calling of me Traitor in this manner.

Ld *Keble*. What need we any more, when we are of your Opinion? We wish you may come as clearly off as you say you hope to do.

Mr. *Attorney*. My Lord, and that it may be so declared, and that the World may know whether Mr. *Lilburne* be an innocent Man, or no, I pray put it to the final issue, and let the Law judge.

Lieut. Col. *Lilburne*. Under favour, for me to be denied Law, which I conceive is done unto me when I am denied Counsel, and to put the Niceties and Formalities of the Law upon me, the Signification of which are writ in such Language and Tongues as I cannot read, much less understand; and would you destroy me for the not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extreme towards me. That Gentleman saith the Law of God is the Law of *England*; and it would have no Snares laid to take away a Man's Life: I pray let me have the Benefit of that.

Mr. *Attorney*. Once you had; and it is but just you should; and I am sure it will be granted unto you.

Ld *Keble*. Mr. *Lilburne*, you say well; the Prisoner doth not know the Law; you do not, and many others do not: But I tell you again, you know so much of the Law as is suitable to this Plea; you your self know whether your Conscience accuse you guilty of the Fact laid unto

unto your Charge, or not. For our parts, we say no more than one and twenty Men upon their Oaths have informed us, upon sufficient Testimony of Witnesses, that what they had said we should further inform our selves of, before your Life be taken away; yea, such is the Law of *England*, the tenderest Law in the World of a Man's Life. I say again, that no such Trial for Life is to be found in the World, as in *England*. In any Place but in *England*, a Man's Life may be taken away upon two or three Witnesses; but in *England* two or three Witnesses do not do it: For there are two Juries besides, and you have four and twenty Men returned; you have one and twenty Men upon their Oaths and Consciences that have found you guilty: And yet when you have done that, it is not enough by the Law of *England*, but you are also to have twelve rational understanding Men of your Neighbours to hear all over again, and to pass upon your Life. This is not used in any Law in the World but in *England*, which hath the righteousest and mercifullest Law in the World: And this we sit here to maintain, and let all the World know it, that according to the Rules thereof we have proceeded against you.

Judge *Michel*. Mr. *Lilburne*, you were speaking of the Laws being in other Tongues; those that we try you by are in *English*, and we proceed in *English* against you; and therefore you have no cause to complain of that.

Lieut. Col. *Lilburne*. By your Speeches you seem to bind me up to a single Plea: Truly I conceive that is not equitable by the Law of God, and the Laws of Reason. No Man's Life is to be destroyed by Niceties and Formalities; yet contrary to your solemn Promises, you take all Advantage against me by them, and make my ignorance in the ticklish Formalities of the Law to be the means of my own Destruction: although before I pleaded you ingaged unto me you would take no Advantage by my Ignorance in your Formalities, and my Mistakes in them should be no Disadvantage unto me; and yet now I have pleaded, you seem to hold me close to a single Plea. Truly, Sir, I think that is not just nor fair so to break your Promises, and by fair Words to smooth me on into Nets and Snares, and to make use of my Willingness to be tried by the Law of *England* to drill me on to my own Destruction. Truly, Sir, had I ever thought or believed I should have been denied Counsel, I would have died before ever I would in any manner have pleaded to your Charge, or have yielded to your smooth Insinuations.

Justice *Fermin*. Those Men that know the Laws of *England*, know well that it taketh away no Man's Life but upon clean Proof, and upon manifest Contempts of the Law. The Law is, Whosoever shall go such a way in a Court as evidently gives affront to the Law, that such one takes away his own Life. The Facts that you are charged with, if they had taken effect, would have taken away the innocent Lives of many: Therefore you are now before us charged with the Fact; and every Man's Conscience knows whether he committed the Thing charged upon him, or no; and your self does know whether you be guilty of that you are accused of, or no. But the Court must not spend any further time; for Mr. Attorney-General hath returned the Writ of *Venire facias*, for the call-

ing or summoning of a Jury of Life and Death.

Ld *Keble*. Mr. *Lilburne*, you say you well understand your self: You knew of your coming, and you knew of the Fact that you have committed.

Lieut. Col. *Lilburne*. Truly, Sir, six Months ago I heard much of my Trial; and I longed for it, but could not have it, but was still kept in Prison, and abundance of Provocations put upon me, to make me cry out of my Oppressions; and then to hang me therefore, by a Law made after my pretended Crime was committed, is not just. And truly, Sir, I heard but by uncertain common Fame of my Trial now. Some Parliament-Men told my Wife and Friends that my chiefest Crime was corresponding with the Prince; and to defend my self against that, I fitted my self, never dreaming that only Books should be laid to my Charge, and therefore I could not as to that come prepared: And therefore do humbly desire Counsel, a Copy of my Indictment, and Time to bring in my Witnesses.

Ld *Keble*. Hear what is said to you: For your Witnesses, you should have brought them with you; we'll give you leave to send for them: We will give you time to do, to consider with your self what to say for your self, you shall, till to-morrow Seven a-clock.

Lieut. Col. *Lilburne*. Sir, some of my Witnesses live an hundred or eighty Miles off; and yet I must bring them to-morrow Morning: How's that possible? And therefore I desire Time to bring them in, and also *Sub-pœna's*; for some of them are Parliament-Men, and some of them Officers of the Army, and they will not come in without Compulsion.

Ld *Keble*. That's the time we will give you longer; you knew of your coming long ago, and therefore ought to have come provided.

Lieut. Col. *Lilburne*. Sir, I beseech you give me a convenient time, eight or ten days, that so I may get them together; for how could I be provided before-hand for any thing, but for that which I was at the first imprisoned for, nothing of which is now laid to my charge? Could I divine upon what you would proceed against me? But, Sir, I have that within me, I bless God, that will be a Portion of Comfort with me, to carry me through all your Malice and Injustice.

Ld *Keble*. Never talk of that which is within you; God is in us, as well as in you: never make a flourish of what is in you; for the Fear of God is before our eyes as well as yours, and what we do we shall have comfort in, in that it is according to the Laws of *England*, the Rules of which we are sworn to observe, and every Man will do righteous things as well as you.

Lieut. Col. *Lilburne*. Pray will you give but eight days time then?

Ld. *Keble*. We will give you no more; you ought to have brought them with you, you knew of it long ago; and the Court cannot, nor will not wait upon you.

Lieut. Col. *Lilburne*. By your favour, Sir, thus; then let me have a little time to consult with Counsel.

Ld. *Keble*. I tell you that if the Matter be proved, there needs no Counsel.

Lieut. Col. *Lilburne*. Sir, I shall not much insist upon that, but the question is, Whether the Matter be Treason in Law or no, and whether in Law it be rightly expressed in the Indictment, as to Time and Place, with other Circumstances thereunto belonging? And I question the Legality of the Indictment, and that ought in Law to be disputed, before the Matter of Fact come to be spoken to.

Ld *Keble*. Sir, you said at first, you would speak as a rational and moderate Man, and yet you will not be answered. If Matter of Law do arise out of your Fact, that we have told you again and again, you shall have Counsel and Time.

Lieut. Col. *Lilburne*. Sir, by your Favour, it may be too late to desire Counsel after the Fact is proved. And besides, having legal Exceptions against the Indictment, why should you run me upon the Hazard of my Life, by ticklish Niceties and Formalities; and as my Prosecutor Mr. *Prideaux* saith—*[But being interrupted, cry'd out]* Sir, I beseech you, do but hear me.

Ld *Keble*. Your Distemper will break out; your Heart is so full of boiling Malice and Venom, you cannot contain yourself.

Lieut. Col. *Lilburne*. Mr. *Prideaux* is pleased to urge, that the granting of me my Desire in reference to Counsel, will be so inconvenient a Precedent, as will destroy the Commonwealth: therefore to avoid the danger of such a destroying Precedent, as he is pleased to call it, I desire to have some time assigned me to get my Witnesses together, and then I shall, I doubt not, but convincingly shew you the Hazard and destroying Mischief of that desperate Precedent in denying Men liberty to consult with Counsel, when they are upon Trials for their Lives. For my own Judgment, my own Conscience doth tell me, that it is my undoubted Right by the Law of *England*, by the Law of God, and the Law of Reason; and if it be totally denied me, I can but die: and upon that score, by the assistance of God, I am resolved to die.

Ld *Keble*. You speak great Words of your own Judgment, your own Conscience, your own Zeal, and the like: and I tell you, our Consciences, and our Religion, and our Zeal, and our Righteousness, I hope shall appear as much as yours: You would make your self Judge in your own Cause, which you are not, and so make Cyphers of us; but all your high Words of Conscience and Righteousness is but a Flourish, to make the People believe or be apprehensive as tho we had none, you had all: but you shall know, here we sit with as much Tenderness and Integrity as you stand there, and to do that uprightly which is according to Law and Justice.

Lieut. Col. *Lilburne*. I shall not in the least make any Comparisons, neither do I in that particular; I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy Content, Peace, and Quietness of Mind: and yet for my part I shall rather die than willingly go any further, except I have Counsel first.

Ld *Keble*. Well, Mr. *Lilburne*, the Court is very tender not to take up any of your time; you have heard what was declared to you there, that Mr. Attorney hath made Process against you returnable To-morrow at Seven of the Clock, and

therefore to spend more time will be but your Loss and Damage. The Sheriffs of *London* are to take care to return the Jury To-morrow Morning, and therefore the Court doth adjourn till Seven a Clock To-morrow in the Morning; and in the mean time they do commit the Prisoner at the Bar to the Lieutenant of the *Tower* again.

Lieut. Col. *Lilburne*. Sir, I did not hear you the first Words.

Ld *Keble*. You shall not be denied to hear it again, the Court desires to be good Husbands of Time for you; we could have sat long enough to have trifled away your Time that you may spend in your Meditations, and take your Friends Advice; do not stand upon and destroy your self by Words.

Just. *Jermin*. Mr. *Lilburne*, all that are here are to take notice of it, that the Prisoner at the Bar hath had more Favour already, than ever any Prisoner in *England* in the like case ever had: for by the Laws of *England*, in the matter of Treason, whereof you are indicted, you ought to have been try'd presently, immediately: But because all the World shall know with what Candor and Justice the Court do proceed against you, you have till To-morrow Morning; which is the Court's extraordinary Favour, and the Doors are wide open, that all the World may know it.

Lieut. Col. *Lilburne*. Sir, I can shew one hundred Precedents to the contrary in your own Books, to disprove what you say.

Ld *Keble*. Adjourn the Court.

Lieut. Col. *Lilburne*. I humbly thank you for what Favour I have already received.

The Court adjourned till the next Morning, and the Prisoner remanded to the Tower.

Guild-Hall, October 26, 1649, being Friday.
At the Trial of Lieut. Col. John Lilburne, the Second Day.

THE Prisoner being brought to the Bar, spake as followeth: Sir, I pray hear me a Word or two.

Ld *Keble*. Mr. *Lilburne*, I am afraid something troubles you; I will have no body stand there*, let all come out but one Man.

Lieut. Col. *Lilburne*. Here's none but my Brother and my Solicitor.

Ld *Keble*. Sir, your Brother shall not stand by you there; I will only have one hold your Papers and Books, and the rest not to trouble you: wherefore the rest are to come out.

Lieut. Col. *Lilburne*. Sir, I beg of you but one Word, tho I do not know any reason why of myself I should not have the Privilege of the Law, as well as any Man in *England*; yet besides what Yesterday I alledged for myself, for to have Counsel assigned, yet To-day give me leave to mention an unquestionable Precedent for my purpose, and that is Major *Rolfe*, who being an Officer in the Army, and being lately indicted for High Treason (before the Lord Chief Baron *Wilde*, that now is at *Hampshire* Assizes) for conspiring to poison and pistol the late King, which by Law was the highest of Treasons, did

* That was in the Bar, where his Brother Col. Robert Lilburne, his Solicitor Mr. Sprat, and other of his Friends stood.

conceive himself, in regard of his Ignorance, unable to defend himself singly against his Enemies Design, which was to take away his Life: whereupon he becomes an humble Suitor to the Lord Chief Baron *Wilde*, that he might have Counsel assigned him; and the Court, before ever the Grand Jury received any Testimony against him to find the Bill, assigned him Counsel, who as I understand were one Mr. *Nichols*, now a Judge of this Bench, and sitting there; and Mr. *Maynard* of the *Temple*: they were both assigned his Counsel, and from Mr. *Maynard* himself I have it, yea, from his own Mouth; who being assigned his Counsel, they came into the Court, where the Grand Jury was called before the Judge. Mr. *Maynard*, and Mr. *Nichols*, now a Judge here, had liberty there to be in the open Court, where the Witnesses, before the Indictment was found, was called, and in open Court was sworn, and in open Court gave in their Evidence before the Grand Jury; Major *Rolfe's* Counsel being by in open Court, to hear all the Evidence that was given against Major *Rolfe*, who in his Indictment was indicted for two Matters of Fact; the first was, That he had declared that in such a Month, and at such a Place, he had an intent to Pistol the late King, which by the Letter of the Law of 25 *Edw. 3. chap. 2.* was Treason. Then there was another Charge, That such a Day he had so said or declared to Poison him, in the Presence of such a one; and they were both put into one Indictment. Whereupon Mr. *Maynard* being assigned by the Lord Chief Baron *Wilde*, that now is, to be of Counsel for *Rolfe* in the same Case (but with abundance of more advantage to him, than I am now in) Mr. *Maynard* was then of Counsel to the Prisoner, and had liberty to hear what the Witnesses swore against him, and to make his best Advantage of it, and that in open Court, before the Indictment was found by the Grand Inquest; and altho there were two express Witnesses against him, yet but one of them swore to one thing, and another to another. Mr. *Maynard* being one that knew the Law better than Major *Rolfe* did himself, he apply'd the two Statutes of *Edward VI. viz. the 1 Edw. 6. chap. 12. and 5 & 6 Edw. 6. chap. 11. to Rolfe's Case*; which Statutes do expressly declare, That no Man ought to be convicted of Treason, but by two sufficient Witnesses upon plain and clear Evidence to each Fact of Treason: which Evidence, as Sir *Edward Coke* says in the third Part of his *Institutes*, ought to be as clear as the Sun at Noon-day, and not upon one single Witness, and upon conjectural Presumptions, or Inferences, or Strains of Wit. Now, Sir, I am an *Englishman* as well as Major *Rolfe*, and I have been an Officer in the Parliament-Army as well as he, and there fought for them as heartily as ever he did in his Life, and he was accused for the highest of *English* Treasons. And therefore I humbly crave, that in regard there are many particular Errors in the Indictment, as to Matter, Time, and Place, that therefore in reference to the Illegality of the Indictment, according to this Precedent by one of your own Fellow-Judges, that you would, according to my Birth-right declared in Major *Rolfe's* Case, assign me Counsel as he had, to help my Ignorance, that so I may not be destroyed by Surprizal, and illegal and unjust Prerogatives.

Ld *Keble*. You see with what a great deal of Favour, instead of a few Words, we have heard you many; this is a Privilege: but this that you say upon it, it may be it was done; but that we do, shall be according to that you and we shall find to be according to the Laws of the Land, and our Conscience, and the Privilege of the Subject: that that they did before the Grand Jury, and the Witnesses, the Witnesses are here sworn in Court in Presence of the Grand Jury, so far we go with them; that of Mr. *Maynard* and Mr. Justice *Nichols* being assigned Counsel, for what cause it was then they best know, it is nothing that doth now concern us, tho the Treason was against those Laws that then were in being; we must come to Proof, it may be he confess'd his Fact; if you will do so too, it alters the Case.

Lieut. Col. *Lilburne*. No, Sir, he never confess'd it, for if he had, he had been found guilty; but he was saved merely by the Skill and Honesty of his Counsel Mr. *Maynard*, and his Indictment null'd and evaded before ever the Grand Jury found it, and that upon this Point of Law, because by the two Statutes of *Edward VI.* there ought to be two plain and clear Witnesses to every Part of Treason; and tho *Rolfe* was accused by two Witnesses, yet there were two Facts, and but one Witness to the Proof of each of them.

Ld *Keble*. When you come to Trial, if we see there be need of Counsel, the Court will be instead of Counsel to you; nay the Court, if they see any Matter of Law for Counsel, tho you do not ask it, they will give you it. And therefore set your Heart at rest, for if there be any thing rational in Law that we can spy out, as well as your Counsel, we will help you in it.

Lieut. Col. *Lilburne*. Sweet Sir, I crave but one Word more; I am upon my Life, and if you deny me what the Law affords me, and that which hath been granted to be Law by Cavalier Judges, yea and by your Fellow-Judges, who are now in Power at this Day; the Lord deliver me from standing in need of you to be my Counsellors.

Ld *Keble*. We are upon our Lives too, as well as you.

Lieut. Col. *Lilburne*. No, by your Favour, not in so imminent a manner as I am.

Ld *Keble*. We are upon our Lives and our Souls to all Eternity.

Lieut. Col. *Lilburne*. Sir, I beseech you hear me one Word.

Ld *Keble*. I will hear no more.

Mr. *Prideaux*. My Lord, I desire the Court would proceed, and not prolong Time, seeing he has pleaded Not Guilty, and confessed something.

Lieut. Col. *Lilburne*. No, Sir, you do me wrong, and abuse me: I never confessed any thing, neither did I plead Not Guilty; for my Plea was conditional, grounded upon your Promises, not to take any Advantage of my Ignorance in your Formalities.

Ld *Keble*. Go on; be silent, Mr. *Lilburne*.

Lieut. Col. *Lilburne*. If you take away my Life without affording me the Benefit of the Law, my innocent Blood be upon your Heads.

Ld *Keble*. Sir, these passionate Words will do you no good, you had better forbear them.

Lieut. Col. *Lilburne*. Pray hear me then.

Ld *Keble*.

Ld Keble. Do you say that we do offer to take away your Life, Sir? if we do take it away contrary to Law, we are liable to answer for it: but we shall judge what you have done. [*The Lieutenant-Colonel pressing to speak, was not suffered, but bid be silent.*] Sir, I advise you, Sir, spare yourself with Patience, and hear the Court.

Justice Jermin. Be quiet, Sir.

Lieut. Col. Lilburne. I beseech you, Sir, let me hear but the Grand Jury speak; for I understand from some of themselves, they never found me guilty of Treason, but do conceive themselves wronged by some Words Yesterday, that passed from some of the Judges: I pray let me hear them speak.

Ld Keble. Mr. Lilburne, you said you would be rational, you would be moderate; you do break out; you will do yourself more Hurt than any here can do you: you must be silent and hear the Court, we can lose no more Time to hear you. Cryer, call the Jury.

Cryer. The Jury called—[*And Mr. Lilburne earnestly pressed to be heard, but could not.*] Cryer. Miles Petty, William Wormwell.

Lieut. Col. Lilburne. Sir, I beseech you let me but see these Gentlemens Faces.

Ld Keble. You Master Sprat, you must not talk to the Prisoner; you may stand and hold the Books: you did offend Yesterday, but you shall not do so To-day, for you shall not stand near the Prisoner to talk to him.

Lieut. Col. Lilburne. My Lord, the Law says a Stander-by may speak in the Prisoner's Behalf at the Bar, much more whisper to him; but especially if he be his Solicitor.

Cryer. John Sherman, Thomas Dainty, Ralph Ely, Edmund Keyzer, Edward Perkins, Ralph Packman, Francis Woodall, William Commins, Henry Hanson, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevill, John Mayo, Henry Jooley, Arthur Due, Roger Sears.

Clerk. You good Men of the City of London appear. Stephen Ives, John Sherman, Ralph Ely, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevill, Roger Sears, John Mayo, Nicholas Murren.

Clerk. You Prisoner at the Bar, these good Men that are here presented before the Court, are to be of your Jury of Life and Death; if therefore you will challenge them, or any of them, you must challenge them before they go to be sworn, and then you shall be heard.

Cryer. Every Man that can inform my Lords the Justices, and the Attorney-General of this Commonwealth, against Master John Lilburne Prisoner at the Bar, of any Treason or Felony committed by him, let them come forth, and they shall be heard, for the Prisoner stands upon his Deliverance; and all others bound to give their Attendance here upon pain of Forfeiture of your Recognizance, are to come in.

Lieut. Col. Lilburne. Sir, I beseech you give me leave to speak.

Ld Keble. You cannot be heard.

Lieut. Col. Lilburne. Truly, Sir, I must then make my Protest against your unjust and bloody Proceedings with me, before all this People; and desire them to take notice, that yesterday I pleaded to my Bill conditionally, that no advantage should be taken against me for my Ignorance in your Formalities, and you promised me you would not.

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Ld Keble. We give you too much time; you will speak words that will undo you: is this your Reason? You shall talk in your legal time, and take your legal Exceptions, we will hear you till midnight.

Lieut. Col. Lilburne. Then it will be too late, Sir.

Justice Jermin. You have given a great Slander, and that doth not become a Man of your Profession; you speak very black words.

Lieut. Col. Lilburne. I beseech you, do but hear me one word; I do not know the Faces of two of the Men that were read unto me, I hope you will give me time to consider of them.

Ld Keble. No, Sir, you ought not to have it.

Lieut. Col. Lilburne. Will you let me have some Friends by me that are Citizens of London, that know them, to give me information of their Qualities and Conditions? for without this, truly you may as well hang me without a Trial, as to bring me here to a Trial and deny me all my legal Privileges to save myself by.

Ld Keble. If you be your own Judge, you will judge so; go on.

[Mr. Sprat, or Col. Robert Lilburne, whispers to the Prisoner to challenge one of the Jury, which the Judge excepted against.]

Lieut. Col. Lilburne. Sir, by your favour, any Man that is a By-stander may help the Prisoner, by the Law of England.

Ld Keble. It cannot be granted: and that Fellow come out there, with the white Cap, pull him out.

Lieut. Col. Lilburne. You go not according to your own Law in dealing thus with me.

Justice Jermin. Your words were never a Slander, nor never will be; hold your peace. Cryer, go on.

Cryer. Stephen Blyth, look upon the Prisoner. Abraham Seal, John King, Nicholas Murren, (Thomas Dariel) [the Prisoner excepted against him] Edward Perkins, Francis Peale.

Justice Jermin. Was he recorded and sworn before he spake, or no?

Cryer. No, my Lord.

Justice Jermin. Then let him continue, if he be right recorded.

Cryer. The Oath was not given quite out.

Justice Jermin. Then he hath challenged in time; let him have all the lawful Favour that may be afforded him by Law.

William Comins sworn, Simon Weedon sworn.

Lieut. Col. Lilburne. He's an honest Man, and looks with an honest Face, let him go.

Henry Tooley sworn, Arthur Due excepted against.

Ld Keble. Take away Mr. Due, let him stand a little by.

Henry Hanson put by, being sick; one that could not hear, excepted against; John Sherman, Ralph Head, Roger Jenkinson, Josias Hamond, Richard Allen, John Mayo, Roger Sears, Henry Hanson excepted against, Edmond Keyzer sworn.

The Jury called.

Clerk. Twelve good Men and true, stand together, and hear your Evidence.

Justice Jermin. Cryer of the Court, let the Jury stand six of the one side, and six of the other.

G

Clerk.

Clerk. 1. Miles Petty, 7. Ed. Perkins,
 2. Stephen Ives, 8. Ralph Packman,
 3. John King, 9. William Comins,
 4. Nicholas Murren, 10. Simon Weedon,
 5. Thomas Dainty, 11. Henry Tooley,
 6. Edmond Keyzer, 12. Abraham Smith.

Of the Jury, six live about Smithfield, one in Gosling-street, two in Cheapside, two in Bread-street, and one in Friday-street.

Justice Jermin. It's well done.

Cryer. The Lords the Justices do straitly charge and command all manner of Persons to keep silence, while the Prisoner is in Trial.

Mr. Broughton, John Lilburne, hold up thy Hand.

Lieut. Col. Lilburne. As I did yesterday, I acknowledge myself to be John Lilburne Freeman of London, Son to Mr. Richard Lilburne, of the County of Durham, and some time Lieutenant-Colonel in the Parliament-Army.

Justice Jermin. You refuse to hold up your Hand; and tho' you break the Law of England, the Court will not break it.

Lieut. Col. Lilburne. I do what the Court declares is my Right and Duty to do; I do no more than declare my Name to be so as it is.

Ld Keble. Read the Indictment.

Mr. Broughton reads. Hold up thy Hand, John Lilburne; thou standest here indicted of High Treason by the Name of John Lilburne, late of London Gentleman, for that thou, as a false Traitor, not having the Fear of God before thine eyes, but being stirred and moved up by the Instigation of the Devil, didst endeavour not only to disturb the Peace and Tranquillity of this Nation, but also the Government thereof to subvert, now established without King or House of Lords, in the way of a Commonwealth, and a Free-State, and happily established; and the Commons in Parliament assembled, being the Supreme Authority of this Nation of England, to disgrace, and into Hatred, base Esteem, Infamy and Scandal, with all the good, true, and honest Persons of England, to bring. That is to say, that thou the said John Lilburne, on the first Day of October in the Year of our Lord 1649, and in divers other Days and Times, both before and after, in the Parish of Mary the Arches, in the Ward of Cheap, London, aforesaid, of thy wicked and devilish Mind and Imagination, falsely, maliciously, advisedly, and traitorously, as a false Traitor, by writing and imprinting, and openly declaring, that is to say, by a certain scandalous, poisonous, and traitorous Writing in Paper, intitled, *A salva Libertate*; and by another scandalous, poisonous, and traitorous Book, intitled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton Esqs; late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true, and zealous Affections to the Liberties of this Nation*: And by another scandalous, poisonous, and traitorous Book, imprinted, and intitled, *An Outcry of the Young-men and Apprentices of London, or an Inquisition after the lost fundamental Laws and Liberties of England*, directed Aug. 29. 1649.

in an Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the fifth of June 1647. but more especially the private Soldiers of the General's Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traitorously defeated at Burford, the fifteenth of May 1649. And also by another scandalous, poisonous, and traitorous Book, intitled, *The legal fundamental Liberties of the People of England, revived, asserted, and vindicated*; didst publish that the Government aforesaid is tyrannical, usurped, and unlawful; and that the Commons assembled in Parliament are not the Supreme Authority of this Nation. And further, that thou the said John Lilburne, as a false Traitor, God before thine eyes not having, but being moved and led by the Instigation of the Devil, endeavouring, and maliciously intending to subvert the Government aforesaid, as is aforesaid, well and happily established; thou the said John Lilburne, afterwards (that is to say) the aforesaid first Day of October (a) in the Year of our Lord 1649 aforesaid, and divers other Days and Times, as well before as after, at London aforesaid, that is to say, in the Parish and Ward aforesaid, at London aforesaid, maliciously, advisedly, and traitorously didst plot, contrive, and endeavour to stir up, and to raise Force against the aforesaid Government, and for the Subverting and Alteration of the said Government, and those wicked, malicious, and traitorous Advise-ments to put in execution, &c. And thou the said John Lilburne afterwards, that is to say, the aforesaid first Day of October in the Year of our Lord 1649 aforesaid, and divers Days and Times as well before as after, at London aforesaid, that is to say, in the Parish and Ward aforesaid, of thy depraved Mind, and most wicked Imagination, in and by the aforesaid scandalous, poisonous, and traitorous Book, intitled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton Esqs; late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true, and zealous Affection to the Liberties of his native Country*: falsely, maliciously, advisedly, and traitorously, didst publicly declare, amongst other things in the said Book, these false, scandalous, malicious, and traitorous Words following; 'But my true Friends, (meaning the Friends of the said John Lilburne) 'I (meaning the aforesaid John Lilburne) 'shall here 'take upon * me the Boldness, 'considering the great Distractions 'of the present Times, to give a 'little further Advice to our Friends aforesaid, 'from whose Company or Society, or from 'some of them, hath been begun and issued out 'the most transcendent, clear, rational and just 'things, for the Peoples Liberties and Free- 'doms, that the fore said John Lilburne hath 'seen or read in this Nation, as your notable 'and excellent Petition of May the 20th, 1647. 'burnt by the hands of the common Hangman, 'recorded in my Book called *Rash Oaths unwar- 'ratable*, pag. 29, 30, 31, 32, 33, 34, 35. with 'divers Petitions of that nature, and the Petition

(a) Note that Mr. Lilburne was imprisoned by the Council of State as a Traitor, the 28th of March, 1649. and they there came, and after arraign him as a Traitor, for Actions done above five Months after, waving all the pretended Crimes for which they first imprisoned him.

‘ of the 19th of *January* 1648. recorded in the following Discourse, pag. 45, 46, 47, 48. and the Masculine Petition of the 11th of *September* 1648. so much owned by Petitions out of several Counties; yea, and by the Officers of the Army’s large Remonstrance from *St. Albans*, the 16th of *November* 1648. pag. 67, 68, 69. The Substance of all which, I (thou the foresaid *John Lilburne* meaning) ‘ conceive is contained in the printed Sheet of Paper, signed by my Fellow-Prisoners, Mr. *William Walvin*, Mr. *Richard Overton*, and Mr. *Thomas Prince* and myself, dated the 1st of *May* 1649. and intitled, *The Agreement of the Free People of England*. Which false, scandalous, and traitorous Book, called, *The Agreement of the People of England*, tends to the Alteration and Subversion of the Government aforesaid. ‘ The Principles of the foresaid Agreement, I (meaning yourself the said *John Lilburne*) ‘ hope and desire you (the Friends of the aforesaid *John Lilburne* meaning) ‘ will make the final Centre, and unwavering Standard of all your Desires, Hazards and Endeavours, as to the future Settlement of the Peace and Government of this distressed, wasted, and divided Nation: the firm establishing of the Principles therein contained, being that only which will really and in good earnest marry and knit that Interest, whatever it be, that dwells upon them, unto the distressed or oppressed Commons of this Nation.

‘ But the Principles of the foresaid Agreement being so detestable and abominable to the present * ruling Men, as that which they know will put a full end to their Tyranny and Usurpation, and really ease and free the People from Oppression and Bondage; that it is something dangerous to those that go about the Promotion of it: yet I shall advise and exhort you, (meaning the Friends of him the aforesaid *John Lilburne*) vigorously to lay all Fear aside, and to set on foot the Promotion of it (meaning the said Agreement) ‘ in the same method we took for the promotion of the foresaid Petition of the 9th of *January* 1647. laid down in the following Discourse, pag. 23, 24, 25. and write to all your Friends in all the Counties of *England*, to chuse out from amongst themselves, and send up some Agents to you (two at least for each County, with Money in their pockets to bear their Charges) to consider with your called and chosen Agents, of some effectual Course speedily to be taken for the settling of the Principles thereof, (meaning the aforesaid false Agreement, devised by yourself the aforesaid *John Lilburne*) ‘ and to set up the promoting of, (the foresaid feigned Agreement meaning) ‘ as that only which in an earthly Government can make you (the aforesaid Friends of the said *John Lilburne*) ‘ happier: at least to know one another’s Minds, in owning and approving the Principles of the foresaid false ‘ Agreement, that so it may become to you (meaning the foresaid Friends of the foresaid *John Lilburne*) ‘ and all your Friends, your Centre, Standard, and Banner, to flock together to, in time of those foreign Innovations, and domestick Insurrections, that are like speedily to bring Miseries enough upon this poor distressed Nation, (the aforesaid Nation of *England* again meaning) ‘ and unanimously resolve and engage one to another, neither to side with, or fight for, the Chimera’s, Fooleries, and Pride

* These Lines are in p. 7.

‘ of the present Men in Power, (the aforesaid Parliament of *England* meaning) ‘ nor for the Prince’s Will, nor any other base Interest whatsoever: the which if you (the aforesaid Friends of the said *John Lilburne* meaning) ‘ should fight for, it would be but an absolute Murder of your Brethren and Countrymen you know not wherefore, unless he or they will come up to those just, righteous, and equitable Principles therein contained, and give rational and good Security for the constant adhering thereunto.

‘ And upon such Terms, I do not see but you may justifiably, before God or Man, join with the Prince himself; yea, I am sure, a thousand times more justly, than the present ruling Men (upon a large and serious Debate) joined with *Owen Roe O-Neale*, the grand bloody Rebel in *Ireland*; who, if we must have a King, I (meaning he the aforesaid *John Lilburne*) ‘ for my part I had rather have the Prince, (meaning *Charles Stuart*, Son to the late King) ‘ than any Man in the World, because of his large Pretence of Right, which if he come not in by Conquest, by the hands of Foreigners (the bare attempting of which, may apparently hazard him the Loss of all at once) by gluing together the now divided People, to join as one Man against him; but by the hands of *Englishmen*, by Contract upon the Premises aforesaid, (which is easy to be done) the People will easily see, that presently thereupon they will enjoy this transcendent Benefit, (he being at peace with all foreign Nations, and having no regal pretended Competitor) viz. The immediately disbanding of all Armies and Garrisons, saving the old Cinque-Ports: and so those three grand Plagues of the People will cease, viz. Free-Quarters, Taxations, and Excise; by means of which, the People may once again really say, They enjoy something they can in good earnest call their own. Whereas for the present Army to set up the pretended false Saint *Oliver*, (or any other) as their elected King, there will be nothing thereby from the beginning of the Chapter to the end thereof, but Wars, and the cutting of Throats, year after year; yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful and lamentable Experience they now see they perfectly are; which Slavery and absolute Bondage is like daily to encrease, under the present tyrannical and arbitrary new-erected robbing Government. And therefore rouse up your Spirits before it be too late, to a vigorous Promotion, and settling of the Principles of the foresaid Agreement, as the only absolute and perfect Means to carry you off all your Maladies and Distempers.’

Here Lieutenant-Colonel *Lilburne*, in the first Day’s reading the Indictment, taking notice of the Judge *Thorp* and Mr. *Prideaux* to whisper together, cry’d out, and said to this effect:

L. Col. *Lilb.* Hold a while, hold a while, let there be no Discourse but openly; for my Adversaries or Prosecutors whispering with the Judges, is contrary to the Law of *England*, and extremely foul and dishonest Play: and therefore I pray let me have no more of that Injustice.

Mr. Attorney. It is nothing concerning you (let me give him satisfaction) it is nothing concerning you, Mr. *Lilburne*.

L. Col. *Lilb.* By your favour, Mr. *Prideaux*, that is more than I do know; but whether it be or not, by the expresse Law of *England*, it ought not to be; therefore I pray let me have no more of it.

Mr. *Broughton*. And further, thou the said *John Lilburne* stand'st indicted, for that thou the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers Days and Times, as well before as after, in *London* aforesaid, and in the Parish and Ward aforesaid, didst maliciously, advisedly and traitorously publish another false, poisonous, traitorous and scandalous Book, intituled, *An Out-cry of the Young Men and Apprentices of London, or an Inquisition after the lost Fundamental Laws and Liberties of England*: having these traitorous and scandalous Words (amongst other things) following; that is to say, *We* (meaning the Young Men and Apprentices

of *London*) considering what is before premised, * are necessitated and compelled to do the utmost we can for our own Preservations, and for the Preservation of the Land of our Nativity, and never, by popular Petitions, address our selves to the Men sitting at Westminster any more, or to take any more notice of them, than as of so many Tyrants and Usurpers; and for the time to come to hinder (as much and as far as our poor despised Interest will extend to) all other whatsoever from subscribing or presenting any more popular Petitions to them; and only now as our last Refuge, mightily to cry out to each other, of our intolerable Oppressions, in Letters and Remonstrances signed in the behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able by the Strength of God to lay down their very Lives for the maintaining of that which they set their Hands to. And further, That thou the aforesaid *John Lilburne* afterwards, that is to say, the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers other Days and Times, as well before as after, not being an Officer or Soldier, or Member of the Army aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, as a false Traitor, did maliciously, advisedly and traitorously endeavour to stir up a dangerous, mutinous and traitorous Distemper, Mutiny and Rebellion in the Army, now under the Command of *Thomas Lord Fairfax*, and didst endeavour to draw *Thomas Lewis*, *John Skinner*, and *John Toppe* from their Obedience to their superior Officers, &c. and further, didst deliver unto the three Soldiers before-named, the said Book, intituled, *An Out-cry of the Young Men and Apprentices of London*; having these Words following contained in them: ' Surely all Sense and Compunction of Conscience is not totally departed from you; hear us therefore in the earnest Bowels of Love and Kindness, we intreat and beseech you with Patience, and do not abuse us, for complaining and crying out, for the Knife hath been very long at the very Throats of our Liberties and Freedoms; and our Burdens are too great and many for us, we are not able to bear them and contain our selves; our Oppressions are even ready to make us despair (or forthwith to fly to the prime Laws of Nature, viz. the next violent Remedy at hand, light where it will, or upon whom it will) they are become as devouring Fire in our Bosoms ready to burn us up, rendring us

desperate and careless of our Lives, prizing those that are already dead, above those that are yet alive, who are rid of that Pain and Torment that we do and must endure, by sensible seeing and beholding, not only the dying, but the daily Burial of our native Liberties and Freedoms, that we care not what becomes of us, seeing that we are put into that original State or Chaos of Confusion, wherein Lust is become a Law; Envy and Malice are become Laws, and the strongest Sword rules and governs all by Will and Pleasure; all our ancient Boundaries and Land-marks are pulled up by the Roots, and all the Ties and Bonds of human Society in our *English* Horizon totally destroyed and extirpated. Alas for pity! we had rather die than live this Life of a languishing Death, in which our Masters possess nothing (to buy themselves or us Bread to keep us alive) that they can call their own; therefore it's no boot to serve out our Times, and continue at our drudging and toiling Trades, whilst these Oppressions, Cruelties and Inhumanities are upon us, and the rest of the People, exposing thereby the Nation, not only to domestick Broils, Wars and Blood-sheds (wherein we are sure our Bodies must be the principal Buts) but to foreign Invasions by *France*, *Spain*, *Denmark*, *Swethland*, &c. as was well observed by an endeared and faithful Friend of the forementioned late treacherously defeated Party at *Burford*, in their Book of the 20th of *August* 1649, intituled, *The Levellers vindicated, or the Case of the Twelve Troops truly stated*, pag. 11, and 12. which we cannot but seriously recommend with them, to your serious Perusal and Judgment, and desire to know of you (but especially the private Soldiers of the Gen. Regiment of Horse, who we understand had a hand in seizing upon, and plundering our true Friends at *Burford*) whether you do own the abominable and palpable treacherous Dealings of your General and Lieutenant-General *Cromwell*, and their perfidious Officers with them, or no? (that so we may not condemn the Innocent with the Guilty, and may know our Friends from our Foes:) as also to tell us, Whether you do approve of the total Defection of your Army, under which it now lieth, from their Faith and fall'n Engagement made at *Newmarket-Heath*, the 5th of *June* 1647. not one of those righteous Ends, in behalf of the Parliament and People, on which your Vow was made, being yet fulfilled or obtained; but on the contrary (as we have before-rehearsed) a whole Flood-gate of Tyrannies are let in upon us, and overwhelm us; and whether you [*the aforesaid private Soldiers meaning*] justify all those Actions done in the name of the Army, upon your Account, and under the Pretence of that Engagement, since the Engagement it self was broken, and your Council of Adjutators dissolved? And whether you will hold up your Swords to maintain the total Dissolution of the People's choicest Interest of Freedom, viz. frequent and successive Parliaments, by an Agreement of the People, or obstruct the annual Succession? Whether you do allow of the late shedding the Blood of War in time of Peace, to the Subversion of all our Laws and Liberties? And whether you do countenance

‘ nance the Extirpation of the Fundamental
 ‘ Freedoms of this Commonwealth, as the Re-
 ‘ vocation and Nullity of the great Charter of
 ‘ England, the *Petition of Right*, &c.? And whe-
 ‘ ther you do assent to the Erection of Arbitrary
 ‘ Prerogative Courts, that have or shall over-
 ‘ rule, or make void our antient way of Trials
 ‘ in Criminal Cases by a Jury of Twelve Men of
 ‘ the Neighbourhood? And whether you will
 ‘ assist or join in the forcible Obstruction of this
 ‘ martial and tyrannical Rule over us? Also whe-
 ‘ ther you will fight against and destroy those
 ‘ our Friends that shall endeavour the Compo-
 ‘ sure of our Differences, together with the
 ‘ Procurement of our Freedoms, and Settlement
 ‘ of our Peace (your Plenty and Prosperity) ac-
 ‘ cording as it was offered by the four Gentlemen
 ‘ Prisoners in the Tower of London, upon the
 ‘ first Day of May 1649, as a Peace-offering to
 ‘ the Nation, by the Agreement of the People,
 ‘ [the aforesaid feigned Agreement meaning.] Lastly,
 ‘ We [the aforesaid Young Men and Apprentices of
 ‘ London meaning] earnestly beseech you [the a-
 ‘ foresaid private Soldiers again meaning] to ac-
 ‘ quaint us, whether from your Hands, to your
 ‘ Power, we may expect any Help or Assistance
 ‘ in this our miserable, distressed Condition, to
 ‘ the Removal of those Iron Bonds and Yokes
 ‘ of Oppression [the aforesaid Government in way
 ‘ of a Commonwealth and Council of State mean-
 ‘ ing] that have thus enforced us to complain,
 ‘ and address our selves thus to your Considera-
 ‘ tion; for we [the aforesaid Young Men and Ap-
 ‘ prentices again meaning] cannot chuse but ac-
 ‘ quaint you [the aforesaid private Soldiers again
 ‘ meaning] that we are seriously resolved, through
 ‘ the Strength and Assistance of God, with all
 ‘ the Interest we have in the World, to adhere
 ‘ to the righteous things contained in our
 ‘ treacherously defeated forementioned Friends
 ‘ Vindication, [the aforesaid traitorous Book, in-
 ‘ titled, *The Levellers Vindicated*, or the Case
 ‘ of the Twelve Troops truly stated, again
 ‘ meaning.]

And further, thou the said John Lilburne, as a
 false Traitor, by most wicked traitorous Con-
 spiracies, Designs and Endeavours of thine afore-
 said, afterwards, that is to say, the aforesaid first
 Day of October, in the Year of our Lord 1649,
 abovesaid, and divers other Days and Times, as
 well before as after, didst in the Parish and Ward
 of London aforesaid, in and by the aforesaid scan-
 dalous, poisonous and traitorous Book, intituled,
*An Impeachment of High Treason against Oliver
 Cromwell, and his Son-in-law Henry Ireton*, &c.
 most falsely, maliciously and traitorously publish,
 and openly declare, amongst other things, in the
 said Book, these following scandalous, treache-
 rous, tumultuous and traitorous Clauses and
 Words following; that is to say, ‘ But I [mean-
 ‘ ing thy self the said John Lilburne] and many
 ‘ other Persons [meaning the aforesaid Friends]
 ‘ intreat you seriously to consider that I cannot
 ‘ advise you to make Addresses to him [mean-
 ‘ ing the aforesaid Thomas Lord Fairfax, Cap-
 ‘ tain-General] as the General of the Nation’s
 ‘ Forces [the Forces of this Nation of England
 ‘ meaning] for he [the aforesaid Captain-General
 ‘ meaning] is no General, but is merely a great
 ‘ Tyrant [meaning the aforesaid Captain-General]
 ‘ standing by the Power of his own Will, and
 ‘ a strong Sword borne by his Vassals, Slaves

‘ and Creatures [the Soldiers of the Army afore-
 ‘ said meaning] having no Commission to be Ge-
 ‘ neral, either from the Law or the Parliament,
 ‘ nor from the prime Laws of Nature and Rea-
 ‘ son. For First, when he was made General
 ‘ by both Houses of Parliament, it was expres-
 ‘ ly against the Letter of the Laws. And Se-
 ‘ condly, when he refused to disband, &c. he
 ‘ hath rebelled against his Parliament-Commis-
 ‘ sion, and thereby destroyed and annihilated it,
 ‘ &c.

[The Reader is desired to take notice, That in
 the Indictment it self there was a great many
 other things than in this is expressed; as parti-
 cularly divers Passages out of a Book, called
 Mr. Lilburne’s, intituled, *The Legal Fundamen-
 tal Liberties of England revived*, &c. as also
 out of another Book, intituled, *A Prepara-
 tive to an Hue and Cry after Sir Arthur Hasle-
 rig*, &c. as also out of *The Agreement of the
 People*, of the first of May 1649. with several
 other remarkable Things in Matter and Form,
 that were more neglected to be taken than the
 Pleadings; because it was not supposed, but
 the Indictment (being a Record) a true Copy
 of it might easily be had; considering that by
 Law all Records ought freely to be used by
 any Freeman of England, and Copies of them
 denied to none that desire to take them: But
 that Privilege being in this Cause already dis-
 puted and denied; in which regard, the Rea-
 der must at present accept of the best imper-
 fect Notes that the Publisher could pick up.]
 But to go on.

And further, That thou the said John Lilburne,
 as a false Traitor, all and singular the Clauses and
 English Words abovesaid, and many other trai-
 torous, poisonous and malicious Expressions in
 and by the aforesaid Writings, and by the afore-
 said several Books, as aforesaid recorded, and by
 thee the aforesaid John Lilburne published, and
 openly declared in the several Books so as afore-
 said printed, and by the aforesaid Writings, and
 by thee the aforesaid John Lilburne, in Manner
 and Form aforesaid, published, and openly di-
 vulged and declared divers other scandalous, ma-
 licious, tumultuous and treacherous Clauses and
 Words in the said Books contained, falsely, ma-
 liciously, advisedly and traitorously, hast pub-
 lished and openly declared, to the intent to stir
 up, and raise Forces against the Government
 aforesaid, in the way of a Commonwealth, and
 free State as aforesaid established; and for the
 suppressing and Alteration of the said Govern-
 ment, and to stir up Mutiny in the Army a-
 foresaid; and also to withdraw the said John
 Tooke, Thomas Lewis and John Skinner, and many
 other Soldiers, from their Obedience to their su-
 perior Officers and Commanders, and to set them
 in Mutiny and Rebellion against the publick
 Peace, and to manifest Contempt of the Laws
 of this Commonwealth and free State, and a-
 gainst the Form of the Statutes in this Case
 made and provided.

The Indictment being reading, and the Noise
 of the People in the Hall great, the Prisoner
 said he could not hear, and had some few Lines
 before read over to him.

L. Col. *Lilb.* Pray hold your peace, Gentlemen; I beseech you be quiet. [*speaking to the People.*]

Ld *Keble.* Quiet your self, we will quiet them for you.

Broughton. Which Country are you? so that you are to find whether he is guilty or no, he having already pleaded, Not Guilty. If you find that he is guilty of any the High Treasons laid to his Charge, then you are to enquire what Goods, Lands or Chattels he stood possessed of, when he committed the said High Treasons; but if you find Not Guilty, you shall then enquire whether he did not fly for it; and if he did not fly for it, then you are to say so and no more: therefore hearken to your Evidence.

Lieut. Col. *Lilburne.* May it please your Honour.

Cryer. If any Man can give any Evidence to my Lords, the Justices of Oyer and Terminer, against Mr. *John Lilburne*, let him come in, and he shall be heard.

Lieut. Col. *Lilburne.* I desire to be heard to speak two or three Words. I humbly desire the Favour to speak two or three Words. I humbly desire the Favour to be heard two Words.

Ld *Keble.* It is not a fit time; you shall be heard in your due time: but hear what the Witnesses say first.

Lieut. Col. *Lilburne.* I conceive I am much wronged, in saying that I pleaded Not Guilty, for I pleaded no such Plea; I appeal to the Court, and to all that heard me, whether I pleaded any such Plea: for before I pleaded, the Court became engaged to me, to take no Advantage of my Ignorance of the Formalities of the Law; and promised to give me as much Privilege as my Lord Duke of *Hamilton* and others enjoyed before the Court of Justice.

Ld *Keble.* We know all this.

Lieut. Col. *Lilburne.* Sir, by your favour, I pleaded conditionally, and now I make my absolute Plea to the Indictment, which is this; That I except against the Matter and Form of it, Matter, Time and Place, and humbly crave Counsel to assign and plead to the Errors thereof.

Ld *Keeble.* You must hear us, we hear you; a word is a great deal; these things we have taken perfect notice of, the Court is not ignorant of them; therefore they need not so suddenly be repeated to us again; you need not repeat these things, for I tell you again, they are all fresh in our Memories, and that we have done we must maintain, or we have done nothing.

Lieut. Col. *Lilburne.* Truly it is requisite for me to say, that I am wronged, I had no such single Plea; I plead a Plea at large to the Errors of the Indictment; and first now crave liberty of the Law of *England* to have Time and Counsel assigned me.

Ld *Keble.* You shall have the Laws of *England*, although you refuse to own them in not holding up your Hand; for the holding up of the Hand hath been used as a part of the Law of *England* these 500 Years. Go on.

My Lord, the Prisoner at the Bar stands indicted as a Traitor, for that he contriving, and maliciously intending not only to disturb the publick Peace, but also to bring the Government of the Nation, happily settled in a free

Mr. the
Counsel that
was an Assis-
tant to Mr.
Prideaux.

State or Commonwealth, without a King, or an House of Lords, and the Commons in Parliament assembled to bring in Disgrace and Contempt amongst all good Men; he did the first of this Instant *October*, and divers times before and since in this City, falsely and maliciously, advisedly and traitorously, by writing, printing and openly declaring, in and by one Paper of his, called *A Salva Libertate*, and by divers other Papers and Books, whereof one he calls, *An Impeachment of High Treason against Oliver Cromwell and his Son-in-law Henry Ireton*; and another Book of his, entitled, *An Out-cry of the Young Men and Apprentices of London*, directed to all the private Soldiers of the Army, &c. A third, *A Preparative to an Hue and Cry after Sir Arthur Haslerig*; and a fourth, *The Legal Fundamental Liberties of the People of England revived*: That he did in these Books publish, That the said Government is tyrannical, usurped and unlawful; and that the Commons in Parliament assembled, are not the Supreme Authority of this Nation. He stands further indicted, That he, as a false Traitor, did maliciously, advisedly and traitorously, plot and contrive to raise Force against the present Government, and for the Subversion and Alteration of it; and for the fulfilling of his most malicious and traitorous Designs, he did, in and by the said traitorous Books, falsely, maliciously and advisedly, utter and declare several most false and scandalous, malicious and traitorous Words and Writings, that in the Indictment are particularly named and expressed. And thirdly, That as a Traitor, not being an Officer, nor a Soldier, or a Member of the Army under the Command of the now Lord General *Fairfax*, he did most maliciously and traitorously endeavour to withdraw certain Soldiers of that Army from their Obedience to their superior Officers, which are particularly named in the Indictment: And that for the full Accomplishment of his Contrivances and Endeavours, he did maliciously, advisedly and traitorously, publish and deliver the poisonous Book, called *An Impeachment*; and in particular directed by the Title of the Book, to all the People of *England*, being for that end published by him to publick View: In which Book are contained most false and scandalous, malicious, mutinous and traitorous Expressions, as in the Indictment are set forth. And further, That in the said Book, which he called *An Impeachment*, That the present Government is tyrannical and usurped; and that the Commons of *England* in Parliament assembled, are not the Supreme Authority. And he further stands indicted, and the Jury further finds and presents, that by all these and other Expressions written by him, and published by him in written Papers and printed Books, he hath falsely, maliciously and traitorously stirred up strife on purpose, and to the intent, to stir up and raise Force against the present Government, settled in the way of a Commonwealth and free State, without King and Lords, on purpose it to subvert and destroy. And further, he hath also most traitorously endeavoured to withdraw the private Soldiers from their Obedience and Subjection to their superior Officers: And all this in manifest Contempt of the Laws of this Commonwealth, in that behalf made and provided, and to the hazard of the Overthrow and utter Subversion of the said Government.

To

To this Indictment the Gentleman hath pleaded Not Guilty, and hath put himself upon his Country; and if we can prove this against his Plea, it is at an Issue.

Lieut. Col. *Lilburne*. I deny that, Sir, I never pleaded any such single Plea as Not Guilty: and you Gentlemen of the Jury, I beseech you take notice he extremely wrongs me in saying so; for my Plea was a conditional Plea, and as a Plea at large.

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you have heard the Indictment read unto you, and you have heard it opened unto you; and you have heard what Mr. *Lilburne* says, That he did not plead Not Guilty: and I hope he is ashamed of his Plea now he hears the Indictment opened unto him. My Lord, in this Indictment there are contained these several Grand Treasons.

The first is, That he hath advisedly, traitorously and maliciously published, That the Government that is now established, by way of a free State or Commonwealth, without either King or House of Lords, is tyrannical, usurped and unlawful. And further, That the present Parliament now assembled, are not the Supreme Authority of the Nation.

The second is, That he hath plotted, contrived and endeavoured to stir up, and raise Forces against the present Government, and for the Subversion and Alteration of the same.

The third is this that relates to the Army; you have heard what his Expressions have been, and they have been read unto you, concerning them and the rest, That he, not being an Officer, or Soldier, or Member of the present Army, hath offered to stir up Mutiny in the Army, and to withdraw the Soldiers from their Obedience and Subjection to their superior Officers, and thereby to stir them up to Mutiny and Discontent.

These are the main Parts and Substance of what I intend to charge him with in the Evidence, to prove that which was contained in the Indictment. My Lord, you have heard, in what hath been read out of the Indictment, what Expressions they are; those that are traitorous to the Publick, and have been so declared, so judged, so executed, these are here Mr. *Lilburne's* engaged true Friends: The Parliament, the Government, the Authority of both Parliament and Army, they are Tyrants, Usurpers, Mercenaries, Janisaries, Murderers, Traitors, standing by their own Power and Swords, and over-ruling all by their Wills: These are the Expressions that he hath used. My Lords, I shall not trouble you with any thing of Aggravation; for, my Lords, I do conceive, that the reading of the Books themselves aggravates every thing against him; and I think there is no *Englishman* (as Mr. *Lilburne* so often styles himself to be) will own such Words or Acts as these are.

And truly, my Lord, if I had read the Books, and not known the Person, I should not have thought he had been either a Christian, or a Gentleman, or a civil Man, to have given such base and bitter Language; but, my Lords, and you of the Jury, I shall hold you no longer, the Evidence being so plain, and the Matter so foul, that it will not admit over-much, or stand in need of any Dispute; and to make it plain and clear to your Judgments and Consciences, there

are Witnesses in the Court evidently to prove every thing that will stand in need to be proved for the Indictment.

My Lords, the Words are maliciously, advisedly, and traitorously: I shall not catch at Words, but, as himself says, what he prints is of mature and deliberate Consideration; and such are his Books in print, that himself hath either printed, or caused to be published.

The first that he is charged withal, is that which is called *An Outcry*: It hath a very dangerous Title, and in the Direction especially to the Soldiers of the Army; but especially to the private Soldiers of the General's Regiment of Horse, that helped to plunder the true-hearted *Englishmen*, traitorously defeated at *Burford*; so that the Rebels at *Burford* were Mr. *Lilburne's* dear Friends. My Lords, it hath not only a dangerous Title, but was published at a dangerous Time, yea, and for a dangerous End, which was to stir up the great Mutiny that was in the City of *Oxford*. My Lord, for the Proof of this we shall offer this, That Mr. *Lilburne* himself was Captain *Jones's* Associate in the publishing that Book: For Mr. *Lilburne* and this Captain *Jones* brought this Book to the Press to be printed. We shall offer unto you where he hath published it to Soldiers of the Army, to engage them in a Mutiny and Discontent against their superior Officers. Therefore in the first place call *Thomas Newcombe*.

Thomas Newcombe sworn.

Justice *Jermin*. Before you speak look upon the Prisoner first, whether you know him, or not.

Mr. Attorney. My Lord, if you please, he may take the Book in his Hand, and see whether he printed it, and when he printed it, and who brought it to the Press.

Mr. *Newcombe*. I printed of this Book only the last Sheet, not knowing where the former part of it was done; which Book was brought to me by Lieut. Col. *Lilburne* and Capt. *Jones*, which Capt. *Jones* did agree with me in the Price: I was stop'd in the Proceedings in it. I say that Capt. *Jones*, together with Lieut. Col. *Lilburne*, did bring it to me, and that Capt. *Jones* did agree with me in the Price; but I was taken before I did perfect it: But Capt. *Jones* did indent with me for the Price. But this I must say, Lieut. Col. *Lilburne* came alone with the Copy; and afterwards at Night he came again, and had a Proof of it; and that he was present when it was corrected.

Mr. Attorney. And when the first Sheet was printed, then they came at Night again, and examined the Proof with Capt. *Jones* and his Corrector?

Ld *Keble*. And he brought the Copy of the whole Draught of the Book unto you?

Lieut. Col. *Lilburne*. Sir, by your favour, if Mr. *Prideaux* have done with the Witness, I crave my Right by Law to ask him some Questions. In the first place, I desire he may be asked, Whether I was either Reader of the original Copy, or the Over-looker of the printed Proof?

Mr. *Newcombe*. You had a printed Sheet of it, and that was all.

Lieut.

Lieut. Col. *Lilburne*. I desire to know whether I was either the Reader of that he printed, or the Looker upon the written Copy?

Mr. *Newcombe*. You look'd upon the Sheet that was printed, Capt. *Jones* read the Manuscript.

Lieut. Col. *Lilburne*. Ask him the Question thus, Whether was I the Corrector of the Thing printed, or the Looker-on upon the printed Copy? And whether, or no, he can swear that that printed Sheet, that he says I had, was corrected and revised, and was a true and perfect Sheet, according to the Original?

Mr. *Newcombe*. It was a Copy of the Sheet before it was corrected or revised.

Mr. *Attorney*. And Mr. *Jones* did read the Original, and Lieut. Col. *Lilburne* corrected the Copy.

Lieut. Col. *Lilburne*. Under favour, you are mistaken: He says that I cast my Eye upon the Copy; but doth not in the least say that I corrected it. And therefore, Sir, you do abuse me, in going about to make him say more than his own Conscience tells him is Truth.

Ld *Keble*. While the Examination was, he saith you read the Proof.

Lieut. Col. *Lilburne*. Sir, he says no such Thing, by your favour.

Ld *Keble*. Mr. *Newcombe*, was not Mr. *Lilburne* there the second time at Night, and did he not look upon the Copy?

Mr. *Newcombe*. That he did, my Lord: But, my Lord, I shall tell you the Manner of our Trade in this particular. The Manner is, That after we have set a Form of the Letter, we make a Proof of it, which Proof we have a Corrector does read: My Corrector he had one, being he corrected it, and Capt. *Jones* look'd upon the Manuscript. And Lieut. Col. *Lilburne* had a Copy of the same Sheet uncorrected; but he did not correct it, nor read to the Corrector. There was two pulled off; the Corrector had one, and Mr. *Lilburne* had the other; and Capt. *Jones* look'd upon the Manuscript, and read it to the Corrector.

Lieut. Col. *Lilburne*. He has declared unto you, That he was taken printing the Thing before it was perfected: I desire to know whether I was at his House to give any further Directions at all after it was taken?

Mr. *Attorney*. That's no Thanks neither to you nor him.

Lieut. Col. *Lilburne*. I pray let him answer the Thing: Let me have fair Play above board. Sir, I beseech you let me hold him close to the Question. He says he was taken before the Sheet was perfected: Truly I think they are his very Words.

Mr. *Newcombe*. I said in my Examination that it was a Proof of that printed which you had.

Lieut. Col. *Lilburne*. I desire again to know this of him, whether before he had printed or perfected that Sheet he had doing, he was not taken, and both the Forms?

Ld *Keble*. Mr. *Lilburne*, you must desire us to ask him the Question; and not you to demand it of your self.

Lieut. Col. *Lilburne*. I shall, Sir.

Mr. *Newcombe*. It was before the Forms were taken.

Lieut. Col. *Lilburne*. I ask you, whether before the Things were compleat and perfect, your

Forms were not both taken, and your Person seized upon?

Mr. *Newcombe*. There were only some few Copies printed, and then I was seized upon, and the Forms taken away before I had perfected the Sheet. But this I say, He did not indent with me for the Price; neither had I the Copy from Mr. *Lilburne*'s Hands, but from Capt. *Jones*'s Hands.

Justice *Fermin*. You say that he had one Proof, and *Jones* another: When was this you speak of? Give us the Time as near as you can.

Mr. *Newcombe*. I cannot justly say the Time; but as I remember, it was about seven or eight Weeks since.

Mr. *Attorney*. Stand you aside; and call *John Tooke*, *John Skinner*, *Thomas Lewis*, *John Hawkins*, and *John Merriman*, Witnesses sworn.

Mr. *Attorney*. *John Tooke*, do you declare now your Knowledge. That which I call him for, is to this purpose, That Mr. *Tooke* being a Soldier of the Army, one of them mentioned in the Indictment, Mr. *Lilburne* delivered him one of the *Outcries*, on purpose to draw him from his Obedience to his superior Officers.

Ld *Keble*. Shew him the Book.

Mr. *Tooke*. I have seen the Book; but I had not the Book in my Hand before.

Mr. *Attorney*. Tell what you know; that's all we ask you.

Mr. *Tooke*. About seven Weeks ago, being at Dinner with *Thomas Lewis* and *John Smith*, all Soldiers, after Dinner we met with Lieut. Col. *Lilburne* in *Ivy-Lane*; and *Thomas Lewis* knowing of him, took acquaintance of him.

Justice *Fermin*. All Soldiers under my Lord General *Fairfax*?

Mr. *Tooke*. Yes, Sir.

Justice *Fermin*. Go on.

Mr. *Tooke*. Mr. *Lilburne* asked me to go and drink a Cup of Beer: We did so. And so when we went in, he asked whether we had seen such a Book as the *Apprentices Outcry*? And Mr. *Lewis* answered, That he had seen it in a Man's Hand. Then Lieut. Col. *Lilburne* said he had one in his Pocket, that was given him; and if he pleased to accept of it, he would give it him. So told him he had thought to buy one of them, for he heard they were sold in the City; but he would accept of his. So Mr. *Lilburne* delivered it to Mr. *Lewis*.

Mr. *Attorney*. What did Master *Lilburne* say further unto you?

Mr. *Tooke*. He said, That you Soldiers keep us all in Slavery.

Lieut. Col. *Lilburne*. I beseech you, let me ask him one Question.

Mr. *Tooke*. There was some to be sold; but I forgot the Place.

Mr. *Attorney*. Did he name a Place and Person to you, where you might have some of them?

Mr. *Tooke*. He did name a Place, but I have forgot it, where there were more Books to be sold.

Lieut. Col. *Lilburne*. Sir, I beseech you let me ask you one Question----

Ld *Keble*. Mr. *Lilburne*, for your Direction, you must make your Question to us, and require us to ask him the Question; and then if your Question be fair, it shall not be denied you.----

Lieut.

Lieut. Col. *Lilburne*. Then thus: Whatsoever this Gentleman says of meeting him in *Ivy-Lane*, and desiring him to go to drink with me, yet I desire you to ask him whether I did take Notice or Cognizance of any of them first? or whether they did speak to me before, before ever I said any thing to them?

Ld *Keble*. To what end do you ask this?

Lieut. Col. *Lilburne*. Because in your Indictment I am charged that I went among the Soldiers to seduce them from their Obedience to their Superior Officers; when I have made it my Endeavour to shun them as much as I can, and not to come nigh the Place where I know they are, if I can avoid it; no, although I meet with them, not to discourse with any of them, unless they begin first.

Ld *Keble*. I tell you this, which may direct you afterwards: Whosoever began to discourse first, if you did give them the Book afterwards, it is all one.

Lieut. Col. *Lilburne*. But, shall please you, I am upon my Life; and by Law I ought not to be denied to ask the Witnesses that swear against me any Question that I please, that I my self judge pertinent for my Advantage.

Mr. Attorney. Call *Thomas Lewis*.

Thomas Lewis. And it shall please you, I am upon my Oath to speak the Truth; and I shall desire by the Help of God so to do, and no more. One Day, which I conceive, to my Remembrance, was the 6th Day of *September* last, we being upon a Guard at *Paul's*, went to an House to refresh our selves; and when I came forth I met with Lieut. Col. *John Lilburne*, whom I had formerly known, and sometimes visited in his Imprisonment, and whom I was very glad to see, having a little before heard as though some sudden Accident or Mischance had befallen him; and I did ask of him how he did. He said unto me he was well: And so with that says he, What are you upon the Guard? To my best Remembrance this was his Expression; yet see whether it was he, or another that said it. As I take it these were his Words: Says he, I have almost forgotten you. Sir, I was known to you formerly, having sometimes been with you in the *Tower*. Says he, Will you go drink? If you please, we will: And so upon that we went to a Place called the *Red-Cross* in *Newgate-Market*. And there we sitting down to drink, having not much Discourse for the present, we sitting still, he asked me at length, Have you heard of a Book called the *Outcry of the Apprentices*? Sir, said I, I have heard of it, and have a longing Desire to buy one of them to read it; and my Reason why I so said was, because I did understand it was to be sold at the *Exchange*; there I intended to go to get one of them. Says he, I had one given to me; and if you will, I will give it unto you. So I received the Book with Thankfulness; and further expressing, which was something mean, it would save me a Penny in buying of it. And I further entreated him, if he could direct me where I might buy some more of them. I have a Friend, says he, in such a Place; if you would go to him, and tell him that I am here, I should think my self beholden to you. Now the Place's Name was *Martin's-Lane*, but the Man's Name, whither I went, I have forgot, and the Man too: I never heard of the Man before nor since; so I told Mr. *Lil-*

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burne. Now he said to me, Peradventure where you find that Man, you may have some more of the Books. Now these were the Words, to my best Remembrance and Knowledge, as I desire to speak with a pure Conscience.

Mr. Attorney. Mr. *Lilburne* gave you one of those Books?

Mr. *Lewis*. Yes, Sir; and I put it into my Pocket, and when I had done, Mr. ---- he will deliver him ----

Whether there was any Books or Passages betwixt them? And upon which he told him, Yes; there is a Book that Mr. *Lewis* has, that has such a Title.

Mr. Attorney. What did you with the Book?

Mr. *Lewis*. I delivered it to the Lieutenant.

Mr. Attorney. The same Book that you received from Mr. *Lilburne*, you delivered to the Lieutenant.

Mr. Attorney. What did Lieutenant-Colonel *Lilburne* say to you concerning your Pay? Did not he ask you, &c.

Lieut. Col. *Lilburne*. I pray, Sir, do not direct him what to say, but leave him to his own Conscience and Memory, and make him not for fear to swear more than his own Conscience freely tells him is true.

Mr. *Lewis*. The Discourse was thus: Says he, You Soldiers (to my best Remembrance) are the Men that keep us all in Slavery. Now what to conceive of that Expression, I must leave that unto you. And as concerning our Pay, he asked us, How is your Pay? These were the Words, or to that effect. But there was Money come for us, and ready to be delivered out unto us.

Mr. Attorney. Call *John Skinner*: He was one of those that was in Company, and can speak to it.

Mr. *Skinner*. To my best Remembrance, and it shall please you, 'twas the beginning of *September*, I cannot justly tell what Day, that I met with Mr. *Lilburne* in *Ivy-Lane*, near unto *Paul's*; and meeting with him, I was going towards the Guard, and so was Mr. *Lewis* with me, being walking forth of the Lane, having been refreshing our selves. And near the end of the Lane we met Lieutenant-Colonel *Lilburne*, which Lieutenant-Colonel Mr. *Lewis* very well knew; and knowing of him, asked him how he did; and how it went with him, in regard he had heard before he was in Prison; and so I did not take any heed what he said further. Neither do I know whether Mr. *Lewis* asked Mr. *Lilburne* to go with him to drink, or Mr. *Lilburne* asked him; but to the *Red-Cross* in *Newgate-Market* we went to drink. And Mr. *Lilburne* did ask Mr. *Lewis* whether or no he had seen the Book which was called the *Apprentices Outcry*. Mr. *Lewis* answered him, That he had not seen the Book, (as I remember;) but he had heard of that Book that it was forth, and he did intend to buy one of them, in regard they were publickly sold abroad. Says Mr. *Lilburne*, I have such a Book in my Pocket, which was given me even now; and I will give it you, if you will.

Lieut. Col. *Lilburne*. I pray let me hear two or three Lines before.

Mr. *Skinner*. Whereupon you answered, and said, I have the Book in my Pocket, and it was given me, and I will give it you. And Mr. *Lewis* received it; and that was all. And presently I went away.

H

Mr.

Mr. *Prideaux*. You hear, Gentlemen of the Jury, that it is the same Book that he received from the Hands of Lieut. Col. *John Lilburne*.

Lieut. Col. *Lilburne*. My Lord, I beseech you hear me before the Witnesses go: And he that was sworn before, I desire to ask him this Question, Whether or no that this is the very Book that is mentioned in the Indictment? And whether or no they have examined the Words of it with the Indictment?

Mr. *Prideaux*. You need not; that shall be proved presently. Mr. *Skinner*, That Book which Mr. *Lilburne* gave you, what did you with it?

Mr. *Skinner*. It was delivered unto my Lieutenant, who stands there.

Lieut. It was delivered unto my Captain upon the Guard.

Capt. *Merriman* took the Book into his Hand, and said, This individual Book, signed in several Places by me, I delivered to Mr. *Frost*, Secretary to the Council of State; and Mr. *Frost* caused me to sign it in several Places, whereby it could not be mistaken; and that is the very individual Book.

Mr. *Prideaux*. My Lords, and you Gentlemen of the Jury, we have thus far gone in the Evidence; That Mr. *Lilburne* brought the last Sheet of it to the Press the first Time he came with Capt. *Jones*; and he came the second Time with him to examine it, that is, he had a printed Copy, that was then printing, to be printed, and was the Corrector for the Press, reading the Original Copy: So far is he privy to the printing of the Book. In the next Place, three Witnesses (Soldiers of the Army) swear he gave them one of those Books, and one of them gave it to his Lieutenant, and the Lieutenant to the Captain; and the Captain swears this individual Book is that which Master *Lilburne* gave into the Hands of Mr. *Lewis*. What can be more plain than this? I pray you judge. For here is plain Testimony of Mr. *Lilburne's* delivering this *Outcry* to the three Soldiers, and one of them to his Lieutenant, and his Lieutenant to his Captain, and his Captain to Mr. *Frost*, with Marks upon it: So this is by consequence proved unto you, this is the individual Book that Mr. *Lilburne*, Prisoner at the Bar, gave to the three Soldiers; and which is to be made use of when you have occasion upon the Evidence, to read it as now it is in the Court with you.

Lieut. Col. *Lilburne*. By your Favour, I have had no Answer to the Question, that I humbly craved an Answer to; which is, Whether the Soldiers are positively able to swear that this is the individual Book which they say they had from my Hands? And whether they are able to swear that this individual Book is a true and exact Copy, without Addition or Subscription, of that original Manuscript that the Printer saith Captain *Jones* delivered to his Hands, which, he saith, I had an uncorrected Sheet of.

Mr. *Prideaux*. We shall clear that to you when we come to make use of it.

Lieut. Col. *Lilburne*. I beseech you, Gentlemen of the Jury, to take notice of my Question, and what I am denied.

Mr. *Prideaux*. The next Thing that is charged upon him is a Paper written and entitled, *A Salva & Libertate*. My Lord, I shall open the Thing to you, being directed (my Lord) for the

Prosecution of Mr. *Lilburne*. And having Things of very high Concernment that are charged against him, I did by Word of Mouth send to have him come to me; which I understood he did decline, because the Lieutenant had no Warrant. The Lieutenant of the Tower was pleased to acquaint me with it; and I thereupon directed my Warrant to the Lieutenant to bring him before me. And Mr. *Lilburne*, &c.

Lieut. Col. *Lilburne*. My * Lord, and please your Honours, thus; If we be upon Matter of Fact, let us come to it: Let us have no Introduction to teach the Witnesses what to say, beyond what their own Consciences dictate unto them.

* This was the first or second Time that Mr. *Lilburne's* Tongue slipp'd the calling him Lord.

Mr. *Prideaux*. I shall go no further in it; let the Lieutenant of the Tower speak himself.

The Lieutenant of the Tower sworn.

Mr. *Prideaux*. Lieutenant of the Tower, you are questioned about the *Salva Libertate* that Mr. *Lilburne* delivered unto you: Have you the Original?

Lieut. Tower. Yes, Sir, I have.

Mr. *Prideaux*. How came you by it?

Lieut. Tower. I shall be short in what I say, because I will not trouble the Court.

Lieut. Col. *Lilburne*. Let me hear you then.

Lieut. Tower. Being abroad, there was a Message left with my Servants, That I should bring up Lieutenant-Colonel *Lilburne* to Mr. Attorney's Chamber in the Temple; and when I came in, I had notice of it. I did then send to Lieutenant-Colonel *John Lilburne*, to let him know what Command I had received from the Attorney-General, the next Day to carry up Lieutenant-Colonel *John Lilburne* to the Attorney-General's Chamber. But Lieutenant-Colonel *Lilburne* not well understanding whether I had a written Warrant, or no; but before he came at home he recalled himself, and came back, and desired the Sight of my Warrant. I told you before I had no Warrant, but by Word of Mouth. Why, says he, do you think I will go upon a Verbal Warrant? Saith he, I will not go unless you force me. But the next Day Mr. Attorney-General was acquainted that he refused to come without a Warrant. When the Warrant was made, I met with Lieutenant-Colonel *Lilburne* about Ten of the Clock in the Tower, who intreated me to let him see it. I shew'd it him, he read it, he desired a Copy of it, takes it; which when he had, he went from me, and about two Hours after he came to me, about One of the Clock, and said, I pray receive this from me, for (says he) I do intend not to own the Authority and Power of that Gentleman that sent me the Warrant. Whereupon I told him I would shew this same to the Attorney-General: Why, says he, I give you it to that Purpose. When the time came, Lieut. Col. *Lilburne* did go along with me in an orderly civil way: I had no body but my Man, for I told him, I will take no body but my Man, if you will engage yourself to me that you will return peaceably: which he did, and so we went very orderly to Mr. Attorney's Chamber; which is all for that I can say.

Mr. Attorney. If you please that the Lieutenant may upon his Oath declare, whether that be the true Original he had from Mr. *Lilburne's* own Hands or no?

Lieut.

Lieut. Tower. It was never out of my Custody since he gave it me.

Ld Keble. Mr. *Lilburne*, you do acknowledge it to be your own Hand-writing; shew it him.

Lieut. Col. Lilburne. I am too old with such simple Ginns to be catch'd; I will cast mine Eyes upon none of your Papers, neither shall I answer to any Questions that concern myself: I have learned more Law out of the Petition of Right, and Christ pleading before *Pilate*, than so.

Mr. Attorney. Would you had learnt more Gospel.

Judge Jermin. You may answer a Question whether it be true or false, and confess, and glorify God.

Lieut. Col. Lilburne. I have said, Sir; prove it: I am not to be catch'd with such Fooleries.

Ld Keble. You see the Man, and the Quality of the Man; this is the Paper that he delivered into his own Hand, and that is sufficient, as well as if it was of his own Hand-writing.

Lieut. Col. Lilburne. Good Sir, your Verbal Bench-Law is far short of your written Text in your own Law-Books.

Judge Jermin. Put it into the Court.

Ld Keble. Your writing or not writing is nothing; you delivered the Book.

Lieut. Col. Lilburne. Sir, I desire to know in what Place, whereabouts in the Tower of *London*, the Lieutenant of the Tower saith he received this Paper.

Ld Keble. Let him name the Place where it was delivered.

Lieut. Tower. The Place was at the Steps, at the bottom of the narrow Passage at my Garden-end, in the Cart-way where the Carriages come up.

Lieut. Col. Lilburne. Whether is that Place in the Liberties of *London*, or is it part of the County of *Middlesex*?

Lieut. Tower. The Tower is in * *London*, some part of it, and some part in *Middlesex*; but unto which Place that part of the Tower belongs, I am not able certainly to say, but it hath commonly been reputed in *Middlesex*.

Mr. Attorney. My Lord, you may see the Valiantness of this Champion for the People's Liberties, that will not own his own Hand; altho I must desire you Gentlemen of the Jury to observe, that Mr. *Lilburne* implicitly confesseth it.

Lieut. Col. Lilburne. Sir, I deny nothing: and what now can be proved mine, I have a Life to lay down for the Justification of it, but prove it first.

Mr. Attorney. My Lord, the next thing to prove the Charge against him is a very high one, it is styled Master *Lilburne's*, and his Name is to it: it is intituled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton, Esq, late Members of the late forcibly dissolved House of Commons, presented to publick View by Lieut. Col. John Lilburne, close Prisoner in the Tower of London.* My Lord, I doubt he will not own it; but yet, my Lord, he may be asked the Question.

Lieut. Col. Lilburne. I shall deny nothing I do: And yet I have read the Petition of Right,

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Sir, that teacheth me to answer to no Questions against or concerning myself, and I have read of the same to be practised by Christ and his Apostles.

Mr. Attorney. You will not own it, the Book you have read?

Lieut. Col. Lilburne. You may make your Advantage of it.

Mr. Attorney. We shall prove it, call Witnesses.

Thomas Daffern, Richard Lander Marshal, Major Hawksworth, Governour of Warwick-Castle; all sworn.

Mr. Attorney. Mr. *Daffern*, if you please he may be asked where he met Mr. *Lilburne*, the Time when, what Book was given him, and to what Purpose it was given him.

Mr. Daffern. Why, it was upon the 12th of *August* last. Having been in *Southwark*, I met with Lieut. Col. *Lilburne* upon the Bridge, I went back with him to his House at *Winchester-house* in *Southwark*: He had leave to visit his Family at that time, being very sick, and I told him I was going into *Warwickshire* the next Day; and he having heard that Col. *Ayres* was then removed from *Oxford* to *Warwick-Castle*, he gave me a Book to carry to him, and I delivered it to him at *Warwick-Castle*.

Mr. Attorney. The Book that he gave you, you gave to the Governour: did you see any more of them?

Mr. Daffern. I never saw any of them but that, which was both the first and the last I have seen of them.

Mr. Attorney. *Lander* the Marshal was present at that Time, was he not?

Mr. Lander. That I was, and I had it from him, and I delivered the Book to Major *Hawksworth* the Governour.

Mr. Attorney. Major *Hawksworth*, what did you do with the Book?

Major Hawksworth. I sent it to Colonel *Purefoy*, in a Paper sealed with three or four Seals.

Mr. Attorney. Call Col. *Purefoy*.

[Col. *Purefoy* sworn.]

Lieut. Col. Lilburne. I hear not one Word: Under Favour but one Word, I crave but one Word, I have an Exception. First, Col. *Purefoy* is one of those that call themselves the Keepers of the Liberties of *England*; and for committing Crimes against them I am indicted, and he is one of them, and therefore a Party, and in that respect in Law he can be no Witness against me. It would have been very hard for the King to have been a Witness against that Man that was indicted for committing Crimes against him; such a thing in all his Reign was never known.

Col. Purefoy. I received this Book, sealed in a Letter, from the Governour of *Warwick-Castle*, Major *Hawksworth*; I know his Hand, and I know the Day he sent me this very individual Book, and my Hand is at it, and the Governour who sent it up to me, which I declare to be the very individual Book that I received from him.

Mr. Attorney. Mr. *Lilburne*, you are mistaken; Col. *Purefoy* is a Member of Parliament, he is none of the Keepers of the Liberties of *England*.

land. But why will you put us to all this trouble to prove your Books, seeing your Hand is to them? My Lord, I had thought the great Champion of *England* would not be ashamed to own his own Hand.

Lieut. Col. *Lilburne*. I have answered once for all: I am upon Christ's Terms, when *Pilate* asked him whether he was the Son of God, and adjured him to tell him whether he was or no; he reply'd, *Thou sayst it*: so say I, Thou Mr. *Prideaux* sayst it, they are my Books: but prove it, and when that is done, I have a Life to lay down to justify whatsoever can be proved mine.

Judge *Fermin*. But Christ said afterwards, *I am the Son of God*: confess, Mr. *Lilburne*, and give Glory to God.

Lieut. Col. *Lilburne*. I thank you, Sir, for your good Law, but I can teach myself better.

Mr. *Attorney*. Here Mr. *Lilburne* makes a Book, which was given to the Hands of Mr. *Daffern* by Mr. *Lilburne* himself; Mr. *Daffern* he swears that the same Book he gave to Col. *Ayres*; Mr. *Lander*, the Marshal of the Garison of *Warwick*, swears that the same Book *Daffern* gave to Col. *Ayres*, he had from him, and gave to Major *Hawksworth* the Governour; the Governour swore, that that Book he received from the Marshal, he sent sealed up in a Letter to Mr. *Purefoy*; who also swears, that that same Book he set his Hand to it to know it again by, and that the individual Book that is now given into your Hands, is the same Book that was delivered to him: the Title is, *An Impeachment of High Treason against Oliver Cromwell Esq;*

Lieut. Col. *Lilburne*. Sir, I wonder you are not ashamed so far to press the Testimony beyond that they themselves swear. Mr. *Daffern* doth not name the Book at all that was given to him, neither doth he swear it to be mine; and therefore, Sir, you abuse yourself, the Court, the Witness, and me too.

Mr. *Attorney*. Master *Lilburne*, I have done you Right in it, and no Wrong at all; for Col. *Purefoy* doth name it. The next is a very dangerous Book of his, called, *A Preparative to the Hue and Cry after Sir Arthur Haslerig*. Mr. Lieutenant of the Tower, you are upon your Oath, I pray you speak your Knowledge to that.

Lieut. of Tower. My Lord, it is true, Lieut. Colonel *Lilburne* gave me in the Tower such a Book; but I cannot say, whether that be the same Book that he delivered to me, or no: I have such a Book also at home, but I am not able to say that is the very Book he gave me; and whether this be the same Book, I know not.

Mr. *Prideaux*. Call Mr. *Nutleigh* and Mr. *Radney*.

[Master *Nutleigh* sworn.]

Lieut. Col. *Lilburne*. I pray let the Witnesses stand here, the Jury say they cannot hear them.

[Edward *Radney* called and sworn.]

Lieut. Col. *Lilburne*. I pray you, let me know what these Gentlemen are; I do not know them,

neither can I remember at present that ever I saw them before.

Ld *Keble*. You see they look like Men of Quality.

Mr. *Prideaux*. They are my Servants, Mr. *Lilburne*.

Mr. *Nutleigh*. My Lord, and (a) please your Lordship, the 14th of *September* last, the Prisoner at the Bar, Lieut. Col. *John Lilburne*, being before Mr. Attorney-General, and I being by in the Chamber, I did see him deliver this Book to Master Attorney-General, this specifical Book; and he did own it, and called himself the Author of it, save only the Erratas of the Printer.

Lieut. Col. *Lilburne*. The last Clause, I beseech you, Sir; the Jury desires to hear the last Clause.

Mr. *Nutleigh*. My Lord, he (b) said he was the Author of that Book, the Erratas of the Printer excepted.

Lieut. Col. *Lilburne*. Let him be asked this Question, Whether in that Expression, *saving the Erratas of the Printer*, there did not follow these Words, *which are many*? I desire to know whether there were not such Words or no?

Mr. *Radney*. I was present, my Lord, when the Prisoner at the Bar presented this Book to Mr. Attorney, and owned it, saving the Erratas of the Printer.

Lieut. Col. *Lilburne*. Were there no more Words?

Mr. *Radney*. Not to my Remembrance. [And so said they both.]

Lieut. *Tower*. My Lord, I was present at the same time, when Lieut. Col. *Lilburne* did present a Book to Master Attorney-General, with such a Title as this: And truly if I be not much mistaken, there was used by him these Words, *which are many*. Thus it was in the whole: says he, *Here is a Book which is mine, which I will own, the Erratas or Errors of the Printer excepted, which are many*; and if I mistake not very much, those are the very Words Master *Lilburne* said.

Mr. *Attorney*. My Lords, and you Gentlemen of the Jury, you see that here are three Witnesses, and they do all agree in this, that Master *Lilburne*, the Prisoner at the Bar, did deliver this Book to me, owning it as his (c) own, the Errors or Erratas of the Printer only excepted. And as for that Clause, *which are many*, only the Lieutenant of the Tower swears to that singly; and therefore I desire it may remain in Court, as that individual Book that they saw Master *Lilburne* give me. But, my Lord, there is another Book in the Indictment, Intituled, *The legal fundamental Liberty of the People of England revived and asserted: or, An Epistle written the Eighth of June 1649, by Lieutenant-Colonel John Lilburne, to Mr. William Lenthall, Speaker to the Remainer of those few Knights, Citizens, and Burgeses, that Colonel Thomas Pride at his late Purge thought convenient to leave sitting at Westminster*. My Lords, for this Book it owns Master *Lilburne*, if he will own it, it hath his Name to it: But I have my Lesson from him; my Lord, he will

(a) But Mr. *Lilburne* hath been heard to profess, he saw not those Gentlemen in the Chamber that he discoursed with Mr. *Prideaux* in, altho' he looked divers times about him.

(b) That is an errant Lye; for divers that heard the Words, aver them to be thus: It is my Book, and I will own it; and so it might be, altho' he had bought it.

(c) So is an Ox a Man buys with his Money, it is his own; and so is a Gold Ring he finds, after he hath found it, it is his own: and yet it doth not follow, that the Owner either begot the Ox, or made the Gold Ring.

own nothing, he will publish enough, but, my Lord, he will not own it when he comes to be questioned for it; that is not the true Principle of a true Christian, nor an *Englishman*, nor a Gentleman.

Lieut. Col. *Lilburne*. I deny nothing, by your favour.

Mr. Attorney. And confess as little. My Lord, for this you have two Books in proof before you; *The Preparative to the Hue and Cry*, and the *Salva Libertate* owns these very individual Books: for the *Preparative to the Hue and Cry*, in the marginal Note at the second Page, owns and avows this Book, called, *The legal fundamental*, &c. to be Master *Lilburne's*. And Master *Lilburne* himself did own the *Preparative to the Hue and Cry* before three Witnesses to be his; and therefore the *Salva Libertate*, Mr. Lieutenant of the Tower hath sworn that he received it from his own hands. My Lords, as for this Book the *Salva*, which he does not acknowledge, we shall read the Words in the Indictment, altho it had been as ingenuous for Master *Lilburne* to have confess'd it, as for us to have proved it: and for the proof of it, read the Title.

Clerk. The Title read: *A Preparative to an Hue and Cry after Sir Arthur Haslerig, a late Member of the forcibly dissolved House of Commons; and now the present Wicked, Bloody, and Tyrannical Governour of Newcastle upon Tyne.*

Mr. *Prideaux*. Read the marginal Note in Page 2.

Clerk. Page 2. in the Margin: 'That those Men that now sit at *Westminster* are no Parliament, either upon the Principles of Law or Reason: see my Argument and Reasons therefore, in my second Edition of my Book of the 8th of June 1649, intituled, *The legal fundamental Liberties of the People of England revived and asserted*, pag. 48, 49, to 63.'

Mr. Attorney. This Book hath Mr. *Lilburne's* Name to it, and here in this his *Hue and Cry* he owns it, and the third Page in the Margin hath it again.

Clerk. Page 3. 'Peruse carefully, I intreat you, the Quotations in the 6th and 8th Pages of my forementioned Impeachment of High Treason against *Cromwell*: as also of the 12th and 15th Pages of the second Edition of my forementioned Book, dated the Eighth of June 1649, intituled, *The legal fundamental Liberties, &c.*

Mr. Attorney. Read the fourth in the Body of the Book.

Clerk. Page 4. 'At which Trial, by Strength of Arguments, I forced the Judges openly to confess, that Generals were nothing in Law: see also the second Edition of my Book of the Eighth of June 1649, intituled, *The legal fundamental Liberties of the People of England revived, asserted, and vindicated*, pag. 49.'

Lieut. Col. *Lilburne*. Let him speak whether it be 29 or 49.

Clerk. Forty nine, (but there is not so many Pages in the Book.)

Mr. Attorney. My Lord, here is a *Salva Libertate*, which is his own Book, tho he will not own it. My Lord, I had thought the great Champion of England for the Peoples Liberties, would never have been so unworthy, as not to have owned his own Hand: but read in the 24th Page of the *Salva* in his own written Hand.

Clerk. Page 24. 'I have by almost eight Years dear-bought Experience found the Interest of some of my forementioned Judges to be too strong for me to grapple with, and the only * Cause, to my apprehension, that all this while keeps me from my own.' And in the Margin he saith; 'See also the second Edition of my forementioned Book, intituled, *The legal fundamental Liberties of the People of England revived, &c.*

* This was brought in by head and shoulders.

Mr. Attorney. Now, my Lord, there is the *Salva Libertate* that was given from his own Hand that owns it; I mean this Book, call'd, *The legal fundamental Liberties, &c.*

Mr. Attorney. Read the Title of it.

Clerk. *A Salva Libertate sent to Colonel Francis West, Lieutenant of the Tower of London, on Friday the 14th of Septemb. 1649. by Lieut. Col. John Lilburne.*

Mr. *Prideaux*. Read where it is marked.

Clerk. 'But if you would produce unto me a written Warrant which hath some more face of legal Magistracy in it than verbal Commands, and according to my Right and Privilege let me read it; I would go with you either by Land or Water as you please, because I was in no capacity to resist you: altho I then told you, I judg'd a Paper-Warrant (altho in Words never so formal) coming from any pretended Power, or Authority in *England* now visible, to be altogether illegal; because the intruding General, *Fairfax*, and his Forces, had broke and annihilated all the formal and legal Magistracy of *England*, yea the very Parliament itself; and by his Will and Sword (absolute Conqueror like) had most tyrannically erected, set up, and imposed upon the free People of this Nation, a Juncto, or Mock-Power sitting at *Westminster*, whom he and his Associates call a Parliament; who like so many armed Thieves and Robbers upon the High-way, assume a Power by their own Will, most traitorously to do what they like.'

Mr. Attorney. That's not the place, look towards the latter end.

Clerk. Then here it is: 'Sure I cannot chuse but acquaint you, that I have long since drawn and published my Plea against the present Power, in my second Edition of my Book of the 8th of June 1649, intituled, *The legal fundamental Liberties of the People of England revived, asserted, and vindicated*; which you may in an especial manner read in the 43d, 44th, 45th, to the 49th Page: which by the Strength of the Lord God omnipotent, my large experienced Help in time of need, I will seal with the last Drop of my Blood.'

Mr. Attorney. My Lord, for the Book called *The legal fundamental Liberties of England*, his Name is to the Book; but I shall not put much weight upon that: But in others of his Books, as in his *Preparative to an Hue and Cry*, which he owns, and which is proved he owns by three Witnesses, in several places of that Book he owns this as his Book, viz. *The legal fundamental Liberties of England revived, &c.* he calls it mine, and his forementioned Book: and in his *Salva Libertate* he owns it again, gives it the very Date, and the very Title that is in this Book. My Lords, we have done with this. My Lords, now I shall go on to make use of it, and to shew my

my Lord out of these Books his Words and Language, to make good the Charge that hath been read in the Indictment against Mr. *Lilburne*. My Lords, if you please, for that I shall begin first in reading to the Jury the very Act itself, which makes the Fact to be Treason.

My Lord, for that, here is the Act that doth declare the Commonwealth for the future to become hereafter a Free State; and the other declaring that Fact to be Treason, that shall say it is Tyrannical or Unlawful. These are general Acts which need not be proved; but if the Prisoner does desire it, we shall prove it.

Clerk. Die Lune, 14 May 1649. Ordered by the Commons assembled in Parliament.

Lieut. Col. *Lilburne*. Hold, Sir! prove your Act first, whether it be an Act of Parliament.

Mr. Attorney. My Lords, I shall not struggle with Mr. *Lilburne* in plain terms; but I thought when Acts were published, the Courts of Justice were bound in duty to take notice of them: but if it be so he will have it proved, we will, altho it be but a slender Cavil, for this is one of the published Copies.

Lieut. Col. *Lilburne*. But under your favour, Mr. *Prideaux*, as there may be counterfeit Money, (which we see there is every day) so there may be counterfeit Statutes too; and this may be one for any thing I know, therefore I desire it may be proved to be a true Statute or Act of Parliament.

Mr. *Nutleigh*. This is a true Copy of the Act of Parliament, which I examined with the Record.

Lieut. Col. *Lilburne*. The Record! Where is that to be found?

Mr. *Nutleigh*. At *Westminster*, with the Clerk of the Parliament.

Lieut. Col. *Lilburne*. Is this Gentleman able to depose it to be a true Law in all the parts of it? For by the Laws of *England*, the People are not to take any notice of Acts made, but by a Parliament; neither are they to take notice of those Acts that are not proclaimed. Sir, I beseech you let me know where the Record and Rolls are, and where he examined this, and whether he is able to swear whether they have been proclaimed in every Hundred and Market-Town, according to the old, and not yet repealed Law of *England*.

Ld *Keble*. At *Westminster*, he tells you.

Lieut. Col. *Lilburne*. I beseech you, where at *Westminster*?

Ld *Keble*. The Clerks of the Parliament are known to the City of *London* here, you know it well enough.

Lieut. Col. *Lilburne*. That is no Answer to my Questions: I pray let me have fair play; for it is a Question to me, whether the Books of the Clerk of the House of Commons be a (a) Record in Law or no.

Ld *Keble*. Read, Clerk.

Clerk. *An Act of the 14th of May 1649, declaring what Offences shall be adjudged Treason.*

‘ WHEREAS the Parliament hath abolished the Kingly Office in *England* and *Ireland*, and in the Dominions and Territories thereunto belonging, and hath resolved and declared that the People shall for the future be

‘ governed by its own Representatives, or National Meetings in Council, chosen and intrusted by them for that purpose; hath settled that Government in the way of a Commonwealth and Free State, without King or House of Lords: Be it therefore enacted by this present Parliament, and by the Authority of the same, That if any Person shall maliciously or advisedly publish, by writing, printing, or openly declaring, That the said Government is Tyrannical, Ulurped, or Unlawful; or that the Commons in Parliament assembled are not the Supreme Authority of this Nation; or shall plot, contrive, or endeavour to stir up or raise Force against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by any open Deed: That then every such Offence shall be taken, deemed, and adjudged by the Authority of this present Parliament to be High Treason. And whereas the Keepers of the Liberty of *England*, and the Council of State constituted, and to be from time to time constituted by Authority of Parliament, are to be, under the said Representatives in Parliament, entrusted for the Maintenance of the said Government with several Powers and Authorities, limited, given, and appointed unto them by the Parliament: Be it likewise enacted by the Authority aforesaid, That if any Person shall maliciously and advisedly plot, or endeavour the Subversion of the said Keepers of the Liberty of *England*, or the Council of State, and the same shall declare by any open Deed; or shall move any Person or Persons for the doing thereof, or stir up the People to rise against them, or either of them there, or either of their Authorities; that then every such Offence and Offences shall be taken, deemed, and declared to be High Treason.

‘ And whereas the Parliament, for their just and lawful Defence, have raised and levied the Army and Forces under the Command of *Thomas Lord Fairfax*, and are at present necessitated, by reason of the manifold Distractions within this Commonwealth, and Invasions threatned from abroad, to continue the same; which under God must be the instrumental Means of preserving the well-affected People of this Nation in Peace and Safety: Be it further enacted by the Authority aforesaid, That that if any Person, not being an Officer, Soldier, or Member of the Army, shall plot, contrive, or endeavour to stir up any Mutiny in the said Army, or withdraw any Soldiers or Officers from their Obedience to their superior Officers, or from the present Government, as aforesaid; or shall procure, invite, aid, or assist any Foreigners or Strangers to invade *England* or *Ireland*; or shall adhere to any Forces raised by the Enemies of the Parliament, or Commonwealth, or Keepers of the Liberties of *England*; or if any Person shall counterfeit the Great Seal of *England* (for the time being) used and appointed by Authority of Parliament: That then every such Offence and Offences shall be taken, deemed, and declared by the Authority of this Parliament, to be High Treason; and every such Person shall suffer Pain of Death, and shall forfeit unto the

(a) And well might he: for Mackwel, in his Manner of passing of Statutes, in his Preface thereunto, saith, That the Commons had no Journals at all before Edward the Sixth's time.

Keepers of the Liberty of *England*, to and for the use of the Commonwealth, all and singular his and their Lands, Tenements and Hereditaments, Goods and Chattels, as in case of High Treason hath been used by the Laws and Statutes of this Land, to be forfeit and lost. Provided always, That no Persons shall be indicted and arraigned for any of the Offences mentioned in this Act, unless such Offenders shall be indicted or prosecuted for the same within one Year after the Offence committed.

Mr. *Prideaux*. Read the other Statute.

Clerk. Tuesday, 17 July 1649. Ordered by the Commons assembled in Parliament, That this Act be forthwith printed and published. Hen. Scobel, Cler. Parl.

An Act declaring what Offences shall be adjudged Treason.

WHEREAS the Parliament hath abolished the Kingly Office in *England* and *Ireland*, and in the Dominions and Territories thereunto belonging; and having resolved and declared, that the People shall for the future be governed by its own Representatives, or National Meetings in Council, chosen and entrusted by them for that purpose, hath settled the Government, by way of a Commonwealth, and Free State, without King or House of Lords: Be it enacted by this present Parliament, and by the Authority of the same, That if any Person shall maliciously or advisedly publish by writing, printing, or openly declaring, That the said Government is tyrannical, usurped or unlawful; or that the Commons in Parliament assembled, are not the Supreme Authority of this Nation; or shall plot, contrive or endeavour to stir up, or raise Force against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by any open Deed; that then every such Offence shall be taken, deemed and adjudged by Authority of this Parliament to be High Treason. And whereas the Keepers of the Liberties of *England*, and the Council of State, constituted, and to be from time to time constituted by Authority of Parliament, are to be, under the said Representatives in Parliament, entrusted for the Maintenance of the said Government with several Powers and Authorities limited, given and appointed unto them by the Parliament: Be it likewise enacted by the Authority aforesaid, That if any Person shall maliciously and advisedly plot or endeavour the Subversion of the said Keepers of the Liberties of *England*, or the Council of State, and the same shall declare by any open Deed, or shall move any Person or Persons for the doing thereof, or stir up the People to rise against them, or either of them, their, or either of their Authorities, that then every such Offence and Offences shall be taken, deemed and declared to be High Treason. And whereas the Parliament, for their just and lawful Defence, hath raised and levied the Army and Forces now under the Command of *Thomas Lord Fairfax*, and are at present necessitated by reason of the manifold Distractions within this Commonwealth, and Invasions threatened from abroad, to continue the same,

which, under God, must be the instrumental Means of preserving the well-affected People of this Nation, in Peace and Safety: Be it further enacted by the Authority aforesaid, That if any Person, not being an Officer, Soldier or Member of the Army, shall plot, contrive or endeavour to stir up any Mutiny in the said Army, or withdraw any Soldiers or Officers from their Obedience to their superior Officers, or from the present Government, as aforesaid; or shall procure, invite, aid or assist any Foreigners or Strangers to invade *England* or *Ireland*, or shall adhere to any Forces raised by the Enemies of the Parliament, or Commonwealth, or Keepers of the Liberty of *England*: or if any Person shall counterfeit the Great Seal of *England*, for the time being, used and appointed by Authority of Parliament: that then every such Offence and Offences shall be taken, deemed and declared by Authority of this Parliament to be High Treason; and every such Person shall suffer Pains of Death, and also forfeit unto the Keepers of the Liberty of *England*, to and for the Use of the Commonwealth, all and singular his and their Lands, Tenements and Hereditaments, Goods and Chattels, as in case of High Treason hath been used by the Laws and Statutes of this Land, to be forfeit and lost. Provided always, That no Persons shall be indicted and arraigned for any the Offences mentioned in this Act, unless such Offenders shall be indicted and prosecuted for the same within one Year after the Offence committed. And be it further enacted by the Authority aforesaid, That if any Person shall counterfeit the Money of this Commonwealth, or shall bring any false Money into this Land, counterfeit, or other like to the Money of this Commonwealth, knowing the Money to be false, to merchandize or make Payment in Deceit of the People of this Nation; or if any Person shall hereafter falsly forge, and counterfeit any such kind of Coin of Gold or Silver as is not the proper Coin of this Commonwealth, and is or shall be current within this Nation, by Consent of the Parliament, or such as shall be by them authorized thereunto; or shall bring from the Parts beyond the Seas into this Commonwealth, or into any the Dominions of the same, any such false and counterfeit Coin of Money, being current within the same, as is aforesaid, knowing the same Money to be false and counterfeit, to the intent to utter or make payment with the same, within this Commonwealth, by Merchandize or otherwise; or if any Person shall impair, diminish, falsify, clip, wash, round or file, scale or lighten, for wicked Lucre or Gain-sake, any the proper Monies or Coins of this Commonwealth, or the Dominions thereof, or of the Monies or Coins of any other Realm, allowed and suffered to be current within this Commonwealth or the Dominions thereof: that then all and every such Offences above-mentioned, shall be, and are hereby deemed and adjudged High Treason; and the Offenders therein, their Counsellors, Procurers, Aiders and Abettors, being convicted according to the Laws of this Nation, of any of the said Offences, shall be deemed and adjudged Traitors against this Commonwealth, and shall suffer and have such Pains

‘ Pains of Death and Forfeitures, as in case of
 ‘ High Treason is used and ordained. Provided
 ‘ always, and be it enacted by the Authority
 ‘ aforesaid, That this Act touching the Moneys
 ‘ and Coins aforesaid, or any thing therein con-
 ‘ tained, nor any Attainder of any Person for the
 ‘ same, shall in any wise extend, or be judged
 ‘ to make any Corruption of Blood to any the
 ‘ Heir or Heirs of any such Offender, or to
 ‘ make the Wife of any such Offender to lose
 ‘ or forfeit her Dower of or in any Lands, Te-
 ‘ nements or Hereditaments, or her Title, A-
 ‘ ction or Interest in the same.’

Mr. Attorney. My Lords, and you Gentlemen of the Jury, you have heard these Laws read unto you: the Clauses that we are to make out in Proof against Mr. *Lilburne*, are these; That if any Person shall maliciously or advisedly publish by writing, printing, or openly declaring that the said Government is tyrannical, usurped or unlawful; or that the Commons in Parliament assembled are not the Supreme Authority of this Nation, are Traitors: These we shall join together with his Books. My Lord, you are here in Court, and have received the Proofs against him, and we shall now make it out, that he hath done what this Statute forbids, out of his own Books that have come from himself, as the Author of them. My Lord, we shall begin with that Charge against him, in declaring the Government to be tyrannical, usurped and unlawful; and for that end, see his *Impeachment of Lieutenant General Cromwell*, &c. p. 8.

Justice Jermin. Mr. *Lilburne*, doth your Paper of the 17th of May agree with that which was read, or no?

Lieut. Col. Lilb. No, Sir; I conceive, Sir, you ask'd me whether this Act I have in my Hand, do agree with that which was read?

Just. Jermin. Yes, Sir, I do.

Lieut. Col. Lilb. It does not.

Just. Jermin. Then you will make use of it by and by.

Lieut. Col. Lilb. I, Sir, intend so, if you will let me.

Mr. Attorney. My Lord, the first is, That Mr. *Lilburne* hath declared the present Government to be tyrannical, usurped and unlawful: and that *in ipfissimis verbis*, that he hath so declared, in a very high way, in the very Words: So his Book, intituled, *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton*, &c. Read fol. 8.

Clerk. Fol. 8. ‘ Yea, and the absolute keeping
 ‘ up of a perpetual and everlasting Army, under
 ‘ which the People are absolute and perfect
 ‘ Slaves and Vassals, as by woful and lamentable
 ‘ Experience they now see they perfectly are;
 ‘ which Slavery and absolute Bondage is like
 ‘ daily to encrease under the present tyrannical
 ‘ and arbitrary, new-erected, robbing Govern-
 ‘ ment.

Mr. Attorney. And so, my Lord, it is here expressed to be a tyrannical and arbitrary Government, which are expressly within the Words of the Law; for they are a *tyrannical Government*. My Lords, we shall not stick here with him, but you shall see the whole Course of all his Pen's Writing hath been to this purpose: that goes very far, my Lord; see the Title-page of the last Book.

Clerk. Title-page. ‘ Before a legal Magistracy, when there shall be one in *England*, which now in the least there is not.’

Mr. Attorney. See fol. 1.

Clerk. Page 1. ‘ I have fully, both by Law and Reason, undeniably and unanswerably proved, That the present Juncto sitting at *Westminster*, are no Parliament at all in any Sense, either upon the Principles of Law or Reason, but are a Company of usurping Tyrants and Destroyers of your Laws, Liberties, Freedoms and Proprieties, sitting by vertue of the Power and Conquest of the Sword.’

Mr. Attorney. Read the Title-page of the same Book.

Clerk. *An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, Esquires, Members of the late forcibly dissolved House of Commons; presented to publick view, by Lieutenant-Col. John Lilburne, close Prisoner in the Tower of London, for his real, true and zealous Affections to the Liberties of his native Country.* In which following Discourse or Impeachment he engageth, upon his Life, either upon the Principles of Law (by way of Indictment, the only and alone legal way of all Trials in *England*) or upon the Principles of Parliaments antient Proceedings, or upon the Principles of Reason, (by Pretence of which alone they lately took away the King's Life) before a legal Magistracy, when there shall be one again in *England*, which now in the least there is not.

Mr. Attorney. Indeed, my Lord, and you of the Jury, Mr. *Lilburne* is a very great Rooter; not a Leveller, but a Rooter to root out the Laws of *England* by the Roots.

¶ —. There is not —

Lieut. Col. Lilb. By your favour, Mr. *Prideaux*, I knew the time when others said it as well of you; and it is not long since you were penn'd down in a black Bill, to my knowledge, as unfavoury Salt, with many others, to be thrown out of the House of Commons. I pray, Sir, whether were those Rooters that went about to root up that House by force of Arms, or Mr. *Prideaux* and others to give them cause, at least in their Apprehensions?

Mr. Attorney. My Lord, a legal Magistracy in *England* as now, he saith, in the least there is not: if there be no Magistracy, I will conclude, there is no Propriety left in this Nation; but Mr. *Lilburne* saith, there is no Magistracy; and if so, then no Propriety.

Lieut. Col. Lilb. It would be a very strange Argument that you would infer; I wish you and I were to dispute that in point of Law for our Lives, that to deny a Magistracy legally constituted, according to the Formalities of the Law, does not destroy Propriety. For indeed, Sir, Propriety is an Antecedent to Magistracy, and is first in being before it. But, Sir, to end the Dispute, he that owns the Law of *England* (as I do) that distinguisheth *meum* and *tuum*, can never be a Destroyer of Propriety: I wish your Practice were as consonant to Propriety as my Principles.

Mr. Attorney. Read the second Page at the Mark.

Clerk. ‘ Now, I say, considering that which is before declared, I cannot upon any terms in the world, either with Safety, Justice or Conscience, as things stand with me at present, give
 ‘ my

‘ my Consent, but hinder (as much as I am able)
 ‘ all Addresses from me, or any other that shall
 ‘ own the usurping Tyrants as a Parliament, es-
 ‘ pecially by Petition, which was a Course (saith
 ‘ the pretended Parliament Solicitor against the
 ‘ King, in his *Case stated*, pag. 24.) which God’s
 ‘ People did not take with *Rehoboam*; for they
 ‘ never petitioned him (although he was their
 ‘ lawful Supreme Magistrate) but advised him;
 ‘ he refusing their Counsel, and hearkening to
 ‘ young and wicked Counsellors, they cry
 ‘ out, *To thy Tents, O Israel!* and made quick and
 ‘ short Work of it.’

Mr. *Prideaux*. My Lord, here are Words again
 to make good as aforesaid, That the Parliament
 are usurping Tyrants. Read also pag. 28.

Clerk. Read on pag. 28. in the Margin of the
 said Book. ‘ And if those very things should be
 ‘ judged Treason, as they are, and were in the
 ‘ Earl of *Strafford*, I wonder what should be-
 ‘ come of all our present Juncto at *Westminster*,
 ‘ and their new thing called a *Council of State*?
 ‘ Undoubtedly the most, if not all of them, must
 ‘ go to *Tyburn* or *Tower-Hill*, there by a Halter
 ‘ or Ax, to receive their just Deserts. *Amen.*’

Mr. *Attorney*. There is an *Amen* pronounc’d
 to us, let him have it that deserves it: But to
 go on. Read the 11th Page of his Book called,
The Apprentices Out-cry.

Clerk reads pag. 11. ‘ We say, considering
 ‘ what is before premised, we are necessitated and
 ‘ compelled to do the utmost we can for our
 ‘ own Preservation, and the Preservation of the
 ‘ Land of our Nativity, and never by popular
 ‘ Petitions, &c. address our selves to the Men
 ‘ sitting at *Westminster* any more, or to take any
 ‘ more notice of them, than as of so many Ty-
 ‘ rants and Usurpers; and for time to come to
 ‘ hinder (as much and as far as our poor despised
 ‘ Interest will extend to) all others whatsoever
 ‘ from subscribing, or presenting any more po-
 ‘ pular Petitions to them; and only now as our
 ‘ last Paper-Refuge, mightily cry out to each
 ‘ other, of our intolerable Oppressions, in Letters
 ‘ and Remonstrances signed in the behalf, and by
 ‘ the appointment of all the rest, by some of the
 ‘ stoutest and stiffest among us, that we hope
 ‘ will never apostatize, but be able, through the
 ‘ Strength of God, to lay down their very Lives
 ‘ for the maintaining of that which they set their
 ‘ Hands to.

Mr. *Attorney*. Read pag. 2.

Clerk reads on pag. 2. ‘ But even our Parlia-
 ‘ ment (the very Marrow and Soul of all the
 ‘ People’s native Rights) put down, and the
 ‘ Name and Power thereof transmitted to a pick’d
 ‘ Party of your forcible selecting, and such as your
 ‘ Officers (our Lords and Riders) have often and
 ‘ frequently styled no better than a Mock-Par-
 ‘ liament, a Shadow of a Parliament, a seeming
 ‘ Authority, or the like, pretending the Conti-
 ‘ nuance thereof, but till a new and equal Repre-
 ‘ sentative by mutual Agreement of the free
 ‘ People of *England*, could be elected; although
 ‘ now for Subserviency to their Exaltation and
 ‘ Kingship, they prorogue and perpetuate the
 ‘ same, in the Name, and under Colour thereof,
 ‘ introducing a Privy Council, or, as they call
 ‘ it, a *Council of State*, of Superintendency and
 ‘ Suppression to all future Parliaments for ever,
 ‘ erecting a martial Government, by Blood and
 ‘ Violence impulsed upon us.

VOL. II.

Mr. *Attorney*. Read pag. 3. at the Mark.

Clerk. Page 3. ‘ Trade is decayed and fled;
 ‘ Misery, Poverty, Calamity, Confusion, yea and
 ‘ Beggary grown so sore and so extreme upon
 ‘ the People, as the like never was in *England*,
 ‘ under the most tyrannical of all our Kings that
 ‘ were before these in present Power, since the
 ‘ Days of the Conqueror himself: no Captivity,
 ‘ no Bondage, no Oppression like unto this; no
 ‘ Sorrow and Misery like unto ours, of being
 ‘ enslaved, undone and destroyed by our large
 ‘ pretended Friends.’

Mr. *Attorney*. Read page 4.

Clerk. Page 4. ‘ And yet nothing but the
 ‘ groundless Wills and Humours of those afore-
 ‘ mentioned Men of Blood rageth and ruleth o-
 ‘ ver us: and is this all the Return and Fruit
 ‘ that People are to expect from your hands?’

Mr. *Attorney*. Take this *Preparative to an Hue*
 and Cry after Sir Arthur Haslerig, and read
 page 2.

Clerk reads on. ‘ The *Preparative to an Hue*
 ‘ and Cry after Sir Arthur Haslerig, at page 2. in
 ‘ the Margin: That those Men that now sit at
 ‘ *Westminster*, are no Parliament, either upon
 ‘ the Principles of Law or Reason.’

Mr. *Attorney*. Read page 3.

Clerk. Page 3. ‘ They promise to amend, and
 ‘ to proceed according to the Form of the Law,
 ‘ as fully appears in their last fore-mentioned
 ‘ Declaration, and several others; as particular-
 ‘ ly the present Declaration of this present
 ‘ Juncto against Kingship, dated the 17th of
 ‘ *March*, 1648.

Mr. *Attorney*. Read page 4.

Clerk. Page 4. ‘ But the said Sir *Arthur Haslerig*,
 ‘ &c. more arbitrarily, and more treacherously
 ‘ than *Strafford*, having no Pretence of Regal,
 ‘ Legal, or Parliamentary Commissions or Au-
 ‘ thority, no not so much as from the present
 ‘ Nothing, or illegal Juncto, or the present ille-
 ‘ gal Thing called the *Council of State*, Mr. *John*
 ‘ *Jordan* now Member.’

Mr. *Attorney*. My Lord, he doth declare who
 he means by Juncto; Mr. *Jordan*, a Member of
 the present Juncto, the pretended House of Com-
 mons. In the third place, for the Proof of this
 first Particular, I shall produce his Book, intitled,
The Legal and Fundamental Liberties of England
 revived, &c. Read pag. 41.

Clerk reads pag. 41. ‘ But, Sir, I say, no won-
 ‘ der, all the things foregoing rightly consider-
 ‘ ed, they do own you now (as *Thomas Pride*
 ‘ hath made you) for the Supreme Authority of
 ‘ the Nation; although before they would nei-
 ‘ ther submit to King nor Parliament, (when it
 ‘ was a thousand times more unquestionable, both
 ‘ in Law and Reason, than now you are) but
 ‘ fought against both King and Parliament, their
 ‘ Setters up, conquered them, repelled them,
 ‘ subdued them, and broke them both; and so
 ‘ pulled up by the Roots all the legal and visible
 ‘ Magistracy and Authority in the Nation, and
 ‘ thereby left none but themselves, who stand in
 ‘ parallel to none (as they have managed their
 ‘ business) but to a Company of Murderers,
 ‘ Thieves and Robbers, who may justly be dis-
 ‘ possessed by the first Force that are able to do
 ‘ it; no pretended Authority that they of them-
 ‘ selves, and by their Swords can set up, having
 ‘ in the sight of either God or Man, either in
 ‘ Law or Reason, any more just Authority in
 ‘ them,

‘ them, than so many *Algier* Pirates and Robbers
‘ upon the Sea have.’

Lieut. Col. *Lilburne*. You read, as I take it,
a second Edition; whether is that a second
Edition or no?

Mr. Attorney. No, no, it is not so in the In-
dictment; it is no second Edition, but the first.
Read pag. 56.

Clerk. Page 56. ‘ To which I answer; First,
‘ That that Company of Men at *Westminster*, that
‘ gave Commission to the High Court of Justice to
‘ try and behead the King, were no more a Par-
‘ liament by Law, or a Representative of the
‘ People, by the Rules of Justice and Reason,
‘ than such a Company of Men are a Parliament,
‘ or Representative of the People, that a Com-
‘ pany of armed Thieves chuse and set apart to
‘ try, judge, condemn, hang or behead any Man
‘ that they please, or can prevail over by the
‘ Power of the Sword, to bring before them by
‘ force of Arms, to have their Lives taken away
‘ upon pretence of Justice, grounded upon Rules
‘ merely flowing from their Wills and Swords.’

Mr. Attorney. Read the Title-page.

Clerk. *The Legal Fundamental Liberties of the
People of England revived, asserted and vindica-
ted; or an Epistle written the eighth of June 1649,
by Lieutenant-Colonel John Lilburne, (Arbitrary
and Aristocratical Prisoner in the Tower of London)
to Mr. Will. Lenthall Speaker to the Remainder
of those few Knights, Citizens and Burgeses, that
Col. Thomas Pride at his late Purge thought con-
venient to leave sitting at Westminster, (as most
fit for his and his Masters Designs, to serve their am-
bitious and tyrannical Ends, to destroy the good old
Laws, Liberties and Customs of England, the
Badges of our Freedom, as the Declaration against
the King of the 17th of March, 1648. pag. 23.
calls them, and by force of Arms to rob the People
of their Lives, Estates and Properties, and subject
them to perfect Vassalage and Slavery, as he clearly
evinced in his present Case, &c. they have done)
and who (in truth no otherwise then pretendedly)
style themselves the Parliament of England.*

Mr. Attorney. Read pag. 2.

Clerk. ‘ Sir, for Distinction-sake, I will yet
‘ style you Mr. Speaker, although it be but to
‘ Col. Pride’s Juncto, or Parliament sitting at
‘ *Westminster*, (not the Nation’s, for they never
‘ gave him Authority to issue out Writs to elect or
‘ constitute a Parliament for them;) and a little
‘ below, in the same second Page, I accused
‘ *Oliver Cromwell* for a wilful Murderer, and
‘ desire you there to acquaint your House there-
‘ with, (who then had some little Hand of a
‘ Parliament-stamp upon it.)’

Mr. Attorney. Read Page 28.

Clerk. Page 28. ‘ The like of which Tyranny
‘ the King never did in his Reign; and yet by
‘ St. *Oliver*’s means lost his Head for a Tyrant.
‘ But the Thing that I principally drive at here,
‘ is to declare that *Oliver* and his Parliament,
‘ now at *Westminster*, (for the Nation’s it is not)
‘ having plucked up the House of Lords by the
‘ Roots.’

Page 44. ‘ So that if it be Treason to call this
‘ a a Mock-
‘ Parliament, yea, and to say

‘ And if this be true, for true it (a) is,
‘ then there is neither legal Justice, nor Justice
‘ of Peace in England.’

Mr. Attorney. Read Page 37.

Clerk. Page 37. ‘ For if they ever had intended
‘ an Agreement, why do they let their own lie
‘ dormant in the pretended Parliament ever
‘ since they presented it? seeing it is obvious to
‘ every knowing Eye, that from the Day they
‘ presented it, to this Hour, they have had as
‘ much Power over their own Parliament, now
‘ sitting, as any School-Master in England had
‘ over his Boys.’

Clerk. Page 45. ‘ For your Interest and the
‘ King’s, both being Interests of Trust, as your
‘ Declarations do plentifully and plainly declare;
‘ but especially your present *Juncto*’s late Decla-
‘ ration against the late beheaded King, and
‘ Kingly Government.

Mr. Attorney. Read Page 58.

Clerk. Page 58. ‘ And let the present Genera-
‘ tion of swaying Men, that under pretence of
‘ Good, Kindness, and Friendship, have destroy-
‘ ed and trod under foot all the Liberties of the
‘ Nation, and will not let us have a new Parlia-
‘ ment; but set up by the Sword their own in-
‘ sufferable, insupportable, tyrannical Tyranny.’

Lieut. Col. *Lilburne*. I pray, Sir, are all these
Quotations in the Indictment *verbatim*? I do not
remember that I heard them there.

Mr. Attorney. No, we do not offer any Book
but what is charged in the Indictment: For we
do say, That he published those Things among
other Clauses and Things in those Books. So
that we bring in no Book that is not contained
in the Indictment. Read Page 64.

Clerk. Page 64. ‘ That so they might rule,
‘ direct, and counsel their Mock Parliament.

Mr. Attorney. Read Page 68.

Clerk. Page 68. ‘ That that High Court of
‘ Justice was altogether unlawful, in case those
‘ that had set it up had been an unquestionable
‘ Representative of the People, or a legal Par-
‘ liament: neither of which they are, not in the
‘ least; but, as they have managed their Busi-
‘ ness in opposing all their primitive declared
‘ Ends, are a Pack of traitorous, self-seeking,
‘ tyrannical Men, Usurpers of the Name and
‘ Power of a Parliament.’

Mr. Attorney. Read Page 72.

Clerk. Page 72. ‘ Then with much more
‘ Confidence, say I, This that now sits is no
‘ Parliament; and so by consequence the High
‘ Court of Justice no Court of Justice at all.’

Mr. Attorney. My Lord, that which we shall
offer you next, is the *Salva Libertate*, which the
Lieutenant of the Tower had from Mr. *Lilburne*
himself. Read at the Mark.

Clerk. † ‘ A *Salva Libertate*: Altho I then
‘ told you I judged a Paper Warrant, (altho in
‘ Words never so formal) coming from any pre-
‘ tended Power or Authority in England, now
‘ visible, to be altogether illegal; because the
‘ intruding General *Fairfax* and his Forces had
‘ broke and annihilated all the formal and legal
‘ Magistracy of England, yea the very Parlia-
‘ ment it self; and by his Will and Sword (ab-
‘ solute Conqueror like) had most tyrannically
‘ erected, and set up, and imposed upon the
‘ free People of this Nation a *Juncto* or Mock-
‘ Power, sitting at *Westminster*, whom he and
‘ his Associates call a Parliament; who, like so
‘ many armed Thieves and Robbers upon the
‘ Highway, assume a Power, by their own

(a) These Words are not in Page 44, but are in the Book it self.

‘ Wills, most traitorously to do what they like,
 ‘ yea, and to fill the Land with their mock and
 ‘ pretended Magistrates, amongst the Number
 ‘ of which is the pretended Attorney-General:
 ‘ in perfect Opposition of whom, to the utmost
 ‘ of my Might, Power, and Strength, I am re-
 ‘ solved, by God’s gracious Assistance, to spend
 ‘ my Blood, and all that in this World is dear
 ‘ unto me, supposing him not really and substan-
 ‘ tially worthy the Name of an *English* Freeman,
 ‘ that in some measure, in this Particular, is not
 ‘ of my mind.’

Mr. Attorney. My Lord, in the Case of this Charge, what Mr. *Lilburne* is pleased to say concerning me, I shall say no more but only this: I shall not do so by him; I shall not spend my Blood against him. You see what he saith, That the present Government is tyrannical, usurped, and unlawful; that the Commons of *England* in Parliament assembled are not the supreme Authority, but a *Juncto*, a Mock-Power, a Mock-Parliament, a Company of Traitors, that rule merely by the Dictates of their own Will. I could alledge more of his Books unto you, which have Words in them very notorious, and very publick. He doth in expresse Words say, That the Government is arbitrary, tyrannical, and a new-erected, ruining, inflaving, robbing Government: To style them Tyrants, Usurpers, Traitors, parallel to none but Murderers, Robbers, Thieves: No Parliament at all, but *Thomas Pride’s Juncto*, and School-Boys, Destroyers of the Laws and Liberties of the Nation, the present *Juncto*, (Chimeras, Fooleries, and the like.) All these Expressions, and many more, which I am sorry I have occasion to repeat to you; that so much Dirt should be thrown into the Face of any Magistrates of *England*: My Lords, these are now the best which do rule. My Lords, I hope you, and the Gentlemen of the Jury, will take notice of it, as to be very clear, pregnant, evident Proof, that Mr. *Lilburne* hath thus published, and thus said. And besides this, you see what he does go to: He denies all (a) Magistracy. So that now we are all alike, a *Chaos*, a Confusion: And this he hath brought us to, or would have endeavoured it. My Lords, I shall not aggravate; and if I did say no more, it were enough. But I come to the second general Head of the Charge; which is, That he hath plotted and contrived to levy or raise Forces to subvert and overthrow the present established Government, in the way of a free State or Commonwealth. My Lords, if I should say nothing more to the Jury, this that hath been already read is evident Proof of that: For certainly those that shall say that the Governors be Tyrants, that the Parliament is tyrannical, that they are Men of Blood, Destroyers of Laws and Liberties; this cannot be of any other use but to raise Force against them, for subverting and destroying of them, as he himself saith, as so many Weasels or (b) Polecats; especially if you consider to whom these Words were declared, to the Army in general, especially to the General’s Regiment of Horse, that helped to plunder and destroy Mr. *Lilburne’s* true

Friends, defeated at *Burford*; and some of which were most justly, as Traitors, executed.

My Lords, if I would say nothing more to the Jury but this, there is full and pregnant Proof already: But yet, my Lord, further to shew the Malice of Mr. *Lilburne’s* Heart, and that he did intend to raise Force, to incite and invite them to help him to subvert and destroy the Parliament: And for the Proof of this, read the fifth Page of his *Impeachment of High Treason against Oliver Cromwell*.

Clerk reads Page 5. ‘ But, my true Friends, I
 ‘ shall here take upon me the Boldness (in regard
 ‘ of the great Distractions of the present Times)
 ‘ to give a little further Advice to you, from
 ‘ whose Company or Society (or from some of
 ‘ them) hath begun and issued out the most tran-
 ‘ scendent, clear, rational, and just Things for
 ‘ the People’s Liberties and Freedoms, that I
 ‘ have seen or read in this Nation, as your nota-
 ‘ ble Petition of *May 20, 1647*, burnt by the
 ‘ Hands of the common Hangman, recorded in
 ‘ my Book, called *Rash Oaths unwarrantable*,
 ‘ Page 29, 30, 31, 32, 33, 34, 35. with divers
 ‘ other Petitions of that Nature; and the Pe-
 ‘ tition of the 19th of *Jan. 1647*, recorded in the
 ‘ following Discourse, Page 45, 46, 47, 48, &c.
 ‘ and the masculine Petition of the 11th of *Sept.*
 ‘ 1648, so much owned by Petitions out of se-
 ‘ veral Counties, yea, and by the Officers of the
 ‘ Army’s large Remonstrance, from *St. Albans*,
 ‘ of the 16th of *Nov. 1648*, Page 67, 68, 69.
 ‘ The Substance of all which, I conceive, is
 ‘ contained in the printed Sheet of Paper signed
 ‘ by my Fellow-Prisoners, Mr. *William Walwyn*,
 ‘ Mr. *Thomas Prince*, and Mr. *Richard Overton*,
 ‘ and my self, dated the 1st of *May, 1649*, and
 ‘ intitled, *An Agreement of the Free People of*
 ‘ *England, &c.* The Principles of which I hope
 ‘ and desire you will make the final Centre and
 ‘ unwavering Standard of all your Desires, Ha-
 ‘ zards, and Endeavours, as to the future Settle-
 ‘ ment of the Peace and Government of this di-
 ‘ stracted, wasted, and divided Nation; the firm
 ‘ establishing of the Principles therein contained,
 ‘ being that only which will really and in good
 ‘ earnest marry and knit that Interest, whatever
 ‘ it be, that dwells upon them, unto the distres-
 ‘ sed and oppressed Commons or People of this
 ‘ Nation. Yea, the settling of which Principles
 ‘ is that that will thereby make it evident and
 ‘ apparent unto all understanding People in the
 ‘ World, that the real and hearty Good and
 ‘ Welfare of this Nation hath cordially, and in
 ‘ good earnest, been that that their Souls have
 ‘ hunted for, and thirsted after, in all the late
 ‘ bloody Civil Wars and Contests; all the Con-
 ‘ tests of the King’s Party, for his Will and
 ‘ Prerogative, being merely selfish, and so none
 ‘ of the People’s Interest; and the Contest of
 ‘ the Presbyterians, for their make-bate, divi-
 ‘ ding, hypocritical Covenant, no better in the
 ‘ least; and the present Contest of the present
 ‘ dissembling Interest of Independents, for the
 ‘ People’s Liberties in general, (read the follow-
 ‘ ing Discourse, Page 27, 28, 29.) merely no
 ‘ more but Self in the highest, and to set up the

(a) That’s false: He doth no such Thing; but at most saith, *The Army hath destroyed all the legal Magistracy of the Nation; and they are the Men that thereby are the real Levellers and Rooters.*

(b) In calling Tyrants Weasels and Polecats, he hath said no more but what he hath learned out of Saint John’s own Argument of Law against the Earl of Strafford; at which you have no cause to be angry, because they are the Words of one of your own Brother Lawyers.

‘false Saint and most desperate Apostate, Murderer, and Traitor, *Oliver Cromwell*, by a pretended Election of his mercenary Soldiers, under the false Name of the Godly Interest, to be King of *England*, &c. (that being now too apparently all the intended Liberties of the People that ever he fought for in his Life;) that so he might rule and govern them by his Will and Pleasure, and so destroy and enslave their Lives and Properties to his Lusts: Which is the highest Treason that ever was committed or acted in this Nation in any Sense or Kind; either, 1. In the Eye of the Law: Or, 2. In the Eye of the ancient (but yet too much arbitrary) Proceedings of Parliament: Or, 3. In the Eye of their own late declared Principles of Reason (by Pretence of which, and by no Rules of Law in the least, they took away the late King’s Head:) Which, if there were any Law or Justice in *England* to be had, or any Magistrates left to execute it (as in the least there is not) &c.

Mr. Attorney. Read Page 7.

Clerk. Page 7. ‘But the Principles of the fore-said Agreement being so detestable and abominable to the present ruling Men, as that which they know will put a full end to their Tyranny and Usurpation, and really ease and free the People from Oppression and Bondage, that it is something dangerous to those that go about the Promotion of it; yet I shall advise and exhort you vigorously to lay all Fear aside, and to set on foot the Promotion of it, in the same Method we took for the Promotion of the fore-said Petition of *January 19, 1649*, laid down in the following Discourse, *Page 23, 24, 25*. and write to your Friends in every County of *England*, to chuse out from among themselves, and send up some Agents to you (two at least from each County, with Money in their Pockets to bear their Charges) to consider with your culled and chosen Agents of some effectual Course, speedily to be taken, for the settling the Principles thereof (as that only which in an Earthly Government can make you happy, or at least, to know one another’s Minds in owning and approving the Principles thereof:) that so it may become to you and your Friends your Centre, Standard, and Banner, to flock together to, in the time of these foreign Invasions and domestick Insurrections, that are like speedily to bring Misery enough upon this poor and distressed Nation; and unanimously resolve and engage one to another, neither to side with or fight for the *Chimeras*, Fooleries, and Pride of the present Men in Power, nor for the Prince’s Will, or any other base Interest whatsoever (the which if you should fight for, it would be but an absolute murdering of your Brethren and Countrymen, you know not wherefore) unless he or they will come up to those just, righteous, and equitable Principles therein contained, and give rational and good Security for the constant adhering thereunto. And upon such Terms, I do not see but you may justifiably, before God or Man, join with the Prince himself; yea, I am sure a thousand times more justly than the present ruling Men (upon a large and serious Debate) joined with *Owen Roe O-Neale*, the grand bloody Rebel in *Ireland*: Who, if we must have King, I, for my part, had rather have the Prince than any

Man in the World, because of his large Pretence of Right; which, if he come not in by Conquest, by the Hand of Foreigners, (the bare attempting of which may apparently hazard him the Loss of all at once, by gluing together the now-divided People, to join as one Man against him) but by the Hands of *Englishmen*, by Contract upon the Principles aforesaid (which is easy to be done) the People will easily see that presently thereupon they will enjoy this transcendent Benefit (he being at Peace with all foreign Nations, and having no Regal pretended Competitor) viz. The immediate Disbanding all Armies and Garrisons, saving the old *Cinque-Ports*; and so those three grand Plagues of the People will cease, viz. Free-Quarter, Taxations, and Excise: By means of which the People may once again really say they enjoy something they can in good earnest call their own. Whereas, for the present Army to set up the false pretended Saint *Oliver* (or any other) as their elected King, there will be nothing thereby, from the beginning of the Chapter to the end thereof, but Wars, and the cutting of Throats Year after Year, yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful Experience they now see they perfectly are: Which Slavery and absolute Bondage is daily like to increase, under the present tyrannical and arbitrary new-erected robbing Government.’

Mr. Attorney. He hath blown the Trumpet, for all that will to come in: He hath set up his Centre; he would have it to be a Standard for all his Friends to flock to him. And to make them the more quick in betaking them to their Arms, he hath falsely and maliciously there said, That the Parliament had joined with *Owen Roe O-Neale*; which, I can assure all that hear me this Day, the Parliament always detested, abominated, disavowed, and declared against, and never had any Thoughts that way. My Lord, the false Imputations of his laid upon the Parliament, are almost numberless. But, in the Second Place, I come to that pretty Bauble, that’s of his own making, the *Agreement of the People*, dated at the *Tower* the 1st of *May, 1649*, and shall desire your Lordships to judge whether this Agreement of the People, which he made, and his Friends then in the *Tower*, and intitled, *The Agreement of the People*, as signed by them, for they called it *An Agreement of the Free People of England*, strikes not at the very Root of all Government.

Lieut. Col. Lilburne. Pray, Sir, look whether it be licensed, or no, according to the Law of the Nation; and if it be licensed by publick Authority, how comes it to be Treason? That’s very strange!

Mr. Attorney. It is so.

Lieut. Col. Lilburne. Pray, Sir, go, and question the Licenser then.

Mr. Attorney. We must question the Author; the Licenser will not excuse it. Read *Page 2*.

Clerk reads Page 2. ‘This Agreement being the ultimate End and full Scope of our Desires and Intentions concerning the Government of this Nation.’ And a little below: ‘After the long and tedious Prosecution of a most unnatural, cruel, home-bred War, occasioned by

‘Divi-

‘ Divisions and Distempers amongst our selves;
 ‘ and those Distempers arising from the Uncer-
 ‘ tainty of our Government, and the Exercise of
 ‘ an unlimited or arbitrary Power by such as
 ‘ have been trusted with Supreme and Subordi-
 ‘ nate Authority, whereby Multitudes of Grievances and intolerable Oppressions have been
 ‘ brought upon us: And finding, after eight
 ‘ Years Experience and Expectation, all Endeavours hitherto used, or Remedies hitherto applied, to have increased, rather than diminished our Distractions; and that if not speedily prevented, our falling again into Factions and
 ‘ Divisions will not only deprive us of the Benefit of all those wonderful Victories God hath vouchsafed against such as sought our Bondage, but expose us first to Poverty and Misery, and then to be destroyed by foreign Enemies.’

Mr. Attorney. Read Page 3.

Clerk. Page 3. ‘ Agree to ascertain our Government, to abolish all arbitrary Power, and set Bounds and Limits both to our Supreme and all Subordinate Authority, and remove all known Grievances; and accordingly do declare and publish to all the World that we are agreed as followeth. *Page ibid.* That the Supreme Authority of *England*, and the Territories therewith incorporate, shall be and reside henceforward in a Representative of the People, consisting of Four Hundred Persons, but no more.’

Mr. Attorney. The Manner of the Choice of whom, &c. they leave to this Parliament. Read a little below.

Clerk. ‘ All Things concerning the Distribution of the said Four Hundred Members proportionable to the respective Parts of the Nation, the several Places for Election, the Manner of giving and taking of Voices, with all Circumstances of like nature, tending to the Compleating and equal Proceedings in Elections, as also their Salary, is referred to be settled by this present Parliament, in such sort as the next Representative may be in a certain Capacity to meet with Safety at the Time herein expressed; and such Circumstances to be made more perfect by future Representatives.’

‘ We agree that this present Parliament shall end the first Wednesday in *August* next, 1649, thenceforward to be of no Power or Authority; and in the mean time shall order and direct the Election of a new and equal Representative, according to the Intent of this our Agreement; and so as the next Representative may meet and sit in Power and Authority, as an effectual Representative, upon the Day following, namely, the first Thursday of the same *August*, 1649.

Page ibid. ‘ We agree, if the present Parliament shall omit to order such Election or Meeting of a new Representative, or shall by any means be hinder’d from Performance of that Trust, that in such case we shall for the next Representative proceed in electing thereof in those Places, and according to that Manner and Number formerly accustomed in the Choice of Knights and Burgeses; observing only the Exceptions of such Persons from being Electors or Elected, as are mentioned before in the first, third, and fourth Heads of this Agreement: it

‘ being most unreasonable, that we should either
 ‘ be kept from new frequent and successive Representatives, or that the Supreme Authority
 ‘ should fall into the Hands of such as have manifested Disaffection to our common Freedom, and endeavoured the Bondage of the Nation.
 ‘ And for preserving the Supreme Authority from falling into the Hands of any whom the People have not or shall not chuse, we are resolved and agreed (God willing) that a new Representative shall be upon the first Thursday in *August* next aforesaid: the ordering and disposing of themselves, as to the Choice of a Speaker, and the like Circumstances, is hereby left to their Discretion; but are in the Extent and Exercise of Power, to follow the Direction and Rules of this Agreement; and are hereby authorized and required, according to their best Judgments, to set Rules for future equal Distribution and Election of Members, as is herein intended and enjoined to be done, by the present Parliament.’

Mr. Attorney. Read Page 8.

Clerk. Page 8. ‘ And all Laws made, or that shall be made, contrary to any Part of this Agreement, are hereby made null and void.’

Mr. Attorney. My Lords, here by this *Agreement of the People*, that Mr. *Lilburne* hath publish’d to the World, in which, my Lord, he hath designed how many the Supreme Authority shall consist of, the Time when the Parliament shall dissolve, as also the Time when his own Parliament shall meet; this Parliament to be dissolved the first Wednesday in *August* 1649, all Laws contrary to this to be null and void: and in it you shall find some Expressions of Treason in the height, that whosoever shall do contrary to it, shall be most severely punished. In the next Book before this, it is desired by him, that this *Agreement of the People* may be the Center, the Banner, and Standard of all his Friends, and that they go on vigorously with it; which is, my Lord, to dissolve this Parliament, and to put on this new one of Mr. *Lilburne*’s appointing. This we conceive, which is of Mr. *Lilburne*’s appointing, would (if effected) be an absolute Subversion of this in being; and this is High Treason. My Lord, we shall go on with more yet, and that is with his *Outcry*. My Lord, if you please to see the Title, and see to whom it is directed, what was intended to be done with it: it is intitled, *An Outcry of the Young-men and Apprentices of London, directed Aug. 29, 1649, in an Epistle to the Private Soldiery of the Army, especially all those that signed the Solemn Engagement at Newmarket-Heath, the Fifth of June 1647, but more especially to the private Soldiers of the General’s Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traiterously defeated at Burford, the Fifteenth of May 1649.* A good Encouragement! they were traitorously defeated at *Burford*; but we are Rebels and Traitors, and our Army Murderers and Butchers, for giving some of those declared Traitors their due Deserts. But that you may see his Tendency by this Book, read Page 11.

Clerk. Page 11. ‘ We say, considering what is before premised, we are necessitated and compell’d to do the utmost we can for our own Preservation, and for the Preservation of the Land of our Nativity, and never (by popular Petitions) address ourselves to the Men sitting
 ‘ at

at *Westminster* any more, or to take any more Notice of them than of so many Tyrants and Usurpers, and for time to come to hinder (as much and as far as our poor despised Interest will extend to) all others whatsoever from subscribing or presenting any more popular Petitions to them. And only now, as our last Paper *Refuge*, mightily cry out to each other of our intolerable Oppressions, in Letters and Remonstrances, signed in the Behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest amongst us, that we hope will never apostatize, but be able through the Strength of God to lay down their Lives for the maintaining of that which they set their Hands to. You our Fellow-Countrymen (the private Soldiers of the Army) alone being the instrumental Authors of your own Slavery and ours; therefore as there is any Bowels of Men in you, any Love to your native Country, Kindred, Friends or Relations, any Spark of Conscience in you, any Hopes of Glory or Immortality in you, or any Pity, Mercy or Compassion, to an enslaved, undone, perishing, and dying People; O help, help, save and redeem us from total Vassalage and Slavery, and be no more like brute Beasts, to fight against us or our Friends, your loving and dear Brethren after the Flesh, to your own Vassalage as well as ours.

And as an assured Pledge of your future Cordialness to us, (and the true and real Liberties of the Land of your Nativity) we beseech and beg of you (but especially those amongst you that subscribed the Solemn Engagement at *Newmarket-Heath*, the Fifth of June 1647,) speedily to chuse out amongst yourselves two of the ablest and constantest faithful Men amongst you in each Troop and Company, now at last (by corresponding each with other, and with your honest Friends in the Nation) to consider of some effectual Course (beyond all Pretences and Cheats) to accomplish the real End of all your Engagements and Fightings, viz. the settling of the Liberties and Freedom of the People; which can never permanently be done, but upon the sure Foundation of a popular Agreement: who (viz. the People) in Justice, Gratitude, and common Equity, cannot chuse but voluntarily and largely make better Provision for your future Subsistence (by the Payment of your Arrears) than ever your Officers or this pretended Parliament intends, or you can rationally expect from them: witness their cutting off three Parts of your Arrears in four, for Free-quarter; and then necessitating abundance of your Fellow-Soldiers (now cashier'd, &c.) to sell their Debentures at two Shillings Sixpence, three Shillings, and at most four Shillings per lib.

Mr. Attorney. See, my Lord, here we are styled Tyrants, Usurpers, introducing Government-Oppressions of the People; and *Mr. Lilburne* is resolved with his Friends to join together, and to lay down their very Lives for this. This, I think, is a Trumpet blown aloud for all the discontented People in the Nation to flock together, to root up and destroy this Parliament, and

so the present Government. But read also the same Book, pag. 9.

Clerk. Pag. 9. 'For the effectual Promotion of which said Agreement, we are necessitously compelled to resolve in close Union to join ourselves, our Commissioners (chosen for that end) in Council, with our foresaid *Burford* Friends, or their Commissioners; and to resolve to run all Hazards to methodize all our honest Fellow-Prentices, in all the Wards of *London*, and the Out-Parishes, to chuse out their Agents to join with us or ours, to write exhortative Epistles to all the honest-hearted Freemen of *England*, in all the particular Counties thereof, to erect several Councils amongst themselves; out of which we shall desire (and exhort them) to chuse Agents or Commissioners (impowered and intrusted by them) speedily to meet us, and the Agents of all our (and the Agreement of the People) Adherents at *London*, resolvedly to consider of a speedy and effectual Method and Way how to promote the Election of a new and equal Representative, or Parliament, by the Agreement of the free People: Seeing those Men that now sit at *Westminster*, and pretendedly style themselves the Parliament of *England*, and who are as they say (altho most falsely) in the Declaration for a Free State, dated *March 17, 1648*, pag. 27. intrusted and authorized by the Consent of all the People of *England*, whose Representatives they are; make it their chiefest and principallest Work, continually to part and share amongst themselves all the great, rich, and profitablest Places of the Nation; as also the Nation's publick Treasure and Lands; and will not ease our intolerable Oppressions, no not so much as of late receive our popular Petitions, having upon Thursday last, *Aug. 23, 1649*, rejected that most excellent of Petitions ready at their Door to be presented to them by divers honest Men (our true-hearted Neighbours of *Surrey*) the true Copy of which, for the worth of it, altho it be at large already printed in *Friday-Occurrences*, and the *Tuesday-Moderate*, we desire here to insert.'

Mr. Attorney. My Lord, this is a loud one! Whom does he join us withal, but only with those very Men that justly suffered Death, many of them, for it? My Lord, now it's resolved that these Men shall be closely joined with them; and what to do? still to promote *The Agreement of the People*, that which *Mr. Lilburne* hath hatched, and that must be the Baby that those declared open Traitors and Rebels, that *Mr. Lilburne* will join with, must nourish up. My Lord, we shall go on further to shew, what *Mr. Lilburne* drives at; which is not much differing from us, for he would have a Free State: but, my Lord, this that is now in being, it doth not go in *Mr. Lilburne's* Way, and therefore it must be overthrown by Force and Arms, that so Way may be made for his new (a) Commonwealth. We shall go further on, my Lord, and in the next Place quote his Book, intituled, *The Legal Fundamental Liberties of the People of England revived, asserted, and vindicated*, &c. Read Page 57.

(a) And yet a few Days before his Trial, several principal leading Members of the House and Council of State, told his Wife, and several others of his Friends, That *Mr. Lilburne* was turned Cavalier, and had joined with the Prince, and they had several Letters under his own Hand to prove it.

Clerk reads pag. 57. 'And the present Setters-up of this tyrannical new Commonwealth, considering their many Oaths, Covenants, Promises, Declarations, and Remonstrances to the contrary, (with the highest Promises and Pretences of Good for the People and their declared Liberties, that ever was made by Men) are the most perjured, perfidious, false, Faith and Trust-breakers, and Tyrants, that ever lived in the World; and ought by all rational and honest Men to be the most detested and abhorred of all Men that ever breathed, by how much the more under pretence of Friendship and Brotherly-Kindness they have done all the mischief they have done, in destroying our Laws and Liberties.'

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you see Mr. *Lilburne* hath been pleased very often to give the Name of Tyrants to the Parliament: I would give no other Instance, nor shew no other Example but Mr. *Lilburne* himself, to disprove himself; and with much confidence affirm it, that never State had before, (neither King nor State) since the Foundations of it, so much Enmity, nor have endured with so much Patience any Man whatsoever, as they have done Mr. *Lilburne*; who notwithstanding all his traitorous Provocations, and traitorous Designs, undertaken against them, is yet alive at this day, and now hath fair play to plead for his Life. I would take him for his own Confuter, and see by all that has been done by him, and see if he could make good his Actings, and make good the Parliament's dealing with him therefore, can be demonstrated by him to prove them Tyrants. My Lord, I can hardly forbear, to see and hear his dangerous and desperate Expressions, to invite all People for to take up Arms against the Parliament, to cut their throats like Pole-cats and Weasels. My Lords, here to style them the most perfidious, perjured, false, Faith and Trust-breakers, and Tyrants, that ever lived in the World; and to be the most abhorred and detested of all the People, above all Men that ever breathed: O insufferable, and the highest of Treasons!

Lieut. Col. Lilburne. Sir, all the Wit of all the Lawyers in *England* could never bring it within the compass of High Treason, by the old and just Laws of this Nation, that abhors to oppress Men contrary to Law; and then if they seem but to cry out of their Oppressions, to make them Traitors for Words.

Mr. Attorney. I am confident the least Lawyer in *England* would have brought this within the Statute of Treason of the 25 *Ed. 3. chap. 2.* My Lords, you shall see there is none escaped; the Parliament with him are Tyrants, Taitors, and Usurpers; and therefore he stirs up the People to destroy them. But in the third place, you shall see what Titles he gives to my Lord General *Fairfax*, and his chief Officers; that, my Lord, he that reads the Books, and doth not know the Persons, he would think that they were Monsters, and not Men; altho they are so famous and glorious, that all the World hath rung of them to their praise. But, saith he, never was there more glorious Declarations made by Men than by them, and yet never performed any of them. Nay, he doth not only call them also Covenant and Engagement-breakers, but he calls the Lord General Tyrant, Murderer, and what

not; and the Officers, perfidious Officers. My Lords, what I observed in the last Clause of the Act, is, That whosoever goes about to draw the Soldiers from their Obedience to their superior Officers, or from their Obedience to the present Government, that is High Treason: and this likewise we shall find him guilty of, in his *Legal Fundamental Liberties of England asserted and vindicated*; it is in the first side of the Epistle that in the first place I pitch upon, read it.

Clerk. Page 1. of the Epistle. 'I positively accuse Mr. *Oliver Cromwell* for a wilful Murderer, (and desire you to acquaint your House therewith) for murdering Mr. *Richard Arnold* near *Ware*.'

Mr. Attorney. Which Man, my Lord, was condemned for a Mutineer by a Council of War, where the Lord Lieutenant of *Ireland* was but one Member; and the Parliament gave him, and the rest of that Council Thanks, for shooting that mutinous Soldier to death: and yet Mr. *Lilburne* calls him Murderer therefore, and this is laid to my Lord Lieutenant's charge for his part.

Lieut. Col. Lilburne. Doth not the Petition of Right absolutely condemn all such Acts in time of Peace, when the Courts of Justice are open? And the Judgment of the Earl of *Strafford* doth abundantly condemn it, who lost his Life for a Traitor, for doing the very same Act in kind and likeness, at that time, when he in the eye of the Law was as legal a General, as the General was that condemned that Man.

Mr. Attorney. My Lords—

Lieut. Col. Lilburne. I pray, Sir, hear me out: and sure I am, the Declarations of all the Powers extant in *England* ever since, have been to maintain the Petition of Right inviolably; yea, even those that are now in present Power: and if the Petition of Right be true, to shoot Soldiers, as *Arnold* was, is absolute Murder. Nay further, if the Judgment of the Parliament upon the Earl of *Strafford* for such an Act be legal, then all those that had a hand in shooting that Soldier, are Traitors, and ought to die for it, as well as *Strafford*.

Clerk reads on the second side of the Epistle. 'Of all which Crimes and Charges, and all your others against the King, contained in your foresaid Declaration, I know not three of them, but *Cromwell* and his Confederates, in your pretended House and Army, are as guilty of the like in kind, tho under a new Name and Notion, as the King was of the forementioned, if not more guilty.'

Mr. Attorney. Read Page 35.

Clerk. Pag. 35. 'But alas poor Fools! we were merely cheated and cozened, it being the principal Unhappiness to some of us, as to the Flesh, to have our Eyes wide open, to see things long before most honest Men come to have their Eyes open. And this is that which turns to our smart and reproach, and that which we Commissioners feared at the first, viz. That no Tye, Promises, nor Engagements were strong enough to the grand Jugglers and Leaders of the Army, was now made clearly manifest; for when it came to the Council, there came the General, *Cromwell*, and the whole Gang of Creature-Colonels, and other Officers, and spent many days in taking it all in pieces, and there *Ireton* shewed himself an absolute King, if not an Emperor; against whose

'Will

' Will no Man must dispute. And then *Shuttlecock*, *Roe* their Scout, *Okey*, and Major *Barton* (where Sir *Hardress Waller* sat President) begun in their open Council to quarrel with us, by giving some of us base and unworthy Language; which procured them from me a sharp Retortment of their own Baseness and Unworthiness into their teeth, and a Challenge from myself into the field. Besides, seeing they were like to fight with us in the Room in their own Garrison, which when Sir *Hardress Waller* in my ear reproved me for it, I justified it, and gave it him again, for suffering us to be so affronted. And within a little time after, I took my leave of them for a pack of dissembling juggling Knaves: amongst whom in Consultation ever thereafter I should scorn to come, (as I told some of them;) for there was neither Faith, Truth, nor common Honesty among them. And so away I went to those that chose and intrusted me, and gave publickly and effectually (at a set Meeting appointed on purpose) to divers of them, an exact Account how they had dealt with us, and cozened and deceived us; and so absolutely discharged myself from meddling or making any more with so perfidious a Generation of Men, as the Great-ones of the Army were; but especially the cunningest of *Macchiavelians*. Commissary *Henry Ireton*.'

Mr. Attorney. Read Page 37. at the Mark.

Clerk. Page 37. ' Which the General and his Council knew well enough: and I dare safely say it upon my Conscience, that an Agreement of the People, upon Foundations of just Freedom, gone through with, is a thing the General, and the chiefest of his Council, as much hate, as they do Honesty, Justice, and Righteousness, (which they long since abandoned;) against which, in their own Spirits, they are absolutely resolved (I do verily believe) to spend their Heart-Blood, and not to leave a Man breathing in *English* Air, (if possibly they can) that thoroughly and resolutely prosecutes it; a new and just Parliament being more dreadful to them, than the great Day of Judgment, so much spoken of in Scripture. And altho they have beheaded the King, yet I am confidently persuaded, their Enmity is such at the People's Liberties, that they would sooner run the hazard of setting the Prince in, to reign in his Father's stead, than further really a just Agreement, or endeavour a new Parliament rightly constituted.'

Mr. Attorney. Read Page 38.

Clerk. Page 38. ' Whenas alas! it is as visible as the Sun when it shineth in its Glory and Splendor, that *Korah*, *Dathan*, and *Abiram*, of old, were never such Rebels against Authority, as the General and his Council are; nor the Anabaptists at *Munster*, with *John* of *Leyden*, and *Buperdullion*, were never more Contemners of Authority; nor *Jack Straw*, nor *Wat Tyler*; nor all those famous Men, mentioned with a black Pen in our Histories, and called Rebels and Traitors, can never be put in any Scale of equal Ballance, for all manner of Rebellions and Treasons against all sorts and kinds of Magistracy, with the General and his Council.'

Mr. Attorney. See, my Lord, and you Gentlemen of the Jury, you see *Mr. Lilburne* gives

the General and his Officers as bad Titles, as he can give the worst of Rebels and Traitors, or the worst of Men. But we go on to his *Outcry*; read the Title of it.

Clerk. An *Outcry* of the Young-men and Apprentices of London, pag. 8. where it is thus: ' Sure all Sense and Compunction of Conscience is not totally departed from you.'

Mr. Attorney. If it please you, my Lord, because the Jury may observe it, the Book is directed to the Soldiers of the Army, and that is an *Outcry*, &c. Now read Page 8.

Clerk. P. 8. ' Sure all Sense and Compunction of Conscience is not totally departed from you: hear us therefore, in the earning Bowels of Love and Kindness we intreat and beseech you, with patience, and do not abuse us for complaining and crying out; for the Knife hath been very long at the Throats of our Liberties and Freedoms, and our Burdens are too great and too many for us, we are not able to bear them, and contain ourselves; our Oppressions are even ready to make us despair, or forthwith to fly to the prime Laws of Nature, viz. the next violent Remedy at hand, light where it will, or upon whom it will. They are become as devouring Fire to our Bones ready to burn us up, rendring us desperate and careless of our Lives, prising those that are already dead above those that are yet living, who are rid of that Pain and Torment that we do and must endure, by sensibly seeing and beholding not only the dying, but the daily Burial of our native Liberties and Freedoms; that we care not what becomes of us, seeing that we are put into that original State, or Chaos of Confusion, wherein Lust is become a Law, Envy and Malice are become Laws, and the strongest Sword rules and governs all by Will and Pleasure; all our antient Boundaries and Landmarks are pull'd up by the roots, and all the Ties and Bonds of human Society in our *English* Horison totally destroy'd and extirpated. Alas for pity! we had rather die, than live this Life of languishing Death, in which our Masters possess nothing (to buy themselves or us Bread, to keep us alive) that they can call their own. Therefore it's no boot for us to serve out our Times, and continue at our drudging Trades, while these Oppressions, Cruelties, and Inhumanities are upon us, and the rest of the People; exposing thereby not only the Nation to domestick Broils, Wars and Bloodsheds, (wherein we are sure our Bodies must be the principal Butts) but to foreign Invasions, by *France*, *Spain*, *Denmark*, *Sweedland*, &c. as was well observed by our endeared and faithful Friends, of the forementioned late treacherously defeated Party at *Burford*, in their Book of the 20th of *August* 1649. intitled, *The Levellers vindicated, or the Case of their twelve Troops truly stated*, pag. 11, 12. which we cannot but seriously recommend (with them) to your serious Perusal and Judgment; and desire to know of you (but especially the private Soldiers of the General's Regiment of Horse, which we understand had a hand in seizing upon and plundering our true Friends at *Burford*) whether you do own the abominable and treacherous Dealings of your General and Lieutenant-General *Cromwell*, and their perfidious Officers with them, or no, that

' so

‘ so we may not condemn the Innocent with the Guilty, &c.

Mr. Attorney. Read Page 11.

Clerk. Page 11. ‘ You our Fellow-Countrymen (the private Soldiers of the Army) alone, being the instrumental Authors of your own Slavery and ours; therefore as there is any Bowels of Men in you, any Love to your native Country, Kindred, Friends, or Relations, any Sparks of Conscience in you, any Hopes of Glory or Immortality in you, or any Pity, Mercy or Compassion to an enslaved, undone, dying, perishing People: O help, help, save and redeem us from total Vassalage and Slavery, and be no more like brute Beasts, to fight against us or our Friends, &c.

‘ And as an assured Pledge of your future Cordialness to us, (and the true and real Liberties of the Land of your Nativity) we beseech and beg of you (but especially those amongst you, that subscribed the solemn Engagement at Newmarket, the fifth of June 1647,) speedily to chuse out from amongst yourselves two of the ablest and constantest faithful Men amongst you, in each Troop and Company, now at last (by corresponding each with other, and with your honest Friends in the Nation) to consider of some effectual Course (beyond all Pretences and Cheats) to accomplish the real End of all your Engagements and Fightings, viz. the settling the Liberties and Freedoms of the People; which can never be permanently done, but upon the sure Foundation of a popular Agreement: who (viz. the People) in Justice, Gratitude, and common Equity, cannot chuse but voluntarily and largely make better provision for your future Subsistence, than ever your Officers, or this pretended Parliament intends, &c.

Mr. Attorney. Read the Title of his *Impeachment*.

Clerk. *An Impeachment of High Treason against Oliver Cromwell, &c.*

Mr. Attorney. Read Page 2.

Clerk. Page 2. ‘ But I shall rather desire and advise you, by Letter, like yourselves, to address yourselves to the Lord *Fairfax*, by the Sword of whom and his Soldiers I am now in prison for my Honesty and Innocency, and nothing else, and demand my Liberty of him. If he refuse, print it, and do as God and Reason shall direct you; for it was his and his Soldiers Force, that fetch’d me out of my Bed the 28th of *March* 1642, without all shadow of Law or Justice, and against the Tenour of all their own Declarations, the particular Pages of which you may read in the following Letter to *Mr. Holland*, p. 5. and by Force of Arms carried me to *Whitehall*, and then to *Derby-house*, before a Company of Men that in Law had no more power to commit my Body to Prison, than so many Thieves and Robbers upon *Shuters-Hill* have: who by the Rules of their own Wills (as in the second Edition of the Picture of them, I have fully declared) sent me by Force of Arms to the *Tower*, for all my short Eternity in this World.

‘ But I intreat you seriously to consider, that I cannot advise you to make Address to him as the General of the Nation’s Forces; for he is no such thing, but is merely a great Tyrant, standing by the Power of his own Will,

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‘ and a strong Sword, borne by his Vassals, Slaves and Creatures; having no Commission to be General, either from Law, the Parliament, or from the prime Laws of Nature and Reason.’

Mr. Attorney. Read *An Outcry of the Young-men and Apprentices*, pag. 3.

Clerk. Page 3. ‘ Your Heart seems to us as obdurate as the flinty Rock; as savage and inhuman, as if the Flesh and Blood, the Bones and Marrow of the People were become your Meat.’

Mr. Attorney. Stay, *Mr. Broughton*: The Jury will take notice, that this is directed to the Soldiers of the General’s Regiment; this speaks to them.

Clerk. reads on. Directed Aug. 29, 1649, in an *Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the fifth of June 1649, but more especially to the private Soldiers of the General’s Regiment of Horse.*

Mr. Attorney. Now read Page 3.

Clerk. Page 3. ‘ Your Hearts seem to us as obdurate as the flinty Rock; as savage and inhuman, as if the Flesh and Blood, the Bones and Marrow of the People were become your Meat, as already it is in effect; and instead of Encouragement and Support to our true Friends and real Relievers, (at least in faithful Desire and Endeavour) as shall stand in the gap betwixt our Destroyers and us, all Ways and Means are used to impoverish, destroy, and suppress them; and in them to break and vassalage the Spirits of all the *English*, which in all Ages have had the preheminiencies of other Nations, that there may not be so much of Gallantry or Courage left amongst the People, that one amongst them shall dare to assert or maintain their Freedoms.’ And a little below, ‘ If any do but murmur and complain, presently their Houses, as with Furies, are beset with armed mercenary Janizaries, Guards, and Centinels set upon their Doors and Passages.’

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you hear what stuff this of *Mr. Lilburne*’s is; yea, such stuff as that it would make any Man loath to hear it. The last Clause of the Act is, ‘ If any Person not being an Officer, Soldier, or Member of the Army, shall plot, contrive or endeavour to stir up any Mutinies in the Army, or to withdraw any Officers or Soldiers from their Obedience to their superior Officers, or to the present Government; it is High Treason.’ You have here the several Books read to you, and the Calumniation laid upon the chiefest of them, to stir the rest up to Mutinies against them; but they are very well known, and therefore nothing that *Mr. Lilburne* can say will stick upon them, to their prejudice. But, my Lord, you see here, and you of the Jury, how he appeals from the Officers to the Soldiers, interrogates to know what they could do, and whether they will acknowledge they will own them, and not fight against them, and what Aid and Assistance they will give to him and his Friends against their own General, and the rest of their superior Officers. You see also what he calls that noble General, that all the World doth honour, and his Fame rings through the World; and yet he calls him a grand Tyrant, standing by the Power

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of his own Will, and a strong Sword, a Destroyer of the Parliament, of the Laws and Liberties of *England*. You see what he calls the common Soldiers; Furies and mercenary Janizaries, which none but *Turks* have. You have heard the several Charges proved unto you, for my part I think it as clear as Noon-day. We have not raised any advantage upon any slipping Words that have slipped from him, which we might have done; and I could have urged some more Witnesses, to have proved his Books published by him to publick View, tho when he comes in the face of the publick Court of Justice, he will not own them, which shews his Design to be the more dangerous. He will write, print, publish, bespatter, and reproach; yea, and raise Tumults and Rebellion in a clandestine way: but if we chance to question him therefore, he will not own it; you see we have been fain to fetch it out of the fire, and yet this is one of *England's* and its Liberties valiant Champions.

Lieut. Col. *Lilburne*. You have done no more to me, than the Scribes and Pharisees did to Jesus Christ; and in my dealing with you, I have but walked in the steps of my Lord and Master Jesus Christ and his Apostles. For I am sure of it, Jesus Christ, in his Pilgrimage on Earth, freely, openly, and publickly taught and declared himself to be the Son of God, the Messias or Saviour of the World that was prophesied of; and yet when he came amongst the Scribes and Pharisees, and *Pilate* the Roman Governour, who by Questions went about to insnare him, he confesseth nothing, but saith, I spake openly to the World, I ever taught in the Synagogues and in the Temple, whither the *Jews* always resort, and in secret have I said nothing; why askest thou me? Ask them which heard me what I have said unto them: Behold, they know what I have said. And when *Pilate* adjured him to answer him whether he was such a one or no, Well, saith he, thou sayest it: So say I, Thou, Mr. *Prideaux* sayest it, they are my Books, but prove it.

Mr. Attorney. But I think here are enough, and too many: And therefore, Gentlemen of the Jury, if you respect the Government of the Parliament, the Honour of the Council of State, the Honour of the Nation, or of the Army, or the Preservation of the Law of the Nation, you cannot say but that the Prisoner is guilty of such Crimes and Treasons as he is now accused of, and accordingly find him so: For it cannot be supposed that you will lay him in a single Balance against the Honour of all the Powers in the Nation, and also the Peace thereof.

Foreman. We desire the Act of Treasons to make use of.

Lieut. Col. *Lilburne*. I beseech you hear me a few Words: They desire to have it along with them. Sir, with your favour, I shall humbly crave Liberty to speak a few Words: I shall keep me close to that which is my Right and my Duty, and that is to the Matter of Law in my Indictment. There are many Things put into the Indictment by the Testimonies of Witnesses now sworn, that are pretended to be acted in several Counties. Whether that be according to Law, or no, I do not know whether you will judge it so, or no; but sure I am, if either those express Statutes that I have already cited to the

Jury, or the third Part of *Coke's Institutes*, be Law, I ought not to be tried for Treason but by a Jury of the next Neighbourhood, in the self-same County the Fact is pretended to be committed in. And therefore it is very questionable to me whether my Indictment be legal, for that it chargeth me with Facts of Treason committed in three several Counties; and that being Matter of Law, I desire Counsel to argue that Point in the first place. There are also a great many other Exceptions I have to make against the Illegality of the Indictment; and having particularized one, I humbly crave that which is my Right by Law, that I may have Counsel assigned unto me. You have said you will do what shall become ingenuous and understanding Men and just Judges in it; and therefore I crave leave, according to my undoubted Right, to have Counsel assigned to plead in Matter of Law to the Insufficiency of the Indictment, and particularly to that Point I have nominated. There are also a great many Things arise out of the Matter of Fact that will be Points of Law likewise, and some of them appear to be so. There were never two clear and positive Witnesses to one Fact sworn against me; but to most of the particular Treasons there is but one a-piece; and I cannot yield that to be legal, but questionable in Law, which I desire Counsel to dispute. I know not any of all the Books fixed upon me, but the *Outcry*, that hath two plain Witnesses to it; and yet it is not sworn that I am the Author of it. The State of the first is this: That I was at the Printer's before the Copy was taken away; and that I gave one of those Books to a Soldier. To sum up the Notes of the Matter of Fact that thereon hath been endeavoured to be proved, is too had a Task to be done by me immediately; and therefore I conceive it but just for you to assign me Counsel, to agree with the Counsel against me what are the Points of Fact upon the Proof, from which the Points of Law are to be deducted. And whatever you, that call yourselves my Judges, may think of this, yet I hope and verily believe that these my honest Fellow-Citizens, that are the Gentlemen of my Jury, who have (thereby) as Men, the Issues of my Life and Death in their hands, will think it but a just and rational Motion and Request; and therefore, before them again, I desire to have Counsel assigned, to plead in Law to the Errors of the Indictment, and also to the Law arising upon the Fact. This, with a larger Privilege, was granted by one of your own Brother Judges to Major *Rolfe* last Year, as his Right by Law; and I do again appeal to Mr. Justice *Nichols*, then one of *Rolfe's* Counsel, for the Truth of this. I pray speak, Sir: Is it not true? [But the Judge sitting as if he had neither Life nor Soul, Mr. *Lilburne* further said:] I hope, Sir, it doth not enter into your Thoughts presently to put me to an undigested extemporary Answer to so large an Indictment as that is that hath been read against me, that it is impossible for any Man's Brain, if it were as big as the biggest Magazine in *London*, to carry it in his Head: And, Sir, I hope you do not conceive that my Memory is of a greater Largeness than the greatest Magazine in this City. You engaged unto me, when I pleaded first to my Indictment, that you would not take Exceptions or Advantage against me

me for my Ignorance in the Formalities of the Law: I desire you to make good your Promise now unto me, and assign me Counsel to help my Ignorance, that so the Counsel against me and my Counsel may agree, as I have seen it done heretofore in the Case of Duke *Hamilton*, upon the Points of Fact, from which Law is to be deducted. And if you please to grant me this legal and equitable Favour, I shall think my self very much obliged unto you: Without which Justice, I cannot conceive upon what ground it can be apprehended I can go on; for my Time and Strength now it is so far spent, that I conceive you cannot think my Body is made of Steel, to stand here four or five Hours together, spending my Spirits, to answer so many as I have to deal with, and be able, after all this, to stand to return an Answer to above five Hours Charge, and that upon Life, when it seems you will suffer me to mend no Blots. I hope you do not lie upon the Catch, to weary and tire me out, by putting more upon me than a Horse is able to endure; and then go about to hang me, because I, through Tiredness, want bodily Strength and Abilities to make and pronounce my Defence.

Sir, to my Apprehension, there does arise upon the Matter of Fact divers Disputes in Law: I beseech you therefore allow me my Right in Law, by assigning me Counsel to help me where I am ignorant, and you shall see I shall do that which shall become an ingenuous and rational Man, and I will put my self clearly upon the Trial of the Country, or my Jury, according to the Law.

Ld *Keble*. *Lilburne*, this that you have heard, and that we have patiently sat to hear, and prepared a Stool for you to have sat upon, to have given you that Liberty that no body should interrupt you more than us; you have heard the fair Course that hath been taken in it. The Books, the Charges upon the Matter, they are but three, they are not hard for your Memory. The Particulars of those we do not expect that the Jury should remember them. The Books are here; they have of them: But amongst them there are many more. But free your self from the Matter of Fact, if you can, and these Books: And when you have freed your self from the Matter of Fact charged upon you, and then make it appear that from the Matter of Fact Law arises; and then, if you can, when the Matter of Fact is clear, and Law doth arise, you shall have Counsel, and you shall have no Defect in us to interrupt you, but to help you in what we may properly know as our Right to do. But if you do not first clear and make out this, which is the Issue upon the Point, to answer the Matter of Fact, we cannot allow you any Counsel. The Thing that is to be disputed cannot possibly be much on your side; it will be but very short: For it is not possible, I say, to be much in Time, or Confusion of your Memory, to give an Answer to this particular Matter of Fact: The first is the publishing of those Books, and the owning of them; and the next is the Books of themselves. But this must be first cleared, before you can have any Counsel assigned you at all.

Lieut. Col. *Lilburne*. I must confess it is a very hard Task for me to contest with the present Power, whose Agents have free Liberty to say against me what they please; and I am denied,

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and that upon my Life, all the Privileges of an *Englishman*, and with your Insinuations and great Words drawn on by my Ignorance to inshare my self: and notwithstanding all your Promises to take no advantage against me for my Ignorance in the Formalities of the Law, yet are the Punctilio's and Niceties thereof more urged against me, than they have been against hostile Enemies. And yet, for my part, no Man can tax me for being in Hostility at any time against them in present Power; and yet upon my Life I am denied that which I had from those, as my Right by Law, against whom I have been in Arms, and fought against in the Field: yea, and that which, in a higher nature than I desire, hath been acknowledged just and legal by some of your own Brother Judges but the last Year, which they have granted to some of my own Countrymen, Freemen of *England*, but this last Year, in a higher nature by many degrees than I plead for. There is Judge *Nichols*, that I understand was one of Major *Rolfe's* Counsel: And I understand from Mr. *Maynard's* own Mouth, that he and Mr. *Maynard* were by Baron *Wyld* assigned of *Rolfe's* Counsel in case of the highest Treason that the Law of *England* ever knew, and that before the Grand Inquest found the Indictment; and that Mr. *Maynard*, &c. had Liberty, as Major *Rolfe's* Counsel, by Baron *Wyld's* Order, to stand in the Court, not only to hear the Witnesses sworn, but also to hear the Words of their Testimony, then caused by the Judge to be given in open Court. And there being but two Witnesses to two Facts contained in the Indictment, Mr. *Maynard*, upon the Allegation of the two Statutes of *Edward* the Sixth, that requires two Witnesses to the Proof of every Fact of Treason, and that to be plain and clear, overthrew *Rolfe's* Indictment in Law, that it was never found; and so saved the poor Man's Life, who, in likelihood, had perished, had it not been for the Ability and Integrity of his Counsel. And all this Mr. Justice *Nichols* knows is very true, and that I have told you nothing about it but what is just. It's true, I have read part of the plain Law of *England*, that is in *English*; but I am ignorant of that part of your Law, which is three times so much as that which is in *English*; and that Law, or the practick Part of the Law is in *French* and *Latin*, which I have truly told you I can neither read nor understand: Therefore I humbly crave my Privilege and undoubted Right by the Law of *England*, (which in a higher nature was granted to Major *Rolfe*, as his unquestionable Right) to have Counsel assigned me, to help me in those Things I am ignorant of, I mean the Formalities and Bottom of the Law. I beseech you, Sirs, do not put me upon Extremities, and upon extraordinary Things, but consider among your selves that righteous Rule of Jesus Christ, and of the Scripture, *To do as you would be done to*; and do not put Impossibilities upon me, by over-ruling by your Power all my just Claims and Pleas in Law, and require more of me than I am capable to perform. And therefore I beseech you, as you would approve your selves to be as righteous Judges before the Eye of that God that sees your Heart, and knows whether malicious and Forethoughts of Malice harbours therein against me his faithful Servant; do not cunningly and designedly destroy me for my Ignorance in the

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essential or circumstantial Matter or Form of that huge Indictment, that has so much Matter of Law in it as it hath, and to take away my Life by denying me that which is the unquestionable legal Right of the Freemen of *England*; the which if you will but allow me, I do not doubt but to come off clearly and freely.

Ld Keble. Mr. *Lilburne*, you are now at a full Point, and this you have said now, you have said often, and we have heard it; and that which you say now, we have answered before.

Lieut. Col. *Lilburne*. Sir, it's your own Law; Sir *Edward Coke* declares I ought to —

Ld Keble. Mr. *Lilburne*, I shall add this more to it, that you at this time have here such a Court, which never any of your Condition ever had in *England*, so many grave Judges of the Law.

Lieut. Col. *Lilburne*. Truly I had rather have had an ordinary one; Sir, I mean a legal and ordinary Assize or Sessions.

Ld Keble. But this you have, and this is to take off, or prevent that which you would do now, if there had been one Judge and no more; and if you had not had this great Presence of the Court, you would have been malepert, and have out-talked them, but you cannot do so here.

Lieut. Col. *Lilburne*. Truly, Sir, I am not daunted at the Multitude of my Judges, neither at the glittering of your Scarlet Robes, nor the Majesty of your Presence, and harsh austere Deportment towards me, I bless my good God for it, who gives me Courage and Boldness.

Ld Keble. That your Trial is so publick, as your Offence is, for this end, that all Men may take notice, that you have fair Play: and therefore according to Law, you ought to make your Case, in Matter of Fact, clear; for that I must tell you again, and once is as good as if I had told you a thousand times over, unless you can clearly do that, you say nothing to it. If you will take that for clear Proof that hath been alledged against you, you may shorten your self; but otherwise make that Defence that you judge most sufficient to disprove the Fact: for till that time, you are clear gone in Law, and no Counsel must or can be assigned you.

Lieut. Col. *Lilburne*. I have been a great while yesterday pleading my Right by Law for Counsel, and now I have stood many Hours to hear your Proofs to the Indictment. I hope you will not be so cruel to put me to a present Answer, when bodily Strength is spent.

Ld Keble. We know it as well as your self you were here, and stood divers Hours yesterday, and to-day you have done the like; but we came before you, and stand after you.

Lieut. Col. *Lilburne*. Sir, will you put a Man to more than a Horse is put to, or is able to go through with? The righteous Man is merciful, even to a very Beast.

Ld Keble. We have been as long as you have.

Lieut. Col. *Lilburne*. But, under favour, you have fat.

Ld Keble. You had that Liberty too; dispute no more, we must go on.

Lieut. Col. *Lilburne*. I desire but a Week's time to return you an Answer to your large Indictment; and if not so long, then give me leave but till to-morrow Morning to consider of my Answer. I am upon my Life.

Ld Keble. No, you must dispatch it now.

Lieut. Col. *Lilburne*. Then give me leave but

to withdraw into any private Room for an Hour to recollect my Thoughts, peruse my Notes, and refresh my Spirits. [And hereabouts Judge *Jermin* did whisper the Lord *Keble* in the Ear; and presently said Judge *Jermin*, It's against the Law to allow you any more time, the Jury stand here charged, the Evidence is given, you must immediately go on, or yield that for Truth which hath been proved against you.]

Lieut. Col. *Lilburne*. Well then, if it must be so, that you will have my Blood right or wrong; and if I shall not have one Hour's time to refresh me, after my Strength is spent, and to consider of that which hath been alledged against me, then I appeal [*which he uttered with a mighty Voice*] to the righteous God of Heaven and Earth against you, where I am sure I shall be heard, and find Access; and the Lord God Omnipotent, and a mighty Judge betwixt you and me, require and requite my Blood upon the Heads of you and your Posterity, to the third and fourth Generation. [Immediately after the uttering of which the Scaffold fell down which was on the left Hand, which occasioned a great Noise and some Confusion by reason of the People's tumbling; but Silence being made, the Prisoner was busy at his Papers and Books, being invited by Sheriff *Pack* to come out of the Bar, for fear he should have fallen with the rest, and so he might have lost his Prisoner.]

Ld Keble. How came the Prisoner there?

Lieut. Col. *Lilburne*. I went not thither of my own accord, but by Mr. Sheriff's Invitation; and if I am in a place where I ought not to be, blame Mr. Sheriff, and not me.

Ld Keble. Dispatch, Sir.

Lieut. Col. *Lilburne*. Sir, if you will be so cruel as not to give me leave to withdraw to ease and refresh my Body, I pray you let me do it in the Court. Officer, I entreat you to help me to a Chamber-pot. [Whilst it was fetching, Mr. *Lilburne* followeth his Papers and Books close; and when the Pot came, he made water, and gave it to the Foreman.]

Ld Keble. Proceed, Mr. *Lilburne*. [But he pressed for a little Respite, which was granted him with much ado, as also a Chair to sit down upon; but within a very little space the Lord *Keble* said,]

Ld Keble. The Court cannot stay for you, proceed on to answer.

Lieut. Col. *Lilburne*. Good Sir, would you have me to answer to Impossibilities, will you not give me Breath? If you thirst after my Blood, and nothing else will satisfy you, take it presently, without any more to do. [But the Prisoner struggled out a little Respite.]

Ld Keble. The Court can stay no longer, take away his Chair, for I cannot see the Bar, and plead what you have to say, for it grows very late.

Lieut. Col. *Lilburne*. Well, seeing I must to it, the Will of God be done. [But his Brother being next to him, was heard to press him to pause a little more:] No, Brother, saith he, my Work is done; I will warrant you, by the Help of God, I will knock the Nail upon the Head. And so he went into the Bar, and set the Chair before him, and laid his Law-Books open upon them, in order, as he intended, to use them; and being ready, said, Sir, I humbly crave the favour, since it is my hard Lot and Fortune, at least

least in my own Apprehension, to have so much hard Measure and Injustice as I have, to know whether or no you will permit me, after that I have pleaded to a Matter of Fact, according to the Law of *England*, that has been allowed to the highest Traitors, in all the Books that I have read of, that I may speak in my own behalf unto the Jury, my Countrymen, upon whose Consciences, Integrity and Honesty, my Life, and the Lives and Liberties of the honest Men of this Nation, now lies; who are in Law Judges of Law as well as Fact, and you only the Pronouncers of their Sentence, Will and Mind: I say, I desire to know, when I have pleaded to Matter of Fact, whether you will be pleased to give me leave to speak to them a few words besides.

Ld *Keble*. Master *Lilburne*, quietly express your self, and you do well; the Jury are Judges of Matter of Fact altogether, and Judge *Coke* says so: but I tell you the Opinion of the Court, they are not Judges of Matter of Law.

Lieut. Col. *Lilburne*. The Jury by Law are not only Judges of Fact, but of Law also; and you that call your selves Judges of the Law, are no more but *Norman* Intruders; and in deed and in truth, if the Jury please, are no more but Cyphers, to pronounce their Verdict.

Justice *Fermin*. Was there ever such a damnable blasphemous Heresy as this is, to call the Judges of the Law, *Cyphers*?

Lieut. Col. *Lilburne*. Sir, I intreat you give me leave to read the Words of the Law then; for to the Jury I apply, as my Judges, both in the Law and Fact.

Ld *Keble*. We will not deny a Tittle of the Law.

Judge *Fermin*. Let all the Hearers know, the Jury ought to take notice of it, That the Judges that are sworn, that are Twelve in number, they have ever been the Judges of the Law, from the first time that ever we can read or hear that the Law was truly express'd in *England*; and the Jury are only Judges, whether such a thing were done or no, they are only Judges of Matter of Fact.

Lieut. Col. *Lilburne*. I deny it, here's your own Law to disprove you; and therefore let me but read it. It is a hard case when a Man is upon the Trial of his Life, that you will not suffer him to read the Law to the Jury, for his own Defence; I am sure you have caused to be read at large those Laws that make against me.

Ld *Keble*. But I shall pronounce to clear the Righteousness of that Law, whatsoever others will pretend against it that know it not.

Lieut. Col. *Lilburne*. Sir, under favour, I shall not trouble my self with any thing, but what is pertinent to my present purpose: Here is the first Part of *Coke's Institutes*, it is owned by all the Lawyers that I know, or ever heard of in *England*, for good Law.

Ld *Keble*. If you can convince us, that Matter of Law does concern the Jury, you say something.

Lieut. Col. *Lilburne*. Sir, I have been shuffled too much out of my Liberties already, give me leave to read but the Law to the Jury; I will make use of nothing now to them, but your own Words; and when I have done, I will leave

my self to them, and the Guidance of God upon their Conscience. And having the Book open in his Hand, he said, In the first Part of *Coke's Institutes*, Sect. 366. fol. 226, 227, 228, in his Exposition of *Plowden*, hath these Words.

Ld. *Keble*. Have we dealt so fairly with you all this while? Pray be confident, those that are Quotations there, are not for your purpose; but I thought how good a Lawyer you were, for to set *Coke's Commentaries* upon *Plowden*, when there is no such Book or Commentary. Go to your Matter of Fact, which is clear; but for this, let it fall down, and spare your self, and trouble your self no more with *Coke*; he has no Commentary upon *Plowden*. [But Master *Lilburne* press'd to speak.]

Judge *Fermin*. Hold, Sir.

Lieut. Col. *Lilburne*. What, will not you allow me Liberty to read your Law? O unrighteous and bloody Judges!

Judge *Fermin*. By the Fancy of your own Mind you would puzzle the Jury; we know the Book a little better than you do; there is no such Book as *Coke's Commentary* upon *Plowden*.

Ld. *Keble*. Sir, you shall not read it.

Judge *Fermin*. You cannot be suffered to read the Law; you have broached an erroneous Opinion, That the Jury are the Judges of the Law, which is enough (a) to destroy all the Law in the Land; there was never such damnable Heresy broached in this Nation before.

The Cryer cries out, Hear the Court.

Lieut. Col. *Lilburne*. Do your pleasure, then here I'll die: Jury, take notice of their Injustice; but seeing they will not hear me, I will appeal to you, and say, It is an easy matter for an abler Man than I am, in so many Interruptions as I meet with, to mistake *Plowden* for *Littleton*; I am sure here are *Coke's Commentaries* upon *Littleton*, * and these be his Words; In this * § 366. Case the Recognitors of the Assize may say and render to the Justices their Verdict at large upon the whole Matter. Which I am sure is good Law, forasmuch as we see it continually done in all Actions of Trespass or Assault, where the Jury doth not only judge of the Validity of the Proof of the Fact, but also of the Law, by assigning what Damages they think is just.

Ld *Keble*. I am sure you are in an error, in a gross one, as possibly a Man can be in; this is so gross, that I thought it could not have come from Master *Lilburne*, that professeth himself to be a rational and knowing Man.

Lieut. Col. *Lilburne*. And in another place he saith, 'For as well as the Jurors may have Cognizance of the Lease, they also may have Cognizance of the Condition.' And further there *Coke* saith, 'Here it is to be observed, That a special Verdict, or at large, may be given in any Action, and upon any Issue, be the Issue General or Special.' And in Section 368. *Littleton* hath these Words; 'Also in such Case, where the Inquest may give their Verdict at large, if they will take upon them the Knowledge of the Law, upon the Matter they may give their Verdict generally.' *Coke's* Words upon it are fully to the same purpose, who saith, 'Although the Jury, if they will take upon them (as *Littleton* here saith) the Knowledge of the

(a) Yes, but there was at Reading, when Colonel Martin, after they were sworn, caused all the Jury before the Judges sitting upon the Bench, to put on their Hats, as their Right; being they were then the chief Judges in the Court, and the other inferior to them.

'Law, may give a general Verdict.' I am sure this is pertinent to my purpose; and now I have done, Sir.

Ld Keble. You have spent a little time, but you have done yourself no good; I thought you had understood the Law better than I see you do.

Lieut. Col. Lilburne. Now, Sir, as to Matter of Fact, according to your own desire, seeing you have broke your Promise, and will allow me no Counsel, but lye at catch with me, I shall come to it without any Preamble. The Statute of 1 Edward 6. chap. 12. (I desire the Jury may take notice of the Statutes) and the 5th and 6th of Edward the Sixth, chap. 11. here's the Statute-Book, which doth expressly declare; That no Man shall be condemned for Treason, Petty-Treason, or any such like Crime, but by the Evidence and clear Proof of two legal and sufficient Witnesses. Sir Edward Coke in his third Part of *Institutes*, Chap. of *High-Treason*, is absolutely of the same Opinion, fol. 12. In this Branch, says he, *four things are to be observed. First, this word (provablement) provably; that is, upon direct and manifest Proof, not upon conjectural Presumptions, or Inferences, or Strains of Wit, but upon good and sufficient Proof of two Witnesses. And this is fol. 12. And herein the Adverb (provablement) provably, hath a great Force, and signifieth a direct and plain Proof.*

And, secondly, *this Word (attaint) necessarily implieth, That he be proceeded with, and attainted, according to the due Course and Proceedings of Law, and not by absolute Power, or by other Means, as in former times it hath been used.*

And fol. 24. chap. Petty-Treason, he saith, *It hath been holden, That upon the Trial of Misprision of Treason, there must be two lawful Witnesses, as well upon the Trial as the Indictment; as it was resolved by the Justices in the Lord Lumley's Case, Hill. 14 Eliz. reported by the Lord Dyer under his own Hand; and in the Margin he hath this Note upon it, That this is the last Resolution of the Judges upon it. And a little below, in the same fol. and fol. 25, he saith, Therefore upon the Indictment, which is in manner of an Accusation, by the Statutes of 1 Edward 6. cap. 12. and 5 and 6 Edward 6. cap. 11. two lawful Witnesses are requisite. And in fol. 240. he hath the same, his Words are these; Attainders of Treason, &c. ought to be upon plain and direct Evidence, (as before is said) for if the Party be executed, Restitution may be had of his Lands, but never can be had of his Life. Now I have done, Sir.*

Ld Keble. I hope the Jury hath seen the Evidence so plain, and so fully, that it doth confirm them to do their Duty, and to find the Prisoner guilty of what is charged upon him.

Judge Jermin. This that you have said, makes much for the Jury.

Lieut. Col. Lilburne. We shall see that by and by; but I shall proceed on to answer your Proof to the Indictment, and that in the same Method that your Witnesses swore. And therefore, Sir, in the first place, to the first, which is Thomas Newcomb the Printer; he swears in these Words, That I was present with Captatin Jones, from whose Hands he says he received the last Sheet of the Book, called *The Out-cry of the Young Men and Apprentices of London*: But he says, Captain Jones agreed with him for the printing of it, and not I; for in that Particular he doth not in

the least accuse me, neither doth he in the least accuse me in any manner in the world of being the Author of it; and that I did any more at his House, but take away a single Sheet of it before it was corrected; which, says he, I brought away with me. In answer to whose Testimony I return this; and I earnestly entreat you, Gentlemen of the Jury, to observe it well; and therefore, in the first place, he is but a single Testimony to this. But, secondly, I answer, That he confesses moreover, that before he had compleated that Sheet that he received from Captain Jones, he was taken; and not only he, but his Forms also were taken from him. So that by his own Confession, that Copy that was brought by Captain Jones when I was present with him, proved abortive, it was never wrought: For he says, it was taken before he had perfected it; and to my knowledge they had it in their possession. So that it clearly appears, it was never perfectly wrought off, and therefore the Books were never perfected: therefore I hope that it will not be Treason in me, being a Freeman of England, to walk the Streets with my Friend, and to go into a House with him where he hath business to do; admit it be a Printing-house, where he intends to have a Sheet of Paper printed: his Affairs, Business or Actions are nothing to me, neither are they now in the least laid to my charge; and if they were, as they are not, yet that Sheet miscarried, and was taken before it was perfected. So that truly, Sir, you may go seek the Printer of it; for you see that miscarried that Captain Jones delivered to the Printer in my Company; and that Sheet which he saith I had away, was an uncorrected one, which could serve me for no other Use, but waste Paper, and cannot be adjudged to be a true Copy of that which was contained in the Indictment: neither doth he or any other swear, that at the Printer's they see, or know where was done the Title of that *Out-cry* contained in the Indictment. So that for any thing the Jury knows, the first Part of that Book hath no dependance upon the Sheet that was spoiled, and not brought to maturity in Master Newcombe's Hands, as he himself upon his Oath declares. So that truly, Sir, in Law Mr. Newcombe's Testimony proves nothing at all against me, as to that Book mentioned and contained in the Indictment: and therefore you Gentlemen of the Jury, my Life is in your hands, I beseech you take notice, That in all his Testimony, there was not one Word that he declared, to accuse me to be the Author of that Book, or that my Name was to it; for you shall find the Names of ten that own it, so that I think his Testimony is gone, and is not worth a Straw.

In the next place, there were three Soldiers, viz. John Tooke, Thomas Lewis, and John Skinner, that swear against me: The Substance of all their Testimonies centers in one; and John Tooke in the first place saith, about seven Weeks ago he met with Lieut. Col. John Lilburne in Ivy-Lane, where Lewis knowing of him, gave him a Salute: and they being glad to see him that he was well in health, and the like, out of Friendship went to drink a Cup of Beer together at the Red-Cross in Newgate-Market, where he saw a Book, called *The Apprentices Out-cry*, given unto Master Lewis, and he heard these words uttered by Lieut. Col. Lilburne, *You Soldiers are those*

those that keep us in Slavery. The second Witness, being *Thomas Lewis*, saith, That the sixth of *December* or *September*, for so was his Words, he met me in *Ivy-Lane*, and took acquaintance of me, asked me how I did, and I thank'd him: and he further declares, That he was very much refresh'd to see me, that I was well, and in Health, and was glad to see that those Things that were given out of me by common Fame (that I was kill'd or dead) that they were not true. Therefore he being my old Acquaintance, as he saith, we went to drink a Cup of Beer together; and says he (as he remembers) *Lieut. Col. Lilburne* asked him if he had seen a Book call'd *The Apprentices Outcry*, and he said No, he had not seen it, but he had heard of it, and was thinking to go and buy one of them, for that he longed to read it, and heard it was publickly sold: and says he, *Lieut. Col. Lilburne* said he had one which was given him, and if he pleased he would give it me, which he thankfully received; and afterwards we staid a little time to drink a Cup of Beer, and had some Discourse. But he doth fix no Evil upon me, that fell from me in that Discourse, neither doth he say, that I did stir him up to Mutiny, or to make Division in the Army; only he saith, I told him that if he went to such a Man, whose Name he hath forgot, it is possible he might buy some more of them, for they were publickly sold all over the City. So that you Gentlemen of the Jury may take notice, that he declares the things by common Fame were publickly sold, and one of them he says was given to me, and I gave it to him. Truly I hope the Jury hath more Conscience in them, than to go about to take away my Life for giving away a single Sheet and a Half of Paper, that no Man swears I was the Author of, or the Causer of it to be Printed and Published: but the most that can be fix'd upon me, is, That I had one of them given me, and I gave it to a Soldier, my familiar Friend, who had a great Desire to see it, and was going to buy one of them, being publick up and down *London* at that time, which is all that he doth charge upon me; only he says further, that there was a little Discourse: but his Testimony doth not reach to accuse me of any evil or malicious Counsel given them, or any Aggravations of Spirit, as tho I did incense him or them against their Officers or Fellow-Soldiers, thereby to stir them up to Mutiny and Rebellion. For truly I have made it my Work, for to be as sparing in my Discourse as could be, in the Company of any belonging to the Army; yea, and to shun coming nigh the Place, if I can avoid it, where they are. And he saith, I had no aggravating Spirit within me, nor uttered any Provocations to make them rise in Mutiny against their Officers; and there is none of them all that does in the least fix that Book upon me, to be mine, as the Author of it.

Only he saith further, That upon his declaring he longed to see the Book, that *Lieut. Col. Lilburne* told him that such a Man, whose Name he hath forgot, might possibly sell them some of them, if they had a mind to them, or to get some of them: and truly I do not believe that Treason.

Further he says, all the worst Discourse I had with them, was, that I asked them a Question, which was, when they had any Pay? and they

told me, they had not had any Pay in five Weeks: and that was the worst of all. There proceeded from me no aggravating Expressions upon it, or mutinous Provocations. But truly that this Discourse should come within the Compass of Treason, to ask my old Acquaintance a Question, that had oftentimes visited me when I was the Lords Prisoner in the *Tower*, or to drink a Cup of Beer with him, or give a Sheet and a Half of Paper that was publickly sold; truly I hope there will be no righteous Jury in the World that will give a Judgment against me for Treason therefore; no, I hope for more righteous Justice from a Jury of Citizens of *London*, whom I hope to find Men of Consciences and Judgment, yea, of such righteous Judgment, as that they will abhor to go about to take away my Life, and my Blood, and lay the Blemish and Stain of Treason upon me and my Posterity for ever, upon such a Thing as this is. And this is all, and the utmost of all, that the Evidence doth witness against me.

Then in the third Place there was *John Skinner*, who was the third; and he says the same in effect, and no more: and therefore I need not go upon that any further, but shall leave it I hope to the enlivened Consciences of my Jury, my Fellow-Citizens of *London*.

In the next Place, the second Thing laid to my Charge, is the *Salva Libertate*, delivered to the Lieutenant of the *Tower*, as he says. Now truly the Lieutenant of the *Tower* is but a single Witness to this, and the Law saith positively there shall be two Legal Witnesses, to prove every Fact of Treason, whose Testimony or Evidence ought to be as clear and evident as the Sun at Noon-day, without any conjectural Presumptions or Inferences, or Strains of Wit: and truly the Lieutenant is but a single Witness at most. I should be loth to reproach or bespatter the Man, yet I must say this, being upon my Life, that he is not only a single Witness, but a Gentleman in whose Custody I was Prisoner contrary to Law; who kept me Prisoner in times by-past, above twelve Months together at the House of Lords illegal Command, contrary unto Law and Justice: for which, above a Year since, I did commence at the Common Law an Action of four or five thousand Pound against him, as I did also against *Colonel Tichburn*, that I have seen upon this Bench, sitting as one of my Judges; which I think is not equal, nor just, nor legal, that he with whom I have a Suit of four or five thousand Pound depending, when thereby my profess'd Adversary, should be one of my Judges: and therefore I desire he may be commanded off the Bench, and withdraw, as being my profess'd Adversary, and therefore in Law incapable to be my Judge. And truly having the same Action depending still against the present Lieutenant of the *Tower*, before the Judges of the *Kings-Bench*, for his detaining me in Prison above a Year together, contrary to Law; he is thereby in the Eye of the Law my profess'd Adversary, and therefore in Law cannot be admitted as a competent Witness against me, upon my Life. Yet the Lieutenant of the *Tower* doth not in the least swear that the Hand is mine, or that he did see me write it; but only he saith, that I did deliver such a Paper to him: but he is but a single Witness, and so I say by the Law of the Land not valid or good, but his Testimony is clearly gone and

and wiped off, as also all Things that do depend thereupon. There are besides five or six Witnesses produced to several Charges; but the Law expressly saith, that there must be two plain and clear Witnesses to every particular Charge, or Fact of Treason, that must take away my Life, and this is your own Law: and therefore he is but a single one, and therefore invalid, and altogether not satisfactory or binding. And then beside, which is considerable, truly I think the Tower of London, in the Place where he saith I gave him those Papers, is not within the Jurisdiction of the City of London; and how I should come to be arraigned by a Jury of my Fellow-Citizens here in London therefore, against whom I must confess that for my Part I have nothing for their Honesty and Integrity to object, I know not: for I know not the Faces of any Two of them, and therefore impossible for me to say any thing against them. I say, I know not how by a London Jury I can be try'd for a Fact fix'd upon me to be committed in *Middlesex*? I beseech you, Gentlemen of the Jury, mistake me not; for I have nothing to accuse you of; and I hope you will be so conscientious and tender in the Trial of me for my Life, that you will put your Case as my Case, and do by me as you would be done unto by me, if you were in my Case and Condition; and the righteous God of Heaven and Earth direct you so to do. And therefore the Lieutenant of the Tower being but a single Witness at most, and in Law not a competent one neither, being my professed Adversary, that hath most illegally kept me in Prison, for which I have commenced long since my Action at Law for my legal Reparations against him; I say, therefore in the Eye of the Law his Testimony sticks not, and I hope, in the righteous Opinion of the Jury, can do me no Harm: and if so his Testimony be invalid, then the *Salva Libertate* cannot reach me, to do me any Hurt; but it and all those my pretended Books call'd by my Name, are all wash'd away and gone, and my Adversaries must go seek new Authors for them, or at least procure new and better Testimony to prove them mine; for that which they have produced hitherto is worth nothing.

Then the next is *Thomas Daffern*; and he says, that the Twelfth of August 1649, he met with Lieut. Col. Lilburne upon the Bridge, as he was going home to visit his sick and distressed Family, and he went back with him to his House in Southwark, at *Winchester-House*, which I am sure is not in London; and therefore at *Guild-Hall* in London, by a London Jury, in Law cannot be try'd: for he positively saith, That at *Winchester-House* in Southwark, which is in the County of Surrey, Lieut. Col. John Lilburne gave him a Book to carry to Col. Ayres, a Prisoner at *Warwick-Castle*; but he does give in no Testimony at all that it is mine, or that that Book was Lieut. Col. Lilburne's Book, of his Making or Penning; but a Book he gave him, and that is all he says; which is no more but that he received a Book at *Winchester-House* in Southwark from the Hands of Lieut. Col. Lilburne, to carry to Col. Ayres, now a Prisoner at *Warwick-Castle*. Now truly he is but a single Testimony, and he swears nothing particularly as to me; and besides, what he swears is to a Fact done in another County, and therefore his Testimony is not worth a Straw; it's

gone, it's invalid in Law, it signifies nothing, it is not so good as a Spider's Web. By virtue of which, the Marshal's Testimony and the Governor's of *Warwick-Castle*, as also Col. *Purefoy's*, need no other Answer from me, but to pity them for the long Journey they have made to no purpose.

The next thing charged upon me, is the *Preparative to an Hue and Cry after Sir Arthur Haslerig*; to which the Lieutenant of the Tower says, that Lieut. Col. John Lilburne gave him one of those Books in the Tower, which truly I am confident is in *Middlesex*: and truly I conceive, under Favour, it will be a Point disputable in Law, that I should be try'd for my Life in this Place, admit there were a thousand Witnesses to make it good that the Lieutenant of the Tower had one of them from me, either in the Place he formerly named, or at his own House; for that Fact was done in the Tower, that is out of the County of London, and so not triable by a Jury of Citizens of London. But he further saith, whether the Book that he now has, be the same that he received from the Hands of Lieut. Col. Lilburne, that he is not able to depose.

Then the rest of the Witnesses that do depose against me in relation to the *Hue and Cry*, are *James Nutleigh* and *Edward Radney*, both of them Mr. *Prideaux's* Servants: and the most that they say, is, That when I was before their Master, upon the 24th of September 1649, at his Chamber in the Temple, to be examined by him, they say they saw me deliver *A Preparative to an Hue and Cry after Sir Arthur Haslerig*, to their Master's Hands, and tell him that that was mine, and I would own it, saving the Printer's Erratas; which, says the Lieutenant of the Tower upon his Oath, I expressed to be many.

In answer to which, I say, I do not know whether the Temple be within the Liberties of London or no; and if it be not, I know no Ground in Law, wherefore a London Jury should try me here. But more fully I say, for any thing the Jury knows, or for any thing the Witnesses swear, the Printer's Erratas, which are many, are all and every of those Clauses that Offence or Exceptions are taken against; for not one of those Clauses which you except against, are not proved not to be the Printer's Erratas: and therefore there is no Validity or Weight in those Testimonies also, for they do not prove in the least that any Six Lines of the Book is mine, all of them say that I owned no more of the Book than was free from the Printer's Erratas. And the Lieutenant of the Tower swears that the Clause was added, *Which are many*: And therefore you the Gentlemen of the Jury, I appeal to your Consciences, and to your Judgments, and the Lord set it home to your Understandings, that you may not be guilty of the Blood of an innocent Man, by Partiality, Fear or Affrightment of Spirit; for in Law, Equity and Justice, all their Three Testimonies put together have no Validity, no Strength, nor Force in them: and so much for that.

The next thing fix'd upon me, is *The Legal Fundamental Liberties of the People of England revived, asserted and vindicated*; and truly all that's brought to prove *The Legal Fundamental Liberties of England* to be mine, is but merely the Relations that are in the forementioned Books: for I do not remember (nay, I am sure of it) that there

there is so much as a single Testimony that does give in any Evidence against me that it is mine; and therefore I can answer to that nothing more than what I have said already. The Testimonies all being invalid, at least in the Eye of the Law; and therefore that's gone too, and blown away as Chaff before the Wind.

Lastly, For the *Agreement of the People*, truly that is dated the first of May 1649. And truly, for ought I know, and I am sure of it too, it is before the Date of any of those Acts upon which I am indicted for my Life, and therefore not within the Compass of it. For *Paul* that great Apostle, said; and he that spoke by the Spirit of God that dwelt within him, and to whom it was given in an extraordinary manner, that so he might thereby be enabled to write the infallible Truths of God, said, *Where there is no Law, there can be no Transgression*. But that Agreement was in being, and publicly abroad with a legal *Imprimatur* to it, before any of the Acts, upon which I am arraigned, had a Being: And therefore, admit it should be granted to be mine, yet it can be no Transgression, or anything prejudicial in the Eye of the Law unto me. But besides, there is not any Testimony at all, that so much as lays it to my Charge to be mine; and therefore it pinches me not, nor does any of all the rest of your Charges. And besides all that I have already said in my own behalf, to shew in Law the Invalidity and Insufficiency of all the Testimony you have produced against me, I add this by way of Addition to it, That there hath not been so much as one single Witness or Testimony to prove that the Books laid to my Charge are rightly and truly dated, and not post-dated; which if any of them, or all of them should be, admit the Proofs were sufficient in Law, yet unless the Days of them be firmly proved to be exactly according to the original Copies, and not post-dated, for any thing the Jury knows, they might be made and writ before ever the Acts, they are said to transgress, had a Being. And therefore if there were so many Testimonies in Law to prove the Books mine, (which there is not in the least) yet, I say, admit there had been a thousand Witnesses to the Proof of every one of those Books, yet notwithstanding in the Eye of the Law, I leave it to the Consciences of my Jury, whether I be not free in that particular, seeing there is none swears punctually and positively to the Dates of them. But to put all out of danger, as I deny nothing, so in that particular I do not own a Jot, a Line, a Word, a Syllable of any of them. Now, Sir, having done so far as I have, and clearly discovered to the Jury, and all that hear me this Day, that all the Proofs alledged against me do not stick, in the least, any Guilt upon me, truly I have clearly answered and invalidated all the verbal Proofs, according to the clear Letter and true Intention of the Law. I have no more to say to all the Evidences that have been read in Books against me: I leave it to the Consciences of my Jury, believing them to be a Generation of Men that believe in God the Father, and believe they shall have a Portion in the Resurrection of the Dead, and stand before the Tribunal of the Lord Almighty, to give an Account unto him, the Lord of Life and Glory, and the Judge of all the Earth, of all their Actions done in the Flesh: I leave it to their Judgments and Consciences, to judge

righteously between me and my Adversaries; and the Lord of Life and Glory, to judge right between me and you, that in all those Things in your long Serowl you pretend me guilty of, I hope I have so clearly and fully answered all and every of your Proofs, that not any one Thing sticks. And to their Consciences I cast it; hoping that they do look upon themselves as standing in the Presence of him that sees their Hearts, and knows now whether there be any Malice in them towards me, or no; which, for my part, I do not believe there is; for I profess I know no Wrong I have particularly done them as Men, or generally as *Englishmen*. My Conscience is free and clear as in the sight of God, and I hope of all unbyassed Men. And, to my Knowledge, I never saw the Faces of any two of them before this Day; and therefore, entirely as an *Englishman*, that loves and honours the good old Laws of *England*, and earnestly desires, and endeavours; and struggles for the Preservation of Justice and just Magistracy, which I wish with all my Soul may be preserved; and therefore having suffered much for the Preservation of the common and just Liberties of *England*, to their Consciences and to their Judgments I leave both this Matter, and the constant Series of all my Actions in this my Pilgrimage and Vale of Tears here below.

Ld Keble. Mr. Lilburne.

Lieut. Col. Lilburne. Your Pleasure, Sir?

Ld Keble. Nothing, Sir, but this: Our Consciences are before God, as well as yours; and therefore you need not speak thus.

Lieut. Col. Lilburne. Sir, I have only two or three Words more, which I have spoken to you: But these Men, that are my Jury and Judges, in whose hands only are the Issues of my Life, have not as yet heard them. I pray you give me Liberty, according to your Promise, to go on without Interruption. You Gentlemen of the Jury, I have many material Things to produce Witnesses unto for my Justification; but no Time in the least will be allowed me, as you see, to produce them, which I ought by Law to have had; especially considering I have been lock'd up so long close Prisoner, and have nothing for which I was first imprisoned laid unto my Charge, and have so high, potent, and mighty Adversaries as I have; and truly every Man is shy of me, for fear he may come into trouble for coming near me. And therefore, I have but two or three Words more to speak to the Jury, I beseech you let me freely go on.

Ld Keble. Make them thirty to your Defence, and you may speak them.

Lieut. Col. Lilburne. I shall, by God's Assistance; I shall keep close to my Defence. Now Gentlemen of the Jury, I think I have sufficiently pleaded for my self at this present; and that to clear up fully unto your Judgments, and to your Understandings, that by the Law of *England* there is not so much as any one Fact proved against me; for the Law is express, that to every particular Fact of Treason there must be two sufficient Witnesses, not by Constructions, or the like: Upon which Score and Plea that Gentleman, Master *Nichols*, that sits there as a Judge, and Master *John Maynard*, saved Major *Rolfe's* Life, being to be arraigned for the highest of *English* Treason before Baron *Wyld*. Now, Gentlemen, if, notwithstanding what I have said,

any Thing shall yet stick upon your Spirits, I shall entreat you to consider the Intention of the Law of *England*: It is repeated several times in Sir *Edward Coke's Institutes*; it is a Maxim in the Law, I have it here in the third Part of his *Institutes*, fol. 6. *Et actus non facit reum, nisi mens sit rea*. Sir, if you please to do me the Favour but to *english* it, and explain it for the Jury? For tho I understand the Substance of it, yet I am not exactly able to *english* the *Latin*, but only to understand the Sense of it. I conceive the Sense of it is this, It is not the Act, but the Intention of the Mind, that declares Guilt. But therefore as in reference unto that, I shall say no more but only this to them, That the constant Series of all my Actions, from my Youth hitherto, have manifested that I have, with an affectionate and compassionate *English* Spirit within me, that hath put me forth for many Years together really to endeavour the Prosperity and Good of the Land of my Nativity, and not its Mischief and Destruction; and that hithertoward, in all my Contests, I have had the Law and the declared publick Justice of the Nation on my side, having never done any Mischief to my Country, unless it be a Mischief to oppose great Mens Wills. I have now been seven Months in Prison, I know not wherefore, altho originally I was committed to Prison pretendedly for Treason: And both the Acts, upon which now I am indicted, have been made long since my first Commitment. There is not any one Syllable of all those Things for which I originally in general, without Accuser or Prosecutor, was voted a Traitor by the present Power; and for which I was proclaimed a Traitor throughout all the Market and great Towns in *England* six Months ago: There is not now, I say, any one of those Things laid to my Charge. But truly I have been laid into Prison for nothing, as by this Day's Work clearly appears, by the Men in present Power. Unto divers of whom I have often sent, to know what it is they require at my hands; and have also from time to time declared my ready Willingness to compose and end all Differences that concern me, having proffered again and again to refer my self unto the final Determination of four of their own Members, finally to end and determine all Differences betwixt them and me; whereof I was willing that Judge *Rigby* should be one of them: A Gentleman (though now a Judge) I have found very honest and faithful, and to whom I have been much obliged for many hearty Favours I have from time to time received from him. I say, I have sent to him and Colonel *Martin*, and abundance of Members besides, from time to time; to some of whom I have written, with some of whom I have spoken. I say, I have sent many Messages with the earnestest Desire in the World, That if I had offended any Man in the House, that if he would be pleased fairly and friendly to refer it to the final Judgment and Determination of four Members of their own House, I would stand to it. And let all the World judge whether, or no, this Proposition was not suitable to a Christian, and suitable to an honest Man; yea, to a Man that judged himself in the strictest Scrutiny of his own Conscience to be free and innocent in his own Soul, and in his own Conscience, from all Guilt, Crimes, or Treasons; or else, if I had not, I would not have put my self upon the Judgment of those that

were engaged in Interest and Self-preservation against me: And yet for the Things that they imprisoned me for as a Traitor in general, which I hear nothing of this Day, which is wonderful strange Law and Proceedings to my Understanding. But besides, Sir, under favour, I have not only done this, but I have yet Thousands of my Friends, I will undertake I could produce ten thousand of old and young, Males and Females, Citizens and Countrymen, Men of Honesty and Integrity, that have in the common Cause always adhered to the Freedoms of the Nation, that have petitioned the Parliament several times, yea, from time to time, with abundance of rational and fair Petitions, and truly stated my Case to them, and acquainted them with my Condition, and with the rest of my Fellow-Prisoners, and earnestly begg'd and entreated of them that they would not be hasty in condemning and destroying me before they had heard me, and afforded me a legal Trial, from first to last, according to the due Forms and Process of the Law of *England*. And yet for all this, till I came before you, I never saw Accuser or Prosecutor, nor Indictment or Charge, nor nothing in all the Earth, legally to demonstrate me so much as a supposed Offender. And yet for all this no Satisfaction in the world would be received; notwithstanding in one Petition they desiring that they would be pleased, seeing they were incensed against us, and that they had taken Indignation against us, they did not desire to justify us in any Thing we had done; but in regard, to their own Knowledge, we had been all four faithful, zealous, and serviceable Instruments in the common Cause of the Nation: In which, to the Hazard of my Life an hundred times over, I have engaged for them, with my Sword in my Hand, with as much Resolution, and as much Faithfulness, as any Man on Earth ever served a Generation of Men; having never betrayed my Trust, or ever given any Suspicion in the least that I would, or ever so much as staggered in my Principles, nor ever so much as disputed any Commands, though never so desperate, that were laid upon me; no, nor ever turned my Back in the Field of their Enemies in any of their Services, so long as it was possible for a Man that had any Brains left him to stand; but was one of those seven hundred Men at *Brentford*, (my self being there a Volunteer, without any particular Command) that with Dint of Sword stood it out against the whole Body of the King's numerous Army for many Hours together, and never stirr'd off the Ground till both Horse and Foot had, as it were, encompass'd us round, and till we came to a Readiness to beat out one another's Brains with the But-end of our Musquets: where I was taken a Prisoner, and led captive in a most barbarous and disgraceful manner to *Oxford*, where I suffered abundance of unexpressible Hardships, and underwent the Shock, and rid the Storm, as stoutly as any Man there, although I believe I was as much courted by Messages from the King himself, as any or all the Parliament-Men that were there my Fellow-Prisoners; for there I have had no less than four Earls and Lords in one Day sent unto me by him, to draw me over to them: But I bless God, that kept me upright and entire unto my Integrity and Principles, and suffered me not to turn my Back upon them. But, Sir, notwithstanding

standing all this, (I say) our Friends desired of the Parliament that they would be pleased to take sufficient Security, according to the Law, for our forth-coming at all times, to answer such Things as shall be laid to our Charge: But their Petitions were contemned, themselves slighted and abused, and by no means could get any satisfactory Answers to them. Sir, I speak here to you, and to my Fellow-Citizens the Jury, as in the sight and presence of God, that knows I lye not: And if you find me to be in a Lye, in the least, in what I have said, then never credit Man of my Profession again for my sake. Truly, Sir, I say, they desired them that we might be released from our Imprisonment, putting in Security to answer whatsoever legally could be charged upon us; only they craved we might have the same legal Privileges that they demanded at the hands of the King, when he impeached the Lord *Kimbolton* and the five Members of High Treason; which Privileges are easily and plainly to be read in their own first *Primitive Declarations*, pag. 38, 39, & 76, 77. Now abundance of the Free People of this Nation, in my behalf, having craved the same Privileges that were demanded for the Lord *Kimbolton*, and in the behalf of the five Members, and the like, all that they desired was no more but the same Privileges that they craved for them; which was, That I might have the due Process of the Law, from first to last; and I and my Accusers come Face to Face at the beginning before an ordinary Magistrate; and if they had any thing to lay to my Charge, that they would legally, according to Law, proceed with me. But, I say, none of these would be granted, altho themselves in several of their Declarations have declared all these Things to be the common Right of all or any of the People of *England*, as well as Parliament-Men. Yet notwithstanding all this, they continued in their incensed Condition against me, and would come to no legal nor fair Issue with me; nor let me in the least know what was the end or thing they required of me, or what was the thing that would satisfy for the Extenuation of their Indignation against me; but contrariwise dealt harder and harder with me; in laying new and fresh insupportable Burdens and Provocations upon me: For, after all this, they caused me to be lock'd up close Prisoner in the Heat of Summer, set Sentinels Night and Day at my Door, denied me the Access of my Wife and little Babes; for a certain Season neither Wife nor Child could so much as set their Feet within the Gates of the Tower to see me, or comfort me in my Distress.

Ld Keble. Mr. *Lilburne*, is this your Defence?

Lieut. Col. *Lilburne*. I beseech you, as either the Law, or Fear of God, Conscience or common Honesty dwells within you, let me have a little fair Play to go on to speak for my Life without Interruption; I shall not trouble you long, for I have almost done.

Ld Keble. When your Matter of Fact is to defend your self, and to answer the Proof upon that; and that is it we are to hear, and not to hear you tell the Story of all your Life: and then if we should reply to these particular things, they will be such as most of them will vanish, and do you no Service, but take up a great deal of time. Do not tell us a Story, but go on to finish the Matter of Fact.

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Lieut. Col. *Lilburne*. It has been your Favour to give me leave to tell it over to you, I pray give me leave to declare it to my Jury, who have not heard it before; and it is very material to my Preservation, and my Life lies upon it: therefore do not deal with me as Proctors, and engaged Men, with those that thirst for my Blood; and laying aside that Evenness of Hand betwixt both Parties, that ought to be in all just and righteous Judges.

Ld Keble. 'Tis nothing to this; if it be any thing in the World to do you good, in the way of your Course of Defence, you should have it.

Lieut. Col. *Lilburne*. Well, if you will let me go on no further to make my Defence, I cannot over-rule you, though you over-rule me; my Blood be upon your Heads, and the Lord God of Heaven and Earth reward you for all your blood-thirsty Cruelty towards me his innocent Servant this Day; and so I have done with it: and what I have said, I have done with it, and leave it to the Jury, earnestly begging and intreating them to take notice of your cruel and unjust dealing with me, in denying me all the Privileges of an *Englishman*, when I am upon my Life.

Ld Keble. What is material, you shall not be debarred in it.

Lieut. Col. *Lilburne*. O Lord, Sir! What strange Judges are you, that you will neither allow me Counsel to help me to plead, nor suffer me my self to speak for my own Life? Is this your Law and Justice, Sir? I have no more to say but this, seeing you straighten me; although you said you would hear me till midnight. I hope I have made it evident to all rational Men, that all or any part of the Testimony given in against me, does not in the exact Eye of the Law, in the least touch me, although I have been most unjustly imprisoned, and most barbarously used, and tyrannized over; yea, and my Estate by Will and Power taken from me, that should have kept me and mine alive, and the legal and customary Allowance of the Tower denied me to this Day. And although I have used all christian and fair Means to compose my Differences with my Adversaries, yet nothing would serve their turns, but I must have Oppression upon Oppression laid upon me, enough to break the Back of a Horse; and then if I cry out of my Oppressions in any kind, I must have new Treason-Snares made to catch me, many Months after their Oppressions were first laid upon me, that if I so much as whimper or speak in the least of their unjust dealing with me, I must die therefore as a Traitor. O miserable Servitude! and miserable Bondage, in the first Year of *England's* Freedom! I have now no more to say unto you, but only this; your own Law tells me, Sir *Edward Coke* speaks it three or four times over in his 3d Part of *Institutes*, That it is the Law of *England*, that any By-stander may speak in the Prisoner's behalf, if he see any thing urged against him contrary to Law, or do apprehend he falls short of urging any material thing that may serve for his Defence and Preservation. Here's your own Law for it, Sir; *Coke* is full and pregnant to this purpose in his 3d Part of *Institutes*, fol. 29, 34, 37. But this hath several times been denied me in the Case of Mr. *Sprat*, my Solicitor; and now I demand it again, as my Right by Law, that he may speak a few Words

for me, according to his often Desire, both to me and the Court. I have almost done, Sir, only once again I claim that as my Right which you have promised, That I should have Counsel to Matter of Law; and if you give me but your own Promise, which is my undoubted Right by your own Law, I fear not my Life: But if you again shall deny both these legal Privileges, I shall desire my Jury to take notice, That I aver you rob me of the Benefit of the Law, and go about to murder me, without and against Law: and therefore as a free-born *Englishman*, and as a true Christian that now stands in the Sight and Presence of God, with an upright Heart and Conscience, and with a cheerful Countenance, cast my Life, and the Lives of all the honest Freemen of *England*, into the Hands of God, and his gracious Protection, and into the Care and Conscience of my honest Jury and Fellow-Citizens; who I again declare by the Law of *England*, are the Conservators and sole Judges of my Life, having inherent in them alone the judicial Power of the Law, as well as Fact: you Judges that sit there being no more, if they please, but Cyphers to pronounce the Sentence, or their Clerks to say *Amen* to them; being at the best, in your Original, but the *Norman Conqueror's* Intruders. And therefore, you Gentlemen of the Jury, are my sole Judges, the Keepers of my Life, at whose hands the Lord will require my Blood, in case you leave any part of my Indictment to the cruel and bloody Men. And therefore I desire you to know your Power, and consider your Duty, both to God, to Me, to your own Selves, and to your Country: And the gracious assisting Spirit, and Presence of the Lord God Omnipotent, the Governour of Heaven and Earth, and all things therein contained, go along with you, give counsel and direct you, to do that which is just, and for his Glory.

[The People with a loud Voice cried, *Amen*, *Amen*, and gave an extraordinary great Hum, which made the Judges look something untowardly about them, and caused Major-General *Skippon* to send for three more fresh Companies of Foot-Soldiers.]

Mr. Attorney. Gentlemen of the Jury, you have heard the Evidence in behalf of the State; you have heard the Insinuations of the Prisoner upon them, as calling you his Fellow-Citizens, and the like: He hath said, and spoken; we have proved, and it is in your Consciences to believe Proof, before Saying. The Prisoner begun to cite you two Acts of Parliament; the one in the 1st of *Edward* the Sixth, and the other 5th and 6th of *Edward* the Sixth; and by those two Acts he would signify to you, that you should have two plain and evident Witnesses to every particular Fact: yet he did forget to cite another Statute made in the first and second Years of *Philip* and *Mary*, that overthrows and annihilates those two Statutes that would have two plain Witnesses to every Fact of Treason; and in all Cases of Treason will have them freed, according to the common Course of Law, the Common Law for the Trial of them. If that must be material, or if that stick with you, that you cannot determine it, my Lords the Judges will direct you in it, and in all other Points of Law. But certainly that Exception was a little

vain too; for we did not insist with one particular Witness in nothing at all: for that of *Newcomb*, the Prisoner did not repeat fully what he said; for I remember he said this, That *Mr. Lilburne* and *Captain Jones* came together, and brought the Copy of the last Sheet that was to be printed: if one come with him, and the other delivered it to the Printer, they are both equally guilty alike. They came again the same Day at Night, and when the first Sheet was printed, to be sure it was true and right, *Mr. Lilburne* did take the pains to take one of the Copies into his Hand, and corrected it.

Lieut. Col. Lilburne. By your favour, Sir, he urg'd no such thing: by your favour, Sir, they are the express Words of the Testimony, to the quite contrary; and I wonder, *Mr. Prideaux*, you are not ashamed to aver such notorious Falshoods, as you do, in the open Face of the Court, before thousands of Witnesses; for *Newcomb* said no such thing, as you falsely affirm; neither is there any such Statute in *Queen Mary's* time that doth abolish those two Statutes of *Edward* the Sixth, that I insist upon for two Witnesses: name your Statute if you can, here's the Statute-Book, let the Jury hear it read, do not abuse them with your impudent Falshoods.

Mr. Attorney. Well, Sir, I leave it to the Judgment of the Jury, Sir. My Lord, as for all the rest, and particularly for that of the *Salva Libertate*, it is true, there is but one Witness, which is sufficient enough by the fore-mentioned Act of *Queen Mary*: but, my Lord, it is under *Mr. Lilburne's* own Hand, he will not deny it.

Lieut. Col. Lilburne. By your favour, there is no Man so swears, in the least, that it is my Hand: *Jesus Christ* denied none of his Accusation; yet when they went about to ensnare him by Questions, he answered *Pilate*, &c. *Thou sayest so; go to those that heard me, they know what I said; why ask you me?* Sir, I beseech you produce your Act of Parliament in *Queen Mary's* time, to prove, in Cases of Treason, there ought to be but a single Witness.

Mr. Attorney. Do not interrupt me, *Mr. Lilburne*.

Lieut. Col. Lilburne. I pray you then do not urge that which is not right nor true, but notoriously false; for if you persevere in't, I will interrupt you, and tell you of it to the purpose.

Justice Jermin. Though you do recite many things, yet I must tell you, the Law of the Land saith, The Counsel for the Commonwealth must be heard.

Lieut. Col. Lilburne. I beseech you then let there be no more added to the Testimony, than Right and Truth; for my Life lyes upon it, and I must and will declare the Baseness and the Falseness of it.

Mr. Attorney. I would not do the tenth part of the Hair of your Head wrong; but being intrusted, I shall do my Duty, and discharge my Conscience in my Place, which is fully and plainly to open that unto them, which in my Conscience I think is right and just.

Lieut. Col. Lilburne. I do repeat it thus, as in my Conscience, that he did say, when the Copy was first brought, *Capt. Jones* gave him the Copy, and *Capt. Jones* did agree with him for the printing of it; and *Capt. Jones* did read the Original to his Corrector, which Corrector amended the Printer's Faults, and that I had an uncorrected

rected Sheet away; and that his Forms were taken before he had perfected that.

Mr. Attorney. And *Mr. Lilburne* came the second time.

Lieut. Col. Lilburne. Will you spend all day in vain Repetitions? You would not give one leave to breathe, nor freely to speak truth, without Interruption, although you were laying load upon me for five Hours together: I pray, Sir, do not now go about to tire the Jury with tedious Repetitions, nor to sophisticate or adulterate their Understandings with your Falshoods and Untruths.

Justice Jermin. *Mr. Lilburne*, the Law of the Land is, That the Counsel for the State must speak last.

Lieut. Col. Lilburne. Sir, your Law is according to the Law of God, you said; and that Law, I am sure, will have no Man to bear false witness: why doth *Mr. Prideaux* tell the Jury such Falshoods as he doth, and takes up six times more time to take away my Life, than you or he will allow me to defend it?

Mr. Attorney. For the *Salva*, that it was delivered in the Tower, which is not in London, I hear not one Witness to prove that.

Lieut. Col. Lilburne. That is a disputable Point in Law, whether it be in London or Middlesex.

Mr. Attorney. And then, my Lord, as for the *Agreement of the People*, *Mr. Lilburne* says, it was dated the 1st of May, 1649, and it was before the Act was made that is dated May, 1649, and it is before the Law was made in July, 1649. We do not question him for that; but when he comes to bring in those Books in August last, then he does new publish that *Agreement of the People*: he incites them to set it up as their Center, Standard and Banner.

Lieut. Col. Lilburne. Let me not thus be abused; that Book was never fix'd upon me, I was never tax'd to be the Author of it, or so much as the Disperser of one of them; what Baseness is this in you, *Mr. Prideaux*, thus falsely to use me?

Ld Keble. He does you no Wrong, but all the fair Play that can be; he doth fix that *Agreement* no otherwise upon you, than by your Books it is.

Mr. Attorney. I do acknowledge the *Agreement of the People* that you are charged with, is dated the 1st of May, 1649, and that the Evidence may allow this; as also, that that *Agreement of the People* that was then published, and which you in your Books did own, was and is signed by *Mr. Walwin*, *Mr. Prince* and *Mr. Overton*, your Fellow-Prisoners, as well as your self.

Lieut. Col. Lilburne. There is no Book yet proved mine; and if that *Agreement* were mine, yet it is dated before both your Acts, and was in print before they had a Being; and therefore in the Eye of your own Law, can be no Transgression; and you yourself doth not so much as accuse me for publishing or dispersing one of them, since your Acts were publicly declared.

Mr. Attorney. That which you owned and signed, *Mr. Lilburne*.

Lieut. Col. Lilburne. By your favour, Sir, I never owned or signed any Book that is proved against me yet; and no Book in the eye of the Law can be accounted mine, until it be legally proved mine, or voluntarily confessed to be mine by myself.

Mr. Attorney. My Lord, that is own'd to be

so printed. When he must come and incite the People, and stir them up upon those Particulars therein contained, to insist with Particulars, as the dissolving of the Parliament, the having of a new, and such other Particulars therein contained; and that this *Agreement* shall be the Center, the Banner, and the waved Standard, unto which they shall flock, and to send Agents into several Countries to put this into execution. Now, my Lords, for this Book it is not doubted but that there are two Witnesses that the *Preparative to the Hue and Cry* was own'd by *Mr. Lilburne* to be his own, the Erratas of the Printer only excepted; and that the Lieutenant of the Tower likewise joins in it. My Lords, I think there was not a Clause read to you out of it, but what is full and home to the purpose: and as for the *Outcry*, the Printer's Testimony is compleat. And *The legal fundamental Liberties* is owned by him in his *Impeachment of High Treason against Lieut. Gen. Cromwell, and his Son-in-Law Commissary Ireton*; and he doth there also sufficiently own the *Agreement* of the first of May: And, my Lords, I do not know there was any thing that was offered here in that Book, but was first proved in the Court. We do not offer any thing of Error that was past, to take *Mr. Lilburne* upon any Speeches that fell from him unawares, although he hath sufficiently done it: but in much speaking there wants not offence: it falls out here in this. *Mr. Lilburne* hath been very free in his writing, in his speaking, in his printing, and it now riseth in Judgment against him, and the Law must now give him his due; which you, my Lords, are sole Judges of, and from whom the Jury and the Prisoner both must receive it, for all that which *Mr. Lilburne* hath said to the contrary. And the Jury answers to the Matter of Fact, and they are upon their Oaths sworn to do the things that are just and right. My Lords, I shall leave the Evidence to them, with this Note or Observation upon it, That notwithstanding all *Mr. Lilburne* hath flourished and said, I will not say as he hath done, and seek by glossing Speeches or Insinuations to wind into the Affections of the Jury, as he cunningly and smoothly hath done, by calling them his Fellow-Citizens, and the like. You Gentlemen of the Jury, you are to answer now according to your own Consciences, betwixt God and you; your Oath is, That you are not to respect Favour or Affection, nor to meddle with him upon any respect, than in Justice, and as it is already clearly witnessed and proved before you. My Lords, you have heard the several Charges he is accused upon, you have heard a great deal of foul Matter and Dirt, that is fit for nothing but to be cast upon the ground, and returns to *Mr. Lilburne* again; for truly when he cast it upon the purest Marble or Brass, it falls off again: God be thanked that it returns to *Mr. Lilburne*, the right Owner. The Prisoner hath cast these Accusations and these Blemishes upon others, but now they are upon the ground they will fall off, and do retort and return upon his own face: he hath taken a great deal of pains to dig deep for Mistakes, nay, for notorious and gross Calumniation; had he the Ingenuity to remember the Words of the Scripture, *That the Pit he hath digged for others, he is fallen into himself*, he would have some Remorse of Conscience in him: but all the Mischiefs and

all the Evils that can be thought upon, which he imagined to heap upon others, is now most justly fallen upon himself. It is said of those Flies whose Matter is Corruption, they always light upon sore places, upon galled Backs, upon Carrion; other Birds, when they fly upon fair Meadows, will not touch these. Certainly the Parliament of *England*, the Army, all the Officers of it, (whose Fame, both as Parliament and Army, all Men know in an extraordinary manner) are now put in a ballance against Mr. *Lilburne*: but for the Army and the Officers of it, no Man can say but they have been faithful and true to their Trust, gallant and courageous, and extreme successful to the Peace and Happiness of this Nation; and God is pleased at this instant to own them, and bless them in a miraculous manner.

Lieut. Col. *Lilburne*. And yet notwithstanding, did not you help to vote them Traitors once? I am sure I was in a Chamber in *Whitehall* last year, when their Commissioners (now Members of your House) put your Name down in their black Bill for a Malignant: but it seems you have recanted your Errors, and engaged to be a good acquiescing Creature, or else you had not been here this day in the condition you are in. But for all their Faithfulness, &c. have they not rebelled twice against their Creators, Lords and Masters?

Mr. Attorney. Never Army hath done greater things, and yet they have not scaped Mr. *Lilburne's* Tongue and Pen; they have not scaped it, my Lords, but he hath lashed them to the purpose. I shall be as good as my Word, not to aggravate the Offences, for they are so vile, they aggravate themselves enough; and therefore I leave it thus, the naked Truth, and the Worth of it, as the Books themselves have offered themselves. But I shall say thus much more, the Honour of the Parliament of *England*, all the Magistracy therein, the Honour of the Government, the Honour and Renown of the Army, that hath done such great and wonderful things, is now at stake against Mr. *Lilburne*; and there being a Law publish'd, that did give warning: and Mr. *Lilburne* had been try'd for his Life sooner, upon my knowledge; I say, Mr. *Lilburne* had been sooner try'd, and sooner condemn'd and executed, if the Law had been sooner made and published. But as he saith right well, *Where there is no Law, there is no Transgression*; and therefore there being a Law against which he hath offended, he must smart for it.

Lieut. Col. *Lilburne*. I am sure I was imprisoned most unjustly, without any the least shadow or colour in Law, many Months before your Acts were made, and extremely oppressed; and now you go about to hang me as a Traitor, for at most but crying out of your Oppression. O unrighteous Men! the Lord in Mercy look upon me, and deliver me and every honest Man from you, the vilest of Men.

Mr. Attorney. And that Law was published and proclaimed in this City, by means of which, Mr. *Lilburne* and others had timely notice that they should not do such things as are there forbidden; it also told them the Penalties of it, which are those that are due for the highest High Treason: and yet notwithstanding you see with what boldness, with what confidence, in

despight of all Law and Authority, these Books have been made and published by Mr. *Lilburne*. And whereas he is pleased to say many times, that many Men have petitioned for him to the Parliament, he will not affirm to you that ever he petitioned himself; but in all his Discourse here, he calls them *the present Men in Power, the Gentlemen at Westminster*: nay, my Lord, he hath not so much as owned the Power of the Court since he came before you, but hath often called you Cyphers, and the like.

Lieut. Col. *Lilburne*. That's no Treason, Sir: they intitle themselves *the present Power*; and would you hang me for not giving them a better Style, than they themselves give to themselves? I think the Style of *present Power* or *present Government*, is a very fit Style for them.

Mr. Attorney. My Lord, I have told you long, it is the Jury that are Judges upon the Fact; and to you I must appeal for Law, if you do believe the Evidence is plain and full against him, for which he stands indicted: and so God direct all your Judgments, I have done.

Lieut. Col. *Lilburne*. Sir, by your favour, I shall desire to address myself in one word to you; which is, to desire that the Jury may read the first Chapter of *Queen Mary*, in the Statute-Book, and the last Clause of the Chapter of the thirteenth of *Elizabeth*; where they shall clearly see, especially in the Statute of *Queen Mary*, that they abhorred and detested the making of Words or Writing to be Treason, which is such a Bondage and Snare, that no Man knows how to say or do, or behave himself, as is excellently declared by the Statute of *Hen. 4. v. 2.* I have done, Sir.

Ld Keble. Gentlemen, you of the Jury, you are sworn; you are Men of Conscience, Gravity, and Understanding: To tell you of the Duties of your Place, that have gone through it so often, is a vain thing. The Sacredness of an Oath, which a Man must not transgress in the least, not to save the World; you have gone so often through it, and understand it, that I need say no more. The Charge you have heard, and the Proofs; but for Proof single, or double, or treble, as some of them do amount unto a Witness in this, yea, that doth double another Man's Witness; if I swear this thing, and another swear the same, a third the same, that is doubled upon all their Testimonies. Mr. *Lilburne* hath cited two Statutes of *Edward the Sixth*, to prove there must be two Witnesses; but I must tell him, were there but one to each Fact, it were enough in Law: for as for that which was cited of *King Edward the Sixth*, you have had it fully answer'd by a later Law of *Queen Mary*, which doth overrule that, and also enacts that the Common Law of *England* shall be the Rule by which all Treasons shall be try'd; which reacheth to this Case too, that there need no more but one Witness, and this is Law: and therefore, Gentlemen of the Jury, that must not stick with you. That which you have heard, to concern you, of the Truth of the Matters, is this, You are not bound affirmatively to have two Witnesses, but in that one Witness with the Circumstances concurs, that is sufficient: That which should prevail with you, is to consider the Strength of the Accusation, which rests in the Books, and doth consist of three Heads, which are laid down in the Books themselves; which doth in the first place

place so firmly express, and so far villify the Parliament and State, as it is now established in *England*; the second doth look unto the Counsels and Incitations of him for the stirring up of Tumults, Commotions, and Wars in this Nation; and the third, are the things cited in his Books to that end and purpose, to divide the Army, and then the other will take the better effect. These are the three main Charges, and these the Books that come from him do so plainly testify: that the Books are proved to be his, you are fit Judges of; but it clearly appears by those his Books, that these things were in his Intention.

For that he says, it is *Mens* that does make a Man guilty, the Mind, that is intended as it is express'd: *Actus non facit reum, nisi Mens sit rea*.

Now that Mind is *rea*, when there is Faith published; but I tell you this, these Books being admitted true, I say that never Man that acted the highest of Treasons, as he hath done, hath had so much liberty as he hath had: and as I said before, never Man of his Condition, nor any Condition in *England*, that was indicted in such a case, ever had a Trial in such a Court, in such an Auditory, such a Presence as he has had.

Lieut. Col. *Lilburne*. The more's my Sorrow.

Ld *Keble*. The more's your Sorrow indeed! You have good cause to be sorrowful indeed for this Act of yours thus declared: if your Intentions had taken effect, your Plot was the greatest that ever *England* saw, for it struck at no less than the Subversion of this Commonwealth, of this State, to have laid and put us all in Blood; your Plot was such, that never such was seen in the world before, to proceed from a private Man as you are; therefore it must needs be heavy upon your Conscience. Therefore my Masters of the Jury, look into your Conscience, and see what that saith unto you, which he stands so much upon: The Witnesses Testimonies are now plain and good in Law, in this Cause they are multiply'd; I do not know in one Particular that there is a Testimony single, but it is aggravated with many Circumstances: therefore let not that trouble you, you are the proper Judges of the Matter of Fact, being of the Country; and if you have fully apprehended the dangerous things plotted in those Books of Mr. *Lilburne's*, you will clearly find that never was the like Treason hatch'd in *England*. And so in God's name, as the Prisoner doth lead to your Consciences, so go and do.

Lieut. Col. *Lilburne*. I desire your Favour, that there may be a Course taken, that neither my Prosecutors, nor any belonging to them, may have access unto the Jury till they have done.

Justice *Fermin*. You Gentlemen of the Jury, I did expect it, it was expected by the Court, that some Matter of Law, or some Question of Law, might arise upon the Evidence; which if it had, it was the Duty of the Court to have cleared it: but there does not appear, and therefore there is an end, as to the Dispute of the Law.

Foreman. We are no Lawyers indeed, my Lord.

Lieut. Col. *Lilburne*. I have begged it, and you have promised it, that I should have liberty to plead in Law to the Illegalities of the Indictment; but you have deny'd me that legal Right:

yea, you will not permit my Solicitor to speak a few words for me. I dare undertake, there was never such a Trial upon *English* Ground as this hath been; where a Man hath been deny'd all the legal Rights of an *Englishman*, as I have been. You Gentlemen of the Jury, who now are my sole Judges, I pray you take notice of it.

Justice *Fermin*. There was never any such kind of Abuse offered to a Court as you have given, nor never was such Language used to any Court of Justice before, that I did hear of, as you have given: and certainly the Behaviour at the Bar doth set forth what the Humours and Character of the Man is; for in this case, if any such dangerous thing of acting of Commotion or Mutiny in the Army or in the Nation should have follow'd, it had been too late then to have thought of the Remedy. Therefore the Wisdom of the Parliament hath declared, That whosoever shall by writing, printing, or by openly declaring, publish that the present Government of *England* is Usurped or Tyrannical, it is Treason. There is the Fact, upon which all the Evidence does depend; and you are to judge, whether in all those Books there be not by Mr. *Lilburne* a traitorous Fact committed; and how clearly this does appear unto you, with all Circumstances thereunto belonging, I leave you to judge: and how short his pretended Replies are to be seen, or invalidate the Strength of the Witnesses, I also leave you to judge. I say, I might easily shew you, how short his pretended Answers are of real Satisfaction, but I leave it to your Judgments.

Lieut. Col. *Lilburne*. Sir, my Answers are real Answers, not pretended ones, as you are pleased to call them.

Justice *Fermin*. But in this Business the Evidences are sufficient to make a Man guilty of Treason; for here was not simply a passionate Act, or inconsiderate Speech, but what he hath done, he hath done deliberately and advisedly, which is sufficient to make him, or any Man that so doth, guilty of Treason. All this that was published was in *August*, the Act is in *July* preceding. Now it is very true, and I will *english* it for Mr. *Lilburne*, *Actus non facit reum, nisi Mens rea*: The Act of a Man does not make him guilty, unless his Mind be guilty. But I pray, how shall any Man know the Guilt of a Man's Mind, but by those polluting and poisonous Words that come out of his mouth? that's the Mind. What I hear a Man say, I may lawfully say he thinks: and it is a Rule in Law, that the outward Acts do shew forth inward Intentions: that very Rule I will not speak it in *Latin*, because I speak to one that does say he does not understand *Latin*, otherwise I could speak more *Latin*. Now here is the matter, whether or no, upon the whole Evidence that you have heard, there does not appear sufficient matter to make this Prisoner guilty, not of rash, but of advised and deliberate Treason; and as plainly of plotting and contriving to raise Mutiny and Seditious in the Army, thereby totally to subvert and destroy the present Government: and truly, I have not heard more of Skill has been used, and more Attempts made, than I think you have heard, and do remember. I doubt not, but as you will take care of the Life of a Man, that you must not take away the Life of an Innocent; so

so will you be as careful of your own Souls, and the publick Safety: and that's all that I desire, and I pray God to direct you for the best.

Lieut. Col. *Lilburne*. If you will not let me have Counsel, let my Sollicitor speak Matter of Law for me.

Justice *Fermin*. Mr. Attorney, you must take some care to suppress this, he will not be answered by us. I pray demand Justice of the Court against him.

Lieut. Col. *Lilburne*. Well, Sir, then I have done.

[The Foreman desires the Act for Treason, and one of the Jury desired to drink a Cup of Sack, for they had sat long, and how much longer the Debate of the Business might last, he knew not; and therefore desired, that they might have amongst them a Quart of Sack to refresh them.]

Justice *Fermin*. Gentlemen of the Jury, I know for my part in ordinary Juries that they have been permitted to drink before they went from the Bar; but in case of Felony or Treason, I never so much as heard it so, or so much as ask'd for: and therefore you cannot have it.

[But one of the Judges moved they might have it.]

Justice *Fermin*. I may not give leave to have my Conscience to err; I dare not. And thus if the rest of the Judges be of opinion, you shall have a Light if you please, the Fellow that keeps you shall help you to it; but for Sack, you can have none, and therefore withdraw about your Work.

Lieut. Col. *Lilburne*. Sir, I understand the Officer that is to keep their door hath declared something of Bitterness of Spirit against me; I desire therefore he may have some indifferent Man joined with him, to see I have fair play: which was granted and he sworn.

The Jury go forth about Five a-clock, the Court adjourned till Six a-clock, and the Court commands the Lieutenant of the *Tower* and the Sheriffs to carry the Prisoner into the *Irish Chamber*, which they did. The Prisoner stays about three quarters of an hour, and the Jury being come into the Court again, the Prisoner was sent for; and after the Cryer had caused silence, the Jury's Names were called, viz.

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|---------------------|----------------------|
| 1. Miles Petty, | 7. Edmond Keyfar, |
| 2. Stephen Iles, | 8. Edward Perkins, |
| 3. Abraham Smith, | 9. Ralph Packman, |
| 4. John King, | 10. William Commens, |
| 5. Nicholas Murren, | 11. Simon Werdon, |
| 6. Thomas Dainty, | 12. Henry Tooley. |

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Cryer. *John Lilburne*, hold up thy Hand. What say you, (look upon the Prisoner) is he guilty of the Treasons charged upon him, or any of them, or not guilty?

Foreman. Not guilty of all of them.

Clerk. Nor of all the Treasons, or any of them that are laid to his charge?

Foreman. Not of all, nor of any one of them.

Clerk. Did he fly for the same?

Foreman. No.

[Which *No* being pronounced with a loud Voice, immediately the whole Multitude of People in the Hall, for joy of the Prisoner's Acquittal, gave such a loud and unanimous Shout, as is believed was never heard in *Guild-Hall*, which lasted for about half an hour without intermission: which made the Judges for fear turn pale, and hang down their heads; but the Prisoner stood silent at the Bar, rather more sad in his Countenance than he was before. But Silence being made:]

Clerk. Then hearken to your Verdict, the Court hath heard it: You say, that *John Lilburne* is not guilty of all the Treasons laid unto his charge, nor of any one of them, and so you say all, and that he did not fly for it?

Jury. Yes, we do so.

Clerk. Gentlemen of the Grand Inquest, the Court doth discharge you. And you Gentlemen of Life and Death, the Court doth discharge you also. Lieutenant of the *Tower*, you are to carry your Prisoner to the *Tower* again, and Major-General *Skippon* is to guard you; and all whom you shall desire, are to assist you.

The Prisoner withdraws, and the Court adjourned till Wednesday following.

Extraordinary were the Acclamations for the Prisoner's Deliverance, as the like hath not been seen in *England*; which Acclamations, and loud rejoicing Expressions, went quite through the streets with him to the very Gates of the *Tower*, and for joy the People caused that night abundance of Bonfires to be made all up and down the streets. And yet for all his Acquittal by the Law, his Adversaries kept him afterwards so long in Prison, that the People wonder'd, and began to grumble that he was not discharged; and divers of his Friends went to the Judges, the Parliament, and Council of State, by whose Importunities, by the seasonable Help of the Lord Gray of Grooby, Col. Ludlow, Mr. Robinson, and Col. Martin, his Discharge was procured, a Copy of which thus followeth.

WHEREAS Lieutenant-Colonel John Lilburne hath been committed Prisoner to the Tower, upon suspicion of High Treason, in order to his Trial at Law; which Trial he hath received, and is thereby * acquitted: These are therefore to will and require you, upon sight hereof, to discharge and set at liberty the said Lieutenant-Colonel John Lilburne from his Imprisonment; for which this shall be your sufficient Warrant.

* The Jury justified in their Verdict by the Council of State.

Given at the Council of State, at *Whitehall*, this 8th Day of November 1649.

To the Lieutenant of the Tower of London, or to his Deputy.

Signed in the Name and by the Order of the Council of State, appointed by Authority of Parliament.

John Bradshaw, President.

The Examination of the Jury who try'd Lieutenant-Colonel John Lilburne, at the Sessions-House in the Old-Bailey, upon Saturday the 20th of August, 1653. Taken before the Council of State the 23d of the same Month, in pursuance of an Order of Parliament of the 21st.

THOMAS GREENE, of Snow-Hill, Tallow-Chandler, Foreman of the Jury, being ask'd what the Grounds and Reasons were that moved him to find the said Lieutenant-Colonel *John Lilburne* not guilty upon the Indictment preferred against him at the Sessions-House in the *Old-Bailey*, saith, 'That he did discharge his Conscience in what he then did, and that he will give no other Answer to any Questions which shall be ask'd him upon that matter.'

And being in particular demanded of him, whether he conceived it not sufficiently proved, that the Act whereupon he was indicted was an Act of Parliament; whether he was not satisfied that the Copy of the Act produced, was a true Copy of the Act itself, or that the *John Lilburne* at the Bar was the *John Lilburne* mentioned in the Act; and what other thing it was, which moved the Jury to find as aforesaid: the Examinant answered, 'That he will give no other Answer, as above said, and desired that he might be no further press'd therein.'

And being further ask'd, why he would not give an account of the Grounds and Reasons of their Verdict, he said, 'He would not do it, for Reasons best known to himself.'

Michael Rayner, of Friday-Street, Leather-Seller: He saith, That he was one of the Jury that tried Lieutenant-Colonel *John Lilburne*, upon Saturday the 20th instant; and that he was summoned to serve the Jury upon Wednesday was Sevensnight, and did constantly attend in Court, and upon the Service, until the Trial was over; and that he was not solicited by *John Lilburne*, nor any other on his behalf. And the Questions mentioned in the foregoing Examination being asked him, he answered, 'That he was satisfied in the Verdict he gave in that Case; and that he should give no other Answer thereto.'

And being further press'd therein, he desired that a Day's Time might be given unto him, to consider of it, and he should give Satisfaction to the aforesaid Questions.

He was further asked who advised him to make this Answer to the Council: Whereunto he answered, 'That the Jury were all of that Mind; and that they agreed to give this Answer at a Meeting they had all together at the *Windmill-Tavern* in *Coleman-Street* this Morning; which Meeting they had upon occasion of the Order of Parliament for examining this Business: And that he had notice to come to this Meeting by one or two of his Partners, whose Names (he saith) he doth not well know.'

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And being further demanded of him, Whether Mr. *Scobell*, Clerk of the Parliament, did not give Evidence that Lieut. Col. *John Lilburne* at the Bar was the very *Lilburne* against whom the Act was made? He said he did give that Evidence; and that he did believe he said true; and that the Copy of the Act of Parliament produced was a true Copy: But saith, 'That he and the rest of the Jury took themselves to be Judges of Matter of Law, as well as Matter of Fact; although he confessed that the Bench did say that they were only Judges of the Fact.'

He further said, He was very unwilling to be of the Jury.

Thomas Tunman, of Cow-Lane, Salter, another of Lieutenant-Colonel *John Lilburne's* Jury, who saith that the Verdict was Not guilty. And being asked the Questions in the first Examination, he saith, 'That he was sworn to find according to the Issue and Evidence, and that he did find according to his Conscience; and positively refused to give any other Answer: And did deny that the Jury, aforesaid, had agreed together to give one and the same Answer to the Council, or that they had met together this Morning, or at any other time since Saturday-night last, until they came to the Council.' And being asked in particular whether the said Jury did not meet together this Morning at the *Windmill-Tavern* in *Coleman-Street*, he positively answered they did not.

Emanuel Hunt, of St. Sepulchres; who saith, He was one of *John Lilburne's* Jury, upon his Trial on Saturday last; and that the Jury found him not guilty: But his Memory being short, doth not well remember the Issue.

He being asked whether it was not proved that the Prisoner was the *John Lilburne* mentioned in the Act, saith, 'He was not satisfied that it was so proved; and that there are many *John Lilburnes*; and that *John Lilburne* was indicted of Felony, which he did believe he was not guilty of; and that what was found was done by the Consent of all, and did satisfy their Consciences therein; and refused to give any other Answer than as aforesaid.'

And it being demanded of him whether the Jury had not met together, to agree of the Answer they were to give to the Council, he answered, 'They met together the Night of the Trial to drink a Pint of Wine; and that they met not since until this Day.' And being asked what time of the Day, he answered, 'Five of them met here.' But being asked particularly whether they met not at the *Windmill-Tavern* in *Coleman-Street* this Morning, he did

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acknowledge they did, and that Mr. *Tunman* in particular was there: But refused to declare who gave him notice of this Meeting.

James Stephens, of the *Old-Baily*, Haberdasher; who saith, That he was one of Lieutenant-Colonel *John Lilburne's* Jury; and that having considered of the Matter whereof he was indicted, they found him not guilty. And being asked the Questions in the first Examination, he acknowledged, 'That he was satisfied that the Prisoner was the *John Lilburne* mentioned in the Act; nor did he yet question the Validity of the Act: But the Jury having weighed all which was said, and conceiving themselves (notwithstanding what was said by the Council and Bench to the contrary) to be Judges of Law as well as of Fact, they found him not guilty.'

He acknowledged that all the Jury met this Morning at the *Windmill-Tavern* in *Coleman-Street*, to consider what Answer to give to the Council; and that the Foreman of the Jury spoke to him to be there, telling him he had heard there was an Order of Parliament for summoning them before the Council: And further saith, That *Tunman* was at that Meeting.

Richard Tomlins, of *St. Sepulchres*, Book-Binder, who saith he was one of Lieutenant-Colonel *John Lilburne's* Jury; and that the Jury found him not guilty. And being asked what was the Point in Issue, he desired to be excused in that, saying, 'What he can tell, is one thing; but to accuse himself, is another thing.' It being further demanded of him, whether he was satisfied that the Prisoner was the *John Lilburne* mentioned in the Act, he said he was not. And being asked what made him think so, he answered, 'He was not bound to give any account of what he did in that Business, but to God himself.'

William Hitchcock, of *Watling-Street*, Woollen-Draper; who saith he was of Lieutenant-Colonel *John Lilburne's* Jury, and that the Jury found him not guilty. He being asked the Questions express'd in the Foreman's Examination, he answered, 'He had discharged his Conscience in what he had done; and desireth the Council not to ask him any Questions, for he can give no other Answer, and is resolved to give no other Answer.'

And being asked concerning the Meeting of the Jury, to agree of an Answer to be given to the Council, he first denied that they had any other Meeting than what they had the same Night his Trial was. But being asked particularly if they met not at the *Windmill-Tavern* in *Coleman-Street* this Morning, he acknowledged they did; 'But denied he heard of any Order of

Parliament for sending for the Jury; nor did they meet upon the Business of *John Lilburne*, or that they did at the Meeting speak of it: but only met to drink a Pint of Wine, as they had agreed to do the same Night they gave up their Verdict.'

Thomas Evershot, of *Watling-Street*, Woollen-Draper; who saith he was one of *John Lilburne's* Jury, and that they found him not guilty: But denied to give any Answer to any further Questions, saying, 'He was satisfied in his own Conscience in what he did.' And being asked whether the Jury did not meet this Morning, to agree of an Answer to be given to the Council, denied that they did, or that they met at all since the Night of the Trial, until they met at the Council.

The Persons following were examined the 29th of August, 1653, in the Morning.

Thomas Smith, of *Cornhill*, Haberdasher of Small Wares: He saith he was of *John Lilburne's* Jury, and found him not guilty. But refused to answer to any other Questions; saying, 'He was called to serve his Country in this Particular; and that he had done it according to the best of his Understanding: Acknowledgeth the Meeting of the Jury at the *Windmill-Tavern* yesterday Morning.'

Gilbert Gayne, of *Dunstan's* in the West, Grocer: He saith he was one of *John Lilburne's* Jury, and found him not guilty. And he being asked what the Issue was, he acknowledged that he was indicted for Felony, for coming into *England*. But saith, 'That the Jury did find as they did, because they took themselves to be Judges of the Law, as well as of the Fact: And that although the Court did declare they were Judges of the Fact only, yet the Jury were otherwise persuaded from what they heard out of the Law-Books.' He confesseth he himself did at first differ from the Jury, but was convinced by their Reasons. He confessed the Meeting of the Jury.

Griffith Owen, of *Bishopsgate Ward*, Brewer: He acknowledgeth he was of Lieutenant-Colonel *John Lilburne's* Jury, and that they found him not guilty, 'Because he was not satisfied that the Prisoner was the *John Lilburne* mentioned in the Act; and that he had never seen *John Lilburne* before that Day, nor was he solicited in his behalf by any Person.' He acknowledgeth the Jury met yesterday Morning at the *Windmill-Tavern*; but made no Agreement what Answer to make the Council.



XLVI. *The Trial of Mr. CHRISTOPHER LOVE**, before
the High Court of Justice for High Treason, the 20th
of June 1651, 3 Car. II.

THE Court being set, and called over, the Lieutenant of the Tower was commanded to bring forth his Prisoner: And Master Love was brought to the Bar. After the reading of divers late Acts of Parliament concerning Treason, Master Prideaux, the Attorney-General for the Commonwealth, spake as followeth:

Attorn. Gen. My Lord, you have heard several Acts of Parliament read, and the Offences therein mentioned. My Lord, I have here a Charge against Mr. Love, the Prisoner at the Bar; and I humbly desire that it may be read. And you may please to take his Answer to it, whether by Confession, or otherwise.

[The Clerk is commanded to read the Charge.]

The Clerk. A Charge of High Treason, and other High Crimes and Offences, exhibited to the High Court of Justice by Edmond Prideaux, Attorney-General for the Commonwealth of England, for and on the behalf of the Keepers of the Liberties of England, by Authority of Parliament, against Christopher Love, late of London, Clerk; by him preferred and commenced against the said Christopher Love.

That is to say,

THAT he the said Christopher Love, as a false Traitor and Enemy of this Commonwealth and Free State of England, and out of a traitorous and wicked Design to stir up a new and bloody War, and to raise Insurrections, Seditions, and Rebellions within this Nation, did in several Days and Times, that is to say, in the Years of our Lord 1648, 1649, 1650, 1651, at London, and at divers other Places within this Commonwealth of England, and elsewhere, (together with William Drake, late of London, Mercer; Henry Jermin, late of London, Esq; Henry Piercy, late of London, Esq; John Gibbons, late of London, Gentleman; Edward Massey, late of London, Esq; Richard Graves, late of London, Esq; Sylas Titus, late of London, Gentleman; James Bunce, late of London, Alderman; and other their Accomplices, yet unknown) traitorously and maliciously combine, confederate, and complot, contrive and endeavour to stir and raise up Forces against the present Government of this Nation, since the same hath been settled in a Commonwealth and Free State, without a King and House of Lords, and for the Subversion and Alteration of the same.

And the better to carry on and accomplish their said traitorous and wicked Design, he the said

Christopher Love, together with the said William Drake, Henry Jermin, Henry Piercy, Richard Graves, Edward Massey, John Gibbons, Sylas Titus, James Bunce, and others, (since the Death of Charles Stuart, late King of England, who, for his notorious Treasons, and other Tyrannies and Murders, by him committed in the late unnatural and cruel Wars, was, by Authority derived from Parliament, justly condemned to Death and executed) several Days and Times, in the respective Years aforesaid, at London aforesaid, and at sundry other Places of this Commonwealth, and since this Nation was settled in the way of a Commonwealth or Free State, as aforesaid, did traitorously and maliciously declare, publish, and promote Charles Stuart, the eldest Son of the late King of England, to be King of England, (meaning this Commonwealth) without the Consent of the People in Parliament first had and signified by Authority and Ordinances to that purpose.

And further, to carry on and accomplish their said traitorous and wicked Design, he the said Christopher Love, on several Days and Times in the respective Years aforesaid, at London aforesaid, and in divers other Places within this Commonwealth of England, and elsewhere, together with the said William Drake, Henry Jermin, Henry Piercy, Richard Graves, Edward Massey, John Gibbons, Sylas Titus, James Bunce, and other their Accomplices, as aforesaid, did traitorously and maliciously invite, aid, and assist the Scots, being Foreigners and Strangers, to invade this Commonwealth of England, and adhered to the Forces of the Enemy, raised against the Parliament and Commonwealth aforesaid, and Keepers of the Liberties of England aforesaid.

And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, divers Days and Times between the 29th Day of March, 1650, and the 1st Day of June, 1651, at London, and other Places, as aforesaid, did traitorously and maliciously give, hold, use, and maintain Correspondence and Intelligence by Letters, Messages, Instructions, and other Ways, prejudicial to this Commonwealth, with the said Charles Stuart, Son of the late King, and with the late Queen, his Mother, and with the said Henry Jermin, Henry Piercy, and divers other Persons, being of Counsel, and abiding with Charles Stuart.

And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, several Days and Times in the respective Years aforesaid, at London aforesaid, and divers Places within the Commonwealth of England, and elsewhere, as aforesaid, did traitorously and maliciously use, hold, and maintain Correspondence and Intelligence with divers Persons of the Scottish Na-

tion; that is to say, with the Earls of Argyle, Lowdon, Lothian, and Belcarras, and with one Bayley Gent. and divers other Persons of the Scottish and other Nations, whom he the said Christopher Love well knew to adhere to the said Scottish Nation in this War against the Parliament and Commonwealth of England.

And further, he the said Christopher Love, within the Times, and at the Places before mentioned, did traitorously and maliciously abet, assist, countenance, and encourage both the Scottish Nation, and divers other Persons, adhering to them in this War against the Parliament; and did send and convey, or cause to be sent and conveyed, Moneys, Arms, Ammunition, and other Supplies, to Scotland, and other Places, and to the said Titus, Massey, and others in Confederacy against this Nation, without special Leave and Licence from the Parliament of England, or Council of State, or the Captain-General of the Parliament's Forces.

And further, to carry on and accomplish the said traitorous and wicked Practice and Design, he the said Christopher Love, within the Times, and at the Places before mentioned, did traitorously and voluntarily relieve the said Syllas Titus, Edward Massey, Colonel Bamfield, and one Mason, late of London Gent. and one Sterks, late of London, Gent. who then were, and yet are under the Power of the Scottish Nation, and in Arms against the Parliament and Commonwealth of England, with Moneys, Arms, and Ammunition. All which Treasons, and traitorous and wicked Practices and Designs of him the said Christopher Love, were and are to the apparent Hazard of the publick Peace of this Commonwealth and Free State, Parliament and People of England, and to the manifest Breach, Contempt, and Violation of the Laws of the Land, and contrary to the Form of divers Statutes and Acts of Parliament in such case made and provided.

And Master Attorney-General (by Protestation, saving to himself in the behalf of the Keepers of the Liberties of England, to exhibit any other Charge against the said Christopher Love, and to reply to the Answer he shall make to the Premises) doth for the said Treasons, on the behalf of the Keepers of the Liberties of England, impeach the said Christopher Love as a Traitor and publick Enemy to this Commonwealth and Free State of England: And doth pray that he may be put to answer all and singular the Premises; that such Proceedings, Trial, Examination, Judgment, and Execution, may be thereupon had against him, as shall be agreeable to Justice.

The Clerk. Christopher Love, you stand charged on the behalf of the Keepers of the Liberties of England, by Authority of Parliament, of High Treason, and other High Crimes and Offences against the Parliament and People of England: This High Court therefore requires you to give a positive and direct Answer, whether you are guilty or not guilty of the Crimes and Treasons laid to your Charge.

Mr. Love. My Lord, before I plead, I humbly crave leave to express my self in a few Words to this Court; and afterwards to make humble Proposals of what I desire in order to this Trial. In the first place, being I am this Day called to a great and weighty Work, in the Entrance to it I do earnestly beg the Prayers of all them that have an Interest in God, that he would carry me through this whole Trial with such Gravity, Godliness, and Meekness of Wisdom, as becomes

a Professor and Preacher of the Gospel; and that he would keep me in this Hour of Temptation rather from Sin than from Suffering. Sir, I am this Day made a Spectacle to God, Angels, and Men; singled out from among my Brethren to be the Object of some Men's Indignation and Insultation. By my appearing in this Place, I am made a Grief to many that are Godly, and a Laughing-stock to the Wicked.—[Here he was interrupted by the Court.]

* Lord President of the Court. Mr. Love, *Mr. Keble. how long Time do you intend to take up?

Mr. Love. I will be brief, Sir.

Ld President. We have been calling upon God to direct us and you, and all good People, that Justice may be done; and you would glorify God rather than Man, if you would confess, knowing what was done in that great Sin of *Achan*; there was great Pains taken, and the whole Nation was fain to be examined, and their Houses divided, and at last when it came to *Achan*, you know what *Joshua* said to him, *Confess and tell the Truth, and glorify God*. This is that, that if you respect God before Man, you may now clear yourself, and set forth his Glory upon Earth; and your next Work is to plead Guilty or Not Guilty. For we see that those Ways you go, would take up Time, and we have taken all into our Thoughts before-hand.

Mr. Love. I do not desire to protract Time, but I would not lie under a Prejudice.

Ld President. When you go out of your Way, we must help you; and know, if any be under a Prejudice here, their prejudging is rather in Mercy than in Prejudice to you.

Mr. Love. I hope you will not be more severe to a Minister, than you were to Lieut. Col. *John Lilburne*. When you were at the Court at *Guildhall*, at the Trial of *Lilburne*, you gave him the Liberty of two Hours to plead, before he pleaded Guilty or Not Guilty.

Ld President. To a Minister! you say well: but I tell you, we do more to a Christian than to a Minister; and we are all Christians, and your Ministry is but an Office; and therefore what Mr. *Lilburne* had, it was the Favour of the Court then: but Time is spent, and pray do not you follow that now.

Mr. Love. Whereas your Lordship is pleased to urge the Case of *Achan* to me, if my Case were the same as *Achan's* was, I should do as *Achan* did, confess and give Glory to God; but *Achan's* was a peculiar and extraordinary Case, and therefore I pray it may not be laid to me. God was the Informer and Discoverer, and God did by Lot discover *Achan* to be the Man.

Ld President. Will you plead?

Mr. Love. I desire Liberty to speak a Word. I had not diverted my Discourse, but upon your Lordship's Words.

Attorn. Gen. My Lord, I hope he will be so ingenuous, as not to be long.

Ld President. Take this in your way, Mr. Love, God is as present here, as he was in the Case of *Achan*. Go on.

Mr. Love. Sir, by my appearing in this Place, I am made a Grief to many that are Godly, and a Laughing-stock to the Wicked, and a Gazing-stock to all; yet, blessed be God, not a Terror to my self. Sir, I am, as *Jeremiah* was, born a Man of Strife and Contention: Not actively, I strive

strive and contend with none; but passively, many strive and contend with me. Yet I trust God will make me, as he did *Jeremiah*, an Iron Pillar and Brazen Wall against those that do oppose me, that I shall not be dismayed at their Faces, lest I be confounded before them. Strong Suggestions against me are generally received; and great Opposition strongly maintained: And in this Condition no Man dares stand by me: But God stands by me, and strengthens me. — [Here he was interrupted again.]

Ld President. Sir, come to the Business in hand.

Mr. Love. I beseech you, Sir, spare me: You gave *Mr. Lilburne* more Time.

Attorn. Gen. My Lord, when he shall come with such Speeches that are nothing to the Business in hand! My Lord, he instances in *Lilburne's* Case: You know that Debate; it was in relation to a Narration.

Mr. Love. Sir, it was the Narration of his Doings and Sufferings, that he might not be misrepresented to the Court.

Attorn. Gen. You know you are a Minister: And if it be your Purpose to spin out Time, to think to ingratiate your self to the People, it will not do. My Lord, this is a Court of Justice, that proceeds according to the established Laws, and Laws that have been read to him. *Mr. Love* is a Minister; and had he applied himself to God, as he might have done, he need not have been brought hither, if he had not gone that way he did. But, my Lord, I desire he may go on to the Charge, and give his Answer to it. My Lord, before we have done, we shall have many Occasions of Discourse between him and I.

Mr. Love. I beseech your Lordship allow me that Favour that you allow to every one you try, that I may not stand under Misrepresentations to you, who are my Judges.

Ld President. Are not we of as much Credit as you? And are not we judged Ministers as well as you, and more than you? And I tell you, that which you require we have already done, and wish you as much Happiness as to our Brother: And for you to spend Time about that which is nothing to the Business, it must not be suffered.

Attorn. Gen. My Lord, let the constant known Laws of the Commonwealth of *England* be observed, as well as other Laws; of which that is one, That he ought not to speak any thing till he hath pleaded Guilty, or Not guilty. My Lord, I desire to take my Course. I do not make Speeches against him, to misrepresent him to you, otherwise than he stands charged. And, my Lord, I would not have him to clear himself till he come to the Trial, whether he be not accused justly. It is not my Nature, but the Duty of my Place; and the Duty of his Place, as a Prisoner, is to plead, and to put himself upon Trial. That being done, there will be occasion enough for him to plead his own Innocency. My Lord, to take up two hours time in talking of that which is not material, should not be.

Mr. Love. I insist upon that Liberty that *Mr. Lilburne* had.

Ld President. He did plead first.

Mr. Love. No, my Lord, he did not plead first: and I have much to move before I plead.

Ld President. You can say nothing till you plead.

Mr. Love. My Lord, I desire not much Time.

Attorn. Gen. My Lord, let the Time now insisted on be what Time it will, *Mr. Love* will have Time to speak for himself; and it is so far from being to the Point, that it is trifling: And this rather makes him seem guilty, than it gives him any Acquittance.

Mr. Love. Prove me guilty first, Sir. Sir, do not prejudge me.

[Then Command was given to read his Arraignment.]

The Clerk. Christopher Love, you stand charged, on the behalf of the Keepers of the Liberties of England, by Authority of Parliament, of High Treason, and other High Crimes and Offences, against the Parliament and People of England: This High Court therefore requires you to give a positive and direct Answer, whether you are Guilty or Not guilty, of the Crimes and Treasons laid to your Charge.

Mr. Love. I refuse not to plead; but I beseech you give me leave to speak before I answer.

[*Mr. Love* having a Paper in his Hand, the Judge said:]

Ld President. How many Leaves is it?

Mr. Love. But two or three: and if this Court be more strict and severe to me, than that was to *Mr. Lilburne*, I cannot help it. What I shall say, shall be something in general; and I beseech you give me leave to speak to it.

Attorn. Gen. Sir, not before you plead.

Mr. Love. Yet I have this Liberty, That when Matter of Law ariseth in the Indictment, to make a Motion, and to move for Counsel, and to shew the Illegality of it: And though I confess I am extremely ignorant of the Law, yet I understand that after I have pleaded, I am not capable of Counsel.

Ld President. You are mistaken, Master Love.

Mr. Love. I suppose I am not mistaken. For in the third Part of Judge *Coke's Institutes* I find it thus; 'The Prisoner, when he pleads Not guilty, whereby he denies the Fact, after the Plea of Not guilty, can have no Counsel: But if he have any Matter of Law to plead before, he may urge it.'

Ld President. He pleads he is ignorant of the Law, and yet can make use of it.

Mr. Love. I am to plead for my Life: And I am to use Scripture, Law, and any other lawful Means to save my Life. *Paul* did plead the Roman Law.

Ld President. Some of us know as much of *Paul* and Scripture as you do.

Mr. Love. Sir, I make no Comparisons. [Then *Mr. Love* reads out of Judge *Coke's Institutes*: 'The safest way, for the Party indicted, is to plead upon his Arraignment the special Matter for the Overthrow of the Indictment:'] And this must be done before I plead. ['And to require Counsel for the pleading thereof, which ought to be granted; and to require a Copy of so much of the Indictment which is necessary for framing his Plea, which ought to be granted. And these Laws ought to be construed favourably; for that the Indictment is commonly found in the Absence of the Party.']

Ld President. But your Indictment is in your Presence. You are out of your way.

Mr. Love. Sir, you bring me out of my way.

Ld President.

Ld President. Your Indictment is not yet found: There is nothing done behind your back, only the reading of this; but that is nothing but a written Parchment till you plead unto it.

Mr. Love. I have something to except against the Legality of this Indictment.

Ld President. Go on then.

Mr. Love. Sir, the first Motion I shall make is for Counsel, to advise in Matters of Law relating to this Trial: And as I do gather from hearing the Indictment, there are several Matters of Law that do arise, in which I desire to have Counsel assign'd me. And the first is, Whether the Act, by which this Court is constituted, of the 26th of *March*, 1650, that forbids receiving or sending Letters or Messages to or from *England* or *Ireland*, do enable you to receive a Charge against me concerning Letters to or from *Scotland*, *Scotland* not being mentioned in that Act by which you are constituted. Therefore seeing this is Matter of Law, I desire I might have Counsel to advise with about it.

Attorn. Gen. *Mr. Love* then doth admit that he hath received and sent Letters to *Scotland*.

Mr. Love. I admit nothing, Sir; you charge me with it, but I do not grant it.

Attorn. Gen. Then you will give us leave to prove it. If he will admit that he hath sent and received Letters from *Scotland*, and so demur that it is not in your Power, I will join with him. But, my Lord, there was a particular Act read, that doth relate particularly to *Scotland*; and that this Court hath Cognizance of that Act, was read beforehand, but *Mr. Love* did not observe what was read to him: and it is so far in favour of Justice to him, that you read him the Laws and Clauses upon which he stands impeached; and that there is a Law against sending to *Scotland*. But, my Lord, these Debates are lingring of time; if a Man will demand Counsel, he admits the Fact, that the Fact is true; but being true, he ought not to be condemned upon it: if so, I will join with him; but if he plead Not Guilty, I shall be ready to prove it.

Mr. Love. I beseech you, Sir, I do apprehend there is another Matter of Law ariseth, and that is from the Act of the 26th of *March*, 1650, there is a Prohibition of sending Letters or Messages to any in Arms against the Parliament; now I am charged with sending and writing in Letters to *Scotland*; now it doth not appear to me that *Scotland* was in Arms against the Parliament of *England*, but for their own Preservation. Therefore I desire Counsel in this, Whether I that am accused of writing and sending into *Scotland*, am therefore accused of writing and sending to those who are in Arms against the Parliament of *England*; or whether they were in Arms for the Preservation of *Scotland*, or in opposition to the Parliament of *England*.

Attorn. Gen. If you will admit still, that you have sent or received from *Scotland*, then I readily grant it.

Mr. Love. I will admit of nothing: I have so much of a Christian in me, that I will deny nothing that is proved to be true; and so much of an *Englishman*, that I will admit of nothing that is seemingly criminal.

Ld President. You are a Christian, and you are here in the Presence of God, as *Achan* was.

Mr. Love. If it be proved against me.

Ld President. Then your Denial of it will be a high Transgression against God.

Mr. Love. I could urge the Case of Jesus Christ, who, when he was accused before a Judicatory, answered not a word.

Ld President. You are our.

Mr. Love. When Christ was accused in a civil Business, to be a Mover of Sedition (as now I am) they asked him, whether he was King of the *Jews*? and he answered them not a word. But this is that I doubt, whether there be not Matters of Law arising from the Charge read against me, and that in respect of the time of the Act of the 26th of *March*, 1650, which gives power to you to determine several Crimes, and to proceed to the Trial of the Offender. And, Sir, it is also to me doubtful, whether this be not Matter of Law; viz. whether this Trial ought not to be by a Jury of Twelve of the Neighbourhood, or whether in any different way from it. And I doubt it upon this ground, your Lordship having given me this hint; for I was present at the Trial of *Mr. Lilburne*, and the Formality of the Law tied him to plead to this, That he must be tried by God and his Country. He refused it, and your Lordship urged it upon him, that he might safely plead it by God, because God was in all Judicatories; and by his Country, because, said you, by Country is meant the Jury of a Man's Equals: And this is a Trial according to the Law of the Land. Now if you have declared that in *Guild-Hall*, I beseech your Lordship inform me, whether a different way from this of a Jury of the Neighbourhood be according to Law in *Westminster-Hall*?

Ld President. You shall be informed: That was a Trial by the Law, as it then stood; these now are all upon Acts of Parliament, and Laws of the Land, that are of as high a nature as they: those are ancient Laws, and these are Statutes lately made, and of an extraordinary nature, and were made to meet with such Persons as you, that have done such things as you have done. And now for your Neighbourhood, I hope you have twenty or forty Neighbours that are within the Equity of that Law.

Mr. Love. If they be a Jury, I have Power to except against 35 of them.

Attorney-General. My Lord, he pretends *Mr. Lilburne's* Trial; but when you come to hear the Evidence, you shall hear what he was doing then: he was preparing himself then in his Business; he thought his Time might come; and I am informed, that since he hath been in the Tower, *Lilburne* hath been his Counsel.

Mr. Love. *Mr. Prideaux*, Sir, you are no God to know my Thoughts.

Attorn. Gen. I did say this from his own Expression; he was a diligent Observer there, that he might know what was done there, that so he might prepare himself.

Mr. Love. Sir, you did declare this after the Change and Abolition of a King and House of Lords, That a Trial by a Jury of Twelve of the Neighbourhood was according to Law; and you urged Master *Lilburne* with this, That he might plead, and do no harm unto himself. And not only so, but the House also declared, That since the Change of Government, they would never alter that way of Trial: and upon the ninth of *February*, 1648, they did declare, That though they thought fit to abolish the Kingly Office and the House of Lords, yet they resolved

resolved they would still retain and preserve the Fundamental Laws of the Nation, for and concerning the Preservation of the Liberties, Lives and Estates of the People. Now, Sir, they declaring they would never alter this way of Trial, and you declaring this way of Trial by Juries to be according to the Fundamental Laws of the Land, I beseech you give me the Reason why it is denied to me.

Attorn. Gen. My Lord, it is very unusual for a Prisoner to debate with the Court; here he is to be controlled: let him know he is a Prisoner upon the Trial of his Life, before that Court that hath been empowered by the Parliament; they who did never bind their own Hands: I must say, my Lord, they cannot bind their own Hands; and it is this Trial that they have thought fit to give him. And for his excepting against 35, then you will hardly be a Court left. My Lord, I think, if he look upon the Court, he will find no Enemies here, knowing them to be of his Neighbourhood, and most of them of London, and, I think, he known to them, and they to him, the most of them. But, my Lord, these Disputes are not allowed to others; and the Gentleman will (I hope) have so much Modesty at last, that he will think he hath said a little too much to the Court; and I think it is not good to provoke too far. And, my Lord, he hath said much, and you have given him fair Answers, and those that are clear and undeniable. But if he speak of the Jurisdiction of the Court, and that he will not plead, let him speak in plain *English*, and he shall hear me in plain *English*.

Mr. Love. Although I am not satisfied as to the Foundation and Original of this Court, yet I refuse not a Trial, hoping that Tenderneſs of Conscience will appear in you, and Clearneſs in me, and Weakneſs of Proof against me. Upon this I do not refuse a Trial, but I will plead, if I may have that which the Law allows me. And according to my weak Measure and Unskilfulness in the Law, upon the Charge read against me, I do apprehend there may be some things objected against the Legality of the Indictment, and many things to take it off, both for Matter of Time and Form, and other things, by a Lawyer. Therefore I entreat I may have Counsel to be with me, both in my Chamber, and here in the Court; and then I will plead.

Attorn. Gen. I am not here to make a Bargain; but this I will say to him, He hath had so much Tenderneſs and Respect, as few Men more. He hath had notice of his Trial above a Fortnight; and, my Lord, he hath not been denied Counsel.

Mr. Love. I could do nothing in order to my Trial, because I have sent for Counsel, and they would not come near me, because they were not assigned by this Court; and my Studies being another way, and being unskilful in the Law, therefore I could do nothing in Preparation to my Trial. Therefore I pray do not destroy me in a hurry: The more fair the Trial is, the more just you will be, and I the more guilty, if it be proved against me.

Attorn. Gen. I appeal to Master Love, whether or no it was not denied to *Lilburne*; and there is none that hears him, but sees he hath prepared himself, and perused several Acts whereupon he is impeached. But these are Discourses,

my Lord, which if he will put too nigh upon the Court, that we should dispute, we cannot force words from him.

Mr. Love. *Mr. Prideaux* is pleased to urge *Mr. Lilburne*, but I have more Matter of Law arising from the Charge than he had; and have not that Trial by way of a Jury as he had; and there are many things in the Charge said to be done before the Act of the 29th of March, 1650, which gives you Cognizance only of things done from that time; so that many things there are, in which Counsel would advise me: therefore I beseech you deny me not that Right and just Favour.

Ld President. You do not breathe the same Air and the same Breath, for it comes from you both Yea and Nay: for you say you are ignorant, and yet will not be informed by any thing that can be said; and so your Ignorance is wilful. But in this Case, I am sure, what Law soever you can plead, yet there be some Acts and Matters you have denied.

Mr. Love. I have urged Matter of Law arising out of the Charge, from the 29th of March, 1650. There was no Act then, that I know of, that did prohibit the sending of Letters or Messages to or from *Scotland*; and I am indicted for Letters or Messages sent to, and received from *Scotland*, before that time.

Attorn. Gen. I would fain give you satisfaction: do not cast away your self. My Lord, we do use in Law to lay it so for the Fact, we cannot tell what the Proof will be; whether the Proof will be within these three Months or ten Months; and it is laid in relation to other Offences.

Mr. Love. I have here the Letters of several Counsellors, and they return to me their Denial; if I could have got their Counsel, I would: and yet if I had had it, I could not tell what they should have advised me in, not having a Copy of my Charge.

Ld President. If you had desired a Copy of your Charge, you might have had it. You must know you are before those that have Law, and Conscience, and that are bound to be of Counsel for you, and that is the Court; and it is their Duty to see that whatsoever the Law of *England* allows you to have, that that you should have: but you must have it in a due and proper Time and Manner of Law appointed. You are not now for the present where *Lilburne* was, nor before such a Court; he was before a Commission of Oyer and Terminer, who are to proceed according to those Laws, and upon that the Commission directs; and that is by that which the known and fundamental Laws of *England* direct unto: but this is not in all Particulars the like; the Jury there hath a large Latitude, who proceed by way of Grand Jury and Petty-Jury, which are both included in this Court: so that in all things the Proceedings upon that, are not as upon this. But thus far the Proceedings are alike; you have your Charge, and you are to plead to it, for that is the first thing to be done; there is nothing can answer your Charge, but whether you be Guilty or Not guilty: if you plead Not guilty, then the Evidence will be called; and if then any Matter of Law ariseth upon the Evidence, it is the usual Course to assign you Counsel, and to be Counsel for you, and to tell you it is Law to have Counsel: but for you to demand Counsel,

and

and first to have Counsel assigned you, it is against that Form and Legality that the Law of *England* appoints; for till you put your self upon Trial, we cannot allow you Counsel to the Trial; so that you must plead, and it is our Duty to tell you so. And it is the Duty of this Court to be as careful when you have put your self upon Trial, that all the Benefit of the Law may be afforded you; therefore you need not fear it, for if any of these things arise, you now fear upon the Evidence, then will be your time and our time to stand upon this you now do, touching Matter of Law; but in the mean time, in truth that which we are to tell you, and which we are bound in Justice and Conscience to let you know, is this, That you are out of your way; and therefore do not destroy your self: for if you refuse to plead, there is nothing then but a plain downright Judgment.

Mr. *Love*. In ordinary Courts of Judicature the Judges do counsel for the Prisoner; but you are here Judges not only in Matter of Law, but of Matter of Fact also; and therefore I cannot advise with you: For should I confess any thing, then it ariseth out of my own Mouth, and you will condemn me upon it. Seeing therefore both lie in you, both Matter of Law, and Matter of Fact, I beseech you afford me Counsel, and let me have a Copy of my Charge, and Solicitors, that they may be here with me in Court, and then I shall willingly plead.

Attorn. Gen. This cannot be done, nor ever was done, to have Counsel assigned, until upon Matter of Fact something did appear; and for the Copy of the Charge, it was never demanded, I think, before; and it is in vain for us to speak, if the Gentleman do refuse to plead: I shall then press you for Justice.

Mr. *Love*. I do not refuse to plead; but yet I should be guilty of my own Blood, should I not plead for that just and necessary Means for the Preservation of my Life: through my Ignorance I may run my self into Hazard and Danger, therefore I beseech you deny me not that just Favour.

A Lawyer, a Member of the Court. Mr. *Love*, you are not prodigal, you say, of your Blood; nor are we, I hope, prodigal of your Blood; we are to answer for all; therefore I pray let me beg thus much of you. If you plead Not Guilty to the Charge, then there is a Proceeding to be by Master Attorney, to prove you guilty of it; and if by any Evidence, that he shall produce, or in any thing that shall fall out from yourself in Answer to the Evidence, there shall arise Matter of Law, trust us, I pray you, we do promise you that we will give you the Benefit of the Law in it; and when there comes Matter of Law to be decided, which we are persuaded is Matter of Law, then you shall have Counsel assigned you; but there is no Counsel to be allowed till the Prisoner desire it, and shew Matter of Law, for which he desires it.

Another Lawyer of the Court. The main thing you stand upon, Mr. *Love*, is this, That there is no mention made in any Act, that this Court can take cognizance of sending to, or receiving from *Scotland*; but therein you are mistaken; for the business of holding Correspondency with *Scotland*, is in express words appointed to be under the Jurisdiction of this Court; therefore I think you are utterly mistaken in that. Then, Sir, for Counsel, if there comes any thing in

the world that is legal, and is a fit thing Counsel should be heard in, I think I may promise it, we will not make our selves so far guilty of your Blood, as to deny you that Justice that belongs to any Man; for it is your just Right to have it, and we cannot deny it, when a Point of Law ariseth. And you do not urge Matter of Law, only you question the Jurisdiction of the Court, and we must over-rule you in that; for we are not to dispute the Power of the Court: For if the Parliament give us Jurisdiction, and by a special Act appoints, That the business of holding Correspondency with *Scotland* should be within the Cognizance of this Court, we must obey, and not dispute.

Mr. *Love*. I suppose, Sir, a Man may demur concerning the Jurisdiction of a Court to one Point: as if he be accused for Treason at the *Common Pleas*, he may demur to the Jurisdiction of that Court in that: so, Sir, I apprehend there are some things read against me in the Charge, of which this Court cannot take Cognizance, for that they are said to be done before the Act for the constituting of this Court came forth; so that I may demur to the Jurisdiction of the Court in that Particular.

Ld President. For you to anticipate your Evidence before we come to it! we do not tie you to the Charge, but to the Proof; and we must apply ourselves to the Proof, and not to the Charge.

Attorn. Gen. And for the Business of *Scotland*, which troubles him much, it is express'd in this very Act, That the same Offences are to be inquired, tried and judged by the High Court of Justice, in such Manner and Form, as other Offences are to be tried, in express Terms.

Mr. *Love*. But there is no time mentioned; for there are two Acts, wherein if the Prisoner be not indicted within a Year, then the Fact shall not be prosecuted. Therefore I must demur to the Charge, as not legal in Matter of Form. There are two Acts declaring what Offences shall be Treason, wherein it is said in those two Acts, That if the Party be not indicted within a Year, he shall not be indicted at all. Now the Indictment that is against me, looks back to things that are pretended to have been done by me in 1648, and 1649, and so according to those two Acts I am not to be questioned for them, it being above a Year before I was indicted.

Ld President. How is it possible that this comes to be an Exception until you hear the Evidence? If you hear the Evidence, and do find that the Witness do speak to this not within the time of the Limitation, then is your Exception proper; but no Counsel can divine what Time they can give Evidence for.

Mr. *Love*. Sir, I am now to look to the Charge of Treason read against me, and not to the Evidence; and in the Charge I am indicted for those things, for which I apprehend I ought not to be indicted. For according to those two Acts, I ought not to have been indicted for things pretended to have been done by me so long ago: and this I apprehend to be Matter of Law. And for the Witnesses, let them speak to what Time they will, yet this I am sure, they cannot prove that I was indicted within a Year for those things that are charged upon me to be done in 1648, and 1649, for that were to prove an Impossibility: So that it appears to me, I am in-

dicted

dicted for those things for which I ought not to be indicted.

Ld President. It may be so; and if so, those things will fall off of themselves; there may be some things true, and some things not true; and the Counsel may fail in Proof of some of them, and you may clear your self: yet this cannot be before the pleading. When you come to plead, if the matter be not proved against you, and within the time limited, it will fall off of it self without any Words at all; and all this time is lost to all this Auditory, and no Counsel can give you Advice in this.

Mr. Love. I still say, I do not refuse to plead, but if you would afford me Counsel, I should think my Life in a great deal less danger. For I do not know, whether I may not, by the Advice of Counsel, confess some part of the Indictment; whether I may not demur in Law upon some part, or a great part of the Indictment, which I have done already: as that I am charged for Treason for those things that are not within your Cognizance or Power, as I apprehend, and things done before your Acts; and for such things, that if I had done them, I must have been indicted for them within a Year, or else not at all: and these I deem legal Exceptions.

A Member of the Court. My Lord, he is very ignorant of the Law; for the Fact must be put in question before Matter of Law can arise: for if the Fact be one way, then the Law falls out that way; if the Fact be false, then another way. Now if *Mr. Love* brings in any of these Exceptions for Matter of Fact upon Proof, whether he sent Letters into *Scotland*, or in such a time, whether that be any Offence, that will all arise after the Matter of Fact proves true or false: But before that, under favour, none can speak to any thing against an Indictment, unless he speak against the Jurisdiction of the Court. And then for other Matters, they are saved unto him. And you will, I suppose, admit of Counsel in Matter of Law; but his Desire cannot be granted unto him until he plead, and until the Matter of Fact be some way determined.

Mr. Love. I beseech you acquaint me then with the Meaning of these words in Judge *Coke's* Institutes, *The Prisoner at the Bar may have Counsel to overthrow the Indictment.* It must be either to overthrow a part of the Indictment, or to help the Plea, either to plead *Not Guilty* in part, or to demur in part. Let me hear then, I beseech you, what is the Meaning of those words, *That the Prisoner at the Bar may have Counsel to overthrow the Indictment.* I cannot overthrow the Indictment when I plead; for then Witness comes in against me.

Attorn. Gen. He may overthrow the Indictment by the Witness; and I believe he is convinced, that the Court hath Jurisdiction in as full and express terms as Law and Authority can give them. And for the next, I may say, your Lordship and the Court did never allow a Counsel to pick holes and find faults. But if he object that to you that is just and probable, and that which is dubious and doubtful, and fit to be debated in Law, assign him Counsel. You have heard all his particular Exceptions, and given your Judgment upon them all. But I hope, he doth not here expect to have Lectures of Law read him, and to make him understand them. But as to

those particular Exceptions that he hath made to you, I think some Satisfaction is given, and that every Man is satisfied, and that there is no Colour of Doubt there, for Matter of Fact, and the Times that he insists upon. For the Act directing what Offences are Treason, and not to be arraigned unless they be prosecuted within a Year, I must tell him, the Impeachment is laid from 1648 to 1651. Yet, my Lord, I shall make it appear, that the Indictment doth look backward to some Offences, and forward to others. It is laid first in general: he committed such and such Treasons and Offences in such and such Years. And I shall come with the Evidence, and apply them to such Times that are within your power, and in which the Law makes them Offences: and this is to be debated then, and not to be once spoken of now. My Lord, I shall begin from 1648, and run on with him, that he hath continued in a treasonable Disposition, and in treasonable Plottings, to the time he was laid up, and since; and will justify all: and therefore it behoves him to insist upon it. And I will make it appear, that he was one of the first that ever did appear against this Commonwealth in plotting; and he did continue so until the time of his Restraint, and after that time.

Mr. Love. Sir, you are no Witness; if you be a Witness, come and swear.

Attorn. Gen. I will use you with all the Duty of my Place; and if you give me not occasion, I shall not do otherwise.

Mr. Love. I shall give you no occasion.

Ld President. This will make all that hear him to think that this is the very best of his Case; as we know it is.

Mr. Love. Sir, altho I do not come here to have the Law expounded to me, yet I do come here to have the Benefit of the Law; and if the Law allows me this Benefit (I being unskilful) that if I can find in the Charge Matter of Law arising, then to have Counsel to advise me, and to overthrow the Indictment: Why should I be deny'd this Benefit? And I do not yet, according to my Understanding, see that you afford me the Benefit of the Law, you not granting me Counsel to advise me to overthrow the Indictment.

One of the Court. *Mr. Love*, if it were possible, I desire you might have satisfaction, for this that you desire is very just; and when it comes to its proper time, then you shall have it: but do not by disorderly demanding of it out of your time, lose the Benefit you might have of it when it comes to your time. That which you stand upon, and call Law, is not Matter of Law; nor can you call it Law, till you hear what the Fact is. For can any Man judge what is Matter of Law, till he know the Matter of Fact? as it hath been told you well, that the Law ariseth out of the Fact: so that if you will anticipate the Evidence, and the Proof of the Fact, by urging this Matter of Law which you did hear read in the Charge, you will do yourself wrong, and you are mistaken in it; for there is no Matter of Law appears there, for it is barely, *Thus you have done.* And if you say this is Law, you exclude all the Witnesses. Whether you have done it or no, we cannot tell; and if you have done it, whether contrary to Law or no, we cannot tell, because we must apply the Witness

to the Acts of Parliament that authorize us to sit here: and if we find that the Doubt grows upon what the Witnesses say, and upon what the Law saith, then doth Matter of Law arise, and then it is time for you to say, it appears not by this Witness that it is within the Act. I do the rather speak this, because we do extremely desire you should receive Satisfaction, for I would not have any here have any thing put upon him, that may not appear just and according to Law; and none can ever say that a Man had Counsel assigned him, before he pleaded here.

Ld President. It is now the Sessions at *Newgate*, and there may be many Prisoners; and if every Prisoner should take the liberty to plead Matter of Law, and say, I am no Lawyer, let me have Counsel assigned me, and I will answer, when should we have any Man answer? when would Men be executed for robbing, and stealing, and killing?

Mr. Love. That Court is different from this; you here are Judges both of Law and Fact, there the Judges are Judges of Law, and the Jury of Matter of Fact. But, Sir, satisfy me in this; if there be any thing in Law before pleading to overthrow the Indictment, (as I perceive by Judge *Coke* there is, and to which I have received no satisfactory Answer) let me have that legal Benefit to overthrow the Charge. I have said what I can; but if I had Counsel here, they could say a hundred times more.

Ld President. You have heard no body but yourself, for whatsoever hath been told you by the Court and your Friends about you, hath not been hearken'd unto. We have spent thus much time, and People are weak, and if you will plead, do. Read his Charge once again; and I tell you the next is Judgment.

The Clerk. Christopher Love, you stand charged on the behalf of the Keepers of the Liberties of England, by Authority of Parliament, of High-Treason, and of other high Crimes and Offences against the Parliament and People of England; this High Court therefore requires you to give a positive and direct Answer, whether you are Guilty or Not Guilty of the Crimes and Treasons laid to your Charge.

Mr. Love. I am not satisfied, but that Matter of Law doth arise from this Charge; and I do earnestly press I may have Counsel, and then I will plead.

Att. Gen. I do as earnestly press, that you would as positively say, that you cannot allow him Counsel till he hath pleaded.

Mr. Love. I now see Mr. Attorney's words to be true. When he came to me to the Tower, and examined me, the 16th of this Month, he said, That seeing I would not acknowledge (as he called them) my Treasons, I was judged peremptory and obstinate: and I remember he said these words to me; *Mr. Love, though you are too hard for me in the Pulpit, yet I will be too hard for you at the Bar.* And truly now I find it so: and it is an easy matter for a Lawyer, armed with Law and Power, to be too hard for a poor naked Scholar, that hath neither Law nor Power.

Ld President. Doth this do any good to you? If it were so that you are too hard for him, (for you are too hard for every Man in the Pulpit) yet you sometimes are so out, and in that

you are controulable. If Master Attorney be too hard for you here, let him be too hard for you; but it is the Court that are to deal with you here: we will not do it because of his Saying, but you must think that the Court will be led by their Evidence, and not by Mr. Attorney.

Mr. Love. You gave this Favour to Master *Lilburne*, and I do not deny to plead: but I am not prodigal of my Blood, therefore I crave Counsel.

Ld President. I do not know what to say more to give you satisfaction, than what I have said. You say you do not deny to plead, and yet you do not plead; you say Mr. Attorney is too strong for you, but you know it is not he, but the Evidence may be too strong for you. And do not you think that you have such Judges, as will let you receive any prejudice. *Mr. Love*, you are a Minister, I pray shew forth the Spirit of a Minister of Jesus Christ; carry yourself so, as that you may not either wrong yourself or the Court. I would have you behave yourself without recriminating. You speak of Mr. Attorney, as if he could be too hard for you, as if we were all of his side, be it right or wrong: know that we are Men of Conscience, and have Souls to save as well as you.

Mr. Love. The Charge is long, and I never heard of it before, nor knew of it before.

One of the Court. We give you our Faith and Credit, that if any Matter of Law ariseth, we will not make ourselves guilty of your Blood, but we will allow you Counsel: yourself hath read a Book in the Court, that shews the Court cannot allow you Counsel till you plead.

Ld President. Did you ever consult with the Lieutenant of the Tower? What, will you cast away yourself?

Col. West, Lieut. of the Tower. I could, my Lord, advise him no more than what I knew, and that was the time of your sitting.

Mr. Love. I hope you will not in a hurry spill my Blood.

Lieut. of Tower. Since Saturday was seven-night he was not restrained.

Ld President. Your Profession goes much in Profession; but when it is abused, it is the highest Transgression; you would evade things with mental Reservations, and say and unsay at the Bar, as high as any Jesuit can do.

Mr. Love. I will not lye for my Life; you may say what you please, and do what you please, I speak before God and this Audience.

Ld President. *Mr. Love*, know that we are here in as sacred a posture, as you are in the highest Place of your Calling; and if we do not know that God is here present, we are the miserablest Creatures in the world: and therefore if your Office and ours do not make us know that we are in the presence of God and Jesus Christ, it will be but ill for us; and yet you hurry out, that it should be such a terrible thing in you, more than in us. You have spoken many Words as a Shadow in the Air, there is nothing material in them, but the Strength of your Will against the Judgment of the Court.

Mr. Love. If I do plead to the Charge, I do allow the Matter and Form of the Charge to be legal. I desire to have Counsel to come to my Chamber; I do not say, to come to this place, but to have liberty for them to come to my Chamber.

Mr.

Mr. Steele, Recorder of London. I did not think to have spoken, nor have I usually spoken in this Court, yet I will speak a word out of tenderness to yourself. You have very often insisted upon it, that you should have Counsel assigned before you plead, that is it you plead for: truly the Course of Law is this, That if the Prisoner charged at the Bar, before he plead shall demand Counsel, he must of necessity put in some special Plea before the time he can demand Counsel. The Court doth not enforce you to plead Guilty or Not Guilty to the Matter of Fact; but they say, of necessity you must plead. If you put in a special Plea, and tell them that it is a special Plea, and desire Counsel upon it, they will consider it: but till you can declare what that special Plea is, for there is a general Plea, and a special Plea; the general Plea is *Not Guilty*, the special Plea is in some Particulars. Now for you to alledge neither the special Plea nor the general Plea, it is impossible that Counsel can be assigned you. And whereas you say you are concluded if you plead, and cannot object against the Indictment afterwards; no, Sir, I tell you in the name of a Christian, and one that knows a little of the Law, that all the Objections you have against the Indictment, the Formality of it, and those things you speak of, as that of your Fact not being committed in such a time that the Act holds out, that the High Court hath no relation to try you for *Scotland*; all these will be saved to you, if they arise upon Matter of Fact from the Evidence. True, if you make an Objection against the Jurisdiction of the Court, that hath no relation either to the special Plea or general Plea, it cannot be. It is impossible an Objection should be received against the Essence of the Court, there is none can possibly over-rule that for you but themselves; it is such a thing, that no Counsel can be assigned you as to that, because it strikes at the very Being of the Court. Now therefore I beseech you in the name of a Christian, that you will not do yourself that prejudice; for Nature teacheth every Man to preserve himself by all just ways and means: and I do believe that in this Business you have apprehended it for your Preservation, and that you are loth to do any thing that tends to your destruction; but you may satisfy your Conscience, in that you have done what you can. And when you have pleaded, and used all the Arguments you can, and have heard the Judgment of the Court in it, you may satisfy your Conscience, that in the words of honest Men (unless it be the Jurisdiction of the Court, though you have tacitly spoken there) you shall have that Right and Privilege which the Law allows you. I confess, I never spake here before, and it is a Rule amongst us, that none but the President should speak; and we have done more to you, than to the greatest Person that ever spake here, because we think some necessity lies upon us towards you, (in regard of your Calling, and the Worth that hath appeared in you) to direct you what you have to do.

Mr. Love. Sir, a Man may demur touching the Jurisdiction of any Court, if he can shew any thing in the Indictment that the Court cannot take cognizance of, which he is charged with; tho he do not demur simply as to their Jurisdiction in general, yet as to that Particular he

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may demur: as a Man may demur in Chancery, when a Cause is only tryable at the Common Law.

Ld President. You must know, that he that speaks against the Jurisdiction of the Court, speaks against the Jurisdiction of the Parliament of England.

Mr. Steele, Recorder of London. Mr. Love, to help your Understanding, I did not say that Mr. Love did expressly speak against the Power of the Court, as if they had no Power to try him; but this he seemed to say, That what he hath offered against the Jurisdiction of the Court, in any thing he is questioned for, if he have not Counsel for it before, he cannot have it afterwards. Now if the Question you offer be a mix'd Doubt, for your Objection is mix'd; for you say, the Court hath no Power to try the Facts whereof you are indicted: now is it possible the Court can judge of that, or know there is Matter of Law arising out of it, till the Fact appear out of the mouths of the Witnesses? It may be the Fact will not be proved, then there will be no Matter of Law arising; if the Fact be proved that it was done at such a time, before the Act was made, when that appears to them, the Court then will strike it off, you shall not need Counsel, then we shall not regard it: if upon the Fact any other Doubt ariseth in relation to *Scotland*, (for it must be from two Witnesses, your Doubting being mixed with Matter of Fact) we shall then be able to judge of it.

Mr. Love. Sir, if any Crime be laid to my charge, that ought not to be laid, and that this Court can take no cognizance of, I should have Counsel in it.

Ld President. We have spoken more to you than became us, perchance, and that from Tenderness to you; and if nothing can give you satisfaction, but over and over with the same things again, we can but speak our Consciences, and leave it to yourself.

Mr. Love. I do declare I do submit to the Trial, and am willing to do it; but it behoves me to use all just Means for the preservation of my Life: if you will, give me but a day's time to consult with Counsel.

Ld President. That is in your Learning sufficient to say, you will do it, and yet do not do it; because I say I will submit, therefore I do submit; this is no Obedience at all. I know no such Logick as this; it is submitting, that must do it; you will submit, but you will not act: pray, Mr. Love, be so charitable as to take us to be Christians.

Mr. Love. What prejudice, Sir, can it be to this Court, being I have not spoken with any Lawyer, to give me but a day's time? I will desire no more.

Attorn. Gen. I would fain know, why may not the next Prisoner say, You have done so in Mr. Love's Case?

Mr. Love. You have accepted of special Pleas, you did it in the Case of Sir John Stowel; and if I thro my Ignorance in Law cannot urge the Strength of Law, and a special Plea, as otherwise I might do, I beseech you let me not be prejudiced by it.

Ld President. Sir John Stowel insisted upon special Matter he had to plead, and that was, the Articles of *Exeter*; but he did first plead to the Charge, Not Guilty: yet we gave him that

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benefit

benefit; and he had that which did last a great Debate of this Court, and so did *Hamilton*, and divers others: we will do no otherwise with you than with them.

Mr. Love. If you now deny me my special Plea, I cannot help it; which is this, That the writing or sending Letters (if it could be proved against me) into *Scotland*, doth not come within your Act; and that it is only for *England* and *Ireland* that are mentioned therein.

Ld President. If there be a special Plea wherein there is no Difficulty, then we give no Counsel; but a special Plea must have something that is dubious in the Judgment of the Court: but for this, that in the Letter of the Law every School-Boy understands, the Judge will not allow you Counsel in a trivial Matter; we have gone over and over with you again, and this is like other Discourses with you: but certainly never was the like seen, that a Court was so trifled with.

Mr. Love. This is my humble Motion, allow me but Counsel to-morrow, that they may appear here.

Ld President. You may have Counsel to-morrow, as the Case shall be.

Mr. Love. Shall I have the Copy of the Charge?

Ld President. You shall have what is fit, you shall have nothing deny'd you when it comes to you to have it, you shall have that Respect; I do it not to flatter you: but refuse to plead at your Peril.

Mr. Love. Will you give me but this Favour, that I may have but an Hour or two's time to consult with a Lawyer?

Ld President. I do not know but that this that is done, must be done for all that come to the Bar.

Attorn. Gen. I had thought there would have appeared in him that calls himself a Minister of the Gospel, more Meekness and Obedience to Authority, not out-facing Authority; and it is not well done of him. My Lord, I humbly beg, that having had thus much of your Patience, and Persuasion by Arguments, and all Means used to him, and nothing will prevail; that, my Lord, you will now be pleased to give your Judgment according to the Rules that the Law appoints you, upon him that refuseth to plead.

Mr. Love. I do not refuse to plead.

Ld President. Doth a Man of your Learning say, you do not refuse?

Mr. Love. A Man may demur to his Charge, and yet not refuse to plead; and the Court may grant me a Day's Time, if they please; for I come here unarmed and unprepared.

Attorn. Gen. His Demur is to Matter of Fact.

Ld President. Will you put that upon Law, for Law, which is not Law? And by your putting yourself upon that, you confess the whole Charge.

Attorn. Gen. I desire one Favour, my Lord, which is of Justice to him; which is, that you would be pleased to command your Clerk to read that Act that says, *If any Person before you refuse to plead, he may hear the Sentence of the Law upon him.*

Ld President. Clerk, read the Act.

[The Clerk reads that part of the Act about refusing to plead.]

Attorn. Gen. My Lord, we desire his final Sentence.

Mr. Love. My Lord, I desire but the Favour of a Day's Time to consult with Lawyers.

[The Lord President consults a while with the Court.]

Ld President. I now do deliver it from all of the Court, and all of them are of that Mind, and now plead, or you shall have Judgment.

Mr. Love. But if I plead, I desire I may have Counsel to hear the Witnesses.

Ld President. We will not make a Precedent; for it will be said, it was Master *Lilburne's* Case, and Master *Love's* Case.

Mr. Love. Will you promise me, that I shall have Counsel to hear the Witness?

Ld President. We will promise you Justice. Read the Sentence.

[The Clerk goes to read the Sentence.]

Mr. Love. Not Guilty.

Attorn. Gen. My Lord, we do say in the Behalf of the Commonwealth, he is guilty of the Crimes and Treasons laid to his Charge. And, my Lord, you now perceive, that when you have been long troubled, you see he comes very hardly to it; an innocent Man would not have made so much ado, and knowing his Innocency, would not have had so much Capitulation and Trifling with a Court of Justice. My Lord, for these Crimes, you are pleased to observe they are of several Natures, and of long Continuance. And now, my Lord, for the State of the Evidence, it is commended to the Charge of another Gentleman, that is, Master Solicitor-General of the Commonwealth, to open to you the State of the Fact, by which he stands here Impeached and Accused, the Nature of it, and how it should have been carried on, the Series of Time, the Persons with whom he comply'd, how plotted and contrived to undermine this Commonwealth, even to the Foundations of it. My Lord, when that is opened, I will then produce the Evidence to make it good against him.

Mr. Solicitor-Gen. My Lord, *Mr. Love* urgeth much for himself, but he doth not tell you what. For my Part, I never saw his Face till now; but his own Carriage, if that do not do him Wrong, none will. He says, he is singled out from all the rest of his Brethren, I suppose he means those that are his Fellow-Conspirators: the Reason of that is, because he was the first, he had a Hand in the first Action and last Action; so that from the Beginning to the End he was the principal Man, both by Counsel, Friends, Purse, and Encouragement: and that is the Reason he might justly be singled out to be first in the Punishment, because he was first in the Fact. He says, God in *Achan's* Case wrought the Discovery. My Lord, I think the Court will think, that God was the great Discoverer of this great Treason; for through the whole Series of it, it was press'd and carry'd on with as much Caution and Secrecy as the Wit of Man could contrive; and nothing but the Goodness of the God of Lights, the Father of Lights, could have brought this to light, who discovers the Secrets of all Hearts, and hidden things of Darkness; he hath discovered this. My Lord, the Nature of the Treason, it is not One or Ten Treasons, but it is a Mystery of Treasons, woven together during the Space

Space of two Years, under the Notion of Religion. Many of them that were the Conspirators giving out, that they were a Party distinct and separate, and so they did behave themselves like a Party separate from the rest of the Commonwealth. First, This Party did assume to themselves Sovereign Power, and did exercise it divers Ways; they did take upon them to send Agents abroad to treat with foreign Princes and States, Enemies to this Commonwealth, and to give Commission to that purpose, and to give Instructions to that purpose; they did demean themselves in this Point, as if this Party had been a Free State. My Lord, the very first of their Rise was that in *February* 1648. When the *Scots* had declared for the King, then they send immediately to their Brethren here, these Conspirators, to let them know that they intended to make Addresses to the new King very speedily, and that there were Propositions drawing to that Purpose; and did desire a firm Compliance with them, promising them faithfully (and how they kept it, we shall hear) as their Brethren of *Scotland*, that their Interest should be provided for as their own: and the Covenant, that was the Ground of all. When they had thus promised, they believed their Brethren, and thereupon went about the Work, and established a Council at *Dowgate*, and there they met, and plotted and contrived how in the first place to make an Agreement between the King and the *Scots*, to the Intent that when they were agreed, they might come with united Forces to invade this Commonwealth. They were plotting and contriving this about *Midsummer* 1649. They were taken notice of abroad to be considerable Men; and the King of *Scots*, as they called him, thought fit to send an Agent to them, to treat with them, which was one *Mason*, my Lord *Piercy's* Man; his Errand here, was to reconcile both Parties, the Royal and Presbyterian Party, and to make them both subservient to do his Work. My Lord, he treated with the Countess of *Carlisle*, *William Drake*, and divers others, Citizens of *London*, and this was with the Privy of the Ministers. My Lord, he had Commission from the King to assure these Conspirators, that if they could procure the *Scots* to send more moderate Propositions than they had formerly sent (for the Treaty was broken off before, the Propositions were then immoderate) that they should be satisfied. Thereupon they were so confident of themselves, and so bold (and in this Master *Love* had a principal hand) that without any more ado he frames a Letter to *Scotland*, to advise them, and to persuade them by all means to send more moderate Propositions. The *Scots* return them this Answer, That they saw no Cause to send more moderate Propositions; but they desiring a good Success of the Treaty, they should send beforehand to the King, to prepare and move him to comply with the Propositions when they came. Thereupon they were as ready, whereas they sent with the one Hand to the *Scots*, so with the other Hand to the King. They framed a Letter to the King, and I will express it in their own Language; this was the Substance of their Letter: First, they let the Prince know, that there was a considerable Party in *England* sensible of their Sufferings there (they made themselves so considerable;) and by and by you shall see what became of that. First, The

King did understand them to be so considerable. Secondly, They were bound in Conscience and Loyalty, to the utmost to help him to his just Rights, if he were once engaged with them by taking the Covenant, &c. and prosecuting the Ends of it. Thirdly, That there was no Way to do this, but by closing with his Subjects of *Scotland*. Fourthly, that being done, all the Presbyterians were bound to assist him. And this, which they did, must be sent away before Commissioners come, to prepare the King to give them good Entertainment. With this Letter there was a Letter sent to the late Queen, to desire her by all means to work the King to a Compliance with the *Scots*. And there was a Letter sent to my Lord *Piercy* and *Jermin* to that Purpose; taking Notice that the Queen, my Lord *Piercy*, and *Jermin*, were their very good Friends, and ready for this Conjunction: Whereof they took special Notice, and did approve of it as a Thing very acceptable, and which should be remember'd in due time. My Lord, this Letter was sent; and afterwards *Mason* he brings the Answer from the King, and Queen, and *Piercy*; all agreeing to this Work, That the *Scots*, if they came with Propositions, should be complied withal. But *Piercy* and *Jermin* writ further, and did advise them, to the Intent the King might not fall back again, that they would send a meet Person to be present about the King when the Commissioners came, that so he might see fair Play. And thereupon *Titus* was sent away, to be an Agent there for them at this Treaty: And this Treaty was at *Jersey*. But this Treaty took not effect, as was desired: Whereupon they resolved upon another Treay at *Breda*. But at the Treaty at *Breda* the King advised in his Letter (which I shall read) in the latter end of the Letter that they would send Commissioners then to treat with him. My Lord, the Letter was written by the King back again to the Ministers: First, The King in the Letter took notice of the Ministers Non-compliance with the present Power, and of their Loyalty and good Affection to him; and that if God restored him, he would requite them. Secondly, He promised all Satisfaction to the *Scots*. Thirdly, Made large Promises of high Favours, particularly to the Ministers. Fourthly, Wished them to send Commissioners sufficiently instructed, to treat at *Breda*. Now, my Lord, in the Diary that came along with this (for there was a Diary of all *Titus's* Negotiations) in that Diary it did appear, that the King was very much satisfied with the Correspondent's Application to him; and that that should be a main Argument to him to satisfy the *Scots*. So, my Lord, if they had not thus moderated and persuaded the King that they were a very considerable Party, he would never, in all Probability, have closed with the *Scots*, but have thought them very inconsiderable. But when he was informed that if he closed with the *Scots*, he should have a considerable Party in *England*, that made him think the *Scots* were worth closing with. My Lord, *Titus*, in his Negotiation at *Jersey*, did assure the King, That the Ministers were averse to the present Government both in Pulpit and in Print; and that they were well affected to serve him and the Nation; and that the Nation was ready to espouse his Quarrel, if he did join with the *Scots*. This he did assure him in the behalf of the Ministers. And

to shew how they did own this, they did like this Assurance so well, that they send him another Letter; and they did likewise send him a Letter of Thanks for his good Service he had done, in possessing the King how considerable they were. My Lord, after this Business of *Jersey*, when *Titus* had done his good Service there, he was coming home to make his Relation; but hearing by the way that the Council of State had intercepted some Letters, he durst not come farther than *Calais*: And from thence he sends a Letter, to let them know all this; and withal, that he had something to communicate to these Conspirators, that was not fit to be communicated by Letter; and therefore desired that some meet Person might be sent to *Calais*. Thereupon this Letter being read in Mr. *Love's* Study, (so secretly was it carried) there it was agreed that Major *Alford* should be the Man that should go to *Titus*, and should receive all this Account from him. Whereupon *Alford* he went away to *Titus* presently, and there he did speak to him; and *Titus* did acquaint him with all these Proceedings; and withal, they did advise that a Commission should be sent in the latter part of the Letter. So that now they had no more to do, but, since their Hopes failed them at *Jersey*, to have an Eye to the Treaty at *Breda*, where they desired to send Commissioners. My Lord, this Letter, to be presented at *Breda*, was managed at Mr. *Love's* House. Colonel *Masse*, Colonel *Graves*, *Titus*, &c. these were the Parties. There were Letters sent to them to act accordingly: And *Titus* sent Letters to the King and Queen, and *Piercy*. And again, my Lord, for the Commission, it was as transcendent a Boldness as ever was done by private Men: The Commission was corrected by Mr. *Love*; for it was rough-drawn by *William Drake*, which was the *English* Agent here. But Mr. *Love*, in his Study, and Doctor *Drake*, did help to correct it. The Substance of the Commission was this: 'We, the Presbyterian Party in *England*, do authorize you *Francis Lord Willoughby of Parham*, *Edward Masse*, *James Bunce*, *Richard Graves*, and *Sylas Titus*, to treat on our behalf, and the rest of our Brethren the Presbyterians of *England*, with the King; and to assist our Brethren the *Scots* Commissioners in their Treaty with the King, and to do according to the Instructions annexed.' My Lord, here be the Heads of the Instructions; That the Commissioners should use all Arguments they could to move the King to give the *Scots* Satisfaction, and to take the Covenant; and particularly to inform him of the Condition of Affairs, and how Things stood in *England* at that time, all which then cried out for an Agreement with the *Scots*; giving them full Power of all Things; and what should be concluded by them the Commissioners, should be confirmed by the Confederates. I think, my Lord, here was a very large Commission; whatsoever they thought fit, they were willing to comply with and make good. My Lord, at Mr. *Love's* House, at the same time it was moved, (according to a Letter from my Lord *Piercy* to *William Drake*) that a good Sum of Money might be sent the King, as a great Means to dispose the King to an Agreement with the *Scots*. But they did not think fit to be cozened of their Money; but if this Conjunction did follow, then to raise Mo-

ney considerably. And they went on so far, as to debate how to raise this great Sum of Money for this pious Work, as you shall hear by and by, under what Notion when propounded. Those Men agreed that the best way was, That the Ministers should have several Correspondents; and that they should propound the lending of ten, twenty, thirty, forty, or fifty Pounds for a charitable Use: But you must not ask what this charitable Use is for. And this charitable Use, what would it have been? If God had not bless'd the Battel at *Dunbar*, we should have seen it. My Lord, a little before the Battle at *Dunbar*, when they had a Letter from *Masse*, or *Bailey*, or somebody, they then began to understand their Brethren better than before: For he did inform them, That notwithstanding what was pretended, yet for all that there was no *English* employed, nor was the King crowned. This did disturb the Minds of the Conspirators very much; infomuch that they did expostulate with a large Letter, written by Mr. *Love* and Dr. *Drake*, written in a Table-Book in Sack, and sent there. They did expostulate with them, because the Presbyterian Party, which was the over-ruling Party, were grown so confident of carrying all before them, that they did neither crown the King, nor mind the *English*. They did blame them for this, seeing this going upon a single Interest, and upon one Party alone, which they did call Godly, would not do well. And, my Lord, it proved so indeed: They carried it on upon this till the Battel at *Dunbar* came, and then they began to be of another mind. After that Battel, there was a Letter from the Commissioners of Estates, pressing for Arms and Ammunition; and Letters from *Masse* and *Titus* for Money to be sent. My Lord, these good-natured Men, notwithstanding they had been so handsomely dealt withal when their Brethren were in Power, yet for all that, so fierce and eager were they to carry on this great Design, which God knows what it would have come to, they notwithstanding, upon Mr. *Love's* Proposition, (for he was the Man who did propound it) agreed to send five hundred Pounds presently to *Masse*. My Lord, this Money was raised, and Subscriptions taken by Mr. *Love* himself at his own Table. And this is proved by one who brought his ten Pounds: He brought it to Mr. *Love*, and would trust no body else with it. And this was sent away presently by Captain *Masse*. My Lord, there was a large Letter sent also with the Money, wherein was good Counsel; for besides the Money, he did write to advise his Brethren, that it would be notable Service to endeavour after Union. The Letter was sent; and that large Letter, inviting to Union, had been delivered to the Assembly; and that would help to quash the dissenting Party in *Scotland*, who had made the King a Prisoner. But now the State and Church were all agreed: And this was the Fruit of Mr. *Love's* Letter. And if they had not been so united, they could have done no Harm. This Letter came so seasonably, that they conceived it very considerable. They pressing to Union very much, by this means did quash the dissenting Brethren; and by that means they came to be as now they are. My Lord, about *Christmas* last there came a Letter from *Masse*, which gave an Account of crowning their King, and of great Preparations

tions to take the Field; and that the Correspondents here should beware of unseasonable Rising; and that they were most afraid that these Persons would rise too soon, and so spoil all. My Lord, in answer to this Letter, they write back again to *Massey*, to advise him, on the other side, to take heed that he came not into *England* but well provided, and not to depend much upon the Assistance here in *England*: They were afraid he was too weak, as he was afraid they were too forward. My Lord, after *Cook* was apprehended, then the Correspondents met no more at publick Meetings; and yet they received Letters from *Drake*, *Massey*, *Bunce*, and the rest, (whereof Mr. *Love* was still made acquainted, as a principal Man) that told them of the hopeful Condition of the *Scots* Army, that they intended to engage in *England*; advising the Party here not to be too forward. This was the second Advice. And see the Reason of it: For if Mr. *Love* sat at the Helm, as he did, all the Meetings being at his House, after *Drake* went away, he still stating the Question, drew these Letters, and corrected them. And if he were such a main Stickler, truly there was very great Reason for his Advice. My Lord, about the middle of *March* last Colonel *Bamfield's* Man brings an Answer to the Message in the Table-Book, written in Sack, containing four or five Sheets of Paper. Upon this Packet there was nothing written but the Letter *L.* to deliver to one of the Conspirators: And seeing nothing but the Letter *L.* written, he carried it to Mr. *Love*, and Mr. *Love* did own it as sent to him. And that was the large Narrative of the State of Affairs in *Scotland*, after the Fight at *Dunbar*, how Things stood there. My Lord, with this Narrative was sent also a Letter from Mr. *Bailey*, by Order from the General Assembly: They did order Mr. *Bailey* (which was the *Scotch* Correspondent there) to write a large Letter. And there was another Letter from my Lords of *Argyle*, *Lowden*, and *Lothian*, &c. It is worth your observing what this Letter was that came from these Men: First, Thanks for the good Affections of Mr. *Love* and the rest of the Conspirators. Secondly, Incouragement to persevere; and to credit *Bamfield's* Negotiation for Money. Thirdly, Promises to repay all, whatever they should lend. But when and by whom this Payment should be made, the Letter will tell you; and that is, when God shall bless their Endeavours in procuring a Free Parliament in *England*. So the Parliament in *England* must pay all the *Scots* Debts, that these Conspirators shall lend. Truly, I think it will be a very free Parliament indeed, when it comes so free out of the People's Purfes. My Lord, Mr. *Love* and others gave *Bamfield's* Man, that brought this Narrative, out of their own Purfes ten Pounds, and sent a Bill of Exchange of thirty Pounds to *Bamfield*: By one Witness it will be expressly proved, that ten Pounds of this Money came out of Mr. *Love's* Purse. My Lord, *William Drake's* last Letter did inform that *Massey* would break into *England* as soon as there was Grass for his Horses; and therefore he sent to have a good Bank of Money provided in readines; and that they should think of timing a Party; and that they should neither rise too soon nor too late, but just when *Massey* came in. This Mr. *Love* told Major *Adams*. My Lord, now we come

so near to the Time, as that one of these Conspirators is apprehended by the Council of State: When he had been in Restraint three Days, he sent to Mr. *Love*; and Mr. *Love* came to him. But he had been at a kind of Fast; for they did keep Fasts once a Fortnight, at least, and Prayers for the good Success of this Design; That God would bless this wonderful Treason, which was for the making, by the *Scots* Army, an utter Subversion of this Commonwealth, and the free, and noble, and magnanimous People of *England* should be made Vassals and Contributaries to the *Scots* Nation. This was the Design; and for this Design the Ministers fasted and prayed: But it is plain God did abhor such Things. And, my Lord, Master *Love* took upon him to speak to the Person under Restraint; 'Take heed, saith he, what you do, lest you 'wrong your self or others.' And said, 'It is 'true, *Titus's* Man hath broken up Papers; but 'we are all well enough: But give notice to the 'rest of the Confederates, that they may not be 'surpriz'd: But be you not troubled, because 'we have pray'd for you this Day'. And they implored the God of Truth that nothing of all this should come to light, but that we should be in the dark still in generals. My Lord, this is the true State of the Evidence, as near as I can present it, with a frail Memory: And, my Lord, I have opened nothing but Generals; your Lordship and the Court will judge it; and Master *Love* will have the less to do to answer. But it appears by this, that there hath been such a Practice, such a Series of Treason, Treason upon Treason, that one Act of Parliament is not enough to contain it; but all those Acts of Parliament read, every one of them make him a Traitor. And, my Lord, I am sorry I have taken up so much of your Time, especially when you have spent so much Time before: If your Lordship therefore will be pleased to have the Patience to hear the Witnesses, we shall prove more than I have yet opened.

Attorn. Gen. My Lord, this was an early Treason that began betimes to crush the Commonwealth in its Infancy; and, my Lord, Master *Love* being singled out for Justice, you will anon observe there was singular cause for it; and if he had had his Desert, it had been long before now: but States can play sometimes with Treasons, and not take a time till they see fit. My Lord, this Treason, as I have opened it to you, began in the Year 1648. The King of *Scots*, so called, but take notice, that the same Nation and Persons that proclaimed him King of *Scotland*, proclaimed him King of *England* also at the same Time, in the same Nation: and those Persons that proclaimed this Person King of *Scotland*, the same proclaimed him King of *England*. My Lord, you have heard some of the Conspirators named, *Titus* and *Drake*, active Men both of them: These Men have been so ingenuous, that they have fled for their Treasons; notwithstanding this Gentleman, a Minister of the Gospel, he doth not do so: they have confess'd their Offences, and are fled for them; they dare not appear, they have so much Guilt within them that prompts them to keep away; but this Gentleman hath not so much. My Lord, *Drake* was so active, and it was carried on with so much Secrecy, and so much (as they thought) of Caution, that Master *Drake* writing, as
that

that Gentleman next Mr. *Love* doth, in Short-hant, he burnt his Papers, and burnt all where any thing was to be seen; so that no Originals are to be seen. My Lord, in this case it hath been opened unto you what Transactions Mr. *Love* had with *Scotland*, and you have been pleased to observe it was a tender Point, that Mr. *Love* did enter Discourse with the *Scotch* Nation, Mr. *Love* was very much troubled at it, and he may see just Cause to be troubled at it. And will you give me leave, there hath been Blood and Treasure spent, as was told you by Mr. Solicitor. I am afraid I might too justly say by that Gentleman, and those he did seduce, that they have been too much the Cause of this Blood, even that Gentleman that stands at the Bar, that should be a Man of Peace, and not of Blood: My Lord, I may justly say, That that Gentleman hath been too much the Cause of these late Engagements between these two Nations, and making himself a Party: And it is a sad Thing when Parties appear against a State. My Lord, I am too much afraid, whatever God pleases to work upon him, that it should touch his Conscience that he should be instrumental in such a Work. But I verily believe, had there not been Actings from hence, there had not been so much Forwardness in the King's Party to the *Scots*. My Lord, I will mind that Gentleman of what is said of the Fifth of *November*; I am sorry for it, that it should be said of our Ministers, *whose Faith is Faction, whose Religion is Rebellion*: It is said so of the *Romish* Ministers, I hope it will not be said so of the *English*, That their Faith is Faction; and that they pray for Strife, and fast for Strife. My Lord, for these Men, *Drake* and *Titus*, they are gone, as I said; and they did confess themselves so much guilty, as that they have fled for it: and Mr. *Love* doth know (I am sorry to see him in that Gesture) that he was conversant with them all, and doth know (I believe) that we can prove it; and when he hears the Men named, he will say so too. Truly, my Lord, I have nothing to say against the Person of the Man, but against his Vices and Faults; and nothing to his Function, and nothing to those whom he pretends so boldly to represent, that is, the Presbyterian Party. We do all know there are many honest, precious, and godly Men, that have received no Discouragement from the State; nor this Gentleman, that should give him any Countenance or Encouragement to oppose the State. But it is somewhat a bold Thing, for a particular Man to be the Head of a Party; and they to engage as representing a considerable Party, to engage to send Commissioners to agree upon Instructions: This is very bold. But, my Lord, God be thanked, many of those that were seduced at first were wise, and did come in before the last; and did not strut it out, my Lord, with States and Justice, as that Man hath done before now, and at present, even out-facing Justice, and boldly, I say, wiping his Lips: He hath done no Offence. My Lord, they were so bold with *Scotland*, that there was a known Agent there maintained and kept between *Scotland* and them: And I will tell him the Gentleman's Name; his Name was Mr. *Sterks*. And, my Lord, when he went away, the Act requiring those of the *Scotish* Nation to be gone, that Gentleman did supply him with Money himself, and others gave

him eight or ten Pounds in his Purse, to carry him away. My Lord, I believe he knows this: And I am sorry that that Gentleman, that hath gone along with us in much of this War, that he should at last so much betray his own Discretion, as rather to trust a reconciled Enemy, than to be true to his own Friends. I say, he trusts a reconciled Enemy, and a weak Enemy; and that he will think, and will know, that they might betray him; as justly may be done, when Men so cast themselves upon the Party of the King, and Queen, and *Piercy*, and *Jermin*. It is no great Policy nor Discretion to have so many of Counsel: They say three keeps Counsel; but this Gentleman hath now twenty, thirty, forty, in *Scotland*, *France*, and *Holland*, and Agitations between them, and frequent Intercourses. My Lord, I shall now call the Witnesses out to you, which when Mr. *Love* doth see, himself will say are honest Men, and to be believed.

Mr. *Love*. My Lord, I beseech you let me speak a Word.

Attorn. Gen. My Lord, he hath heard his Charge in particular; and those Things which, if he be ingenuous to himself and his own Conscience, he cannot but know we shall prove them: And before we prove them, I desire to hear whether, or no, he will confess them.

Mr. *Love*. I hope this Court will not hearken to the Insinuations of Instruments of State, who are well rewarded for their eager Prosecution of Men in such a Condition as I am in: It is an easy matter, through Flourishes of Law, and Strains of Wit, to stir up the Minds of my Judges against me.

Ld President. You have heard the Matter opened to you; which you cannot in any christian or godly Conscience or Understanding but acknowledge, that such Secrets as these you were privy to, and came to your hand: You cannot, before God and Man, do better than to confess these, which you know, by the urging of them upon you, are come to our knowledge.

Mr. *Love*. Will you give me leave to express my self as to these Things which I am now charged with? I do declare and protest, in the Presence of God and this great Assembly, that I never wrote any Letter, either to the King of *Scots*, or to the Queen his Mother, or to the Church or State of *Scotland* in the general, or to any particular Person of the *Scotish* Nation, since the Wars began between *England* and *Scotland*, to this day. I do declare also, in the Presence of the same God, I never received any Letters, written to me, either from the King of *Scotland*, or Queen his Mother, or from the Church or State of *Scotland* in general, or from any particular Person of the *Scotish* Nation, since the Wars began between the two Nations, to this day. I declare and protest likewise, in the Presence of the same God, I never collected, or gave, or lent one Penny of Money either to send into *Scotland*, or into any foreign Part, to the King, or Queen his Mother, or to the Church or State of *Scotland* in general, or to any particular Person of the *Scotish* Nation, since the Wars began to this very day. And as to these Particulars, I have said it often, I am as innocent and as harmless as the least Child: And if you will take the aggravating of these Circumstances against me, and will proceed upon Aggravations

of the Crimes against me, I hope God will help me with more Peace of Conscience to undergo the Censure, than you shall have to inflict it. And as for that Gentleman, that made that great Relation to you of the Treaty of *Jersey*; for my part, I am as great a Stranger to all those Transactions as any here: I never saw the Face of *Titus*; nor did I ever send to him, or receive any thing from him.

Attorn. Gen. My Lord, we shall call the Witnesses.

[Captain *Potter* is called into the Court.]

Mr. Love. I except and protest against this Witness; for he hath been already examined in private, and hath made his Confession there; and that is equivalent to a Conviction: And I hope the Court, in Justice, will not admit of this Man for a Witness.

Ld President. You shall have Justice as well as ever any Jesuit had.

Attorn. Gen. You see now what *Mr. Love* drives at, and you will find his Jesuitical Evasions. And, my Lord, let him be asked, whether ever this Man was before this Court, or any Committee of this Court; and I think in Justice you ought to examine Witnesses beforehand. But it is clear and evident that this Man hath been a Party with him. I do humbly conceive it is so clear and evident, that rather I should except against the Witness, as an incompetent Witness, than *Mr. Love*, because he hath been a Party with him: But I desire he may be a competent Witness, and one in whom there is more Ingenuity than there is in *Mr. Love*.

Mr. Love. Sir, before he swears, I beseech you ask him this Question, Whether he hath not been threatned with Death, if he would not witness against me?

Ld President. You cannot over-rule us with your Beseechings and Beseechings; it will not do it: Your Over-importunity shall not prevail with us.

Mr. Love. Let God prevail with you: Though he may be *Legalis Testis* before Conviction, yet he cannot be so after Conviction.

The Clerk. *The Evidence you shall give, between the Keepers of the Liberties of England and the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.*

[He is sworn.]

Ld President. Now look upon the God of Truth and speak the Truth.

Capt. Potter. I shall speak the Truth.

Attorn. Gen. That Gentleman was pleased to trust others, as I said, even reconciled Enemies, and fell from his Friends. I do grant that this Gentleman hath confessed: And if every honest Man confess his Fault, that is no Offence; for an honest Man questioned for a Fact, to confess the Truth thereof: I have not heard that that is no good Law. And I do say, that before ever this Man came to be examined, we did know it all; and perchance from those that this Gentleman thought fitter to trust than us. But we did so know it before, that every Circumstance was opened by us; and we did convince this Gentleman and others, tho not *Mr. Love*. But *Mr. Love* saith he must not accuse himself, he must not answer; but this Gentleman did more ingenuously. I do affirm that he was questioned to every Par-

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ticular, before he answered: And we do know that the State hath long Hands and Ears. Now, my Lord, if you please, ask *Mr. Potter* what he knows of this Business, of sending to and receiving from *Scotland*.

Ld President. You are upon your Oath, and in the Presence of God, than whom there is no higher upon the Earth, that is in the Seat of Justice, and without relation (as *Mr. Love* saith) to the Parties: Therefore tell the Truth of your Knowledge in the Transaction of this treacherous Treason, that hath been now above two Years in the Passages, between the Presbyterian Party.

Attorn. Gen. No, my Lord, we will not own that upon them: There are some that do style themselves so, the Presbyterian Party, that are conscientious Persons, and pious and godly Men; and I should do them wrong, should I lay it upon them: But that which I do, is against those that do undertake to style themselves the Heads of them.

Ld President. Begin then with that which concerns *Mr. Drake's Agency*.

Captain Potter. I have taken an Oath to speak the whole Truth in this Business; but that is the Truth I know. I desire I may not be press'd to Things that I have only heard.

Attorn. Gen. You must, and from whom you heard them.

Capt. Potter. I was examined several times, and had a wide Latitude there; and then I was to speak to every Truth as I thought and heard: But now I have taken an Oath to speak the Truth between the State and this Gentleman. And I beseech you that I may be held close to those Things, and I will give you the fullest and fairest Account I can. What I said before, was in order to the Discovery of the Thing, much of which I had by hear-say from others; and in that I may mistake in Persons, Places, and Times. What I have done my self, and what I know this Gentleman hath done, that may be put to me fully.

Mr. Love. The Witness must so speak, *That we have seen and heard, that do we testify.*

Attorn. Gen. Your Doctrine will not pass here.

Mr. Love. It is Scripture, Sir; and it behoves me to speak, for I am upon my Life.

Attorn. Gen. *Mr. Potter*, speak what you know, and from whom; and I desire there may be no Glosses put there by those who, I am sure, cannot do it. I ask you first of the Proceedings, and sending to *Scotland*, and back again to *England*; and what you know of it, and from whom.

Capt. Potter. My Lord, the Committee that examined me knows I was not privy to the first Transaction: I did say indeed something of it by hear-say; and I did likewise say that *Mr. Drake* told it me. But I may err in that Particular; possibly *Mr. Drake* did not tell me so; for, as I apprehend, I said I did think it did put a Necessity upon the King to agree with the *Scots*; and then having seen some Papers, and conferred with that Relation others have made, I collected the Truth of them, as far as I did know. But now I am upon my Oath; let me therefore come to the Matter: I spake then many Things as I heard, which I cannot affirm upon my Oath.

Ld President. We must judge of what you have heard.

O

Capt.

Capt. Potter. My Lord, I cannot be certain of that.

Attorn. Gen. That is receded from. But what do you know of *Mason's* coming over here?

Capt. Potter. I know nothing of *Mason*: I saw him but once; and at that Time there past nothing between us of publick Concernment, as I remember.

Attorn. Gen. What was the Answer that was returned to that which *Mason* did bring?

Capt. Potter. That I can speak nothing to of my own Knowledge: I heard he was come hither; and was here to see the Tempers of Men, and to see how Things were like to go.

Attorn. Gen. My Lord, ask him from whom he came.

Capt. Potter. It was said he came from my Lord *Piercy*. But these Things are so remote from me, that I can say nothing to them of my own Knowledge.

Attorn. Gen. My Lord, let him speak what he knows about reconciling the Presbyterian Parties.

Capt. Potter. I think others can speak more close to that; I can say nothing but by hearsay: I heard that *Mason* did endeavour here to find how the Affections of the People stood; and whether there was a Necessity that the King should comply with the *Scots*, or with the Cavaliering Party; and that he found a Necessity of complying with the *Scots*.

Ld President. What Assistance should he have from hence?

Capt. Potter. I know no more of *Mason* than this.

Attorn. Gen. My Lord, ask him if there were not some Letters returned by *Mason*, in answer to what he brought.

Capt. Potter. Not that I know of.

Ld President. Did you hear of it?

Capt. Potter. I think I did hear of it: But I cannot tell by whom; I think by *William Drake*.

Attorn. Gen. My Lord, ask him whether he knows of any Petition sent to the King of *Scots*.

Capt. Potter. I do not know of any; but have heard so.

Ld President. By whom did you hear so?

Capt. Potter. By *William Drake*.

Ld President. Who did *Drake* say did carry the Petition?

Capt. Potter. I cannot tell.

Attorn. Gen. Do you know of any Answer returned from *Piercy* and *Jermin*?

Capt. Potter. I know nothing at all of these Things.

Ld President. Were not you invited to the Meeting?

Capt. Potter. Yes, I was.

Attorn. Gen. What did he tell you?

Capt. Potter. Nothing at all: We had nothing but common Discourse there.

Attorn. Gen. Who was there?

Capt. Potter. There was *William Drake*, Major *Alford*; and I think *Mason* and *Titus* were there.

Ld President. Do you remember any more?

Capt. Potter. I do not remember; nor can I certainly say they were there.

Ld President. Were not you press'd or moved to go to *Jersey*?

Capt. Potter. Not that I know of.

Ld President. Did not *Titus* offer to go?

Capt. Potter. I cannot well tell: But at that Time, or some other, he either was spoken to go, or offered to go.

Ld President. How long ago?

Capt. Potter. My Lord, I cannot speak this of my own Knowledge; but I have heard say, I think, a Month after the Time.

Ld President. Had he any Money to bear his Charges?

Capt. Potter. I know of none.

Attorn. Gen. Well, what Meetings afterwards was there in Mr. *Love's* Study?

Capt. Potter. I have been at Mr. *Love's* several times.

Attorn. Gen. My Lord, ask him whether he was not present in Mr. *Love's* Study, when a Letter was there read from *Titus*; and who was present there: and what were the Debates upon it; and what was the Contents of the Letter; and whether it was not for some to come to *Calais* to him.

Capt. Potter. The Letter I well remember: I cannot say it was Mr. *Love's* Study; nor can I say it was in his House: I do not know Mr. *Love* was present. The Letter, I have seen it, or heard of it: It did desire some to come to *Calais* about the Treaty: And I remember well that Major *Alford* told me he did go to him.

Ld President. What was the Contents of the Letter?

Capt. Potter. I cannot well remember that I have seen it: But I have either seen it or heard of it; I cannot tell which.

Ld President. You must be true to the State, and speak the Truth.

Capt. Potter. My Lord, I would be true to the State, and to the Gentleman at the Bar too: And, my Lord, I can say no more to it: I either saw it, or heard of it; I cannot tell which. I am upon my Oath, my Lord: The Letter did desire some body to come to *Calais* to him.

Attorn. Gen. Was not this Meeting in Mr. *Love's* Study?

Capt. Potter. I cannot say it was in his House: I rather think it was not.

Ld President. Was he present?

Capt. Potter. I cannot say he was present; I think he was not present: I think Mr. *Alford* was sent to the Tavern.

[The Papers of Captain *Potter's* Examinations were here produced by the Attorney-General, and by the Clerk read to him.]

Attorn. Gen. My Lord, these were his Examinations.

Capt. Potter. I intreat this may be remember'd, (which I premised at first) I had a Latitude then, that I have not now: I am now upon my Oath, and desire to be true to my own Conscience, and to the State, and to this Gentleman. I have made (it is true) such a Confession as this is; and I believe the greatest part of it to be true, according to the Latitude I spake it in: But now I am upon my Oath, and now I am to speak knowingly. The Substance of the Thing is true; I believe that he was sent, and sent upon such Things: So much I do verily believe to be true, upon my Oath; but of the Places I cannot speak.

Attorn. Gen. *Alford* did go to *Calais*, and return: And how many Days was it between his going

going and returning? And where did he give an Account of what he did receive from *Titus* at *Calais*?

Capt. Potter. It is a hard Matter for me to speak to the Time: I think about a Week. And for the Relation he made when he came back, as I take it, I met him at the *King's-Head* in *Walbroke* upon his Landing; whether he made the Relation to me there, or afterwards at Mr. *Love's*; whether I heard of the Meeting, or whether I was at the Meeting, I cannot say. I am sure he 'himself made me the Relation; but whether there, or any other where, I cannot make out.

Attorn. Gen. Upon your Oath, did not Major *Alford* make return of the Answer in Master *Love's* Study?

Capt. Potter. I cannot say it; but I think it was there.

Attorn. Gen. Was Master *Love* present?

Capt. Potter. I think he was present; and I think it was in his House: I am sure Major *Alford* made me a particular Relation between him and I.

Attorn. Gen. Was *Sterks*, the *Scotch* Agent, there, or no?

Capt. Potter. I cannot say he was.

Ld President. Was it read in Master *Love's* Study?

Capt. Potter. I cannot say I was there.

[His Examination was again read to him.]

Attorn. Gen. What was the Substance of the King's Letter?

Capt. Potter. It is so much out of my Memory, that I scarce remember there was a Letter; it is so much out of my Mind.

[More of his Examination was read to him.]

Ld President. What do you remember of this now? Is this true?

Capt. Potter. I remember I have heard as much; and I believe it is true.

Ld President. Have you not heard the Letter read?

Capt. Potter. I do not know there was a Letter sent; nor do I know there was a Letter read. I desire to speak the Truth: I had a Latitude then, that I have not now; I had then such an Information shewed me, and I spake to it so far as I thought it was true. These Papers you shew me, as my Examination, were not of my framing.

The Clerk. Look upon them: Is not this your Hand?

Capt. Potter. I know it is my Hand.

Attorn. Gen. My Lord, I did go to the Tower to him, and was with him, and did examine him. My Lord, here be those that will prove it, that himself did confess, and said it was true: And he took time himself to inform himself, and had (as he said) other Mens Examinations and Informations by; and he did add and amend, and gave it under his Hand. This is the Truth, after several Examinations. And he had Papers by him, and did correct them himself, and brought them under his own Hand written by himself, these very Things. And, my Lord, ask him whether he did not write these Things first with his own Hand, and bring them to the Committee of Examinations.

Ld President. Whether did you not bring in

your own Examinations, and what you could inform, written by your own Hand?

Capt. Potter. My Lord, that is my Hand; and what is there I must own as mine. But I hope you will let me distinguish between what I delivered then as I heard it and thought, and what I deliver positively. I do say it is true now, as I have heard.

Ld President. Why did you not say of Hearing then, as well as now?

Attorn. Gen. Upon the Oath you have taken, whether do you not know this of your own Knowledge?

Capt. Potter. Upon the Oath I have taken (and I desire to speak it in God's Presence) I do not remember that I saw the Letter from the King, or heard the Letter read, or the Copy; nor can I say *Alford* told me so much, though I think he did, yet I do not know he did.

Mr. Love. I desire you would take notice whether this be fair, that Mr. Attorney should help the Witness, by putting things into his Mouth?

Attorn. Gen. My Lord, I can help the Witness by asking him Questions.

Capt. Potter. My Lord, no Man shall so far tamper with me, as to make me say an Untruth.

Attorn. Gen. My Lord, pray ask him whether he did not write these Papers, most of them, with his own Hand.

Capt. Potter. True; but to open to the Committee the ground of this Business: But I did not expect to swear to every one of these Particulars.

Attorn. Gen. My Lord, ask him whether after this Return was made there was not a Meeting, and Instructions made about the Commission to be sent to *Breda*.

Capt. Potter. My Lord, to that, I have heard so much; but I cannot speak it positively. I saw no Commission, nor Instructions: I heard there was both. I do not know by whom I have heard it; I think by *William Drake*.

Ld President. Were you not at Mr. *Love's* House when they were drawn up, and Mr. *Love* corrected them?

Capt. Potter. I never saw the Instructions.

Mr. Love. Nor I neither.

Ld President. Did you not hear so?

Capt. Potter. I did.

Ld President. To whom to be directed?

Capt. Potter. To Captain *Titus*.

Ld President. And to who else?

Capt. Potter. The Commissions and Instructions were to be directed to my Lord *Willoughby* of *Parham*, Colonel *Graves*, Major-General *Massej*, Captain *Titus*, and Alderman *Bunce*.

Attorn. Gen. My Lord, ask him whether he hath not heard Mr. *Love* tell him so.

Capt. Potter. Never in my Life.

Ld President. Were you not then present at his House?

Capt. Potter. I know not that I was; nor can I remember.

[His Examination was again read.]

Attorn. Gen. Whether were you not at Mr. *Love's* House? And was there not a Letter agreed upon to *Massej*, and *Bailey*, and *Titus*?

Capt. Potter. I have been several times at Mr. *Love's* House.

Ld President. Whether were you not at Mr. Love's House with these Correspondents?

Capt. Potter. I have been several times at his House with them; and I have been oftner there upon other Occasions.

Ld President. Name them.

Capt. Potter. I mean with Mr. Love, and Mr. Jackson, and Mr. Robinson, and Major Alford, and Mr. Drake, and Mr. Gibbons.

Ld President. What was then agreed upon about Letters when you were at Mr. Love's House?

Capt. Potter. I have a very bad Memory, I cannot speak to Time, and Places, and Persons; such Letters I have heard of were written, I profess I can speak no more knowingly. I never had a hand in any one Letter, but such Letters I have heard of.

Ld President. Upon what account did you meet at Mr. Love's House?

Capt. Potter. I met there sometimes upon a friendly Account, sometimes upon a christian Account, and sometimes to hear News, and sometimes to tell News.

Ld President. Where did you meet with these Persons, William Drake, and these so often mentioned?

Capt. Potter. My Lord, there was a Correspondency in point of News.

Ld President. Between whom?

Capt. Potter. Between Captain Titus there, and William Drake here; and he would tell us many times News there.

Ld President. Do you know Titus was imployed as an Agent hence?

Capt. Potter. I think he was.

Ld President. Had he Money collected?

Capt. Potter. I do not know of one Penny I lent him, and I never contributed to him.

Attorn. Gen. My Lord, ask him, whether himself did not, upon an Occasion, contribute ten Pounds, and bring it into Mr. Love's Parlour?

Capt. Potter. I confess that.

Attorn. Gen. For a Table-book that was written in Sack, do you know of any such thing?

Capt. Potter. I do, my Lord; I went to William Drake in his Retirement, and he was writing out of his Papers some Letters in a Table-book, which he told me was in Sack, as I take it.

Ld President. Why did he write them in Sack?

Capt. Potter. I take it, because it should not be discovered.

Ld President. Do you not know to whom the Letters written in Sack were sent?

Capt. Potter. I know not; but he told me to Bailey and Titus.

Ld President. Where was Bailey and Titus then?

Capt. Potter. I know not where Titus was, but I think Bailey was in Scotland.

Ld President. After Drake was gone, where were your Meetings usually?

Capt. Potter. Many times at Mr. Love's House.

Ld President. When you did meet there, what did you meet upon? Was it not to receive Messages from Titus, and Massey, and Bunce, and Baily, and to return Answers?

Capt. Potter. We had sometimes Letters read there, but from whom they came, or to whom, I believe few can tell, I cannot tell; something of News we have heard, of Affairs; that was the Occasion of my coming sometimes.

Attorn. Gen. Did Mr. Love never tell you the Occasions of those Meetings, and press you to lend Money to furnish Massey and Titus?

Capt. Potter. I can say nothing to that.

Attorn. Gen. What say you to the private Fafts?

Capt. Potter. There were private Fafts.

Attorn. Gen. What! for a Blessing upon the Treaty at Breda?

Capt. Potter. There were Fafts kept, but I never understood they were for any other end, but for the Sins of, and Judgments upon the Nations; and for the most part there have been hundreds of Men and Women there.

Attorn. Gen. Did Mr. Love often officiate there?

Capt. Potter. He hath preached and prayed.

Ld President. Did any pray for a Blessing upon the Treaty?

Capt. Potter. I cannot say so.

Attorn. Gen. What say you to those Letters that came hither after the Fight at Dunbar?

Capt. Potter. My Lord, after the Fight at Dunbar there came Letters from Bailey, and Titus, and Massey.

Ld President. And where were these published?

Capt. Potter. My Lord, I can say no more; I have heard of these Letters too.

Ld President. Were not you present at Mr. Love's House when they were read, or made known there?

Capt. Potter. Possibly I was; I cannot say I heard the Letters read there. I did hear Letters by a private Hand occasionally afterwards.

Attorn. Gen. By the Oath you have taken, were you not present at Mr. Love's House, when those aforesaid Letters from Titus, and Bailey, and Massey, were published and read?

Capt. Potter. My Lord, I cannot say I was there, and I dare not say I was not; it is a Year ago: I believe I was there several times when several Letters were read, and it may be when those were read.

Ld President. Whether was there not five Pounds given to a Messenger that brought them?

Capt. Potter. I have heard there was, but I do not know it.

Ld President. Did you contribute any thing towards it?

Capt. Potter. I think I did contribute ten Shillings.

Ld President. Who contributed besides yourself?

Capt. Potter. I know not.

Attorn. Gen. Was there not at Mr. Love's a Promise of Arms or Letters?

Capt. Potter. My Lord, I cannot say so.

Attorn. Gen. What can you say?

Capt. Potter. I have heard there was.

Attorn. Gen. By whom have you heard it?

Capt. Potter. I cannot say by whom, or who told me so, either Mr. Alford, or Adams, or Far, or some of those Men that used to meet there; for it was common, when I was not there, for some or other to meet with me.

Attorn. Gen. Did Mr. Love contribute to the Messenger?

Capt. Potter. I cannot say he did.

Attorn. Gen. My Lord, I do not ask him one Question, but what himself hath confess'd.

Capt.

Capt. Potter. I do remember such Letters I have heard did come, but never saw those Letters; I do likewise remember I heard there were five Pounds gathered for the Messenger, and I do believe I contributed ten Shillings towards it.

Attorn. Gen. Who else gave beside your self, and who received it?

Capt. Potter. I profess I know not.

Attorn. Gen. Whether was there not a Declaration to the Church of Scotland then published?

Capt. Potter. The Declaration, I know nothing of it; you remembred me of it at the Committee, when I was first examined, but I knew nothing of it.

Attorn. Gen. My Lord, ask him whether the State and Church did not write for Arms and Ammunition at that time after the Fight.

Capt. Potter. My Lord, I have heard so much, but cannot speak positively or particularly to it; I have heard of such Letters, but cannot tell by whom; I saw them not.

Attorn. Gen. To whom were they directed?

Capt. Potter. I never heard who wrote them, nor to whom they were directed.

Attorn. Gen. Was there not one Letter with L. upon it?

Capt. Potter. My Lord, about the Letter L. I did receive those Letters my self, there was an L. written upon them: My Lord, these Letters came from *Bamfield* out of Scotland. There was in these Letters a large Narrative of the Affairs of Scotland, from *Dunbar-Fight* to the time of the Date of them, which I think was about *Christmas*: This is a thing I know better than (I am afraid I give offence by saying, I think, and I heard, and that I cannot speak positively; but of this I can speak positively.) *Bamfield* gave an Account therein of a Narrative of two Sheets of Paper, and I and another or two opened them; and I carried these Letters to Mr. *Love's*; there was one or two more with me, Mr. *Jaquel*, and I think Mr. *Drake*, I cannot well tell. There was a Narrative of the Scots Affairs, and a Letter from nameless Persons, which we suppose to be from Mr. *Bailey*, and from my Lords of *Argyle*, and *Lowdon*, and *Lothian*, and others, whose Names I do not remember. These Letters wrote for ten thousand Pounds for buying of Arms, and hiring of Shipping. These Letters we disliked, and we dissented from them, and agreed to give a negative Answer; but we thought fit, for our own Safety, to raise some Money for the Messenger and *Bamfield*, to which I contributed ten Pounds. I carried all these Letters to Mr. *Love's*; one or two were opened, I think we opened them; the Narrative and my Lord of *Argyle's* Letter I opened, before I understood what they were.

Attorn. Gen. Why did you carry them to Mr. *Love's*?

Capt. Potter. There was a great deal of News in them: there was a Letter L. and I did in my Examination say, I conceived it was to Mr. *Love*; but now upon my Oath, I do not remember very well, and I do not think it was to Mr. *Love*. I do confess I carried these Letters to Mr. *Love's*, I and Mr. *Jaquel*; these Letters were opened, but whether Mr. *Love* opened them, or I, or the other, I cannot tell.

Attorn. Gen. With whom did you leave them?

Capt. Potter. I brought them away, all of them.

Attorn. Gen. Were they not read?

Capt. Potter. They were all read.

Attorn. Gen. He confesseth further, he paid ten Pounds: To whom were the Letters directed.

Capt. Potter. The Letters had no Direction at all upon them, I believe.

Attorn. Gen. My Lord, ask him, whether there was not a Sum of four or five hundred Pounds agreed to be raised.

Capt. Potter. The Advice that was given to that, was, That we should do nothing in it, and we did nothing in it more than I tell you; I carried those Letters to them, and had Discourse of them, and resolved to do nothing in them.

Attorn. Gen. Why did you carry them to Mr. *Love's*?

Capt. Potter. I went for Advice, what I should do with them.

Attorn. Gen. My Lord, pray ask him concerning the four or five hundred Pounds, and for what; and whether this Discourse was at Mr. *Love's* House. Whether there was not a Proposition for raising four or five hundred Pounds, and for whom this was to be raised, and where to be raised, and by what Means.

Capt. Potter. I heard there was, I do not know the Place where; to this I contributed ten Pounds, I brought it one Evening to Mr. *Love's* House, and there I left it.

Attorn. Gen. Where was this Money agreed to be raised?

Capt. Potter. I cannot speak to that.

Attorn. Gen. Who took the Subscriptions?

Capt. Potter. I cannot speak to that neither.

Attorn. Gen. Did Mr. *Love* contribute?

Capt. Potter. I cannot say he did.

Attorn. Gen. Was it in his House?

Capt. Potter. I do not know that I subscribed at all, I do not think there were any Subscriptions; I am sure I never subscribed my Name.

Attorn. Gen. When you came into Mr. *Love's* Parlour, and left the ten Pounds, did you not give him a twitch by the Hand?

Capt. Potter. I cannot say so. [His Examination was again read.]

Ld President. Is this true?

Capt. Potter. The Substance of it is true.

Ld President. Of your own knowledge?

Capt. Potter. Of my own knowledge that I left so much Money.

[The Clerk reads more of his Examination.]

Capt. Potter. This is a Section I never worded, or phrased my self; I have heard as much as this comes to, but cannot speak it knowingly.

Attorn. Gen. Did you not write this your self?

Capt. Potter. I believe not, I cannot positively say that Mr. *Love* either drew up the Letter, or received the Letter.

Attorn. Gen. You say he received the Letter from your own Hands.

Capt. Potter. But not the Letter from *Titus* and *Bailey*.

Attorn. Gen. Do you know of a way of Correspondency laid at *Kendal*, or no?

Capt. Potter. I heard there was such a Correspondency.

Attorn. Gen. By whom?

Capt. Potter. I cannot say by whom.

Attorn.

Attorn. Gen. Do you know that *Groves* was sent to look for Letters there?

Capt. Potter. Yes.

Ld President. Did Mr. *Love* know of it?

Capt. Potter. I cannot say he did.

Attorn. Gen. What had *Groves* for his pains for going?

Capt. Potter. Ten Pounds.

Attorn. Gen. From whom?

Capt. Potter. I paid it.

Attorn. Gen. Did you receive any of it again?

Capt. Potter. I did receive some of it, I received two 10s. by several Persons.

Attorn. Gen. From whom?

Capt. Potter. From *Gibbons*, and *Alford*, and *Far*.

Attorn. Gen. Not from Mr. *Love*?

Capt. Potter. I do not know I ever had a Far-thing from him in my Life.

Attorn. Gen. My Lord, ask him whether there were not Letters returned to *Bamfield* again, and by whom?

Capt. Potter. My Lord, I did receive a Letter that I suppose was to *Bamfield*.

Ld President. From whom did you receive it?

Capt. Potter. It was left in my Shop.

Ld President. By whom?

Capt. Potter. I cannot say by whom.

Ld President. Whom do you conceive it came from?

Capt. Potter. I think from Mr. *Love* or Dr. *Drake*.

Attorn. Gen. Do you conceive so? My Lord, ask him whether Mr. *Love* or Dr. *Drake* was not appointed to draw the Letter.

Capt. Potter. When we were together, there was a negative Answer resolved upon; and this Answer, to the best of my Remembrance, was agreed to be drawn up by Mr. *Love* and Dr. *Drake*: but I received this Letter.

Attorn. Gen. And who received the thirty Pounds?

Capt. Potter. I cannot tell.

Attorn. Gen. But you sent the Letter?

Capt. Potter. I did.

Attorn. Gen. Ask him whether he did not send for Mr. *Love*, and what Discourse pass'd between them, since he was in Prison.

Capt. Potter. I did send for Mr. *Love*, and he did come to me; and I desired his Counsel, as a Minister, and I told him upon what score I was questioned; then I was questioned upon Mr. *Cook* only, and he gave me Encouragement only as a Friend and Minister of the Gospel ought to do.

Attorn. Gen. What was that?

Capt. Potter. He wish'd me to make a christian Use of my Afflictions, and gave me some other Instructions; we had an Hour's Discourse, and it was all to this purpose: He wish'd me to make a christian Use of my Restraint, and to labour to get christian Wisdom and Fortitude.

Ld President. What did he say more to you?

Capt. Potter. My Lord, no more pass'd between us; and I gave him an Account of what Questions I was examined upon in *Cook's* Business.

Ld President. Did you give him an Account?

Capt. Potter. I have said so, and he did advise me to Prudence, and Fortitude, and Courage.

Attorn. Gen. Did he never advise you to be courageous, and that unless you discover'd one another, you were safe enough?

Capt. Potter. My Lord, my Keeper was with me, and we had no such Discourse.

Attorn. Gen. Did he not wish you to be silent?

Capt. Potter. Either then or since he did tell me there was Letter came from Mr. *Drake*, that told him, *Titus's* Man had taken some Letters from *Titus*; but he could not conceive how it could concern me.

Attorn. Gen. But did he discover nothing, and wish you to be prudent for your self, and them?

Capt. Potter. He did not then.

Attorn. Gen. When then?

Capt. Potter. I saw him once since; and he told me of *Bamfield's* Man.

Attorn. Gen. How came it about Mr. *Love* spake with you?

Capt. Potter. I did prevail with my Keeper to go with me to Dinner, and to take a Glass of Wine, and then I provided for Mr. *Love's* coming to me.

Attorn. Gen. What hath Mrs. *Love* said unto you?

Capt. Potter. I saw her ever and anon.

Attorn. Gen. What hath she said to you?

Capt. Potter. She hath wish'd me, with Tears, to have a care of her Husband, and not to discover any thing; I think she hath.

Attorn. Gen. Did not Mr. *Love* say then, That he had been at a Fast, where you were remembered?

Capt. Potter. He did so.

Attorn. Gen. My Lord, I confess I was with this Man in the Tower, as I am bound to do by my Place, to examine him; he had made his Examination before I came thither, and I brought it with me. My Lord, I did ask him Questions, he did answer me upon knowledge; he did confess the Truth, but told them, Mr. Attorney-General was pleased to help him to Particulars, and bring them to his Remembrance.

Capt. Potter. I profess, if it had been to save my Life, I could not affirm them; but you putting me in mind of it, I did know of it.

Attorn. Gen. At the Committee of Examinations, then he had more Particulars told him, and he did confess he did know them all; and he may give you an Account, whether he did not give an Account under his own hand? My Lord, I am not abused, but the Council of State, and the Parliament are abused; and if this Man should do this Wrong to Mr. *Love*, and inform the Court and Council, and the Man be brought upon his Life, because he hath affirmed it; and that several times before several Committees; this Man must not scape unpunished, if for no other Fault but this, to accuse a Man before Authority, and when he comes to his Oath, to deny every word of it. Captain *Fisher* will witness, that he did bring all under his own hand, and upon my Credit, he did speak as fully as we did open, and much more fully: and I answered upon hear-say, How do you know it? And he said, He did know it, he did remember it, and he put it down positively; and that when Mr. *Drake* went away, all the Meetings were at Mr. *Love's* House, and Mr. *Love* did still declare the Occasion of the Meetings, and the Letters were opened by him, and the Discourse upon them; and every word he said upon his own knowledge.

Capt.

Capt. *Potter*. I do confess again, that before Captain *Fisher* and Mr. Attorney did prompt me—

Attorn. Gen. Prompt you, Sir!

Capt. *Potter*. Before he did remember me of them, I had forgot them, as if I had never heard them; but it is one thing to remember a thing as I have heard, and as I conceive to be true, and another thing to swear to it positively: and the Paper allowed me this Latitude; some of it I have heard, the rest I believe, and some I know; and upon this account I believe it is all true.

Attorn. Gen. My Lord, 'tis possible I might wish him to express what he did know himself, and what he did know by relation of others, and so did set it down, and he did it fully and clearly; and after all this, brought it in again written with his own Hand, to the Council of State. My Lord, if you please, Captain *Fisher* may go for the Original under his own Hands.

Clerk. The Original cannot be found.

Mr. *Love*. Here is nothing at all that concerns me about the business of *Titus* in *Jersey*, and about the Letter from *Titus*, and the Copy of the Letter from the King; he tells you he doth not know it was in my House; he tells you it was but a Copy, not the Original.

Captain *Potter* withdraws.

[Major *Alford* called into the Court, and takes his Oath.]

Attorn. Gen. My Lord, let him declare what he knows, either by himself, or others, and of his Employment at *Calais*: make the whole Narrative as much as you can remember.

Major *Alford*. My Lord, I was one Morning wish'd to go with *William Drake* to the Swan at *Dowgate*, hearing there was a Gentleman lately come from the Prince, where I should hear all the News from beyond the Seas: when I came there, it was one Captain *Titus*, one whom I had never seen before; and he gave a Relation of the good Disposition of the Prince, and how inclinable he was to take the Covenant, and to cast off the Cavaliering Party, and those about him, if there were an Opportunity to make it known, that there was a considerable Party in *England* that would stick close to the Ends of the Covenant. Upon that, Sir, my self, and some others that were there, did think we were bound in Duty, and in relation to the Covenant, to press the Ends of the Covenant, for the Prince to take it, and to prosecute the Ends of it. And for that Captain *Titus* said, If we would appoint another Meeting, he would draw up something by way of Attestation or Petition to the Prince for that purpose. My Lord, we did meet at the *Bear* in *Breadstreet*, and there he did draw forth something that he had framed to that purpose, and he read it; and afterwards (not at time) it was agreed upon to be sent over to the Prince. The Substance of it was to press the Prince to apply himself to take the Covenant, and to prosecute the Ends of it, and to cast off all his Cavaliering Party about him, which had brought so much Mischief to his Father, and would do the like to him. This Captain *Titus* drew up, and this I believe was sent over, for *Titus* undertook to send it over. I did ask how the Prince should be made to believe, that this coming from an inconsiderable Party, as we were, should come under the notion of the

Presbyterian Party of *England*, for it went under that notion? He said, he should undertake that by the means of my Lord *Piercy*. And the Petition that was agreed upon, he did send over, I believe; for I did not carry it to the Post-house, but he did undertake to do it. Afterwards he went over himself, and when he was over, he had Information that there was notice of his being here, and of the Business he was upon; and therefore he writ over to *William Drake* (as Mr. *Drake* told me) that he did desire some of us that knew of the Business, should be sent over to him, to receive that Account from him which he had in the Business. So Mr. *Drake* did persuade me to go over to *Calais*; and having some Business of my own, I did go over to *Calais*. I went from my House on the Friday Night, and I was back again on the Tuesday following; and he did give me an Account of that Transaction: The Substance of it was this: It was about his own Troubles he had undergone there by the Cavaliering Party, in managing that Business. He had likewise been imprisoned, and they told him, They would try him as a Spy; and that they urged hard against him, and that he was in that Condition till my Lord *Liberton*, the Scotch Commissioner, came over; and by his means he had Access to, and Favour with the Prince: And that was the Substance of all. He said the King was averse to the Covenant, not of himself, but by reason of those Counsels that were about him. And this was the Substance of that Account he gave me of his Transaction there at *Jersey*, in reference to the Business he went upon: And this he gave me in Writing, which I brought over to deliver to Mr. *Drake*, for it was directed to him, which I did deliver. Afterwards Master *Drake* carried them to Master *Love's* House, where they were read. And that is all as to that Business.

Then afterwards there was a Commission, they called it a Commission, it was agreed upon among us, to be sent over to my Lord *Willoughby* of *Parham* and *Massey*, and I think *Graves* and *Titus*, that they should agitate and act for us at *Breda*, and to advise with the Scotch Commissioners that were there, in behalf of the Presbyterian Party here in *England*; and that is all in relation to that. Afterwards Mr. *Drake* read to me the Copy of a Letter in Characters, which he had written himself in his own Back-shop, which he told me should be sent to the Queen, which was to persuade her to persuade the King, as he came that way, to close with the Scots; for that was the likeliest way to make good his own Interest: but that was at Mr. *Drake's* House only between him and I. Afterwards Mr. *Drake* told me he had disbursed Money about receiving of Letters, and receiving of News, and did wish me that I would let him have ten Pounds, and said he would speak to some others of his Acquaintance to do the like; and if he could get up a considerable Sum, I should have part back again; for he said the Charge was too great for him to undertake: and I do think he had ten Pounds of me for that. After *Dunbar-Fight*, there was I and some others at Mr. *Love's*, in his great lower Room, where was a Letter read, that was said to be from Major-General *Massey*, that gave an Account of the Business of *Dunbar*; and also did write for Arms, I know not how many Thousands; and to that purpose, that they might be

be provided by the way of *Holland*. But upon that, all that were there did say — I heard no Man speak of providing Arms or any such thing. He writ in his Letter, that for his own Necessities, and Captain *Titus* that was there, that a Motion might be made for providing some Money to send over for their Supply: and it was then said, We were so inconsiderable, and so few, that the Sum spoken of could not be done; and therefore it was moved, that every one should do by himself and Friends what he could. This was the Substance of that.

Attorn. Gen. I believe, my Lord, he hath dealt ingenuously with you. This in the general: I pray you ask him, what he knows concerning any Letters that should have been sent at the beginning of the Change of this Government, to *Scotland* from any part of *England*?

Major Alford. For that I know nothing, but heard Mr. *Drake* say, That he had Correspondency with some in *Scotland*; and I have heard him use one Mr. *Bailey's* Name; and he had a Cypher which they writ by.

Attorn. Gen. For the *Swan* at *Dowgate*, he gave relation of that; but who was present then?

Major Alford. Truly, my Lord, it is so long since, that I cannot positively tell; but I am sure I can remember there was Mr. *Huntington*, and *William Drake*, and Lieutenant-Colonel *Bains*; and I cannot tell, my Lord, I think there was one Mr. *Hall*.

Attorn. Gen. Was Mr. *Gibbons* there or not?

Major Alford. Truly, my Lord, I cannot tell whether he was there at that time or no.

Attorn. Gen. My Lord, he says *Titus* at that time did give relation of the Prince and his Party: Can you remember what that Relation was? And do you know whether this was not afterward communicated, and to whom?

Major Alford. I have given you the Substance of it; but for communicating of it, I knew it from none but only from those there.

Attorn. Gen. *Titus* took time to draw it up?

Major Alford. He did so: and at the next Meeting at *Breadstreet*, there were the same Men again: and I think at the same time there was Col. *Barton*.

Attorn. Gen. Was there no mention then, (when it was propounded to you to be a considerable Party) was it not said the Ministers were to be acquainted with it?

Major Alford. It was asked *Titus*, how the King should be possessed that this came from the Presbyterian Party in *England*, because it was agreed upon that there should be no Names used to it? He said there needed none, but only the Engagements of the Ministers in it.

Attorn. Gen. What Ministers?

Major Alford. Truly he did not speak a word of any Man, that I know of.

Attorn. Gen. Was it not then propounded, that *Titus* should be sent to the *Scotch* King before Commissioners came to him, to have a Correspondency settled between him and some others here?

Major Alford. I cannot say at that time, but afterwards. Whether at that time or any other, I cannot tell; but one time *Titus* said, he had learned from my Lord *Piercy*, which had hasten'd him over, that this Business was of that concernment, that they did undertake it should be there before the *Scotch* Commissioners did come. And thereupon *Titus* (as *William Drake* told me,

for this was not at the Meeting) was persuaded to undertake to go about this Business.

Attorn. Gen. Whether was there not some Directions given for a Letter to be written to the Queen, to prepare the Articles with the *Scots*?

Major Alford. I cannot say any thing but what *William Drake* told me privately between him and I, as to that purpose, a Letter to the Queen.

Attorn. Gen. What was that?

Major Alford. I did tell your Lordship.

Attorn. Gen. My Lord, ask him whether he was not at Supper with *Titus*.

Major Alford. No, my Lord, I was not there when he offered himself to go, as I know of.

Attorn. Gen. What Money had *Titus* to bear his Charges?

Major Alford. Thirty Pounds.

Attorn. Gen. From whom?

Major Alford. From *William Drake* singly.

Ld President. Did not *Drake* gather it up again?

Major Alford. My Lord, I cannot tell; I know nothing of any Man, but what I did myself.

Attorn. Gen. We are now speaking of the Meeting at Mr. *Love's* House, and of *Titus's* Letter being read, and he sent. Let him give a particular Relation of that again. I make bold to ask him Questions to help his Memory.

Major Alford. The Letter that was read of *Titus*, was not at Mr. *Love's* House, as I know of, but Mr. *Drake's* (for all things came to him, and we knew nothing but only from him, for the Correspondency was settled between *William Drake* and Captain *Titus*) nor at any publick Meeting that I know of, but what *Drake* told me.

Ld President. But you were at Mr. *Love's* House, you said but now.

Major Alford. I was, but not upon this account, it was after I had been over; for I do not know that ever I was at Mr. *Love's* House, or ever spake with him, till I went over: if I have, I have forgot that ever I spake in my life to Mr. *Love* about it, till after I came from *Calais*; and then I did bring over a Relation, and gave an Account of it concerning *Titus's* Transactions.

Ld President. That Account you gave at Mr. *Love's* House?

Major Alford. No, my Lord, I gave it to *William Drake*, for it was directed to him; and it was three or four days after that we met at Mr. *Love's* House, where Mr. *Drake* read the thing.

Ld President. At what time was it?

Major Alford. At the time when the *Scotch* King was at *Jersey*.

Attorn. Gen. Whether did you bring from *Titus* a Copy of a Letter from the King?

Major Alford. That I forgot; but *Titus* did shew me a Letter, at least-wise he said so, that he had it from the King, that he sent to this Presbyterian Party. And, my Lord, he did copy out the Letter, and the Copy he gave me, which I did bring over.

Ld President. To whom did you deliver it?

Major Alford. I delivered it to *William Drake*, I gave it Mr. *Drake* himself, and I think at his own House; I think it was the same, and that it was read at Mr. *Love's* House. The Substance of it was this, as he told me, That he took in good

good part the Petition or Application that was made to him; and if ever God did restore him, and that he was in a Condition, then he should think of it.

Ld President. What did he speak of a Non-compliance with the present Government, and by whom?

Major Alford. I do not remember a Word of that.

Attorn. Gen. What said he concerning the Scots, and what he would do for the Ministers, if God restored him?

Major Alford. I cannot tell any such Passage, nor do I remember the Particulars of it.

Ld President. The Letter was then read, you say?

Major Alford. I suppose it was the same that I gave to Mr. Drake, but I cannot say it was the same, because it was not in my Custody.

Attorn. Gen. Did not you propose to send Fifty Pounds to Titus?

Major Alford. For that, I heard say that there was Fifty Pounds sent to him, but whether it were or no, I know nothing of it, nor did contribute to it, nor knew nothing of it.

Attorn. Gen. Did not you make a Narrative yourself of what you received by word of mouth from Titus?

Major Alford. It is very like I did speak of it to this Purpose I tell you of, I do not know particularly what I said.

Attorn. Gen. Did you not receive an Account from Titus of his Transaction at Jersey?

Major Alford. I did.

Attorn. Gen. Did you not give an Account of that you received from him?

Major Alford. He gave it me in writing, and I delivered it to Mr. Drake.

Attorn. Gen. But when you met at Mr. Love's House afterwards, did you not make some Narrative of what you received from him by word of mouth?

Major Alford. I had it not by word of mouth, but only by the Delivery of Papers to me, which he could not bring over with Safety.

Ld President. Were those Papers read at that Meeting?

Major Alford. I tell you, my Lord, I delivered them to Mr. Drake, and Drake did read some Papers, and I believe they were the same, but I cannot say they were the same, for they were out of my Custody.

Attorn. Gen. Who then were there present?

Major Alford. There was Mr. Love, Dr. Drake, Mr. Case, Major Adams, Mr. Gibbons, and Captain Far. Truly I cannot particularly tell.

Attorn. Gen. This was given him at Mr. Love's House, and Mr. Love present. My Lord, I pray you ask him whether Titus's Message was not well approved of, and the Letter of Thanks to be returned, and the Hundred Pounds in Money.

Major Alford. I do not remember any of these Things you speak of now.

Attorn. Gen. What do you remember was said concerning him there?

Major Alford. I do not know what was said; I do not know what any Man could say to them which were Papers from him: I do not remember any Particulars, it is so long ago; I believe now it is two Years ago.

Attorn. Gen. Do you not remember that this

was one Passage in the King's Letter, that the King wish'd them to send Commissioners to Breda?

Major Alford. I do not remember that.

Attorn. Gen. But was there not a Commission at Mr. Love's House agreed upon to be sent?

Major Alford. That there was.

Attorn. Gen. What was to be the Effect of that Commission?

Major Alford. It was to advise those Men to join with the Scotch Commissioners, to take Advice with them, and to accept the Presbyterian Party with the King, in relation to the first Petition that was sent.

Attorn. Gen. Was Master Love there?

Major Alford. Mr. Love was there; but I do not know what Mr. Love or any Man did direct in it.

Attorn. Gen. Who did correct those Instructions?

Major Alford. I cannot tell.

Attorn. Gen. Who was agreed to prepare the Commission?

Major Alford. I do not know, for I believe it was prepared when it came there; I heard that which we call a Commission read there, but who prepared it, or acted in it, I do not know.

Attorn. Gen. Did Gibbons bring it?

Major Alford. Who brought it, I cannot tell.

Attorn. Gen. Who were the Commissioners?

Major Alford. As I remember, my Lord Willoughby of Parham, and Maffey, and Alderman Bunce; and whether Titus and Graves, I cannot tell.

Attorn. Gen. Was this in Mr. Love's Study, or in another Place?

Major Alford. It was in Mr. Love's Study.

Attorn. Gen. Was the rough Draught corrected by any Body or no?

Major Alford. I cannot tell whether it was or no, nor can I remember any more Particulars of it than what I have given you.

Attorn. Gen. What do you know concerning any Instructions to give Power to the Commissioners what to do?

Major Alford. At the same time there was agreed upon some Instructions for them to walk by, which was the Substance of the Petition which had been formerly sent; that is, it prest the King to take the Covenant, and to prosecute the Ends of the Covenant.

Attorn. Gen. Who carried the Commission and Instructions?

Major Alford. One Mason.

Attorn. Gen. Who was that Mason?

Major Alford. I did not know him, but I have heard say he did belong to my Lord Piercy.

Attorn. Gen. Was there not at that time some Letters propounded to be written to the Queen, and Jermaine, and to what Purpose?

Major Alford. I cannot tell that any of these Things were propounded there, but Mr. Drake had told me, and read to me in Characters some that he had writ thither.

Attorn. Gen. And was it sent?

Major Alford. I cannot tell, for it was privately between him and I.

Attorn. Gen. When this Commission was thus brought into Mr. Love's Study, was there not a Question propounded, What Warrant have we to send Commissioners, and by what Authority, and what was the Resolution upon it?

Major *Alford*. Well, it may be, but I do not remember it.

Attorn. Gen. Do you remember who went with *Mason*, when he carry'd away this?

Major *Alford*. None went with him but I, and Mr. *Gibbons* did carry the Papers two or three Days after that we had them from Mr. *Drake*, which was this Commission we speak of, to *Gravesend*, to *Mason*; for he was at *Gravesend* before, and there delivered it to him.

Attorn. Gen. What was the Effect of these Instructions?

Major *Alford*. The Substance of them was, according to the first Commission, to press them to use all their Endeavour to advise, and take Advice with the *Scotch* Commissioners how to press the King to take the Covenant, and to join with the honest Party, the Church-Party in *Scotland*; that was the Substance of it.

Attorn. Gen. Did he not write to you to send Money to the King?

Major *Alford*. I heard Mr. *Drake* once say, there was a Letter from my Lord *Piercy* to that Purpose, but Captain *Titus* himself wrote against it.

Attorn. Gen. What Course or Way was propounded to raise Money?

Major *Alford*. I know of nothing propounded that way: it was not agreed for me at that Meeting to go down, but Mr. *Drake* suddenly went down, and Mr. *Drake* alone spake to me.

Attorn. Gen. But he told you it was the first Advice of some others?

Major *Alford*. Truly, I do not remember that he did tell me so: there was a Commission and Instructions read at Mr. *Love's*, but whether agreed upon there or no, I know not.

Attorn. Gen. What know you since *Dunbar* Fight?

Major *Alford*. For that, we met at Mr. *Love's* House, in his lower Room, and there was a Letter that was said came from *Massey*, wherein he gave an Account of that Business, how many Men were lost; and that he did write for Arms to be sent, and in his Letter did propose a way, as I remember, to be done by the way of *Holland*: I cannot tell the particular Number of Arms he writ for, but for Arms: and also did speak something in it concerning his own and *Titus's* Necessity, they being there Strangers.

Attorn. Gen. There was a Proposition made, of raising some Money for Supply of their Necessities?

Major *Alford*. It was not to purchase Money, or Arms, or any such Thing, but only a Proposition made for supplying those Gentlemen's Personal Necessities.

Attorn. Gen. And how was that to be done?

Major *Alford*. It was to be done among ourselves, to raise some Money; there was Five Hundred Pounds spoken of, but it was impossible for us to do that, for us that were inconsiderable Men, being Men of mean Estates and Fortunes, and so it was brought down to a less Sum.

Attorn. Gen. What was that Sum?

Major *Alford*. Either Two or Three Hundred Pounds, I cannot tell which.

Attorn. Gen. How was that to be raised?

Major *Alford*. It was to be raised among ourselves.

Attorn. Gen. And did you subscribe then presently?

Major *Alford*. No, I did not.

Attorn. Gen. Who did?

Major *Alford*. I cannot tell that any did; for I then said, that I did not know that either myself, or any there, was engaged by Promise to do any thing for any, only for Captain *Titus*; for he alone was there upon our Interest, and therefore I said, for that I would contribute Ten Pounds.

Attorn. Gen. How much did Mr. *Love* contribute?

Major *Alford*. I do not know of any particular Sum.

Attorn. Gen. Did Mr. *Love* press you to contribute, or move any to do it?

Major *Alford*. Truly Mr. *Love* did move to Contribution of Money, for the Purpose we speak of, for the Supply of *Titus*.

Attorn. Gen. When was *Titus* there?

Major *Alford*. I cannot tell.

Ld President. Did Mr. *Love* move it?

Major *Alford*. Yes, my Lord.

Mr. *Love*. Was I the first that did move it?

Major *Alford*. Truly I cannot tell that.

Attorn. Gen. Was it at that Time that the Letters were read?

Major *Alford*. It was at that Time.

Ld President. And was Mr. *Love* there then?

Major *Alford*. Yes, it was at that Time.

Attorn. Gen. Do you remember of any Declaration of the Kirk and State read at that Time?

Major *Alford*. No indeed, I do not.

Ld President. You did say, that the Letter did mention for Arms?

Major *Alford*. But we did all, every one of us, disavow that, but only the Supply of their particular Occasions.

Attorn. Gen. Was there no Motion then made for a Letter to be written to the Church of *Scotland*, to press them to Union and Moderation?

Major *Alford*. Not that I know of.

Attorn. Gen. Was there not a Motion of sending Fifty Pounds to Colonel *Graves*? And what succeeded upon it?

Major *Alford*. I do not know of any Particular, but only of the Sum to be raised in respect of *Titus*.

Attorn. Gen. How should your Three Hundred Pounds be disposed of?

Major *Alford*. That I cannot tell.

Attorn. Gen. For whom was it to be raised?

Major *Alford*. I told the Court that it was proposed for *Massey*, and for *Titus*.

Attorn. Gen. Did you pay your Money?

Major *Alford*. No, I did not pay it, for I went out of Town presently: I did promise Ten Pounds, and Ten Pounds I paid, but I cannot tell to whom I paid it, I believe it was paid by my Man.

Attorn. Gen. Did he bring it to you upon Account as paid?

Major *Alford*. I believe he did.

Attorn. Gen. What do you know more?

Major *Alford*. Truly, nothing more.

Attorn. Gen. What do you know of any Correspondency settled at *Kendal*?

Major *Alford*. Nothing at all.

Attorn. Gen. This was since *Dunbar* Fight. Do you know of any Letters that came from the Kirk, or *Lowdon*, or *Argyle*, or any of those?

Major *Alford*. No, I know nothing of that.

Mr. *Love*.

Mr. Love. You confess you went to *Calais*, and brought the Copy of a Letter from *Titus*: Did I send you to *Titus*?

Major Alford. No, I do not say you did.

Mr. Love. It is alledged by this Gentleman, that it was sent out of my House: Did I write any Letter by you when you went into *Holland*? And upon your coming home, you say the Copy of a Letter was read at my House: Will you swear I was in the Room at the time when the Letter was read? I was in my House, but did not I go often out and in? Sir, I do speak this, because some at the Committee said I went in and out often: Do you swear that I heard the Letter read in my House?

Major Alford. Mr. Love, it was read in your Study; but that you were there when the Letter was read, I cannot tell.

Mr. Love. He says, he cannot tell that I heard the Letter read.

Major Alford. I cannot tell whether you might go out.

Mr. Love. How long ago was this Letter?

Major Alford. I think it was at that time the King was at *Jersey*, I cannot remember the Month, I think about two Years ago.

Mr. Love. Was the Letter sent to me, or was it received by me?

Major Alford. I did not say it was. I gave the Paper I brought over from *Titus* to *William Drake*; and some two or three days after, when we did meet at your House, Mr. Drake read those Papers, for he told me they were the same, but I cannot tell they were the same.

Mr. Love. I desire he may be asked, whether I did give my Consent to the sending the pretended Commission he speaks of?

Major Alford. Truly, there was not any Man's particular Assent asked, that I know of.

Ld President. Was it not agreed in the general, that it should be sent over?

Mr. Love. I pray ask him this Question, did not I dissent from sending the Commission?

Major Alford. I do not remember it.

Mr. Love. For the Business of Money, he saith there was Two or Three Hundred Pounds raised: Do you affirm I raised a Penny?

Major Alford. I did not say it was raised, but I say it was there propounded to be raised.

Ld President. This he did say, there was a Proposal for the doing of it, and you did persuade the doing of it; and he left Ten Pounds with his Man afterwards.

Mr. Love. Ask him whether there was not a Letter at that time read, that *Massey* was withdrawn at that time in Discontent from the Court?

Major Alford. I do not remember that Particular.

Mr. Love. Ask him whether the Money was sent to buy Arms, or raise Forces, or only to supply his Wants, he not having a Livelihood.

Major Alford. It was not for Arms, but it was for *Massey* and *Titus*, to supply their Necessities.

Mr. Love. But he proves not that I lent any.

Major Alford. I do not say you did.

Attorn. Gen. Observe Sir, there was a Letter for Arms at Mr. Love's House, read there, and Mr. Love did propound Three Hundred Pounds to be raised, and press'd the doing of it accordingly. Major Alford did likewise lend Ten

Pounds; you may believe there hath been tampering with this Witness too. My Lord, ask Major Alford whether there was not a Letter brought to him by his Sister.

Major Alford. My Lord, after I had Liberty for my Wife to come to me, she did give me a Paper, which I knew was my Sister's Hand; if I saw the Thing, I could tell, but it did miscarry.

Capt. Fisher. My Lord, the Messenger is here in the Court that did take the Letter, of which this is the true Copy Word for Word.

[Major Alford withdraws, and Major Huntington is called into the Court, and is sworn.]

Ld President. What do you know about Mr. Love's House, about the Commission, and Captain Titus?

Major Huntington. My Lord, I can say, that about March 16:8, I met with Major Alford, and he told me that Titus was in Town, and asked me if I knew him, and I told him Ay; and asked him where he was. He said he was newly come from beyond Sea, from the Fry, there being Alderman Bunce. I asked him where he was; he said little to me; but he said he was to meet him the next Day at the Swan at Dowgate; that there was to be some Citizens in order to those Gentlemen beyond the Seas, to speak with him there. I did meet, and the Citizens there, were Col. Barton, Col. Vaughan, Captain Massey, Lieut. Col. Bains, and I think Hollis his Man, I am not certain of it; but Captain Far was there. The Business at that time, was only Commendations from their Friends there; and to tell them that he was commended to their Acquaintance. And afterwards, he grew into very high Praises of the Prince, and that he had the Knowledge of it from a Scotch Lord, I know not his Name. After this, he told them the Prince was running very unhandsome Courses, and they had very great Hopes his own Inclinations did not lead him to it, but it was the malignant Party about him, that had a Prevalency over him there, as over his Father here; but he did rather encline to join with the Irish Rebels, and did believe he would incline that way, unless he could get something from hence, to divert him from it: whereupon he did hope they would all set themselves that way, and that he would get Letters from Persons of Honour (whom I know not) that should persuade him into a good Belief of the Scots, and to take the Covenant. After this, there was a Meeting again, I think fourteen Days after, at the White-Hart in Breadstreet, and there I met too. In the time that I was there, I did understand there had been a Meeting or two before, in order to the Business; and Captain Titus did declare, he had now again Letters from Persons of Honour, to send to my Lord Piercy, and did hope they would set something a-foot amongst themselves of the like Consequence: for Massey, Bunce, and Graves could see no way under the Heavens but for the King to take the Covenant, and join with the Scots, and to engage the Covenanting Party here. And to that purpose, he draws forth a Paper that did purport that they were bound in Honour, and Justice, and Conscience, and I think Loyalty, to maintain him in his just Rights, if he would go and join with the Co-

venanting Party in *Scotland*; and that he had no other way under God but that: which if he did, they took themselves bound in Conscience to help him to his just Rights. Upon this, Lieut. Col. *Bains* makes objection to it, and said, it was a Malignant Business, and did fear there was no good Design in the thing; and thereupon they did break up. I cannot tell whether it was sent or no, for they were afraid he would betray the Business.

After that, I was told by Major *Alford*, that *Bains* told them he was very sorry he should meddle in that Business, and that they would never prosper that had any thing to do with him, for that the Sins of him and his Father were so great: whereupon they were very wary, and afraid he would discover the Business. And he, I think, knew no further. After this, I did understand this Letter was sent to the Prince, and I was told so by Major *Alford*, that it was sent in the name of the secluded Members, and Ministers, and Citizens, and Soldiery, and Noblemen; I remember it fetch'd a great compass. Whereupon when the Prince saw this Letter, and had it from my Lord *Piercy*, he stormed at it, and said, Who are these Noblemen, and the rest? What can they do for me? Can they raise me Ten Thousand Men? Whereupon there was nothing done, but *Titus* retired himself to his Mother's House, and there lived about three quarters of a year, and came to Town after, and did solicit his own Business. A little after this, I heard (upon the Business of the *Scots*) that there was another Letter sent, that did begin the thing again, and now the Prince had considered of the thing, and sent over the Letter, and I heard, that it was to the Ministers of *London*. I did not see the Letter, but *Alford* and *Drake* told me it was so. After this, *Titus* was sent away, and that with a Sum of Money, as I heard; who lent the Money, I cannot tell, and what Sum I know not: but presently after this, I coming to Town out of the West in *March* 1649, in the beginning of *March*, the day of my coming to *London*, after I had been here one or two days at most, I met with *Hollis's* Man in *Fleet-street*, I do not know his Name; he met me, and I asked him, what News? He told me, he wonder'd that I was a Stranger, and asked him what News: Saith he, If you come to Mr. *Love's* House, you shall hear News. What is your Business there, said I? He said, it was to pray together, and to hear the News. I went about Nine of the clock, and Prayer was over, and the News a great part was over: but after I did come there, that I did hear was this; *William Drake* pulled a Paper out of his pocket, that I understood he had put into his pocket, or withdrawn, because of a Stranger, and afterwards he took it out again. The Substance of the Paper was to this purpose, as I remember, it was in Characters, and pulled out of his pocket, and by him read: 'In the name of the Commissioners commissionating the Lord *Willoughby* of *Parham*, Major-General *Massey*, Colonel *Graves*, Captain *Titus*, and Alderman *Bunce*, in order to the Treaty, in the behalf of the well-affected Party in *England*; and these to join with the *Scotch* Commissioners, according to such Instructions that should be therewith inclosed.' And somebody asked him, What power have we to give such a Commission? It

was answered again by *William Drake*, That we have the King's Command for it, and we have likewise the Authority of some prudent Parliament-Men, whom we look upon (saith he) beyond the power of them that now sit. Whereupon Mr. *Love* replies, Come, come, let it go: And after that, I knew nothing.

Attorn. Gen. Repeat that again.

Huntington. When the Question was asked, What power have we to send or give Commission? saith *Drake*, We have the Command of the King to do it; besides, we have the Authority of secluded Members. Whereupon Mr. *Love* replied, Come, come, let it go.

Mr. *Love*. Pray ask him this one Question, Were there no Speeches between *William Drake's* Words, and those Words he pretends were mine?

Huntington. I remember none.

[*Huntington* withdraws, Lieut. Col. *Bains* is call'd into the Court, and is sworn.]

Ld President. Speak what you know of this Business.

Bains. My Lord, concerning any thing that came from *Scotland*, I never knew any thing, nor did I ever hear any thing. For *Dowgate*, I was at two Meetings at *Dowgate*: At the first Meeting there was a Person that I did not know, which at the second Meeting I was told was Captain *Titus*; and he at that Meeting (where there was nine, or ten, or more, or thereabouts) he did propose something to be done, in order to the restoring or preserving the Presbyterian Interest, by way of Application to the King, as he called him, and did advise it to be by way of Petition, and that he conceived to be the only way to preserve the Presbyterian Interest in *England*; and that way would be the way to assure him, he had a considerable Party in *England*. And he did use many Arguments, as a Duty lying upon us by our Covenant, to apply ourselves to him, and he offered to draw up a Draught of a Petition against the next Meeting to that purpose: And he said, it was necessary something should be done by some Parliament-Men, and some Ministers, and some Citizens, that were leading Men, Men that thereby he might be assured that he had a Party, and that considerable. At the next Meeting, which was suddenly after, he did produce a Paper, which, as I remember, was in Short-hand; a Petition, which was to the purpose I have hinted. There were several Debates, whether it should be signed or not signed, and myself and two more disliked it; and before he read the Paper, he began to commend the Good-nature of the King, what good Affections he had; and likewise did say, there was a necessity something should be done to the Queen, and *Jermin*, and *Piercy*, who, he said, were our Friends, that they should stir him up to comply with the *Scotch* Commissioners. And upon this, there was myself, and two more there present, (I hope it sat upon them as upon myself) disliked the Business, and from that time, for my own part, I never heard any thing. The Heads of the Petition I cannot suddenly remember. This Paper carries the Sum and Substance of the Business.

[The Clerk shews him a Paper, which he had formerly given in.]

Bains.

Bains. This Paper, if it be not interlined since, it was of my own dictating, and writ with my own Hand. [He looks upon the Paper.] I see no alteration made at all.

Ld President. And this you deliver upon Oath?

Bains. Yes, upon my Oath, to the best of my remembrance. And as to the Prisoner, I can say nothing.

[*Bains* withdraws. Major *Adams* is called into the Court and sworn.]

Ld President. Declare your Knowledge in this Business.

Adams. Touching Alderman *Bunce* and *Mason*, I know something by relation touching the Correspondency with them.

Ld President. Tell the manner of it.

Adams. I conceive it was carried on by Mr. *Drake*, that is now absent; and in Scotland, by one *Bailey*.

Attorn. Gen. What do you know of *Mason*, and of Letters sent by him?

Adams. *Mason* I do know, and I do know he did receive Letters.

Ld President. From whom?

Adams. He said, from my Lord *Piercy*.

Attorn. Gen. To whom were those Letters communicated here?

Adams. They were communicated to Mr. *Drake*, and by Mr. *Drake* to myself, and Mr. *Alford*, and Capt. *Potter*, and Capt. *Far*.

Attorn. Gen. Was Mr. *Love* privy to it?

Adams. I cannot say that, my Lord.

Attorn. Gen. Were there not Letters sent to Scotland to them, and back again hither, about sending moderate Propositions to the King?

Adams. There was such Letters.

Ld President. Who writ them?

Adams. That I cannot tell.

Ld President. Had Mr. *Love* a hand in them?

Adams. I cannot say he had: I cannot prove a Negative, I cannot say he had not.

Attorn. Gen. What know you of the Petition sent to the King?

Adams. I know nothing of it, only I was told of it.

Ld President. Who told you of it?

Adams. I cannot, my Lord, fix it upon any particular Man, but I believe I was told of it by *Alford*, or *Far*, or *Bains*: for I was not there at that time.

Ld President. What do you know about the Meeting at the *Swan* at *Dowgate*?

Adams. My Lord, I was not there.

Attorn. Gen. Then, my Lord, he may tell you what he doth know.

Adams. My Lord, upon our meeting in some place or other, I cannot tell where, I cannot tell the time, nor the place, but either at the *Swan* in *Fish-street*, or at the *Swan* at *Dowgate*, or in *Cat-eaten-street*: in one of these three places, I cannot punctually remember.

Attorn. Gen. Who was at that Meeting?

Adams. Mr. *William Drake*, Captain *Titus*, Major *Alford*, Captain *Far*, Captain *Potter*, and myself; and I do not know how many more, or whether any more or no.

Ld President. What pass'd there?

Adams. It was there agreed, that Captain *Titus* should go over to *Jersey*.

Attorn. Gen. What was he employ'd about?

Adams. The end of his going was to endeavour to work an Agreement between the King and Scots, according to the Covenant; that was the End that was propounded. And in order to his going, we did agree to furnish him with Money for the present, and made some kind of Promise to maintain him while he was out.

Attorn. Gen. What Money was he furnished with?

Adams. I cannot be punctual in that, but about a Hundred Pounds.

Attorn. Gen. Who should pay it?

Adams. I paid Twenty Pounds of it, but I cannot tell who paid the rest.

Attorn. Gen. To whom did you pay it?

Adams. To Mr. *Drake*.

Attorn. Gen. My Lord, ask him whether when this was sent to *Jersey*, was there not a Return made?

Ld President. Well, go on: There was your Twenty Pounds gone?

Adams. This is the Substance of what I can say of his going.

Attorn. Gen. Was this Twenty Pounds that you laid out of your own, or did you collect it of some of the rest, or did you gather any of it again?

Adams. I cannot say that I did.

Ld President. Did you not?

Adams. My Lord, I tell you the truth, I do not know whether I did or no; for I remember, it was determined that we should gather it at that Meeting.

Attorn. Gen. Did not Mr. *Love* know of the Collection?

Adams. I cannot say he did; it may be he might, but I dare not say upon my Oath, that he knew of it.

Attorn. Gen. Ask him what Return *Titus* made, what Answer, and what Account he gave.

Adams. Major *Alford* went to *Calais* to meet *Titus*, and *Titus* did send word that the Council of State heard of his being there, and thereupon desired that somebody might be sent over to him; for he had something to communicate, which he could not well do by writing, and thereupon Mr. *Alford* was sent.

Attorn. Gen. My Lord, ask him where the Letter was read.

Adams. The Letter that *Titus* sent, was read by Mr. *William Drake*.

Attorn. Gen. Where?

Adams. At his House, as I think, for I cannot certainly remember. I did not say upon my Examination, that it was read any where.

Attorn. Gen. Whether were not you moved to go?

Adams. There was some Motion to that end, I think in Mr. *Love's* Chamber.

Ld President. Who moved it, and where?

Adams. Who moved it, I cannot tell; it was moved, I think, in Mr. *Love's* Chamber.

Attorn. Gen. Was Mr. *Love* there?

Adams. He was there.

Attorn. Gen. Did Mr. *Love* move it?

Adams. I cannot say he did.

Ld President. He will not say it.

Adams. I cannot say it, upon my Oath.

Attorn. Gen. My Lord, so much he saith, That it was moved in Mr. *Love's* Chamber: then he may give you an Account of Mr. *Alford's* Return, and where the Account was given.

Adams.

Adams. The Return of Mr. *Alford's* Account was given at Mr. *Love's* House.

Ld President. What was it?

Adams. The Return he made in general was by a Narrative, and a Copy of a Letter from the King: there was with the Narrative that which was said to be the Copy of a Letter from the King.

Ld President. What was the Substance of that Letter?

Adams. The Contents of the Letter, as I remember, was, First, he express'd a great deal of Affection to the Ministry of *England* in general, and promised great Favour when he was in a condition to do it, and desired them to continue steadfast in the way they were in.

Attorn. Gen. Was this Letter published at Mr. *Love's* Study?

Adams. It was read.

Ld President. Was Mr. *Love* there?

Adams. Truly, to be positive that Mr. *Love* was there, I dare not say; but Mr. *Love* was there at that Meeting, either at the beginning or ending; but whether the Letter was read at Mr. *Love's* House, I dare not swear. The Narrative from *Titus* was a very long one, and very well drawn, I cannot give an account of it now: the whole of it was after this manner; To give an account to us of all the Transactions that had happened since his going out of *England*, he did give an account of his Usage by the Cavalier Party, that was against the King's Agreement with the *Scots*, because there was some did incline to his Agreement with them, and there was another Party was much against it; and he gave a very large account of that. After that, he went on describing his Disposition and Condition.

Attorn. Gen. This was the Substance of the rest. Was there not some Propositions for giving of Thanks to *Titus*, for his so well managing his Affairs there?

Adams. There was a Motion made by somebody.

Ld President. Who made the Motion?

Adams. I cannot tell.

Attorn. Gen. Was not a Hundred Pounds more to be sent agreed upon there?

Adams. I think so.

Attorn. Gen. There was more Money contributed: Who agreed to lend any?

Adams. Sir, to that Question, I cannot say who propounded it; but that there was Money sent.

Ld President. Who contributed?

Adams. I did my share.

Ld President. How much was that?

Adams. As I remember, Ten Pounds.

Attorn. Gen. To whom did you pay it, and where did you pay it?

[Then they shew'd him his Examination.]

Ld President. Come, look upon it, and be well advised.

[*Adams* looks upon his Examination.]

Adams. I paid it to Mr. *Drake*, at his Father's Shop in *Cheapside*.

Attorn. Gen. Next about the Commission and Instructions to be sent, what do you know of that? When this Letter was read from the King, and published in Mr. *Love's* Study, whether was there not a Commission agreed upon, to give Instructions to treat with the King at *Breda*?

Adams. There was a Motion made at Mr. *Love's* House, that there should be a Commission and Instructions drawn and sent. The Mo-

tion was made at Mr. *Love's* House; they were there spoken of.

Ld President. By whom? Who did the Dialogue run between? Did Mr. *Love* do it?

Adams. Truly, for my part, I did not then take such special Notice, that I dare at this time upon my Oath deliver any thing positively against any particular Man; but generally all spake something, as I remember.

Attorn. Gen. Was there any Debate to mend the Instructions?

Adams. Truly, Sir, not as I remember.

Attorn. Gen. Did not Mr. *Gibbons* bring the rough Draught of the Commission?

Adams. Truly, I think he did; as I remember he did. I have spoken of the Commission and Instructions that were debated then and there; and that many of these Persons, here mentioned, were there: But that some of them mentioned might not be there then, is very likely.

Attorn. Gen. Was Mr. *Love* there?

Adams. That he was there some part of this time, I am very confident.

Ld President. Was it in his Study?

Adams. It was.

Attorn. Gen. Was there a Commission agreed upon to be sent?

Adams. For the Word *Agreed*, I cannot tell what to say to it: *Agreed* holds forth as if a Vote passed.

Ld President. Was there not a general Consent?

Adams. Being upon my Oath, I desire to be cautious; for I must be tender in speaking the Truth in this Case; and I do not know what to make of the Word *Agreed*.

Ld President. Was it approved of?

Adams. To my Understanding the Thing was thus: That at such Meetings as these we were not absolutely formal, as if we had been established by a Court of Justice to act thus; and that there should be Prefaces, and such Things, or such Methods observed, as that any Man undertook to make a Preface either at the Beginning or Conclusion; but it was spoken to by many Persons, and by every Person spoken to: And in this Sense it was agreed.

Attorn. Gen. Were there not Instructions agreed upon; and all this in Mr. *Love's* Study?

Adams. It was so.

Ld President. Were they not read there?

Adams. I think they were.

Ld President. Who read them?

Adams. I cannot tell who read them; but they were read: And I think Mr. *Drake* read them.

Attorn. Gen. What was the Contents of the Commission?

Adams. The Contents or the Substance of the Commission was to this effect: [This he reads out of his Examination.]

'We, the Presbyterians of *England*, do authorize you the Lord *Willoughby* of *Parham*, *Edward Maffey*, *Richard Graves*, *Sylas Titus*, and *James Bunce*, to assist our Brethren the *Scotch* Commissioners in their Treaty with the King, according to the Instructions annexed.'

I dare not swear it in these Words; but to this purpose it was. The Substance of the Instructions were to use all the Arguments they could, to move the King to give the *Scotch* Satisfaction, and to take the Covenant: Such Arguments

guments were mentioned as the then Condition of Affairs best afforded, particularly how Things stood in *England* at that time; which did all of them cry out for an Agreement, and gave them full Power as to all Things; and what should be concluded by them, should be confirmed by these here. But I cannot say so; but what Words were, were to this purpose, saving this Conclusion, That what was concluded should be confirmed here: I do not remember that.

Attorn. Gen. Was there not some Debate by what Warrant they should act in this Commission and Instructions?

Adams. There were some such Words at the Meeting.

Ld President. What did Mr. Love say?

Adams. I cannot remember what Mr. Love did say; or whether he said any thing, or nothing at that time: But that there were such Words said, I have said; but by whom, I cannot fix it upon any particular Person.

Attorn. Gen. Was it not debated by what Warrant they should derive Power to themselves to send this Commission?

Adams. There was such Language; but by whom I cannot say; I think by *William Drake*. It was because the King had writ this Letter, wherein he desired there should be such Instructions. There was something spoken of the secluded Members; but by whom, I do not know. There was a Proposition, whether the Authority should be taken from the secluded Members, or from some other.

Attorn. Gen. Did not Mr. Love then say, Come, let it go on?

Adams. I dare not say so.

Attorn. Gen. Was it not propounded at the Meeting to write to the Queen, and to *Fermin* and *Piercy*, for them to mediate with the King to agree with the *Scots*?

[*Adams's Examination* was here again read.]

Adams. My Lord, so much of this as I think to be true, I shall own.

Attorn. Gen. Was not a Letter writ from *Piercy*, that a considerable Sum of Money was fit to be sent to the King? And what Answer was given? Was it not to be done till the King and the *Scots* should agree, and then to raise the Money?

Adams. That there was such a Letter writ, I must needs acknowledge.

Attorn. Gen. Where was it read? At Mr. Love's House?

Adams. No certainly: I only saw it in *Mason's* own Hands; and I remember he shewed it me.

Attorn. Gen. Next, ask him whether there was not a Letter written about *August* last to some here, that *Maffey* had Back-Friends in *Scotland*, complaining he could not be promoted there.

Adams. I did understand there was such a Letter; but by what way, I do not know.

Attorn. Gen. Was not the Letter communicated at Mr. Love's House? And were not you present when this Letter was read at Mr. Love's House, wherein *Maffey* complained he had Back-Friends in *Scotland*?

Adams. No certainly: That Letter was not, to my remembrance, read there. I heard of such a Letter, but saw it not.

Attorn. Gen. My Lord, ask him whether he was not appointed to draw up some Letters.

Adams. There were some I should have had a hand in drawing.

Attorn. Gen. Who were appointed with you?

Adams. As I remember, Captain *Potter*, Captain *Maffey*, and Mr. *Gibbons*.

Attorn. Gen. But was there no Meeting upon it? Was Mr. Love named?

Adams. Mr. Love was not named.

Attorn. Gen. Was there not one *Sterks*, a *Scotch* Agent here, that kept Intelligence from *Scotland*?

Adams. I know there was such a one, we took to be an Agent here.

Ld President. Did he meet at your Meetings?

Adams. Yes, he did meet sometimes.

Attorn. Gen. Was he at Mr. Love's House at any time?

Adams. That he was.

Attorn. Gen. When the Act came forth for banishing the *Scots*, was there not a Collection for his Charges? And were not you at Mr. Love's House when it was agreed to?

Adams. I was not.

Attorn. Gen. Did you contribute Money?

Adams. I did contribute ten or twelve Shillings; I cannot tell which.

Attorn. Gen. What Discourse upon *Dunbar* Fight was there from this Person that is already spoken of?

Adams. This is the Thing: if you please to help my Memory; for there are so many Particulars in this Correspondency, that I cannot tell whereabouts it is I am to speak to; I am very unceartin whereabouts it is I am to speak to.

Ld President. Speak the Certainty as it was in your Breast.

Adams. My Lord, if it be doubtful to me, how can I be certain, and charge it upon my Memory?

Ld President. Speak the Truth.

Adams. I will speak the Truth.

Ld President. Do so then.

[Here again *Adams* looks upon his Examination.]

Adams. There is some of it I did set down, that I dare not own upon my Oath: I then did deliver it so, when I set it down.

Attorn. Gen. Did Mr. Love know that this *Scotchman* was the *Scotch* Agent? Did you not take notice that Mr. Love took notice of him?

Adams. I do think he did; as far as I understand, he did.

Attorn. Gen. Did not Mr. Love generally tell you the Cause of the Meetings?

Adams. No, Sir.

Attorn. Gen. Did you not hear Mr. Love say that this *Sterks* was the *Scotch* Agent?

Adams. I never heard Mr. Love say so; but I knew this, that by our usual Meetings Mr. Love did understand him, as I did, to be the *Scotch* Agent.

Attorn. Gen. How often did you meet at Mr. Love's House?

Adams. I cannot tell: It may be seven, or eight, or ten Times: An uncertain Time.

Attorn. Gen. He was at Mr. Love's Study?

Adams. Whether so many Times, I know not.

Attorn. Gen. My Lord, ask him whether it was not at Mr. Love's Study, when Money was propounded to be raised for *Maffey* and *Titus*.

Ld President. Was that in Mr. Love's Study?

Adams

Adams. I cannot tell whether it was in his Study, or in the Lower Room: I am apt to believe it was in the Lower Room.

Attorn. Gen. Was Mr. *Love* there?

Adams. Certainly he was there.

Ld President. What was the Contents of the Letter?

Adams. The Contents of the Letter I cannot remember.

Attorn. Gen. Whether did it not declare the Poverty of his Condition? And was it not after *Dunbar* Fight?

Adams. Yes, it was.

Attorn. Gen. Was this Letter from *Massey* read at Master *Love*'s House? Was this for Money?

Adams. It was.

Ld President. Was it agreed for Money to be raised?

Adams. If you take the Word *Agreed* as I formerly propounded, it was so.

Attorn. Gen. How was the Money to be raised, and in what manner?

Adams. It was by those that were privy to the Contribution.

Attorn. Gen. Was not Mr. *Love* there? And did not he write down the Sums that were to be contributed?

Adams. This I must needs say, That Master *Love* had Papers in his Hand, and he did write something; but I did not see what he did write: And every Man did write that was there.

Attorn. Gen. Did not you conceive so, That Master *Love* summed up every Man's Sum? Did he put the Letter of their Names before them, when he writ the Sums?

Adams. I cannot say that.

Attorn. Gen. Was not there a Letter penned by Master *Love* and Doctor *Drake*?

Adams. To that Question, I must say there was a Letter; but I cannot deliver it upon my Oath that it was penn'd by Master *Love* or Doctor *Drake*: But it was taken to be so; and I thought it was so.

Attorn. Gen. To whom was that Letter directed?

Adams. I cannot tell to whom.

Attorn. Gen. To whom was it declared to be directed? To whom was it declared to be written?

Adams. To the General Assembly and Kirk of *Scotland*.

Ld President. Was this at Mr. *Love*'s House too?

Adams. It was so.

Attorn. Gen. Was Mr. *Love* present, and did approve of it?

Adams. Mr. *Love* was present at some time of this Meeting. The Reason why I thought it to be of Master *Love*'s or Doctor *Drake*'s drawing, was nothing but merely the Language of it, it being in order to promote the Ends of the Covenant; and all the whole Language was couched to that purpose; and taking notice of the want of Respect to *Massey* and the *English*, and of their being beaten.

Attorn. Gen. My Lord, this is very high: For he tells you this Letter was approved of, and directed to be sent; and this was after *Dunbar* Fight, after we were engaged in Blood.

[Here *Adams* read out of his Examination, as followeth:]

Adams. There was also a large Letter, in the

nature of a Declaration, penn'd by Master *Love* and Dr. *Drake*, and approved of by most of the Presbyterian Party, Ministers, and others, and directed to the General Assembly and Kirk of *Scotland*, subscribed by none: Which contained the Substance of what was declared by *Titus* and *Massey*; but durst not promise any great Sums of Money till they appeared more considerable, and grew nearer Action. The Business required higher Spirits than was for the present; and the Business required a considerable Sum: But to leave no Means unattempted when the Business was feasible. [So far he reads.]

Attorn. Gen. Major *Adams* is now upon his Oath to tell you.

Adams. My Lord, as well as I remember, it did put forth much after this sort: But I cannot swear it in these Words; but that is the Substance of it.

Attorn. Gen. Was not this agreed and declared at Mr. *Love*'s House, that such a Letter should be written to the Honourable Committee, and to the Kirk?

Adams. I answer that, after the same manner as all other Things are agreed at such Meetings as this is: But I have no ground, and do not know why I should say Master *Love* and Doctor *Drake* penn'd it.

Attorn. Gen. Ask him for the Substance of the Letter; whether it were not as he hath told you; and whether he did not say they could not promise a considerable Sum of Money.

Adams. Certainly, either in that Letter, or some other, there was some such Expressions.

Ld President. Well, it was about that Time, and in that Letter, or in some other Letter, and at Mr. *Love*'s House.

Attorn. Gen. My Lord, ask him if there was not an Agent come from *Scotland*, and a way laid at *Kendall* for a Correspondency between these Gentlemen here and some of *Scotland*; and whether one *Groves* was not sent thither.

Adams. That was something obscure: That there was such a Thing, I do verily believe, because it went amongst us for a Truth; but how to make it out for a Truth, upon my Oath I cannot tell.

Ld President. Did Mr. *Love* know of it?

Adams. I do not know.

Attorn. Gen. Ask him what he knows concerning Colonel *Bamfield*'s Man coming hither.

Adams. Concerning that, I know nothing: But I confess I had some Item that at that time there was something found. And this is all I can say to that; I cannot guess the Time.

Attorn. Gen. Was it after the Fight at *Dunbar*?

Adams. Yes, that it was.

Attorn. Gen. Were the Meetings at Mr. *Love*'s House?

Adams. I cannot say all: But all that I know of were.

Attorn. Gen. Ask whether upon the large Letter *Massey* did not write that Things were well settled in *Scotland*.

Adams. Many of these Things were understood so, and taken for granted amongst us; but I can say no otherwise: I thought it to be so; but I know not.

Attorn. Gen. Were you not present, or at Mr. *Love*'s House, when these Letters were read, that they were in a hopeful Condition?

Adams. I cannot say so.

Ld President. What can you say?

Adams. As before, That it went for a Truth amongst us: And that is as much as I can say to it.

Attorn. Gen. Was there not a large Letter inviting your Friends to Union?

Adams. I understand the other Letter to be this you propound to me now.

Attorn. Gen. Now we speak of a Letter from Alderman *Bunce*, and others.

Adams. I cannot speak particularly to that; for I did not see them; but they were told me by one or other of those that were of the Correspondency: And this is all I can say.

Ld President. What is the Truth? Do you conceive it is so?

Attorn. Gen. My Lord, we shall not trouble him with that. My Lord, ask him one Question more: What did *Mr. Love* tell you, that if the Presbyterians got the upper hand again?

Adams. Those words, I think, did but amount to this, That if the Presbyterians were in Arms again, by the Blessing of God, the Cavaliering Party might be prevented from getting the day.

Ld President. Who do you mean by the Correspondents?

Adams. By Correspondents I mean *Alford*, *Potter*, *Far*, &c.

Ld President. Was not *Mr. Love* one of them?

Adams. I took him to be so, my Lord.

Mr. Love. My Lord, I pray ask him, whether any of these pretended or supposed Letters were ever received by me, any one of them, or that I writ one of them, or mended one of them.

Adams. I cannot say that ever I saw him do any such Thing; nor did I ever see him write any.

Ld President. But you saw the Letters there?

Adams. That I have said.

Mr. Love. Ask him whether I gave my Consent to the sending away of this he calls a Commission and Instructions, about the Time of the Treaty at *Breda*.

Adams. No, I will not swear that; and upon my Oath I cannot.

Ld President. Will you not? I will press you to nothing. You said even now, you did not know he did send them away; but you did say he was privy to them, and to the Debates of them. Did he declare any Dissent?

Adams. I cannot say that.

Mr. Love. Will you ask him this Question? Whether he read the Letters that he pretends were sent into *England* or *Scotland*, or whether he heard them read?

Ld President. That he swears.

Adams. I did not swear that these were the Contents of them exactly: I was there when these Letters were read.

Mr. Love. He only heard them read.

Ld President. If there were half a score that had Correspondency, and received Letters, and come together, and one of the most confiding Men read them; will any Man say that he will not believe these were right read? Such a Hear-say as this, is such a Hear-say as you may take notice of.

Mr. Love. But let him prove how it was a Correspondency on my part.

Adams. I did not say that *Mr. Love* was one of the Correspondents; I deny that I said so: I said I conceived him to be so; but that is not that he was so.

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Ld President. They did debate together, and met together, and received Instructions; and therefore he may very aptly conceive he was a Correspondent.

Mr. Love. Doth he swear that I assented?

Adams. I did not swear so.

Mr. Love. He saith Money was sent to *Titus*; pray ask him whether by Agents I employed.

Adams. I cannot say so.

Mr. Love. Here is no Proof at all that ever I received Letter, or writ or sent any Letter. Pray ask him if I knew before they came to my House, that they would bring such Letters with them. Do you swear that I was present in the Room at the time that the Letters after the Defeat at *Dunbar* were sent, wherein there was, as you say, a Promise of Assistance?

Adams. You were there some part of the while.

Mr. Love. Ask him whether he was not threaten'd with Death in case he would not, and promised Favour in case he would, bring in Evidence against me.

Adams. I cannot say I was threaten'd with Death to that end.

Mr. Love. I shall bring a Witness that shall prove from his own Mouth, that he hath confess'd, If he did not bring in Evidence against me, he should be hanged.

Adams. It is true, *Percival* did come to me, and I did say to him, That upon Examination, I did say, if I were not ingenuous, I was threaten'd to be hanged.

Attorn. Gen. When a Man is a Traitor, and doth confess, he deserves Mercy.

Mr. Love. Ask him whether he hath not received Money to give in this Information against me.

Adams. I have not.

Mr. Love. Did not some Messenger come to you, some Months ago, from some Members of the Council of State, and told you you were poor, and should be ruined if you did not confess it? He had three Messengers sent unto him from the Council of State, or some of them, that told him, If he would not confess, he should be ruined.

Attorn. Gen. Did you receive Money, or were there Promises made to you, to testify against *Mr. Love*?

Adams. Upon my Oath I did not.

Mr. Love. Hath he never come to *Mr. Scot's* Chamber? Did he not come a Month before I was committed, being brought there by Major *Cobbet*? And whether he hath not received Money from Major *Cobbet*? I desire that Major *Cobbet* may be called upon his Oath, to know whether he hath not given him Money to bring in Information against me: For he hath taken notice of all Facts, and of all Things done, and hath brought all to *Mr. Scot*. I know, by Information, that this *Adams* is a hired Witness. Sir, this Man is a *Tobiah* and a *Sanballat*: Some Men have hired this Man against me. I desire Major *Cobbet* may be called.

Ld President. He did, and might do it: But did he it to testify against *Mr. Love*? I hope a State, that watches the Nation, may watch for the Safety of a Nation.

[*Mr. Cobbet*, a Major of the Army, is called into the Court, and is sworn.]

Mr. *Love*. Pray ask him whether he hath not at any time, within this three Months, given any Money to Major *Adams*, to acquaint Mr. *Scot*, or the Council of State, with this Design, as 'tis called.

Major *Cobbet*. My Lord, I must and do deny that which this Gentleman doth aver: And truly I wonder at his Boldness, in the Presence of this Honourable Court. I do know Major *Adams*, and have known him a long while; and commiserating him, as being a Prisoner, I lent him ten Pounds; but for no consideration that he should betray Mr. *Love*, or any Man. I paid the Money to his Wife.

Mr. *Love*. He paid it, he saith; how then did he lend it? And he paid it to his Wife: That was to cover the Bribery. But did not you discover to this Man, if he would reveal it to Mr. *Scot*, what Recompence he should have of him? Did not you, walking in the Fields with him, desire him to reveal what he knew; and promised him if he did, he should be a Man preferred?

Major *Cobbet*. I have been acquainted with Major *Adams* this four or five Years, and met with him in the behalf of the Presbyters, understanding there was something was driven on dangerous to the Commonwealth; and I thought I was bound in Duty to requite them, if it were possible, for their Pains of Discovery. And I laboured with him that he would deal so honestly with himself and the Commonwealth, as to let the Commonwealth know what he did know of this Design. Accordingly he gave me some notice; and I said to him, Major *Adams*, if I find you ingenuous, if there be any thing that I can do for you, I shall be ready to serve you by Night and by Day.

Mr. *Love*. It appears then that the ten Pounds was not lent to Major *Adams*, but was paid him for his Discovery: So that 'tis clear he is a hired Witness. And have you not brought him to Mr. *Scot*'s Chamber with Promises of Preference?

[No Answer to that Question.]

[The Lieutenant of the *Tower* is commanded to withdraw his Prisoner; and the Court adjourns till to-morrow.]

The second Day's Proceedings, July the 21st, 1651.

THE Court being sat, Colonel *West*, Lieutenant of the *Tower*, was commanded to bring forth his Prisoner; and Mr. *Love* was brought to the Bar.

Master *Jaquel* was called into the Court, and the Clerk tendered him his Oath; and Mr. *Jaquel* spake to the Court to this purpose:

That there were many Oaths abroad, and he could not tell what to say to them; and he desired to be excused. The Lord President told him that he could not be excused. Mr. *Jaquel* said he was a Prisoner, accused of the same Offences that Mr. *Love* was accused of; and that he conceived he was not a competent Witness against him. The Court again press'd him to take his Oath, Mr. *Jaquel* said that he durst not in Conscience swear against Mr. *Love*; and therefore desired it might not be press'd upon him. The Court still persisted in it, that he must take

his Oath, and witness what he knew. He answered, he would speak the Truth of what he knew, as well as if he was under an Oath. The Court told him that that could not be; for if he did not swear, what he should say could not be received as any thing in matter of Evidence. Mr. *Jaquel* still persisted in his Refusal. When the Court saw he could not be otherwise prevailed with, they fined him five hundred Pounds for refusing to swear. And Mr. *Jaquel*, after he was withdrawn out of the Court, was called in again, and press'd to take his Oath; and was told that the Court had fined him five hundred Pounds for refusing to swear; and again asked him whether he would swear. Mr. *Jaquel* then, when the Oath was read to him, did not swear in that manner as the other Witnesses did, but only put his Hand to his Buttons. And when Mr. *Love* asked him whether he was under an Oath, he answered that he was as good as under an Oath. But the Court not being satisfied with that Answer, press'd him further; and then he did say he was sworn, and was under Oath.

Ld President. Declare now what you know of this Business.

Mr. *Jaquel*. My Lord, for the Paper I was examined about, as for knowing *Titus*, I never saw him in my Life, but one quarter of an Hour in a private House, and I knew nothing of his Business any where. For the other, *Alford* coming over with Letters, I was at Mr. *Love*'s House, and when I was there, there were several Men there.

Attorn. Gen. In what part of Mr. *Love*'s House?

Jaquel. I conceive in his Chamber; for I went up to several that were there, whose Names I can positively say, for two or three of them, though I cannot remember the other absolutely, though I conceive most I have named in my Examination were there; Capt. *Potter* was there, and Doctor *Drake* and Major *Alford*, and Mr. *Love* was there sometimes, though divers times he went out, some coming to speak with him.

Attorn. Gen. Was there not a Copy of a Letter, said to be sent from the King, read there?

Jaquel. I remember no such thing.

Attorn. Gen. Was there not a Narrative?

Jaquel. Yes, from *Titus*, wherein he declared the King's Inclinations to make peace with the Scots, but that his wicked Counsel about him did hinder it.

Attorn. Gen. Was not this of what *Titus* had related from *Jersey*, the Narrative of what had pass'd between him and the King there?

Jaquel. I think it was.

Attorn. Gen. Was not Major *Alford* sent to receive an Account from him at *Calais*?

Jaquel. William *Drake* did tell me so afterwards.

Attorn. Gen. Did Major *Alford* deliver no Account there?

Jaquel. I think it was Major *Alford* read the Narrative.

Attorn. Gen. Did he make no relation by word of Mouth?

Jaquel. Truly I cannot remember.

Attorn. Gen. You cannot remember it was read?

Jaquel. Yes, I am sure it was read, and at Mr. *Love*'s House.

Attorn.

Attorn. Gen. And he was present sometimes?

Jaquel. Yes, sometimes.

Attorn. Gen. What Money was there agreed upon to be provided for *Titus*?

Jaquel. I know of none: it was moved by Captain *Potter*, that there might be forty Pounds, but I know of none, nor was it agreed by Mr. *Love*, Mr. *Drake*, or my self, that we should lay down any at all.

Attorn. Gen. Did you not meet with *William Drake*, and desire to go along with him to see *Titus*?

Jaquel. I did so, but I think *Drake* desired it: I met him in *Newgate-Market*, and, faith he, I am going to see *Titus*, go along with me. I said I never saw him, nor did I know him: Says he, You shall not stay at all. Whereupon he went and found him in a Cheesemonger's House in *Newgate-Market*.

Attorn. Gen. What Discourse had you?

Jaquel. He said he was newly come out of *Holland*, and he had been with the King, and he was a Man of excellent Parts for his Years; and that he was inclinable to what was good, but that he had such desperate evil Counsel about him; and that he did much pity him, and that his Clergy especially was wicked: and he propounded nothing to us, nor did I ever see his Face afterwards; and this is about two Years and a half ago. And for any other Meetings at the *Swan-Tavern*, or for any Agents, I never met him, or saw him.

Attorn. Gen. Do you not remember at any Meeting, that there was Money propounded for Captain *Titus*, or for *Alford*'s being sent over to *Calais*? Speak what you know of that, and by whom it was told you.

Jaquel. Major *Alford* himself told me he was to meet his Son, and he went over upon that score; but after he was gone, *William Drake* told me he was gone to see or meet Captain *Titus*, I am not certain of the Words: and when he did come again, which was the next time I heard of him, then *William Drake* comes to me, and desired me to go along with him, for I think he went up and down to every Man.

Attorn. Gen. You think then that *William Drake* was the prime Man.

Jaquel. Yes, he was the Actor and Agent that moved all.

Attorn. Gen. When *Alford* returned, he desired you to go with him?

Jaquel. To Mr. *Love*'s House.

Attorn. Gen. What was done at Mr. *Love*'s House?

Jaquel. There were some Papers read, which *Alford*, as I take it, read, or *William Drake*, I am not certain which; but read it was, of a relation, that *Titus* came out of *Jersey*, and had seen the King there, and the *Scots* Commissioners; and that the King had a great Inclination to agree with the *Scots* Commissioners, and that he was a Man of excellent Inclinations and Parts, and had a great Desire to agree; but his Counsel, and wicked Crew about him, would not let him: and he said, as I remember, That the King was a kind of a Prisoner with them there, and said, his Counsel did hinder him, or else, if he were from them, he would agree with the *Scots* Commissioners.

Attorn. Gen. You say this Paper was read, this Narrative was read in Mr. *Love*'s House; was not Mr. *Love* present?

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Jaquel. I am not able to say he was: when I came in, I remember he was not in the Room, and he was there two or three times while I was there, but he was several times called out.

Attorn. Gen. Do not you know there was an Agreement of a Letter written back to *Titus*?

Jaquel. I can remember no such thing, but I think *William Drake* told me so, as I remember, but that was two Years ago, I do verily believe by what I conceived, was of his writing.

Ld President. I could wish that Mens Consciences could not be scrupled to believe so much of a Minister, more than of a Magistrate; I hold it pernicious Doctrine for any Man to think he is bound more to obey the Minister than the Magistrate: I ask you then before the Magistrate here, who was present at that Meeting?

Jaquel. *William Drake*, I am sure, and Major *Alford* was there, and Captain *Potter*, and several others, as I remember, Master *Jenkins*.

Attorn. Gen. This was in Mr. *Love*'s House, was it not in his Study?

Jaquel. I cannot tell that. I say as I conceive, that Master *Jenkins* and Master *Cafe* were there, but positively I cannot say it; and Mr. *Jackson* and Mr. *Nalton*, I think.

Attorn. Gen. What say you of Mr. *Watson*?

Jaquel. I think he was there.

Attorn. Gen. What say you of Mr. *Herring*?

Jaquel. I think he was.

Attorn. Gen. What say you of Mr. *Cauton*?

Jaquel. In truth I cannot tell.

Attorn. Gen. What say you of Mr. *Robinson*?

Jaquel. I think he was.

Attorn. Gen. What say you of Mr. *Drake*?

Jaquel. Yes.

Attorn. Gen. Was Colonel *Vaughan* there?

Jaquel. Yes, I conceive he was there.

Attorn. Gen. Was Mr. *Jackson* there?

Jaquel. Yes.

Attorn. Gen. Were Captain *Far* and Captain *Potter* there?

Jaquel. I believe so.

Attorn. Gen. Was Mr. *Gibbons* there?

Jaquel. I cannot tell.

Attorn. Gen. What say you of Mr. *Sterks*?

Jaquel. No, Sir, I do not know it.

Attorn. Gen. Did you not know him to be the *Scotch* Agent? Was he not taken among you to be an Agent from *Scotland*?

Jaquel. Yes, he was a *Scotchman*.

Attorn. Gen. And for Contribution of Money, what Money did you pay, and to whom?

Jaquel. Two five Pounds to Mr. *Drake*.

Attorn. Gen. For what Use?

Jaquel. For charitable Uses.

Attorn. Gen. Then he asked it of you so, or for that purpose; but afterwards, what did you learn it was employed about?

Jaquel. Sir, he did not tell me how he did employ this Money; but afterwards I heard him say, that he had sent *Titus* Money.

Attorn. Gen. What did you contribute to *Sterks*'s going into *Scotland*?

Jaquel. Ten Shillings.

Attorn. Gen. And who else did contribute, that was there? And how much was the Sum that was collected?

Jaquel. I cannot tell.

Attorn. Gen. How much do you guess, or have heard?

Jaquel. Four or five Pounds, I think.

Attorn. Gen. Ask him, who gave the *Scotchmen* Money?

Jaquel. Truly, I did give several *Scotchmen* Money, both to poor Ministers, and others that were banished by the Act, because I knew they were very poor, and knew not how to get away; and I did it out of Charity towards them.

Ld President. Because the State had an ill Opinion of them, therefore you had a good Opinion of them.

Jaquel. There was one Minister that had twelve Children that was banished.

Attorn. Gen. Were you at any Meetings at Mr Love's after *Dunbar* Fight?

Jaquel. No not I.

Attorn. Gen. At what Fasts were you at? And who officiated at those Fasts?

Jaquel. I was at Major *Adams's* and Colonel *Barton's*.

Attorn. Gen. Who did exercise at those Fasts? Was Mr. Love, Mr. *Jenkins*, Mr. *Cafe*, any of them?

Jaquel. I believe they were, I conceive so, I profess I cannot remember; I believe Mr. *Jenkins* was there.

Attorn. Gen. Was not Mr. Love one of them?

Jaquel. Yes, he was.

Attorn. Gen. What was the Occasion of those Fasts?

Jaquel. I know no particular Occasion, but for the Good of the two Nations.

Attorn. Gen. How do you know they were for the Good of the two Nations? Was it not for an Agreement between the King and the Scots?

Jaquel. I confess it was for the Good of both Nations, as both Nations are the Church of God, and do both profess themselves Protestants, and of one Religion; and I conceived it was my Duty to pray for the Good of them both.

Attorn. Gen. But was there not some Expressions for a Blessing upon the Treaty at *Breda*?

Jaquel. I cannot remember such Expressions; for in such Duties I desire to have my Heart lifted up unto God: And, my Lord, it is a great while ago.

Ld President. Will you say your Heart is lifted up unto God, when your Understanding is in your Heels?

Jaquel. My Lord, I do not remember one Passage in Prayer a Week after.

Attorn. Gen. That is in ordinary Meetings, but this is for both Nations: but by what did you know that this was for the Good of both Nations, and why was it pretended to be for the Good of both? And, my Lord, why they should not meet before, but just at that time, and at a private Fast?

Jaquel. I think, that since the Nations of *England* and *Scotland* were at odds, I have been at twenty Fasts.

Attorn. Gen. My Lord, ask him, Whether he were not late with *Potter*, and did not meet with him about Letters from *Bamfield*, and whither they went to read them?

Jaquel. This was about *February* or *March* last, he told me he received Letters, and desired me to go along with him to Mr. Love's, and after Doctor *Drake* came in, and then these Letters were read; and I profess I know not from whence they came, nor the Man; and so

did Mr. Love declare, That he never saw, nor knew, nor heard of *Bamfield* before.

Attorn. Gen. Did he not make mention of Parties in *Scotland*, That one Party was for the King, and another for the King and Kirk, and a third neither for King nor Kirk?

Jaquel. Yes.

Attorn. Gen. But who were those he named, that were Men for the King?

Jaquel. I think, *Hamilton* and his Party.

Attorn. Gen. And who for the King and Kirk?

Jaquel. *Argyle* and *Lesley*.

Attorn. Gen. And who neither for King nor Kirk?

Jaquel. *Straughan* and *Car*.

Attorn. Gen. What did he tell you of the young King's escaping?

Jaquel. Something there was in that, but he was fetch'd back again.

Attorn. Gen. What said he of *Argyle*?

Jaquel. Nothing at all, as I remember.

Attorn. Gen. Was there not an Expression, That they were now agreed to receive in the whole Nation, unless it were those that were notoriously scandalous and excommunicated?

Jaquel. I believe there was.

Attorn. Gen. Did it not mention five thousand Pounds for providing of Shipping?

Jaquel. Yes, in the Narrative or Letter, whether there related at that time, I know not.

Attorn. Gen. And what mention was there made, who were fit to command in *England*, if that Party should come from thence into *England*?

Jaquel. I conceive there were three Noblemen.

Attorn. Gen. Name them.

Jaquel. My Lord of *Suffolk*, my Lord of *Warwick*, and my Lord of *Manchester*, or either of them.

Attorn. Gen. That was propounded by *Bamfield*, but I hope those Lords were more noble than to do any such thing. Was there not another Letter that came with that of *Bamfield's*, sent by my Lord *Argyle*, and it was only, That there should be an Approbation of him? And was this Letter likewise read at the same Time, and at the same Place?

Jaquel. Yes, my Lord.

Attorn. Gen. What was then propounded for Money to be raised for *Bamfield*?

Jaquel. Truly, Captain *Potter* did make mention for forty Pounds to be raised, ten Pounds for Colonel *Bamfield's* Man, and thirty Pounds for *Bamfield* himself: but that Business at the reading was wholly declined, and absolutely refused by all, to act any thing in that relation in which it was sent over. Whereupon Captain *Potter* did move, That if nothing were done in that, whether it were not convenient to send the Messenger something to bear his Charges: says he, If you will pay the Messenger ten Pounds, and send *Bamfield* thirty Pounds, I will give the Messenger the ten Pounds. But there was no Agreement, nor Conclusion I know of, no Bill of Exchange was sent, but Captain *Potter* said he would lay down ten Pounds.

Attorn. Gen. But no body spake against Captain *Potter's* laying down of ten Pounds; and it was propounded to you to lend ten Pounds, and you said, you would consider of it: But did *Potter* lend it?

Jaquel. I cannot tell that, my Lord, he said he would do it.

Attorn.

Attorn. Gen. My Lord, let now Master *Jaquel* tell you what was the Cause why they did refuse to do any thing in the Letter about five thousand Pounds; what was the Cause upon the Debate between you at Mr. *Love's* House, why you did refuse to do any thing about the five thousand Pounds?

Jaquel. The Debate was soon over, for we absolutely refused it, we would not meddle in it, not liking the business; it was a Trouble, I am confident, to them that heard it read.

Attorn. Gen. You do not remember that ever any body did acquaint the Magistrate with the Design in working from *Scotland*?

Jaquel. No, not I.

Attorn. Gen. Did not some say, that *Bamfield* was a Malignant?

Jaquel. I cannot tell, but I never heard of him before.

Attorn. Gen. Were you not told he was a Cavalier, and of the King's side, and that that was the true Reason why they would not trust him?

Jaquel. I do not remember any such thing.

Attorn. Gen. Did Mr. *Love* agree for ten Pounds for *Bamfield's* Man, and thirty Pounds for *Bamfield*?

Jaquel. No, I cannot say so.

Attorn. Gen. Did not Major *Alford* tell you, upon his Return from *Calais*, That he was sent thither to take an account from thence?

Jaquel. He did not, but *William Drake* did tell me that he was gone to *Calais* to speak with Captain *Titus*.

Attorn. Gen. And to take an account of the Transaction of *Jersey*.

Jaquel. Truly, Sir, I cannot say that; but *William Drake* told me he was gone thither to speak with *Titus*: and this is above two Years ago that *William Drake* told me so.

Attorn. Gen. To what end?

Jaquel. To tell and hear News.

Attorn. Gen. What did he do more?

Jaquel. I profess in the Presence of God, I cannot tell, Sir, I beseech you; for in the Paper, I told you before, there were some Circumstances, and something that I cannot say; but it was to this purpose, To speak with *Titus*, to hear the News from *Jersey*; but I cannot say certainly that Word.

Attorn. Gen. We do not press you to the Word, but to the Effect of it: My Lord, I think Mr. *Jaquel* hath given an account already, that this Relation was at Mr. *Love's* House. Mr. *Jaquel*, let me bring one thing to your Remembrance, if it be true: At your Meeting at Mr. *Love's* House upon this business of *Bamfield's* Narrative, you say, thirty Pounds was moved to be sent to *Bamfield*, and ten Pounds to his Man.

Jaquel. Yes, by Captain *Potter*.

Attorn. Gen. And when it was then said, it was thought fit by Mr. *Love*, Mr. *Drake*, and Captain *Potter*, that it should be so done; whether did you not all agree it should be so done?

Jaquel. No, there was no Agreement, but it was thought convenient, or to that purpose.

Attorn. Gen. It was thought convenient by all the Company present?

Jaquel. Truly, Sir, there was not much regard taken in that business, nor was there much done; for we did not stay long, but there were such Words.

Attorn. Gen. But by all present?

Jaquel. Yes, there were such Words.

Attorn. Gen. Whether were not some Friends at Dinner at *Dowgate*, and was not *Mason* there?

Jaquel. My Lord, there was a Gentleman there, I cannot say who he was, nor did I see him before or since.

Attorn. Gen. Who did they tell you he was? Did they not tell you *Mason*?

Jaquel. I profess I cannot remember that, nor can I tell, but I conceive it was so.

Attorn. Gen. In your Examination you say it was *Mason*.

Jaquel. I said, I conceived so.

Attorn. Gen. Why did you believe so?

Jaquel. I cannot tell, but as I remember, *William Drake* told me so.

Attorn. Gen. Whether when *Bamfield's* Letter came, and the Letters from my Lord of *Argyle*, *Lowdon*, and others came, was there not a Letter from *Bailey*?

Jaquel. I do not remember, my Lord.

Attorn. Gen. Nor from the General Assembly?

Jaquel. I do not remember any such thing.

Attorn. Gen. Bethink your self, you are upon your Oath, whether he that brought the Letters from *Bamfield*, did not bring Letters from *Bailey*, and from the General Assembly?

Jaquel. I cannot remember there was any such thing spoken of there.

Attorn. Gen. Was there no Expression of Letters of Thanks for the good Affection of the Presbyterian Party here, and Encouragement to persevere?

Jaquel. I do not remember any such thing.

Attorn. Gen. Were there no Promises, that when they by their Endeavours should get a free Parliament in *England*, that they would reimburse all that was laid out?

Jaquel. I do remember no such thing.

Mr. *Love*. I would ask him some Questions; and the first is, Whether he hath spoken this as a mere Relation, or whether he owns all this he hath spoken, as under an Oath?

Attorn. Gen. We are past that, my Lord, he did say, he was under an Oath.

Mr. *Love*. If he say so, I am concluded.

[Mr. *Jaquel* made no Answer to this.]

Ld President. You have asked two Questions in a few Words: For the first, Whether he spake it under an Oath? You know that time was spent to declare it before he began: if you ask of his own knowledge, you mistook it; for he saith something he hath by Relation, and some that he knows. This he hath taken notice of, what should we further examine over the same thing; for he saith some of his own Knowledge, some by Relation from particular Parties, and some from Parties he calls not now to mind: and it was declared by the Court, that he was a Witness, and the Court accepted him.

Mr. *Love*. I desire your Lordship to ask him this Question, Whether the supposed Narrative that he speaks of, that *Alford* said he brought over, and read at my House, was read at my House; or only by *Alford*, and so brought over as News?

Jaquel. In truth, my Lord, I cannot tell that.

Mr. *Love*. He speaks of *Sterks* a *Scotchman*; I desire your Lordship to know whether he knows, or can affirm by the Oath you say he hath taken, that he was a *Scotch* Agent. [No Answer to that Question.] Mr.

Mr. Love. Sir, ask him this Question; he mentions a Fast at Major *Adams's*, or Col. *Barton's*, and that for the Good of both Nations, because he thought they were the Church of God; whether there was any Intimation in that Meeting, that it was under this Notion, for the Good of both Nations; whether that Meeting was for the *Scotch* Nation to invade the *English* Nation? [No Answer to that Question.]

Mr. Love. He said (if I have taken him rightly, and if not, I desire your Notaries to inform me better) that Mr. Love did not agree to such a Sum as Forty Pounds, and afterwards he said, that all there said it was convenient. Now I would ask how these two can agree together?

Ld President. You are right; for the thing of Agreement he disclaimed totally.

Mr. Love. Then I did not agree to it.

Ld President. No, nor any else.

Mr. Love. But afterwards he says, that they did conceive it was convenient; now I pray ask him, how he knew that I thought it was convenient?

Jaquel. I cannot say any thing that Mr. Love did say it was convenient; but it was not dif-fented from nor spoken against by any, as I remember.

[Mr. Jaquel withdraws. Col. Barton is called into the Court, and is sworn.]

Attorn. Gen. My Lord, let Colonel Barton tell you what he knows of the Meeting at the *Swan* at *Dowgate*.

Col. Barton. My Lord, I was there a little while after the Death of the late King. I was going into *Cannon-Street*, and met with *William Drake*; he desired me to go with him to the *Swan* at *Dowgate*. I told him I had a little Business in *Cannon-Street*, and I would be there by and by. I staid about half an hour about my Business, and went then to the *Swan* at *Dowgate*, and there was, to my best remembrance (for positively I cannot say) *William Drake*, and one a Stranger, Major *Huntington*, and Lieut. Col. *Bains*, and there was one Capt. *Titus*, as was said, and Major *Alford*, and I do not remember who else were there. My Lord, at that time truly I was under a Defect in my Hearing, and since that I have lost an Ear, through a huge Heat, and Cold taken. But, my Lord, I not coming but to the middle of the Discourse they had, and not perfectly hearing, could not well judge of their Discourse: But afterwards I ask'd *William Drake*, what the Intent of the Meeting was? He told me, that their Intentions were to make some Addresses or Applications (some such word it was) unto the Prince, to take him off from his malignant or evil Counsel about him, and to put him upon such as would be honefter and better Counsellors. And this is the Substance of what I then understood from *William Drake*. My Lord, I think two or three days afterwards, I know not which, there was a Meeting again at the *White-Hart* in *Basing-lane*-end at the corner of *Bread-street*. There were, I think, most of them that I have named at the first Meeting: I am sure *William Drake* was there, and Captain *Titus*, and Lieut. Col. *Bains*, and Major *Huntington*, I cannot tell whether Mr. *Alford* was there or no, but these I am sure were there. I did not come to the beginning of that

Meeting neither, the Paper had been read before I came in, to my best remembrance: but I asked *William Drake* what was the meaning of that Meeting? He told me, it was to the same effect that they spake of before; and they had Thoughts to send somebody over to the Prince, to persuade him from that Condition. A while after I met with Lieut. Col. *Bains*, and truly I did ask him more fully of the Circumstances of that Meeting: he told me something, that they intended to make use of my Lord *Piercy* and *Jermin*, and those about the Prince, which he disliked. Truly, my Lord, it troubled me extremely, to think that they should make use of such ill Instruments to persuade the King, and I said, I thought it was not well. And the next time I said to *William Drake*, you have not done well, for it is not a Christian Way we take, to make use of such Men as these to persuade with the King; for do you think that my Lord *Piercy* and *Jermin*, and those Men, will ever persuade the King to leave themselves, and their own Counsels? So he put me off, and from that time he was a little more shy of me. Afterwards he did secretly and cunningly get from me Ten Pounds, and came under a pretence to supply a Friend in necessity; and I said to him, you have Money of your own. Says he, I have not so much as I must needs supply him with; and he could not do it of himself, for fear it should be miss'd. My Lord, I asked him what Friend it was. Nay, saith he, you cannot know that, and you cannot have it till he is in a condition. To tell you truly, he had been a good Customer to me, both for himself and Friends, and I was loth to deny him it, supposing I should have it again. I afterwards did not, to my knowledge, meddle or make at any Meeting; I was never at any of those Meetings after the Business at *Basing-lane*, because I disliked them; but afterwards I did suppose that this Ten Pounds was for Captain *Titus*, for I did put it to him, and said, I am afraid you did furnish *Titus* with that Ten Pounds. What then, said he? Then I shall require it again of you. So he put me off, and run out of the Land. My Lord, for any other Meetings, Transactions, or Knowledge of any other thing from the time of the Meeting in *Basing-lane*, I know none. For the Prisoner at the Bar, truly I do not remember, and I am confident I was never at his House in my life, nor changed one word with him.

Attorn. Gen. Did you meet with *Titus* in *Fleet-street*?

Barton. I did, my Lord, and I asked him whether the King that was dead, (for I knew he was much about the King, because I had heard it;) and I asked him, I say, whether the King was a Man of those Parts he was reported to be. *Titus* told me, not only of his Parts, but Virtues. Truly I suspected then, that *Titus* was not the Man he seem'd to be, and I feared he was a Cavalier in his heart; and truly that did occasion me, with the dislike of others, to leave their Company.

Attorn. Gen. There were sometimes private Fasts at your House; what was the Occasion of them, and who spoke to you for them?

Barton. My Lord, I do not remember the Party that spake to me, I am not certain whether it were Master *Vickars*, but cannot positively say it, or whether it were by Sir *Matthew Brand*, or

or by whom they desired to meet; they met in a Room at my House, to humble themselves before the Lord: and I cannot say any thing of the Fast, because I had Customers, and I did think I was bound to serve my Calling; and I was not there above half an hour, and it was up and down, off and on. There were divers Ministers, who did exercise at that time.

Attorn. Gen. Who did exercise at that time?

Barton. I was not there much of the time, but I think Mr. *Jenkins*, and to my best remembrance Mr. *Love* was there; there was Mr. *Tate* the Parliament-Man, to my best remembrance: I think Mr. *Jaquel* was there, and there was Sir *Matthew Brand*.

Attorn. Gen. What other Ministers were there?

Barton. I think Mr. *Cafe*, and to my best remembrance Mr. *Robinson*; but I am not certain.

Attorn. Gen. What was the Occasion of your Fasts, and at your House?

Barton. I knew no Occasion, because I was not there; but have heard a Servant of my House, who was there, give this Relation. Mr. *Jenkins* began in this manner; O Lord, thou knowest we are not met to put up Complaints against any, but to humble ourselves before thee, and to pray that the Sins of the Land may be pardoned. But I do not remember there was any word, but for the pardoning the Sins of the Nation.

Attorn. Gen. Was there no Sins named in particular?

Barton. My Lord, I do not remember.

Attorn. Gen. My Lord, ask him whether any body hath been with him, to call for any Money for any Parties beyond Sea; for *Massey*, or any others.

Barton. I shall give you a true Narrative of that. I understood, my Lord, that after the Prisoners that were taken at *Dunbar* were come down the River, there were divers Citizens, both Men and Women, that came to see them, and made a relation of their Misery to be such, as I have not heard; and there was one among the rest, that said there was a piece of Meat reached down among the Prisoners, and two or three catching at it, it fell down among the Dung, and they took it up, and eat it. There were divers did move for a Contribution to them, and it was a pretty while before I did contribute any thing: there was Captain *Far* with me, and desired me to give him some Money, and he did not propose the Use; but to my best remembrance, it was either for charitable Uses, or for some in misery. Now I was loth to ask him for what charitable Use, because I did not desire to be known to give such a Sum of Money to the *Scotch* Prisoners. I had a little Money which I had devoted to charitable Uses in my own purpose: When the Parliament granted my Petition for reimbursing the Money I lent, I did promise Fifty Pounds to charitable Uses; and this, I confess, I did intend for the *Scotch* Prisoners, but was loth to ask him, because I would not be thought charitable to your Enemies; but did it not under that relation.

Attorn. Gen. Mr. *Jaquel*, you know *William Drake* and Mr. *Love* very well, do you not know that Mr. *Drake* and Mr. *Love* were very familiarly acquainted?

Jaquel. I must needs say, Mr. *Drake* would be acquainted with all the Ministers in London;

and I cannot say, he was more acquainted with Mr. *Love* than with any other Minister.

[Captain *Far* is called into the Court, and is sworn.]

Attorn. Gen. My Lord, let him acquaint you with what passed at the *White-Hart* in *Breadstreet*.

Capt. Far. I desire the Benefit of my Papers.

Attorn. Gen. At whose request did you come to the *White-Hart* in *Breadstreet*, and when was it?

Far. By *William Drake*.

Attorn. Gen. Was that the first time you were acquainted with any thing of this nature, for carrying on and prosecuting of an Order, to the furtherance of an Agreement between the *Scots* and the King? What do you know of that, at what time was the Meeting?

Far. It was about two Years since.

Attorn. Gen. What was the Discourse at that Meeting?

Far. It was the drawing up of some Heads of a Letter, which might be sent to *Scotland*.

Attorn. Gen. What was the Effect of it?

Far. It was to this effect, to the best of my Memory; for it is so long since —

[Here Captain *Far* was at a stand, whether through Infirmary of Speech (for he seemed to be slow of Speech) or otherwise, I cannot say; and he, or the Attorney-General for him, made great use of the Papers of his Examination.]

Attorn. Gen. To desire them, the better to bring them to an Agreement, that there might be moderate Propositions.

Far. It was to moderate their Desires in the Agreement between the King and the *Scots*.

Attorn. Gen. What to do?

Far. That they might abate of their Demands.

Attorn. Gen. Of their former Demands, that they might be the more like to agree; was it not so?

Far. Yes, my Lord.

Attorn. Gen. Was it not propounded likewise, that some should be sent to the King, to persuade him to give Satisfaction to the *Scots*?

Far. It was propounded by *Titus*, but not approved of.

Attorn. Gen. But did you not agree to send to the *Scots* that you did agree to, and were there not Heads which *Titus*, or *Drake*, did undertake to write, and afterwards were drawn up?

Far. I saw no Letters.

Attorn. Gen. But did not *Drake* tell you he had sent them to Master *Bailey* in *Scotland*?

[Captain *Far* being at a stand, the Attorney-General asketh him again:]

Attorn. Gen. Did not *William Drake* tell you, a Letter was sent accordingly into *Scotland*?

Far. Yes, he did tell me he had sent Letters.

Attorn. Gen. My Lord, let him give your Lordship an account before the Treaty at *Jersy*, where *Drake* met with him, and what he propounded to him, whether to send to *Jersy*, and what Persons, and upon what Message?

Far. Mr. *Drake* did say, that Captain *Titus* did say, It was requisite for one to be at the Treaty at *Jersy*; and I had it from *Drake*, that *Titus* did undertake to go himself thither.

Attorn.

Attorn. Gen. What was his Employment to be there, and what Money was to be raised for him? Did he tell you he wanted Money?

Far. After Mr. *Drake* desired I would help him to Ten Pounds, and *Titus* was in want of Money to relieve his Necessities: and upon this Request I did leave Ten Pounds in Mr. *Drake*'s Warehouse.

Attorn. Gen. Was *Drake* present?

Far. I think he was. I was promised it again, but never received it.

Attorn. Gen. My Lord, let him inform, after this Negotiation of *Titus* was ended at *Jersey*, whether there was not a Letter written by *Titus*, and whether this was not read in the presence of Mr. *Love*, and some others, and whether at Mr. *Love*'s or no?

Ld President. Upon the ending of the Treaty at *Jersey* and *Breda*, were you not present at Mr. *Love*'s House, when it was signified from *Titus*, that it was not convenient for him to come into *England*, because he thought he was discovered to the Council of State, and desired somebody to be sent to *Calais*, to take an Account there of his Negotiation?

Far. Yes, my Lord, I was there.

Attorn. Gen. Where, at Mr. *Love*'s House?

Far. Yes.

Attorn. Gen. In what part of his House, whether in his Chamber or Study?

Far. In his Study, as I remember.

Attorn. Gen. Was the Letter read there, and who read it?

Far. *William Drake* read it.

Attorn. Gen. What was the Substance of the Letter, as you remember?

Far. It was for sending one over to *Calais*.

Attorn. Gen. Was Mr. *Love* present when this Letter was read?

Far. Yes sure, he was present.

Attorn. Gen. Was it agreed that one should be sent to *Calais*, to take an account of it?

Far. It was desired, and I was propounded to go.

Attorn. Gen. Who named you to go?

Far. Mr. *Drake*.

Attorn. Gen. What was the Occasion that Major *Alford* did go?

Far. It was his Son's being there, that was gone from him.

Attorn. Gen. But then it was agreed that *Alford* should go? When *Alford* did return from *Calais* again, and there was an Account given of his Employment, where was this Account given? and where were those Papers read, that did give the Account?

Far. It was given at Mr. *Love*'s; but I cannot say he was present at that, for he was absent sometimes; I cannot be positive to say he was present: I do conceive he was present, but cannot positively say it.

Attorn. Gen. What was the Substance of the Account given by *Alford* or *Drake*, or who read it?

Far. It was a Narrative that he had been at *Calais*, and what Entertainment he had.

Attorn. Gen. Was there a Copy of a Letter brought thither, written from the King to the Presbyterian Party?

Far. I cannot say he brought it.

Attorn. Gen. What was the Substance of the Letter?

Far. To send Commissioners to the Treaty at *Breda*.

Attorn. Gen. What else was in the Letter? Did not the King of *Scots* declare in the Letter, that he would give Satisfaction to the *Scots*, and in order thereunto he desired Commissioners?

Far. It is so long since, that I cannot remember it.

Attorn. Gen. I ask you, whether it were not to this effect, to declare that he was willing to give Satisfaction to the *Scots*, and to that end desired the Presbyterian Party to send Commissioners to *Breda*?

Mr. *Love*. This is gross Darkness, for you to dictate Words to him, and then to say, Was it not thus, or to this effect? and so to put into the mouths of the Witnesses what you would have them say.

Attorn. Gen. When you go in Darkness, it is gross Treason.

Mr. *Love*. Eight Witnesses have not proved that I either writ Letter, or received Letter, or lent Money.

Attorn. Gen. What was the Effect of the Letter?

Far. It is so long since, that I cannot speak particularly; but it was to send Commissioners.

Attorn. Gen. The Copy of the Letter that came from the King by Major *Alford*?

Far. I do not say so, Sir.

Ld President. Such a Letter as they conceived to be brought from him, as they read.

Attorn. Gen. What was that?

Far. That he had been with *Titus*, and did bring the Narrative from him, or to that effect.

Attorn. Gen. Was it not to be communicated?

Far. Yes, it was so.

Ld President. What was the Narrative read from *Titus*? Who were present at this Meeting?

Far. There were several there, but I cannot positively remember any.

Attorn. Gen. Was Mr. *Love* there?

Far. I cannot say he was.

Ld President. Was Dr. *Drake* there?

Far. I cannot say positively, that he hath been at any Meetings.

Ld President. When you were at this Meeting, and Major *Alford* returned this at Mr. *Love*'s House, was Dr. *Drake* there?

Far. I cannot say it.

Ld President. Was Mr. *Jenkins* there?

Far. I cannot say it.

Ld President. How many were there?

Far. About Ten or Twelve.

Attorn. Gen. Ask him whether this Meeting, when this Letter came from the King, advising to send Commissioners to treat with the King at *Breda*; whether was there not a Commission named, and Persons named to treat?

Far. *William Drake* read Papers, but it was not agreed upon by the Company, because private Persons could not give Commissions.

Ld President. Was it not debated at that Meeting for a Commission to be sent accordingly?

Far. *William Drake* read Papers there, that was in the nature of a Commission; but it was not agreed upon by the Company, because private Persons could not do such a thing.

Ld President. Was it not in order to the Treaty?

Far.

Far. It was to advise with them about the Treaty.

Attorn. Gen. Was it not read in the presence of the Company?

Far. The Commissions and Instructions were read in the presence of the Company, but they were not agreed upon.

Attorn. Gen. Was it not in the name of the Presbyterian Party in England?

Far. As I do remember, the Commission was in the name of the Presbyterian Party, for I did but only hear it read.

Mr. Love. Let him speak *viva voce*.

Far. To the best of my Remembrance, it was for the Presbyterian Party, but positively I cannot say so: My Lord, 'tis two Years since, and as near as I can remember, it was so.

Ld President. The Commission, you say, was not agreed to, but the Letter and Instructions were?

Far. William Drake did undertake to draw them up.

Ld President. Were they drawn up and sent?

Far. I am not able to say they were.

Ld President. Who were to be the Commissioners?

Far. My Lord Willoughby of Parham, Alderman Bunce, Major-General Massey, Colonel Graves, and Captain Titus.

Attorn. Gen. What were they to do?

Far. To advise, but not to treat in the behalf of the Presbyterian Party.

Ld President. Not in the behalf of the Presbyterian Party?

Far. No.

Attorn. Gen. Was there not an Agreement of Letters to be sent to the Queen, and no Proposals that way?

Far. No, my Lord.

Ld President. What was the Substance of that Letter read?

Far. It was, as I remember, to have the Queen persuade the King to give Satisfaction to the Scots in their just Demands.

Attorn. Gen. Was it not moved then to be debated what Power they had to send a Commission, and by what Authority they should do it, and by whom was it spoken?

Far. It was demanded, what Authority had private Men to send Commissioners?

Attorn. Gen. Did not you go afterwards with some over into Southwark?

Far. Yes.

Attorn. Gen. Where did you go?

Far. I went with Major Alford, and with Alderman Bunce his Son, and I went to Gravesend.

Attorn. Gen. What other Company was there?

Far. No body else, nor had I gone, but at the request of Master Alford.

Attorn. Gen. Did you know that Mason went?

Far. There was no such Man went along with us.

Attorn. Gen. Did no body tell you that Mason went with the Instructions agreed upon?

Far. There was a Gentleman we met with at Gravesend, that I conceive to be that Mason.

Attorn. Gen. Did he carry the Instructions?

Far. I cannot tell.

Ld President. Did no body tell you so?

Far. Not as I remember, I did not see any delivered to him.

Ld President. Do you believe he carry'd them, out of these Circumstances you heard?

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Far. Yes, I believe he did; I am upon my Oath, and to say positively, I cannot.

Attorn. Gen. Were there not Letters left at your House, and for whom, and what did you with them?

Far. There was at my Brother's House Letters left, but they were returned.

Attorn. Gen. But for whom were those Letters?

Far. They were directed to Will. Drake by Titus.

Attorn. Gen. Were you at Colonel Barton's House at the Fast?

Far. I was.

Attorn. Gen. Who officiated there? Was Mr. Love one of them?

Far. I cannot say positively, I believe Mr. Love did.

Ld President. Do you believe Mr. Love was one of them?

Far. I conceive he was one of them, and Mr. Robinson.

Attorn. Gen. Did he not pray for a Blessing upon the Treaty between the King and the Scots?

Far. That was done, but I cannot say it was by Mr. Love; but these Words were said there.

Attorn. Gen. Were you at a Meeting at Mr. Love's, after the Fight at Dunbar, a remarkable Time to this Nation?

Far. I was there, but came in late.

Attorn. Gen. Were you there, when a Letter was read from Massey?

Far. I did not hear it read.

Ld President. What do you know of it?

Far. There was such a Letter came, to assist the King with Money and Arms; but it was not agreed upon.

Ld President. Do you swear such a Letter came?

Far. I cannot swear positively.

Ld President. Did the Gentleman tell you so?

Far. He did tell me so.

Ld President. The Letter did write likewise for Arms and Ammunition, did it not?

Far. Yes, and for Money.

Ld President. Did not Mr. Love tell you, they could not do it?

Far. I did understand it was Mr. Love.

Attorn. Gen. Did not Mr. Love tell you, they agreed to raise a Sum of Money for Massey, and Titus, and Graves, or some of them?

Far. Yes, he did.

Attorn. Gen. What was the Sum of Money, and for whom was it agreed upon? did Mr. Love tell you so?

Far. I say, Mr. Love did tell me it was agreed upon for the sending of some Money, whether 250 or 300*l*. I cannot say positively; and it was to relieve Massey and Titus in their Necessities.

Attorn. Gen. Did not Mr. Love move you to contribute to this? and what did you contribute?

Far. Mr. Love asked me, and I did promise Five Pounds, and brought Five Pounds, and laid it down upon his Table.

Attorn. Gen. Who was in the Room then?

Far. There were several.

Ld President. Do you know none of them?

Attorn. Gen. Mr. Love saith, he hath neither writ, received, nor sent; but he doth not say, he did not mend Letters.

R

Far.

Far. I brought Five Pounds in a Paper, and laid it upon his Table.

Ld President. And was he in the Room?

Far. Yes, my Lord, but I cannot say any else was.

Attorn. Gen. I could tell you who there were more; Mr. *Cafe* was there too: My Lord, ask him if it were not agreed between them, that it should be so brought.

Far. As I did understand, it was so; it was so for my Particular, but I cannot say it of others.

Attorn. Gen. Did not Mr. *Love* speak to you to that purpose, to bring it in that way?

Far. I cannot say he bid me lay it down.

Ld President. What was the Manner of Mr. *Love's* requiring of you, for notifying of it to you, and the Manner of your Pursuit of that?

[Here Captain *Far* was at a stand, and made no Answer.]

Attorn. Gen. I will make it very short: Whether this were not done that there might be no Discovery of it?

Far. It was done to that effect, that there should be no Discovery of it: I did it under that Notion.

Ld President. And do you not think Mr. *Love* conceived it under that Notion?

Far. I cannot say he did.

Attorn. Gen. Were you not spoken to by Captain *Masse*, to speak to Colonel *Barton* to lend Money?

Far. I did speak to him.

Ld President. What was that?

Far. Ten Pounds, as I conceived; for I receiv'd it from him in a Paper.

Attorn. Gen. To whom did you deliver it?

Far. To Captain *Masse*, *Masse's* Brother, my Lord.

Ld President. You received it from Colonel *Barton*. Captain *Masse* bid you speak to Colonel *Barton* for a Sum of Money; and he gave it to you; and you gave it to Captain *Masse*.

Attorn. Gen. Was the Money, as you conceived, returned to *Masse* and *Titus*?

Far. I cannot say it was.

Ld President. Do you believe it was desired to be raised to that purpose? And do you think it was done according to that purpose?

Far. I do not know.

Attorn. Gen. Whether do you conceive that this Money, you thus brought to Captain *Masse*, was not for *Masse* and *Titus*?

Far. I do conceive it was.

Attorn. Gen. And was not Mr. *Love* commonly at your Meetings? And whether, after *Drake* went away, the Meetings were not at his House?

Far. I met with Mr. *Love* often at his own House.

Attorn. Gen. This Money was taken up under the Notion of a charitable Use?

Far. I do conceive it was given them under that Notion.

Mr. *Love*. Sir, he gave you a large Account of the Negotiation with *Titus*; pray ask him if I were privy to it.

Far. I cannot say so.

Ld President. Do you believe it?

Mr. *Love*. You say the Copy of the King's Letter (you suppose) that was brought over by *Alford*, was read at my House; whether did I hear the Letter read in my House?

Far. I cannot say you did.

Ld President. Was not Mr. *Love*, when the Letter was communicated, sometimes in the Room, going and coming?

Far. I cannot say when it was read; but I say he was there during some part of the Communication; but I cannot say he was there at the reading of the Letter.

Attorn. Gen. These are good Questions, my Lord.

Mr. *Love*. The Court will judge of that.

Ld President. But do you not conceive that he understood the Contents of it?

Far. I do conceive so.

Mr. *Love*. But he doth not say it was so. He said there was a Narrative read from *Titus*, I desire your Lordship to ask him whether I was present whilst the Narrative was read, yea or no.

Far. I cannot say any thing to that; I cannot swear he was there.

Mr. *Love*. Ask him whether I did not go often out of the Room.

Far. I did observe, that when Mr. *Love* hath been there, he hath been often call'd away, and hath been absent; and therefore I cannot say such a thing was done when Mr. *Love* was there.

Attorn. Gen. He hath before proved it upon Oath, that he was there sometimes.

Mr. *Love*. But look before, and he said he could not say I was present when it was read.

Attorn. Gen. This Narrative, whether was it a Copy written by *Alford*, as News brought over, or the Copy written by *Titus* himself?

Far. *Alford* said it was a Narrative from *Titus*.

Mr. *Love*. Pray ask him whether I did send *Alford* over, yea, or no; or agreed to the sending of him over.

Far. I think he did not; but he was sent by *William Drake*.

Mr. *Love*. My Lord, whether was he not privy to it? He told you *Titus's* Letter was writ before *Alford* went.

Far. But it was not agreed upon.

Attorn. Gen. *Titus's* Letter, that he writ, that some might come to him, to receive an Account of him, was read at Master *Love's* House.

Mr. *Love*. I move this Question, because *Alford*, who was the Man sent, confessed that *William Drake* sent him. He pretended there was a Commission read in my House; I desire to know when, or at what Time; whether before the 29th of March, 1650?

Far. I am not able to speak to the Time; it is about two Years since, or something under.

Mr. *Love*. I desire, Sir, to ask him this Question, Whether the rude Draught, written by *William Drake*, or the original Copy, was sent away?

Far. There was only a rude Draught that *Drake* read; and then afterwards *Drake* was to draw it up.

Mr. *Love*. Ask him whether I gave my Consent to the sending away of this Commission.

Far. I cannot say Mr. *Love* was there when it was sent away.

Attorn. Gen. Did Mr. *Love* make any Protestation against it?

Far. It was agreed by all that the Commission could not be sent.

Mr. *Love*.

Mr. Love. Ask him whether I did not declare in the Company, when there was such Speech of commissioning, that it was an high Act of Presumption for private Persons to commissionate any, and a notorious Falshood to say it was an Act of the Presbyterians; and whether did not I declare my self against sending the Commission.

Far. I did say it was agreed upon by all, that we could not send the Commission.

Mr. Love. I can prove, if I may have the Witnesses indemnified, that I declared against any Commission.

Ld President. Mr. Love hath declared then he knew of the Commission.

Mr. Love. I acknowledge the disavowing of any Commission; I gave my Reasons for it.

Attorn. Gen. My Lord, I hope you will remember what the Prisoner says.

Mr. Love. I do not own any thing about concurring with any Commission, but only disavowing of it. After Dunbar Fight, he saith, he came late; and he cannot tell whether the Letter was read at my House, only he says, I told him so: And whether was that the Letter, or a Copy of it?

Far. I cannot say that.

Mr. Love. The most that I have done, is but to receive News; and I hope I shall not die for that. Was this Letter of Masssey written to me?

Far. I have said already I cannot say so.

Mr. Love. I would be glad to be freed in Court.

Ld President. You are a very free Man indeed.

Mr. Love. He speaks of a Sum of two Hundred and Fifty Pounds, or three Hundred Pounds, sent to Masssey and Titus; pray ask him whether I did agree that it should be sent.

Ld President. Did he disagree?

Far. I said it was agreed to; but by whom, I cannot say.

Attorn. Gen. Did Mr. Love at that time disagree?

Far. I cannot say he did.

Mr. Love. Did I move Captain Far, or say, Captain Far, will you contribute Five Pounds to Masssey or Titus, or any Money?

Far. You asked me the Question, what I would do.

Mr. Love. But for Masssey and Titus?

Far. I did conceive it was for Masssey and Titus.

Mr. Love. He says he laid it in my House; and he so far justifies me, that he cannot say I received it; and God is my Witness, I never did see it in my Life. If another Man agrees to receive Money in my House, I hope the Court will not judge me for it.

Ld President. It is an easy matter for you to take it, and convert it to another Use.

Far. I do conceive that Captain Masssey had the Money.

Mr. Love. Now you clear me: Another Man brings the Money, and I do not order him to bring it; and another receives it, and not I.

[Captain Far withdraws.]

Attorn. Gen. Now, my Lord, we shall conclude in a very short Word, with a Minister to a Minister.

VOL II.

[Master Jackson the Minister is called into the Court.]

Mr. Jackson. Sir, I dare not swear.

Ld President. Dare you testify the Truth when God calls you to it? For God will appear in no other Vision than in the Power of Magistracy.

Mr. Jackson. I dare not speak against this Man's Life.

Ld President. Dare you speak the Truth before a Magistrate?

Mr. Jackson. That that I say, is this; That I look upon this Man as a Man very precious in God's Sight; and, my Lord, I fear I should have an Hell in my Conscience unto my Dying-Day, if I should speak any thing that should be circumstantially prejudicial to his Life: And in regard of these Terrors of the Lord upon me, I dare not speak.

Attorn. Gen. I think all the Jesuits in all the Colleges have not more desperate Evasions or Shifts from the Purpose than these Men have. My Lord, you now see what a desperate Combination here is, that Men being before Authority, and in the Face of Magistracy, in such a Court as this is, so eminent in the Presence of it, and so authorized as this is; that Men should dare to dally as they do; and that Ministers should say they dare not speak the Truth: not when Treason is hatched and contrived, they dare not speak the Truth; that this Man should be more precious, though a Traitor, than the Commonwealth, which should be preserved. I hope we shall root these Opinions out, or some of the Parties that hold them; that I will say.

Ld President. Master Jackson, you are one of the Parties in these Meetings, you have been at their Meetings; and we require nothing of you but to speak the Truth. St. Austin will tell you, That to conceal a Truth, or tell a Lye, you had better let the World fall about your Ears. You are required nothing but to speak the Truth; and will you say this Truth will be a Torment to your Soul? Are you a Professor of Jesus Christ, a Minister of God? The great Errand you are sent hither about, is to speak the Truth from him. Therefore lay your Hand upon your Heart, and do as becomes you as a Christian, and as a rational Man, and as one that will tell Truth; for by the Truth the World stands. We are all no better than savage Men, if we have not Judgment to tell Truth one to another.

Attorn. Gen. My Lord, suppose Mr. Love should kill one of these Men (that do hear the Debate) in the Presence of Mr. Jackson, and he should be called to give Evidence, and refuse it; he may take away any Man's Life. Personal Respects should be set aside when we come to Judgment. You see, my Lord, the Person of this Man, how it is preferred by this Man. That which is the Truth, you are required to speak, and nothing else.

Ld President. Have you any Oath or Promise among your Combiners to be secret in this Business?

Mr. Jackson. Never in my Life, my Lord.

Ld President. Will you take your Oath?

Mr. Jackson. I dare not, my Lord.

Ld President. What is your Reason?

Mr. Jackson. I have told you, my Lord, and I will tell you it again; I am a Man of a

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troubled

troubled Spirit, and I dare not do any thing that should cause a Hell in my Conscience to my Dying-day.

Ld President. Do you look to die?

Mr. Jackson. Yes, my Lord.

Ld President. And do you expect to live again?

Mr. Jackson. I trust in Jesus Christ I shall live again.

Attorn. Gen. My Lord, I desire your Clerk may be commanded to give him his Oath, and he required to take it.

[The Clerk tenders him the Oath.]

Ld President. Will you take this Oath, or not?

Mr. Jackson. No, my Lord.

Ld President. Then I think you are the Men that were spoken of before, Jesuits and Priests: They say you are none; but you are their Brethren.

Attorn. Gen. My Lord, these go beyond Jesuits: The Jesuits will swear with a Reservation, and these will not swear at all. This Man must be proceeded accordingly with; for if this be allowed, I conceive there will be no Justice in *England*. And in respect of the Quality of his Person, Function, and Gravity, by so much is it a more pernicious Example, and it aggravates the Thing every way.

Ld President. Let it be known here, that it may be dispersed abroad; and I think there are some of most Counties of *England*. And this Air is gone forth; this very Plot is secretly spread with some chief Ministers throughout all *England*.

Attorn. Gen. This Right they have done to many of them, that I believe it will make a more severe Inquisition into these Persons, than otherwise there would be: It is not Blood that is look'd after, but Confession and Contrition. I am glad that those that are not Clergy-Men do come in, and the Clergy will not confess at all.

[The Court consults a while.]

Ld President. Master *Jackson*, for your refusing to swear, the Court fineth you five hundred Pounds, and Imprisonment during the Pleasure of the Court.

[The Keeper of the *Fleet* is called upon, and commanded to take him in Custody.]

Mr. Love. My Lord, I have some Motions humbly to make to this Court. The first is, to intreat your Lordship, and the rest of the Members of this Court, that if I have let fall any Expressions thro Inconsiderateness, or for want of Skill in the Law, that have been an Offence either to your Lordship, or to any, I beseech you, if I have spoken any derogating Expressions, or made any unreasonable Motions, that you would impute it to my Ignorance.

Ld President. None of them shall hurt you.

Mr. Love. Then I intreat this Favour, That I may have Counsel assigned me, and Solicitors here in Court, and in my Chamber at the *Tower*, and a Copy of my Charge, and convenient Time, as the nature of the Business requires, my Charge being long, and I have not read a Word of it, nor the Depositions; that I may have, I say, Counsel assigned me, and convenient Time to bring in my Answer. And I am confident, thro the good Hand of God upon me, I shall clear my self of all the Treasons

charged upon me, and of all their Aggravations, through Strains of Wit and Quillets of Law by Instruments of State: I am confident I shall clear my Innocency, that I shall not stand a Traitor before you.

Ld President. They being Instruments of State, are Instruments of God, appointed by the State. For your Time, you have all this Afternoon. Are you not ready?

Mr. Love. I was yesterday nine Hours lock'd up in that close Room and in this Place; and I could not read one Word last Night, not out of Trouble of Mind, but through Weariness, being kept so many Hours in the Court.

Attorn. Gen. My Lord, he hath had a Fortnight's Notice of his Trial to prepare for it. My Lord, we have been two Days; and by the Course of Proceedings, if the Gentleman had had his Trial by a Jury, both must have been dispatched in one Day. We are appointed to go on to hear his Defence now, or else on Monday.

Mr. Love. I desire a convenient Time to bring in my Witnesses, to make it appear how the Witnesses against me contradict themselves. I have not yet read the Depositions of one Man, and I cannot read the Depositions by Monday; and to-morrow is a Day that some Time of it should be spent in other Employments.

Ld President. To do Justice, you must run out of the Church; and though you were at your Prayers, you must forsake Praying and Sabbaths to do Justice. Sir, this is of a higher nature than all your Preaching and Praying.

[The Court consults a while together.]

Ld President. The Court all agree to give you till Wednesday Eight a-clock in the Morning.

Mr. Love. I desire that I may have Counsel here, and in my Chamber.

Ld President. You have shewed nothing these two Days that raises any Doubt in Matter of Law.

Mr. Love. There are some Things in my Charge that I doubt this Court cannot take Cognizance of; something in those Acts, and something in respect of the Time. It is Matter of Law, whether the Act speak of sending or receiving Letters or Messages. And here are eight Witnesses come in, and never a Man proves that I received Letter, or sent Letter, or lent any Money. And this I conceive is Matter of Law, whether the Acts reach being present only where other Men lay down Money.

Ld President. You have had Counsel.

Mr. Love. My Lord, I have had none.

Attorn. Gen. For Counsel, you are to send him none, my Lord: He hath his Liberty; he hath Recourse for all the People in *England* to come to him.

Mr. Love. Counsel have refused to come to me; I have their Letters about me.

[Here he reads the Letters of some Counsellors, which they sent to him to the *Tower*, declaring they could not come to him, unless they were assigned by the Court.]

Attorn. Gen. All that we can say to you, is, that Counsel may come to you, if they will.

[Master *Love* is commanded away; and the Court adjourns till Wednesday.]

The third Day's Proceedings, July the 25th, 1651.

THE Court is set; and Mr. Love is commanded to the Bar.

Attorn. Gen. Mr. Love, this is the Day the Court hath given you (according to your Desire) to make your Defence; and they are ready to hear it.

Ld President. And I hope those Directions that have been given, have been observed, that any Persons of what Quality soever, either Lawyers or others, that came to you, have had in a fair way Access unto you; and that you have been debarred nothing that the Court gave Order for. If there have been any Impediments, we will do our best to have them taken away.

Attorn. Gen. My Lord, I have nothing more at present against him: You have heard that whereof he stands accused, and the Evidence produced to prove it. And, my Lord, I hope they be sufficient to convince the Gentleman that there is Proof against him for these Facts and treasonable Designs, whereof he stands accused. This Day is appointed for his Defence, if he thinks fit to make it. But if God hath otherwise wrought upon his Heart, and that he himself is convinced that the Charge against him is proved to be true; to me it will be the best way of his Preservation. But what way soever he thinks fit to take, I shall be ready to go along with him in it: And so, my Lord, I expect what he shall say.

Mr. Love. My Lord, I shall not trouble your Lordship, and the Court, to bring in at present any Witnesses to testify any thing that might invalidate that Testimony that some have brought in against me; I love not to protract Time: But I should betray my own Innocency, should I by my Silence lie under all that Charge and Obloquy which is cast upon me. And therefore I deem it my Duty, wherein I can, and as far as I am able, to express my self before your Lordship and the Court. And therefore I humbly crave leave of your Lordship, and this Court, that I may make my Defence for my Life before you.

Although I am denied Counsel to plead for me in this Court, which is so just and necessary a Means for the Preservation of my Life, yet my Comfort is that of the *Psalmist*, *My Defence is of God, which saveth the Upright in Heart, and pleadeth the Cause of his Servant against him that puffeth at him.*

My Lord, you have granted me that Favour which the *Romans* did to *Paul*, that he might answer for himself, concerning the Crimes laid against him.

In making my Defence, I shall humbly crave leave to proceed in this Method: To speak something, First, concerning the Charge: Secondly, concerning the Witnesses, and their Testimony: Thirdly, something concerning my self: And then, Lastly, some Things humbly to propose to your Lordship and the Court, concerning my Charge. Mr. Attorney-General hath exhibited a Charge against me, consisting of two Parts; of High Treason, and of other High Crimes and Offences. As touching the

first, comparing the Acts which the State hath made with the Actions which my self have done, I know not any personal Act of mine (proved against me) that renders me guilty, as to Treason, by any publick Act of your Lordships. And therefore I pleaded the general Issue, Not guilty, as to that.

As to the second, my Counsel having a general Licence to come to me, and since having been with me, they have acquainted me that Presence with, or Silence at what my Accusers have done, this renders me culpable by your Acts; and therefore, as to that, I shall humbly commit my self to your Justice and Mercy.

Concerning, Sir, the Charge laid against me, I can safely and truly say I am charged with many Things which I ought not, being pretended to be done before the Act was published which constitutes this Court. I am charged likewise therein with many Things that I knew not, and with other Things that I did not; and therefore dare not in Conscience lie under the Obloquy of the whole Charge. I do therefore in general declare and protest against what is mentioned in the Charge, touching the raising of Insurrections, Seditions, and Rebellions. I may say in that regard as *Jeremy* did, I desire not that woful Day, God he knows,

To the other Particulars, to wit, the Confederation with *Jermin*, *Piercy*, and others, in foreign Parts, to raise Forces, I answer, I dislike the very Mention of their Names, or any Concurrence with them in any Practice of such a nature, who are Persons whose Principles are so contrariant to Religion and Liberty.

As touching the other Particulars, to wit, a Correspondence with the Son of the late King, the Queen, *Jermin*, and *Piercy*, and others mentioned in the Charge; I do declare before you, That I never received Letter from, nor sent Letter to any of them; nor had I any Correspondence with them.

There are other Things in the Charge, to which all the Depositions of the Witnesses do not in the least come up: And should I by my Silence render my self obnoxious to the whole, you might judge me to be guilty of that which indeed I am not guilty of.

I observe in reading the Charge, that there are many Things in it which the Witnesses do not in the least speak unto: For, first, none of them swear that ever I writ Letter to the King, or to the Queen his Mother, or to *Jermin*, *Piercy*, or any other Person named in the Charge, or to any Person of the *Scottish* Nation, since the Troubles began.

Again, none of the Witnesses swear that ever I either desired, or persuaded, or directed any Person to write any Letter to any Persons whose Names are mentioned in the Charge, or to any Person in or of the *Scottish* Nation: Nor do any of them swear that ever any Letter was written in my House; but that only Letters supposed to be come from or sent to the *Scots* were read there; which I do not deny. Again, none of them swear that ever I did so much as read a Letter in my House, or other where, that was pretended to come from the *Scots*, or pretended to be sent into *Scotland*. Further, none swear that ever I gave my express and particular Assent to the sending away of any Letter. And none swear that ever I collected one Penny of Money
either

either for the King, or the *Scots*, or any Person in *Scotland*. That which is affirmed by one Testimony, to wit, by *Alford*, that I moved for Money, I shall answer when I come to it. Again, none of the Witnesses prove that ever I invited any Person, or foreign Forces, to invade the Nations of *England* and *Ireland*; which yet is laid expressly to my Charge, in the Charge read against me. None likewise prove that ever I plotted, contrived, or endeavoured to raise Forces, Tumults, or Insurrections within this Nation against the present Government. None swear that I was a Correspondent. Indeed, *Adams* in his Testimony had these Words, (which both the Notary and my self took) That he took me to be a Correspondent. But when I had your Lordship's and the Court's Leave to put this Question to him, Whether upon Oath he would affirm I was one? his Answer was, That he could not positively say I was so; but he said, He did conceive I was a Correspondent; but did not say I was so. So that, Sir, as to these Particulars, there are none of the eight Witnesses (neither the seven that have been sworn, nor yet Master *Jaquel*, whom I do not take to be under an Oath) that do charge any of these Particulars upon me.

I have a Word also to speak concerning the Witnesses who are my Accusers; and I might say there is an Incompetency in them, as to their Number. There are many Particulars sworn against me, to which but one Witness hath sworn to one Fact; and this I shall humbly offer to your Lordship's and the Court's Consideration. I might alledge also an Incompetency as to their Quality: They are not only Persons accused of Treason, and so are not to be believed, but they have made an open Confession of that which is Treason by your Act, and so are not *legales Testes*. They have done that by an open Confession, which, as I am informed, is equivalent to a Conviction: They have confess'd sending of Letters, receiving of Letters, and lending of Money; but they have proved none of these Things against me. Now they having both given it under their Hands, and also publickly declared that they have done these Things, I cannot judge them competent Witnesses against me: But this I must leave to the Court's Consideration.

Sir, concerning the Incompetency of their Number, to that wherein two Witnesses do concur, I am concluded; and wherein they have testified any Thing true, I would not deny it for all the World; and wherein they agree in their Testimony in a Truth, therein I will be candid, and ingenuous to acknowledge it.

My Lord, tho the Charge be long, and my Time but short, and the Depositions many Sheets of Paper, (and truly I could hardly read them over till late last night) yet through the good Hand of God upon me, I shall labour to make as plain and clear a Defence as God shall enable me.

Sir, in reading over the Charge, I observe, that those things which seem most criminal against me, are sworn to but by single Testimony; and I will mention, with your Lordship's leave, a few Particulars.

First, Touching the Letters said to be from *Titus*, the Effect of it being, as was said, to desire some to come over to *Calais*, that he might give them information touching Affairs at

Jersey; none but *Far* swears that this Letter was read in my House. The other Witnesses, some say, it was read in one place, and some in another: *Alford*, I remember, he says he heard it from *William Drake*; and *Adams* says, it was read in *William Drake's* House: but none but *Far* swears, it was read in my House. There is likewise none but *Far* swears, that Major *Alford* was desired in my House to go to *Calais* to *Titus*; neither *Jaquel*, nor *Potter*, nor *Alford*, nor *Adams*, nor any of the rest lay this to my Charge: it is only *Far* that lays this to my Charge, and he doth it most untruly, which I will make out unto you by an undeniable Demonstration.

He says, that at a Meeting at my House the Company did desire Major *Alford* to go to *Calais*. Now if your Lordship observes *Alford's* Testimony, he tells you upon Oath, that he was never in my House till after he came from *Calais*, nor ever spake with me in my life till after he came from *Calais*, therefore could not be desired in my House to go to *Calais*. So that, Sir, I will not lay it upon the Badness of *Far's* Conscience, but upon the Badness of his Memory. I do not think he is such an Atheist, to swear falsely deliberately; but being ask'd so many Questions as he was, for he was ask'd fourscore and eighteen Questions by Mr. Attorney, and some of the Court, he might easily say he knew not what.

And I saw the Man was confounded, and it was hinted to him what to say, by the help of the Papers, and Examinations taken from him in private, and shewed to him in publick: so that, Sir, I saw the Man under a Temptation. I was loth to mention this then, tho I knew his Testimony herein to be false, because I would not anticipate my last Answer.

A third Particular charged upon me by one Witness only, is a Copy of a Letter (not the Original, none swears that) that *Alford* received from *Titus*; and he told him, it was a Copy of a Letter from the King. Now *Far* he swears that the Substance of the Letter was to desire Commissioners to be sent over to *Breda*, at the Treaty there: now *Alford*, who pretended to receive this Letter from *Titus*, being ask'd the Question, he swears that there was no such thing in the Letter, that he knew of. Now truly, if any did know the Contents of that Copy of a Letter, it must be *Alford*, who brought it over: I beseech your Lordship therefore to consider it, and tho the Charge against me be very high, and my Condition very low, and the Opposition against me very great; yet I hope I am in the hands of merciful and just Men, and that wherein you see but single Testimonies, that therein you would be very tender in proceeding to a Sentence against me upon those Testimonies.

Again, in the next place, I observe a single Testimony only in another Business, and that is Major *Alford*. None but he, of all the Witnesses, did swear that it was agreed upon among us, that is, at my House, That a Commission and Instructions should be sent over to the Lord *Willoughby* of *Parham*, *Massej*, *Titus*, and Alderman *Bunce*; none, I say, but *Alford* swore this. *Adams* indeed swore, that there was a Motion that this should be; and *Huntington* swore this, that Mr. *Love* should say, Come, come, let it go;

go; (to which I shall answer, when I come to it.) But *Far* said expressly, three times in Court, being upon Oath also, That all the Company were against sending away the Commission. And *Alford* he only swears, That the Commission was agreed upon.

I hope your Lordship and the Court will judge which of these to believe; and for *Alford's* affirming that it was agreed upon among us, I am sure, if he had any Conscience, he could not say that I agreed to it. I will not deny (now Witnesses have proved it) but that I was present. But I did express myself against the Commission and Instructions, as being an Act of high Presumption, for private Persons to send Commissions and Instructions; and as being an Act of notorious Falshood, that it should run in the name of the Presbyterian Party, when none did know any thing of it, that I know of, but only those that were then in the Room. And I beseech your Lordship and the Court to consider, that this is not only a single Testimony, but that it is said to be done in the Year 1649, a great while ago, my Lord. And so the Business of *Titus*, if it had been true, was done some time before that: so that, Sir, it being done before the Act of the 26th of *March* 1650, which constitutes this Court, herein I hope it will not be deemed criminal, if I had agreed to and approved of the Commission, which I never did. Another Particular, to which I observe there is but a single Testimony, which is *Alford* also; he swore, that at a Meeting at my House, I moved for Contribution of Money to *Titus*; none swore this but only he. *Adams* swore, I took Pen and Ink in my Hand, but he knows not what I writ. Others swore, That I was sometimes present at the Meeting; but none but *Alford* swore, that I moved at a Meeting for Contribution of Money. Now, Sir, as to that it is but a single Testimony; and if it were true, I do not deem it comes under the Act, because the Act (of which I was ignorant till the day I heard it here in Court) of the 2d of *August* 1650, that Act doth adjudge this to be Treason, to wit, *The sending, or causing to be sent, Money, Horses, or Arms, into Scotland*. Now, Sir, if it had been true, which this Witness deposeth, That I at a Meeting did move for Money, yet he proves not against me, that ever I received or sent away a Penny; and if I had moved it, that had neither been a sending away of Money into *Scotland*, nor a causing of Money to be sent away: and so brings me not, as to Treason, under your Act.

Another thing, unto which only a particular Witness swore, to wit, *Far*, is, That I moved him particularly to contribute Money. He chargeth not this at a Meeting, as *Alford* doth; for he says, he came in late, but saith that it was a personal Motion to him alone: And he doth not say, that I moved him for Money for *Massey* and *Titus*, but that I only asked him this Question, *Captain Far, what will you do?* And if your Lordship consider it, and that your Notaries have taken right, you shall find that to be his Answer, which I shall answer when I come to it. And thereupon he confesses, he brought five Pounds to my House, but he doth not tell you that I received it; and God is my Witness, I never saw it, nor received it, nor did I give any directions about it. But as *Far* was going out of the Court, he named *Captain Massey*, the

Person which he thought received the Money; for which he was rebuked by some that were by him, that so the greater Odium might lye upon me: as if because the Money being brought to my House, I must needs therefore receive it. His Name, as I am informed, that rebuked him for declaring who received it, is *Captain Bishop*: so that they would insinuate into your Breasts, who are my Judges, (who I hope will be conscientious) That it was I that received the Money, when the Witness meant honestly, that another received it. But if I had received it, or moved for it, yet he is but a single Testimony to that Particular. Again, in reading the Depositions, I take notice that there is only a single Testimony to those words; (upon the reading, reading I cannot say, for I never read it; upon the hearing some Papers read, supposed to be a Commission) that *Huntington* swore, that I should say, *Come, come, let it go*. Those were his words; but the other who were there present, two or three of them being ask'd, whether they heard me speak such words, they all of them denied that they heard any such words. Now truly this *Huntington* is a Man whose Face I never saw before that day, nor since, till I saw him here in Court: and if I had known that a Business of any dangerous nature had been come to my House, which I did not, (for I knew no more of it, than any here present, before *Drake* took the Papers out of his Pocket, which *Huntington* confesses were written in Characters, and read by *Drake*) I should have been accounted a very indiscreet Man, to speak any such words in the presence of a Man whose Face I never saw before. And for those words that I should say, *Come, come, let it go*; I hope your Lordship and the Court will be satisfied, that I never spake any such words, as to the Commission and Instructions; for then I should have contradicted my self in one Breath: for at the same time I had spoke against it.

Again, I observe in the Depositions, none but *Adams* affirms that there was a Letter, which, says he, *was declared to be directed to the General Assembly of Scotland*. He doth not swear it was directed to the General Assembly, but that it was declared to be so, and so swears by Hear-say. None but he, I say, affirms upon Oath, That at my House there was a Letter read, which was declared to be directed to the General Assembly. And he says further, He thought this Letter was penn'd by Master *Love* or Dr. *Drake*: But I beseech your Lordship and the Court to consider by what reason he did conceive this; and I hope your Lordship will distinguish between a positive Assertion, and a conjectural Supposition. For being ask'd, why he conceived so? *I conceive so*, says he, *because of the Language of it*: as if he that never saw any Letter of mine, to know that poor and low Style I write in, should conceive that either I, or that other Gentleman named, should pen that Letter, merely because of the Language of it, it being, (he said) in order to promote the Ends of the Covenant. I hope the Court will judge of the Insufficiency of this Evidence; and were it never so clear, yet as to that Particular, it is but one Testimony.

Again, none but *Adams* sware concerning a large Letter, that, for my part, I never knew of, till the day he affirmed it here in Court. A
large

large Letter, he says, in the nature of a Declaration, penn'd, as he thought, by Master Love or Dr. Drake, wherein it should be said, That they could not send Money till the Scots did appear more considerable, and grew nearer to Action: Yet he confesses he had no ground to say Master Love penn'd it. And indeed, he had not. But, Sir, as for this Letter, though I durst not for a World deny any thing which I know to be true; yet God is my Record, to my knowledge, I never so much as heard any mention of it. And as for these words he speaks of to be in the Letter, I know nothing at all of them; nor did I ever hear them, as I know of, till I heard him affirm them here in Court.

But if it had been so, yet he is but a single Testimony, and I beseech your Lordship to consider, that he says it was to this effect, or this was the Substance of it: Now I hope so many grave Judges and Lawyers that sit upon my Life, and so many conscientious Men, will be tender of a Man's Blood, when a Man shall come in with Evidence, and shall shew neither my Hand, nor the Letter, nor the Original, neither Copy, nor Transcript, nor any thing but the vain Ravings of a Man's Memory in things spoken or done so long ago; and that a Man shall come in against a Man's Life, and shall only say, that this was the Sum or Substance of it, or it was to this effect. And I being a Divine, I shall not speak as to Matter of Law, that this is insufficient Testimony; but as a Scholar, and one that studies the Scriptures, I shall observe one memorable Instance that pleads my Justification in this Particular, and they are the words of Christ; Christ said, *Destroy ye this Temple, and in three Days I will raise it up*, John 2. 19. Now the Scripture in Mark says, *There arose certain, and bare false witness against Christ, saying, We heard him say, I will destroy this Temple, &c.* Mark 24. 57, 58.

I beseech your Lordship to consider, that in this Testimony of the false Witnesses against Christ, there is only the Variation of a Word, and the Addition of a Letter; there is the Addition of a Letter *I*, and the Alteration of the word *ye* for *will* (there's all) for Christ did not say I will destroy, but, *destroy ye*; and yet the Scripture takes notice of it, that this Addition of a Letter, and Alteration of a Word, brought his Accusers under a false Testimony, though they spake according to their Intention; for they did verily believe he spake of the Temple: for they said, Forty Years was it in building. So that I beseech you be tender in Matters of Blood. I know you who are skilful in the Law do know, that the Proof of Treason must be as clear as the Sun, *Probationes oportent esse luce clariores*. Now when a Man shall come against a Man's Life, and cannot shew any Letter that ever he wrote, or that ever he did receive, but shall only swear it was to this effect, or to this purpose, or I believe this was the Substance of it; I hope you are so wise and conscientious, that you will pass no Judgment upon this conjectural Evidence.

Another Particular, to which only one Witness testifies, and that is *Adams*; he swears that I should say, That if the Presbyterians were in Arms, by the Blessing of God, Malignants might be prevented from getting the day. Truly, I do not know what Crime is in these words, but as they may be wrested. But, Sir, I do remember

that this *Adams* hath often come to my House; he said seven or eight times, he might have said seven and twenty times; for he hath come sometimes once or twice a Week to my House, to tempt me (as I now perceive) and hath offered me Money; and would ask me whether I knew any thing for a publick Use that might require Money; And though I never suspected him, yet so free am I from maintaining Correspondency, or from having Intelligence, or contributing of Money to maintain a War, that I never received one Penny of him in my Life, though I have been moved to it by him: But I remember, of late especially, about a quarter of a Year before I was in Prison, he would come once or twice a Week to my House, and he pretended that he was wrought upon by me, and that I had turned him from his malignant Principles; for he was very violent for *Hamilton's* Invasion of *England*, which I was, and to this day am against; and I did labour to possess him what a mischievous Design that was: and so he pretended to be turned to my Principles, and upon this got some room in my Affections. But these words were not above a fortnight before I was committed to Prison: and I remember the Occasion of them was this; I was bewailing the great Alienation and Difference that there was between the Presbyterian and Independent Party (though I do not love Names of Distinction) and indeed thus I said, That if the godly Party, that were now disunited and disjointed, both of the Dissenting and Presbyterian Way, were in Arms, there were no Hopes that ever the Malignants should get the Day. And God is my Record, I spake nothing to him but to this purpose. And thus, through the good Hand of God upon me, I have spoken to what I observe in reading the Depositions, wherein I find but single Testimonies against me.

I shall now crave leave (which is the main of my Work) to run over the Depositions as briefly as I can; for I shall not trouble you with large Speeches: but being the Depositions were large, and the Witnesses many, your Lordship and the Court (I hope) will bear with me with the more Patience, if I speak more largely in it. It is my Duty to speak for my self, and 'tis for my Life.

The first Witness that appeared in Court against me, was *Henry Potter*. As to his Testimony, there are many Particulars which he was ask'd about me, to which he spake but conjecturally; *as he thought, and as he believed, and as he conceived*. And when Papers by Mr. Attorney-General of his Examination were tendred to him, he answered, That *then he had a Latitude to speak more than he durst affirm upon Oath*. And upon this I shall humbly crave leave that I may make this Motion to you, That you would not, in passing Judgment upon me, hearken to any private Examinations, which are extrajudicial, to be brought in Court against me; for most of the Witnesses had their private Examinations shewed them in Court, and were read to them, and they did not speak in their Relations of what they knew, but what they conceived; and when they could not tell what to say, then their Examinations were produced to direct them: and I hope your Lordship and the Court will take notice of this. And herein I cannot but acknowledge the Justice of this Court in this Particular, That you would not receive private Exami-

Examinations till they came Face to Face, that I might answer to the Crimes laid against me.

But as to his Testimony, I shall not run over things that touch me not, I must not flatter myself to pass over things that concern me: For I know it will be look'd upon with more prying Eyes than mine are. There are only two things in his Testimony that concern me: He speaks not of any Meetings at my House that he knows of; he speaks not of any Money that ever I lent him or gave him, though there was a narrow and exact Examination of him in those Particulars. But two things concern me in his Deposition; the one is, That he received a Letter with a great L. upon it, from one Colonel Bamfield, which was a Narrative of the Affairs of Scotland; which Letter, with two more inclosed, from my Lord of Argyle, Lowdon, and Lothian, he said, he brought them to Mr. Love's: and herein I might take notice, that he forgot himself a little, for he might have said, that he brought them first to Mr. Jaquel's; for Jaquel did affirm in Court, that Potter brought the Letters to him, and spake to him to come to me. The Substance of the Letters from the Earl of Argyle and the rest, he says, were to move for Ten Thousand Pounds; and (as I remember) Jaquel says, for Five Thousand Pounds: But Potter himself acquits me in this matter; for he doth not swear the Letter was to me, nor could he swear it justly; nay, he swears he did not think it was to me. And as for this Bamfield, he is a Man whose Face I never saw to this Day: and he swears, (and indeed he had been injurious if he had not told you thus) that when he came

This Passage of C. Potter's [Mr. Love, I have News to shew you] was through some Mistake left out of his Depositions.

into Mr. Love's House, he said, Mr. Love, I have News to shew you. And unless things be aggravated against me, by the Insinuations of Men, and by rigid Inferences and Collections, this will be the worst charged upon me, That there were several Meetings at my House, and several Letters read there, which I do not deny. But, Sir, he confesses that he said [Mr. Love, I have News to shew you;] and that he opened some of the Letters, and that some were not opened when he brought them: But neither he nor Jaquel swears, that I opened them; and he tells you, That he carried away the Letters with him. And he swears further, That both my self, and all that were there present, did manifest an utter Dislike and Detestation of those Letters. But herein I know what will be laid to my Charge; it will be said, Why did not Mr. Love reveal them? Truly, to this I do ingenuously say, That I did conceive by reading of the Act that constitutes this Court, That those only were bound to reveal, that did receive them; and not that I was bound to reveal that which another Man received. But herein I am better informed by my Counsel, and they tell me, That Presence with, or Silence at what others do, makes it a criminal Fact in me, if the Matter of the Letter be criminal and treasonable by your Acts; and therefore in this, that I did not discover them, I shall humbly beg your Favour.

The next Thing in Potter's Testimony that toucheth me, is, he swears that he heard of a Proposition for raising of 400l. for Titus and Massy; but he varies from the others: Alford

said, 2 or 300l. and Far said, 250 or 300l. and Potter saith, 400l. But he saith he was not present when the Proposition was made, and therefore he cannot speak as to that. But yet saith he, I brought Ten Pounds to Mr. Love's House, and there left it; (five or six Persons more being in the Room.) Mr. Attorney-General was pleased to asked him, Whether he did not give me a twitch by the Hand or Cloak when he brought it? Potter, I remember, denies that he did so; and I do not remember that ever he did it, nor do I remember that ever he laid a Penny of Money down in my House: And I tell it you in the Presence of God, I never saw it, nor received it to this very Day. But, Sir, if he had given me a twitch, which is intended as an Aggravation against me, I hope a Judicatory will not proceed upon so silent a thing as that is: Though Solomon says, *There is a Teaching with the Fingers*, Prov. 6. 13. yet that is so silent a thing, that a Court of Judicatory cannot take notice of it, unless it be manifest and apparent by some Act. And therefore seeing he doth not affirm that I saw the Money laid down, or that I received the Money, or directed or ordered him to come to my House with any Money, I hope you will not lay that to my Charge. And thus I have done as to that Particular.

There is only one thing more in order to the Letters he was examined about. He was ask'd what Answer was returned to those Letters that he received from Bamfield, and the Earl of Argyle and the rest, that he shewed Mr. Love? To that he gave this Account, That a Letter was left at his Shop, which he thought, he said, came from Mr. Love or Doctor Drake. Now, Sir, for my part, I declare in the Presence of God, That I never in all my Life, either wrote or sent, or left a Letter at his Shop: And although I am not to plead another Man's Cause, yet I believe that godly Minister he mentions will clear himself also; but I must only speak to my own Defence. For my part, I never in my Life sent a Letter to his Shop, written to those Persons: and he only swears, That he thought the Letter left in his Shop came from me or Doctor Drake: But how could he know from whom it came, or what was the Matter of it? And if it had come from either of us, which he did not affirm, yet he doth not say he opened the Letter, and so could not tell the Contents of it, that it was an Answer to the supposed Letters he shewed me. I have only one thing to observe in his whole Testimony, and that is, That he confesses, until he had a sight of other Mens Examinations in private, to wit, of Alford's and Adams's, the things did not come to his Remembrance, or Words to that effect he hath in his Depositions; and that there were some things to which he could not speak exactly, till he first saw some Informations; and that Mr. Attorney-General did shew him some Informations, and that did bring things to his Remembrance; and that before Capt. Fisher and Mr. Attorney did prompt him, and remember him, he had forgot. So that, Sir, I beseech you consider, whether this be a clear and good Testimony in Law, That when a Man hath forgot a thing done so long ago, he shall through the Examinations of others have his Memory rubb'd up, and then shall come here in a publick Court to testify this against a Man's Life

The next Witness is Major *Alford*, he gives you a large Relation about sending *Titus* to *Jersey*, and of 100*l.* given him for his Journey, and of Letters to the Queen, and *Jermin* and *Piercy*. My Lord, I am as ignorant of all these things as the Child unborn, and did never know that *Titus* was gone or sent to *Jersey*, by any Person, till a long time after I heard he was there, and till I heard of his Name in the *Diurnals*, that he was an Agent for some Presbyterians; till then, God is my Record, I knew nothing of that: and I need not speak to this, but because this was part of my Charge, and brought into the Court, many may imagine, as if I were guilty upon the whole matter. But that which concerns me, is this; he affirms that the Commission and Instructions were agreed upon at my House, to send to some Persons; to wit, my Lord *Willoughby* of *Parham*, *Massey*, *Titus*, and Alderman *Bunce*, to treat at *Breda*; and this to be in the behalf of the Presbyterian Party.

Now, Sir, I shall humbly crave leave to offer, wherein this Testimony is not only disagreeing with the Testimony of others of the Witnesses, but even to his own Testimony also. For here he says, it was agreed upon at Master *Love's* House; and in three Leaves after, he says, it is true, there was a Commission and Instructions read at Mr. *Love's* House; but whether they were agreed upon there or no, saith he, I know not. I do not say he hath a bad Conscience, but sure I am, he hath a bad Memory. He disagrees with the Witnesses also; for *Far* did expressly affirm upon Oath, That all the Company was against sending them away; and therefore for *Alford* to say it was agreed upon among us, in that I am sure he doth not speak truly. Another thing which *Alford* lays to my Charge, is about a Letter, which after *Dunbar* Fight should come from *Massey*, wherein he should write for Money, and for Arms, by the way of *Holland*; and he swears this Letter was read in my House, and says, That upon the reading of it, I did move for the Contribution of Money to be raised for the Supply of *Titus*. Now before I answer to that, though I am not in a Condition to retort, yet I shall humbly crave leave, without Offence to Mr. Attorney-General, to intreat the Court to take notice of this one thing: Master Attorney-General, when the Witness had spake these Words, did pray your Lordship and the Court to observe, that *Massey* wrote for Arms, and Mr. *Love* moved for Money; as if he would insinuate to the Court, That he writing for Arms, and I moving for Money, that my moving for Money was to buy Arms. Now *Alford* upon Oath did declare, That every Man there was against Arms, and he only said, That the Motion for Money, was to supply the personal Necessities of *Massey* and *Titus*, who were in want. So that I intreat you to consider it, that that Insinuation of Mr. Attorney-General might not be aggravated against me, and that a bad Inference might not be drawn from it; as if he writing for Arms, and I moving for Money, that that Money should be to buy Arms; which is contrary to Major *Alford's* Oath. Again, another Insinuation of Mr. Attorney-General is this; He prayed your Lordship and the Court to consider, That I moved for 300*l.* now this is contrary to *Alford's* Oath; for *Alford* hath these words, *Mr. Love did move for the Contribu-*

tion of Money, but there was no Sum spoken of. Now when he shall affirm that there was only a Motion for Money, but no Sum spoken of, shall this be laid to my Charge, as if I moved for 300*l.*? Therefore I intreat you, that those Insinuations and Aggravations of Mr. Attorney-General may not be laid upon me; and that ye would take no notice of any private Examinations, nor yet of any Aggravations of those who are Instruments of State, but upon the plain Deposition of the Witnesses, and according to their Testimony and your Consciences I must stand or fall. *Alford* said further, That after he came from *Titus*, he gave an Account of a Narrative, and of a Copy of a Letter from the King of *Scots*. What he might bring, I know not; and if he did, I never desired him, either to go to *Calais*, or to come to my House: For I never spake with him, as I remember, till after he came from *Calais*; nor till the time, he says, the Letter and Narrative was read in my House. Now, Sir, he only says it was a Copy of a Letter (not the Original) That *Titus* (saith he) did shew me a Copy of a Letter, at leastwise, which he said was from the King to the Presbyterian Party. So that this which is the Foundation of the rest of the Testimony, is only this, That the Copy of the Letter was read at my House, and that it was a Copy of the King's Letter. This he affirms only upon Hear-say; for he says, *Titus* told him so: But who can swear, either that *Titus* had the original Letter, or that this was a true Copy? Nay, might it not be a fictitious thing, either of *Titus* or of this Man, as may well be suspected? So that they that receive Letters, if that be Treason, and those that write Letters, and send Money, if they be Traitors; yet they have proved none of these against me, and yet I only am arraigned, and they in hope of Favour.

Again, I desire the Court to take notice, though Captain *Far* says there was this Clause in the Copy of the Letter from the King, to send Commissioners to *Breda*; (and yet he overthrew his Oath afterwards; for he says, It is so long ago, that I cannot remember it: but I shall speak to that when I come to it) yet *Alford*, that brought this Letter, affirms, That he did not know it was to desire Commissioners to be sent; and if it had been so, I should never have done it, and never did it. At that time I was in my Study, I do not deny it; but when *Drake* read the Commission, I did declare my Dislike of it, and Detestation against it; and so did (as *Far* affirmed) either most or all the Company: And if any such thing were sent, God is my Record, I did neither know of the writing of it, (other than in Characters) nor of the contriving of it, nor yet of the sending of it away, till I heard *Alford* confess in the Court, that he carried this Commission to *Gravesend* to one *Mason*, a Man whose Name I never heard of before I was in Trouble. And if I had written and consented to it, yet it was in the Year 1649, as Major *Huntington* swore, and therefore was before the time that your Act could take hold of me, if I had concurred to it, which I never did. Again, he insisteth upon it, That I moved for a Contribution. Now herein I beseech your Lordship, that I may offer these two things.

First, This is but the single Testimony of one Man, and by the Law of God, and of the Land,

a Man must not die, but under the Testimony of Two or Three Witnesses: in the Old Testament, *Deut 9. and 15. One Witness shall not rise up against a Man for any Iniquity, or for any Sin in any Sin that he sinneth. At the Mouth of Two Witnesses, or at the Mouth of Three Witnesses, shall the matter be established.* And lest this might be thought to be a Judicial Law pertaining only to the Jewish State, it is therefore quoted four times in the New Testament; by Christ, in *Matth. 18.* by Paul, in *2 Cor. 13.* and in two other Places, as noting it to be a Law of Moral Equity, That no Man's Life should be taken away, but by express and clear Testimony of Two sufficient Witnesses. Now in this that may seem most to pinch upon me, that I should move for Money, there is but one Witness; and it is, as I am informed, contrary to the Laws of the Land, and the Statute of the 1st of *Edward the Sixth*, which provideth, That no Man shall be indicted, arraigned, and convicted for Treason, but by two lawful and sufficient Witnesses: and therefore I beseech your Lordship and the Court, that you would be tender in those things, wherein you find but one Witness speaking.

The other thing that I shall say to this Point, about moving for Money, is, That I humbly conceive the Act doth forbid relieving Persons in Arms; but now no Person can be relieved by a bare Motion: it is not the Motion, but the having the Money moved for, before the Person in Arms can be said to be relieved; and if it were true, yet it is not proved, That those Persons were then in Arms. The other Act of the Second of *August*, I conceive, gives me Relief, if I had moved for Money; for it judges those only to be guilty of Treason, that shall either send, or cause to be sent, Money, Horse, Arms and Ammunition into *Scotland*. Now, Sir, if I had in a Meeting moved for Money, yet he tells you not how much I moved for; for ought he knows it might be but for Six-pence, for he cannot swear to it: and I hope, when the Sum is not spoken of you will be very tender. Yet this comes not under your Act, either to be a sending of Money into *Scotland*, or a causing of it to be sent, which is not the least fastned upon me. When I ask'd him (though he swore I moved for Money) whether I contributed any Money my self? to that he answered, he could not say I did, nor could any of the Eight Witnesses that came against me. And thus I have done as to his Testimony.

The third Witness is Major *Huntington*; and he affirms, That in the Year 1649, one ask'd him to go to my House, and told him there were some there at Prayer, and that he might there hear some News; and that he spake upon hear-say: But then he spake upon Oath, *And when I came there, Prayer was done.* Now for a Man to be so positive in the first Entrance of his Testimony, as to say Prayer was done, when he could not know that there was any Prayer there at all; (for when he came, it seems there was no Prayer; and how then could he know there was any Prayer there at that time?) this at the very first Entrance of his Evidence, I suppose might be a just Ground to suspect his whole Testimony. But as for the Man, I knew him not, I never saw him, as I said, before that time, nor since, till I saw him here in Court. This Man affirms, That *William Drake* read in Characters, that

which he called a Commission, and said, That he had a Command from the King to send this Commission away; which, God is my Record, I never heard, nor ever knew of it: and *Alford* that brought over the Letter, in which *Far* swore those words were, he himself denies it. But that which concerns me in *Huntington's* Testimony, is this, he affirms, That when the Commission was read by *Drake*, I should say, *Come, come, let it go.* Now, Sir, I ask'd him this Question, Let it go, what doth that refer to? Says *Huntington*, let the Papers go. Now truly I am not so bad a Grammarian as to speak of Papers, *let it go*, and not to say, *let them go.* And if I had spoke of Papers, as he says I did, I must either be guilty of Nonsense, or else he of Falshood; I believe he of both. But as for those words, *Come, come, let it go*; he doth not affirm that I said, *Come, let it go away*, but let it go; and that may be a word of dislike: And if I did say so, yet it was not of the Commission, God is my Record; for he came not till Nine of the Clock at Night, as himself says: and before he came, I had declared my self against sending away the Commission and Instructions, as being an Act of too high a Nature for private Men, and of notorious Falshood, to say it was in the Name of the Presbyterian Party, when it was not. And the other Men that were here in Court upon Oath, and that were then present, as *Adams* and *Alford*, did confess upon Examination, That they heard no such words from me.

The next Testimony is Master *Adams*; and he relates a Story of a Correspondency between *William Drake* and one *Mason*; and being ask'd, Was Master *Love* privy to this Correspondency? he did so far clear me, that he could not say it, nor was I privy to it. Being ask'd again, Was Master *Love* privy to these Letters of sending moderate Propositions to the King? That he likewise clears me in, he cannot say it: And I can say, that I am so far from Moderation in their Sense, that Moderation in their Sense I deem downright Malignity; which I was, and still am utterly against. He was asked likewise, Did Master *Love* know of collecting a Hundred Pounds for *Titus*? To that he answered, That he durst not upon Oath say that Mr. *Love* was privy to this Collection; and he doth not say, that it was agreed in my House to send away the Commission, but says, it was moved in my House: for he says, *I cannot say it was agreed upon, for there was no Vote pass'd.* These were his Words; and he contradicts *Alford* and *Far* in three Places of his Testimony. He overthrows *Alford's* Deposition. He affirms that the Copy of the Letter from the King was to shew what great Affection he bare to the Ministry of *England*; and promised great Favour when he was in a Condition to do it; and desired them to stand stedfast in the Way they were in. And he saith he dare not swear that this Letter was read in my House; but he thinks it was. Now, as to this Letter likewise, I desire the same Favour from you, that when the Letter doth not appear, neither the Original, nor the individual Copy, that you would be tender of passing any Judgment upon me upon the vain Rovings of a Man's Memory; and of a Man's Memory too, that is engaged to prosecute my Life to save his own, as most of the Witnesses are that came in against me. He

saith there was a Motion made in my House, that a Commission and Instructions should be drawn up, to send to my Lord Willoughby of Parham, and the rest in Holland; but he says, *But by whom I cannot say*: and says he, *There was no Debate, as I remember, to mend the Instructions*; though the Attorney-General did lay it upon me, as if I had corrected and amended them, when I did neither read them, no, nor so much as touch them in my Life. The Substance of the Commission, he tells you, was to authorize the Lord Willoughby of Parham, Massey, Graves, and others to assist their Brethren of the Scottish Nation in their Treaty. Now to this there is a manifest Contradiction in another Man's Testimony: For Captain Far swears that the Commission he speaks of was not to treat, but only, as private Persons, to advise that the King might agree with the Scots upon the Interest of Religion, and the Terms of the Covenant; that he might not be drawn away by the high-flown Cavaliers and Malignants. So that Far overthrows this Testimony of Adams. Adams says it was to treat; and Far says it was not to treat, but to advise. But be it the one, or be it the other, I detest both; I had no hand in, and gave no Assent unto it, but manifested my Dissent to the whole. He being likewise asked (for I am still upon Adams's Testimony) whether at a Meeting it was not propounded at my House to write to the Queen, and to Jermin and Piercy, to mediate with the King to agree with the Scots: To this he answered, No. And truly he might very well answer so; for I am sure I did never in all my Life hear of a Motion so much as of a Letter to be writ to any of these three Persons, to the Queen, Piercy, or Jermin; and should have loathed and abhorred the very Thought of it; and should think that Cause the worse, wherein these Persons were engaged. Being asked whether there was not a Letter from Piercy, that writ for Money to be sent to the King; and whether the Answer given was, That they should stay till the King and Scots were agreed, and then to send Money; Adams in this did me this Right: He confessed he saw such a Letter writ; but (says he) *I only saw it in the Hands of one Mason*: a Man who, for my part, I never knew nor heard of till I was in Trouble. And being asked whether this Letter from Piercy was read in Master Love's House, he said, *Certainly no*. Being again asked whether about August there was not a Letter written from Massey, wherein he said he had Back-friends in Scotland, and complained that he was not promoted there; and whether that Letter was communicated at Mr. Love's House: In this also he did me right; for he answered, *No certainly, that Letter was not, to the best of my Remembrance, read there: I heard of such a Letter, but saw it not*. Then being asked whether one Sterks was not a Scotch Agent; and whether he did not use to come to my House: To which he gives this Answer, *We took him to be a Scotch Agent, and he met sometimes at Master Love's House*. Now, Sir, as to that, he supposeth that he was an Agent, but doth not swear that he was so, much less that I knew him to be so. Nay, I can swear, upon the best Information I have had both from his own Mouth, and the Mouths of others, that he was no Agent; for he lived in England fourteen Years, and had not been in Scotland in fourteen Years.

And I heard himself say so when he went away upon the Act: And I asked him, Are you imployed by the Church or State of Scotland? And he told me, No, he was not. It is in your Breasts whether you will believe me, or no. And likewise Mr. Blare, when he was here in London, did affirm to me that he was a poor honest Man; and that he was no way imployed as an Instrument of State. I know nothing of the Man's Agency: Be he Agent or not, I never sent Letter or Message by him, nor received any from him in all my Life. But I see it is laid heavy upon me in my Charge, that I contributed Money to him; but no Man in his Depositions did prove that I ever gave him a Penny. Adams being asked whether Master Love did not write down the Sums of Money that was to be contributed to Massey; in this he doth me right also, for he saith, *Master Love had a Paper in his Hand, but I did not see what he wrote*: and therefore to that I need not answer. Being further ask'd, Did not Master Love put the first Letter of their Names before the Sums which others wrote; he answered, He could not say so. Being ask'd further, Was there not a Letter penn'd by Master Love and Doctor Drake? this Answer he gives, *There was a Letter, but (says he) I cannot deliver it upon my Oath that it was penned by them; but I thought it was so*. He could not tell to whom this Letter was directed, but said, *It was declared to be directed to the General Assembly of Scotland*. Now, as I observed in the Beginning, this is only the single Testimony of one Man. And, indeed, it was the first Question (as I remember) that was asked me, that was of moment, when I was examined by the Committee, whether I did not pen this Letter. I did declare to them in the Presence of God, *That I neither penn'd that, nor any other, to any Person of the Scottish Nation since the Wars began*: And this I declare in the Presence of the same God, still to be a Truth. Being ask'd further, Was Master Love present at some time of this Meeting? he answer'd I was: And the Reason why he thought that we might pen it, was because of the Language of it. Mr. Attorney-General upon this (I remember) uses this Expression, *My Lord, this is very high; after we were engaged in Blood, that a Letter should be sent*. But to this I say, there is only a single Testimony that such a Letter was writ; and whether it was sent or no, he doth not prove: nor doth he prove that I writ it: And I declare to you that I never writ it. As touching this Letter, which Mr. Attorney-General is pleased to insist upon so much, Adams being asked whether it was agreed upon that this Letter should be sent, he gave this Answer, *It was after the same manner that other Things were agreed upon; but there was no Vote pass'd*: And therefore he cannot prove my particular and express Assent to the sending of the Letter, or any other Letter whatsoever. And here to take off the Jealousy of a Correspondency, which in the close, thro the Grace of God, I shall clear to you; but to take it off now a little, before I come to it: If there had been a Correspondency maintained, would it have been imaginable that from the time of the Fight at Dunbar, which I think is ten Months since, to this time, that there should be no Letter that any Man can say, nor that I did certainly know of, that either was written, or conveyed,

or

or debated upon to be written, from that time to this very day, to any of the *Scotish* Nation? And yet all this tends to aggravate Matters against me, and all the Burden is laid upon my weak Shoulders. Other Men that have heavy Loads have laid them upon my Back, to lighten them from off themselves. Touching this Letter, he saith, *This was the Substance of it, or it was to this effect, or purpose.* And again, I insist upon it to beseech your Lordship and the Court, to take heed what you do. It concerns you more than me: It concerns my Life only; but it concerns your Honours, and Lives, and Souls, and all, that upon an uncertain Evidence you do not spill a Man's Blood. The Man never read the Letter, only he heard it read; and then he brings into that and other Letters, *This is the Sum of it, or it was to this effect.* And though this Man hath done me Injury in some Particulars, yet in others he hath done me Right: For being asked, Did Master Love write Letters, or receive any, or mend those Instructions? he only swears he saw the Letters; but cannot say I did read them. Being asked whether I did give my Consent to the sending away of that Letter after *Dunbar* Fight, which is so much insisted upon, and so greatly aggravated, he did thus far right me; he said, *I will not swear he did give his Consent.* Being asked whether I was a Correspondent, he said he took me to be a Correspondent: And upon these Words I had leave to ask him this Question, Whether he knew I was a Correspondent? To this he said, That Letters were heard by me; but, said he, *I cannot swear that he was a Correspondent: I did conceive Master Love to be a Correspondent; but I did not say so: And I dare not swear that he was a Correspondent.* So that herein likewise there is nothing but his humbly Conceivings, and his Suppositions; according to which I hope you will not pass any Censure upon me. And thus I have done with *Adams's* Testimony.

The fifth Testimony is that of *Jaquel*, which I do here again in Court except against as no legal Witness; for he did declare he could not in Conscience take an Oath against me. He did well nigh half an Hour declare he could not swear, but that he would make a Narrative or Relation of what was true. I did entreat your Lordships leave to put it to him whether he was under an Oath, or no; and he said, twice at least, *I am as good as under an Oath.* If any Person, good or bad, come under an Oath, I must stand or fall by his Testimony; and, according to God's Ordinance, an Oath is to decide all Controversies: But the Man declared he was not under an Oath, and went out of the Court, and was fined five hundred Pound: And when afterwards he was called into the Court again, he did only put his Hand upon his Buttons on his Breast. So that this was not any taking of an Oath; but fearing his Fine, he did it, though with much seeming Regret of Conscience; and I am informed this Day that he denies that he was under an Oath. And if so, then I have nothing to say to his Testimony; and so shall not speak to it, but only as to a bare Relation and naked Information. There is nothing that doth concern me in his Testimony, but only a Concurrence with *Potter*. *Potter* and he coming to my House with some Letters, (as he saith) one from *Bamfield*, another from *Argyle*, *Lowdon*

and *Lothian*, and *Belcarras*, and another from one Master *Bailey*, if I remember right. Now, Sir, as to these Letters, I do not deny but that they brought them to my House; nay, I do acknowledge those two Men did bring those Letters to my House, at leastwise which they said were such: But whether they were the Originals or Copies, I know not; for I never read nor kept the Letters, but they carried away the Letters with them. And Captain *Potter* said, *Master Love, I have News to shew you;* at that very time when Mr. *Jaquel* and he came to shew them at my House. This Witness, I cannot call him so, but this Informer saith, that being asked what was done upon the hearing of those Letters, he said *Potter* read the Letters; but that there was no Agreement upon it, but an utter Dislike in all that heard them about the Contents of them. And he hath these Words further, *It was, says he, a Trouble, I am confident, to them that heard and read the Matter of those Letters.* But being asked, Did Master Love agree to the giving of forty Pound to *Bamfield* and his Man? To that Question he answers thus: He said there was no Agreement; but it was thought convenient by all. Upon this I craved leave of your Lordship to ask him this Question, How he knew my Thoughts, that I thought it convenient? To which he gave this Answer; *I cannot say any thing, that Master Love did say it was convenient.* So that therein, though he might presume upon a Man's Thoughts to know them, yet he must only judge my Thoughts by my Words, as the Tongue and Heart agree; for he is not a God: But he doth not say that I said it was convenient. Nor did either of them prove that ever I gave a Penny either to *Bamfield* or his Man.

The last Witness that came in against me, is Captain *Far*. And, indeed, I do not know what to make of his Testimony: I will not call it a Prompting, that will be thought too bad a Word; but certainly it was such a Testimony that I never heard produced in any Court in my Life: For Master Attorney-General, and some others here, did ask him ninety eight Questions. So that the Man spake nothing deliberately, but spake by reading out of his private Examinations, which is extrajudicial to be brought in Court, where the Witnesses are to speak *viva voce*. There was, I say, so many Questions (besides those I had leave to ask him) propounded to him, during the Time he was upon his Oath. And the Man was of a dull Spirit, and slow of Speech; and I did perceive him to be so possess'd with Fear, and that he knew not what he said: For he hath manifest Contradictions in his Testimony, which I believe all the Court will see, and therein concur with me, when they come to hear them. The first Word I heard him say in Court was this, To desire the Benefit of his Papers. It seems he did suspect the Badness of his Memory, that he must have his Papers to help him, (and Papers written by another) before he would depose in Court against me for my Life.

Being asked whether upon the ending of the Treaty of *Jersey* there was not a Letter came from *Titus*, to desire somebody to come to *Calais*; and whether that Letter was read at any House; and whether at my House *Alford* was desired to go; he affirms he was, (which none else did) and which is a most notorious Falshood. I have no

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Rancour in my Heart against him; the Lord knows I have prayed for all those that persecute me; and my Heart cleaves to them in Love and Pity. I do not tax the Badness of his Conscience, I think he dares not be so vile; but I do tax his Memory in Things done so long ago. And afterwards he says he could not remember ought, (tho he did pretend to remember) because they were done so long ago; yet before he did affirm them. Now to demonstrate this, that he says in this Clause, to be false, that *Alford* was desired in my House to go, *Alford* himself says he was never at my House till he came from *Calais*, which is certainly true: And therefore *Alford* could not at my House be desired to go to *Calais*. When there was an Account given of *Alford's* Return from *Calais*, then I know he was there, though I never spake with him before that time, as I remember; nor was he ever within my Doors till after his Return. But says *Far*, *I cannot say Master Love was present while Alford's Return was there read; for sometimes he was absent.*

Then further, being asked what was the Substance of that Copy of the Letter from the King that *Alford* brought from *Titus*, he answered, That the Sum of it was this, that the King of *Scots* did declare he would give Satisfaction to the *Scots*; and in order thereunto, he desired Commissioners to be sent over to *Breda*. These are the Words of his Testimony. Now, Sir, this is but the single Testimony of one Man; and it is contrary to the Testimony of that very Man that brought over this Letter: And if any Man knew the Substance of the Copy of the Letter pretended to be from the King, it must be *Alford*, that brought it over: Certainly none could know it better than he. And therefore for this Man to be so strangely besides himself, and to forget himself so, as to say this is the Sum of the Letter, when he that brought it saith the contrary, and did not know that this was the Sum of it, this may seem strange; and I hope you will judge of the Weakness of this Testimony. Being asked whether he did not conceive this to be the Copy of the King's Letter, he did me right in that; for he said he could not tell whether it was the Copy, but that *Alford* told him he brought over a Copy of the King's Letter. And Mr. Attorney-General was pleased to aggravate this of Captain *Far* against me: Says he, The King sent over for Commissioners to treat; and accordingly at Mr. *Love's* House it was agreed upon that Commissioners should be sent, and there were Persons named. To this I say, That, God is my Record, I never in all my Life heard (as I remember) of any Letter from the King to that end, that Commissioners should be sent over. And *Far* doth me right herein; for in answer to that Question, Was your Commissioners agreed upon? he three times answers negatively. I do not perceive that he remembers himself so well in all his Testimony, as in that Particular. Being asked whether the Commission was agreed upon, he said it was not agreed upon by the Company. And herein he did me more right than any Man; for he gave my Reason, For (says he) *the Reason given was, Because private Persons could not give a Commission.* And though he hath done me more wrong than any Man, yet herein he hath done me more right than any Man. Being further asked, Was it not debated

to send a Commission over? *Drake*, he said, *read a Paper in the nature of a Commission; but it was not agreed upon by the Company, because private Persons could do no such thing.* And a third time he says, *The Commission and Instructions were read in a Company at Mr. Love's House; (that he affirms, and that I do not deny) but not agreed upon.* And further he said, He did conceive, to the best of his Remembrance, it was in the Name of the Presbyterian Party of England: But (says he) *I cannot positively say it was so; for I did but only hear it read.* Then your Lordship asked him this Question, Did you say that the Commission was not agreed upon, but that the Instructions were? To this Captain *Far* said, That *William Drake* undertook to draw up the Commission and Instructions; but yet, says he, *I cannot say that they were either drawn up, or sent.* Again, he says further, (and herein he doth me more right than *Adams* or *Alford* doth) *Adams*, he says it was not agreed upon; yet he saith thus, There was a Commission read for to treat; and so says *Alford*: But this Man says directly, That this supposed Commission was not to treat in the behalf of the Presbyterian Party. And it had been a Folly for private Men to assume such a vain Title to themselves. So that he says directly, upon your Lordship's Question to him, that it was not to treat, but to advise the *Scotch* Commissioners, and the Ministers especially, to agree with the King upon the Interest of Religion, and Terms of the Covenant. But being asked, Was it not in the behalf of the Presbyterian Party? he answered, No. Being further asked, Was there not an Agreement at Mr. *Love's* House for a Letter to be sent to the Queen? Herein also this Man doth me right; he said, No, my Lord. And yet he contradicts himself likewise; for being asked in the next Question what was the Substance of that Letter to the Queen, he answered, The Substance of the Letter to the Queen was, that she should persuade the King to give Satisfaction to the *Scots* in their just Demands. Now, either he must hear of this Letter somewhere else, or else frame a Fiction to himself, that this was the Matter of the Letter, when there was no such Letter in *rerum natura*. The next Thing he charges me with, is, That I should say it was agreed that Money should be raised for *Massey* and *Titus*; and he names the Sum, he thinks 250, or 300*l.* and that I thereupon should particularly move him with this Question, Captain *Far*, *what will you do?* Now I beseech your Lordship and the Court to consider that he doth not swear that I said *we were agreed*, but it was agreed; and that might be the Act of other Men, and not mine. And in another place he said *they agreed*; but he doth not say that I said *we agreed*, to include my self: But to that, That I should move him, and say, Captain *Far*, *what will you do?* Truly this is but a general Question. And he himself did me thus far right: When I had leave from the Court to propound this Question to him, Captain *Far*, *did I move you, or say to you, What Money will you give for Massey or Titus?* he answered, He did conceive it was for that Use. So that he proves not against me, that I moved for Money for *Massey* or *Titus*; but only that I should say, Captain *Far*, *what will you do?* And if you observe the Words of the Testimony, they are these exactly. He tells you that
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he brought Five Pounds; for there is all that ever I am charged with. I am not charged with lending a Penny; but only that Fifteen Pounds was brought to my House; Ten Pounds by *Potter*, and Five Pounds by this Man. And he affirms that he left this Five Pounds at my House. And herein I perceive a Contradiction in the Man; and therefore it is hard to determine when he speaks true, or when he speaks false. These are his very Words; *Mr. Love* (says he) *ask'd me what I would do; and I did lay down Five Pounds upon Mr. Love's Table, when several Persons were in the Room.* And being asked, Did *Mr. Love* receive this Money? he said he could not tell; but was loth to tell who he thought received it. But in his last Word, save one, that he spake in Court (which made much for my Advantage) he said he thought I did not receive it; and God is my Record, I did not: But he said another Man did, and named Captain *Massey*. But the Contradiction I observe is this: He tells you he laid down Five Pounds, when several Persons were in the Room; and in the next Question but one being ask'd, Was *Mr. Love* in the Room? *Yes, my Lord*, says he; *but I cannot say any body else was there.* So that therein the Man evidently contradicts himself. And it appears he was under a very great Fear, and even confounded by the many Questions propounded to him. I asked him further, *Did I bid you lay it down?* Says he, *I cannot say that you bid me lay down the Money.* Being asked, Was this way of laying down of Money to prevent Discovery? he said he did it under that Notion. But being asked by me, *Did I bid you lay it down under that Notion?* he answered, he would not say I did. So that I neither directly nor indirectly did bid him bring Money to my House, or lay it down when it was brought there: But other Persons were in the Room; and he conceives what Person took it away. Therefore I beseech you make a candid and fair Interpretation of what I have said or done.

Being asked about the Copy of the King's Letter, that *Alford* says he brought over from *Titus*, whether I was in the Room whilst it was read, he said, *I cannot say that he was there when it was read; but he was there during some part of the Communication.* But says he, *I cannot say he was there at the reading of the Letter; nor can I say he was present whilst the Narrative was read.* He observed I was often called away, and was absent; and says he, *I cannot say there was any such thing done by Mr. Love.* And I asked him this Question, *Did I send, or agree to send Major Alford to Calais?* He answers, He thinks I did not. And herein he falsifieth his former Testimony; for he said Major *Alford* was desired in my House to go to *Calais*; and yet *Alford* swore he never was in my House till after he came from thence. But herein he doth me right too, (though with Contradiction to himself:) He said it was agreed at my House that *Alford* should go; and yet now he says he thinks I did not agree to the sending of *Alford*.

Being asked further, whether I did give Consent to the sending away the Commission, he answered, *I cannot say Mr. Love was there when it was sent away.* And truly I may say, who brought it away, or who drew it up, and what was done in it, I cannot tell. There might be a thousand Treasons in it, for ought I know; for I did nei-

ther own the reading of it, nor the sending of it, but did utterly protest against both. Being again asked whether I agreed to the sending of it away, he answered, *It was agreed upon by all, that we could not send the Commission away.* When I asked him, *Did I say to you, Captain Far, Will you contribute five Pounds for Massey and Titus?* he gave this Answer, (says he) *You asked me what I would do; so that I conceived it was for Massey and Titus.* And he affirms he laid this Five Pounds down in my House; but did not say that I received it. And in the presence of God I speak it, I never saw it, nor received it in all my Life.

And thus with much Acknowledgment, and blessing God, and thanking your Lordship and the Court, you have given me leave to take a brief Survey through the Depositions of the Witnesses, tho they have been very large, and the Charge against me very high.

Now having spoken to the Depositions (before I shall crave leave to speak something concerning my self, and make humble Proposals to this Court) I shall add but one Word, and it is this: I was loth, before I saw Witnesses Face to Face, to confess any thing; I deem'd it against Nature for any to confess against himself, unless he could be sure his Confession should not prejudice him. And I might have been guilty of my own Blood, if I had confessed; for then, did the Matter confess'd amount to Treason by your Law, my Life would be at your Mercy, and you might hang me upon mine own Confession. And upon that ground I went resolv'd to the Committee; and thro the Grace of God I resolv'd not there to confess a Word nor Tittle, till I heard what Proof was brought in against me. And now I do ingenuously acknowledge that there were several Meetings at my House; that these Persons met there; and that this Commission was read there, but I did utterly dislike it, and dissent from it. And that I was present at the reading of Letters, either at the beginning, or end, or some part of them, I do acknowledge: And this I say, that I was ignorant of the Danger that now I see I am in. The Act of the 2d of *August*, 1650, doth make it Treason to hold any Correspondency, or to send Letters, tho but in a way of Commerce, into *Scotland*, let the Matter of them be what it will. Now herein my Counsel acquaints me with my Danger, That I being sometimes present when Letters were read in my House, am guilty of a Concealment; and as to that, I do humbly lay my self at your Feet and Mercy. But as to Treason, I do not know any personal Act of mine proved against me, that brings me under any Act of yours. And thus having briefly spoken concerning the Charge in general, and concerning my Accusers, and having briefly surveyed their Testimony, I shall humbly crave leave to speak something concerning my self, and I shall be very brief in it.

Concerning my self, it is needful I should speak a Word: I would not stand under Misrepresentations, to seem to be what I am not. I am presented unto some as if I were a Malignant, an Apostate from my first Principles, a Mover of Sedition, and what not, but what I am. Wherefore I am constrained to speak a Word in my own Vindication, and I shall make the Apostle's Apology, *I am become a Fool in glorying; but ye have compell'd me.* I count it never lawful

lawful for a Man's own Mouth to praise him, till another Man's Mouth accuses him; and then he may without Vanity be his own Vindicator. What I shall say of my self, the Lord knows it is not voluntarily, out of an affected Ostentation, but by Compulsion, for a necessary and clear Manifestation of my Principles and Practices, now suspected. As touching Malignity, I hate both Name and Thing: And, as Cardinal *Farnesus* said of himself profanely, That if he knew any Part of him infected with *Lutheranism*, he would cut it off, and cast it into the Fire; that I can say truly, That if I knew any Part of me infected with Malignity, I would cut it off with the Pruning-hook of Mortification, and by an ingenuous Retraction before you all this Day. God is my Witness, I never drove a malignant Design, I never carried on a malignant Interest: I detest both. I still retain my old Covenanting Principles, from which, through the Grace of God, I will never depart for any Terror or Persuasion whatsoever. When I look upon all the Vows, and Covenants, and Declarations, and Protestations of both Houses of Parliament, I do find a Suitableness between my Judgment and them, and am not conscious to my self of any thing that I have done in opposition or contradiction thereunto: And therefore I may say as *Jeremy* did, when he was accused, in the like Case, of making Defection to a contrary Party, *Jer. 37. 13, 14. Irijah said to Jeremiah, Thou fallest away to the Chaldeans. Then said Jeremiah, It is false, I fall not away to the Chaldeans.* So, if it be charged upon me that I am fallen from my first Principles, or that I am fallen to Malignity, I say to any that shall so accuse me, it is false, I fall not away to Malignity; I do retain as great a Keeness, and shall whilst I live, and as strong an Opposition against a malignant Interest, whether in *Scotland*, or in *England*, or in any part of the World, against the Nation where I live, and have to this Day, as ever I did in former Times. I am no Incendiary or evil Instrument, to divide the Nations one from another: God knows the Grief of my Heart hath been for the Divisions, and the Desire of my Soul hath been for the Union of both the Nations. And if I had as many Lives as I have Hairs on my Head, or as much Blood in my Veins as there is Water in the Sea, I could count it all well spent to quench the Burning that our Sins have kindled between the two Nations. I have all along engaged my Estate and Life in the Parliament's Quarrel against the Forces raised by the King: My appearing in their Cause was not from any Aim at Profit, but out of a Persuasion of Conscience and Sense of Duty. I may speak it as *Paul* doth it of himself, *I was in Labours more than they all.* I speak it without Vanity; I was, according to my obscure Station and mean Condition, in doing and giving in the Parliament's Quarrel, more than many. Many gave out of their Abundance; but I out of my Want: And as Christ spake to the Widow who gave two Mites, That *she gave more than they all; for she gave all that she had, even all her Living:* So did I; though I gave my Mite, yet I gave my All. And I did not only deem it my Duty to preach for the Lawfulness of a Defensive War, but (unless my Books and wearing Apparel) I contributed all that I had in the World: And that was no small Sum, considering the

Meanness of my Condition. And I have at this Day a great Sum due to me from the State, which is still kept from me, and now my Life endeavoured to be taken from me. And yet for all this, I repent not of what I have done; tho I could from my Soul wish that the Ends of that just War had been better accomplished: Then should we have been happy, and united among our selves, and honoured among the Nations round about us. I am so far (I say) from repenting of what I have done, both by doing and contributing, and suffering in the Parliament's Quarrel, that were it to do again upon the same unquestionable Authority, for the same declared Ends, and against the same malignant Persons, I should manifest as much Readiness of Mind to engage according to my Measure, as ever I did.

And thus I have declared my self touching my Principles in these Particulars: I shall now crave leave to express my self a little touching my Sufferings; and then to make but a few humble Proposals, and so cast my Life into God's Hands and yours. Touching my Sufferings, I may say that my whole Life hath been a Time of Affliction, either of Body or Mind: God sees my Heart to be a tough and knotty Piece, that it needs so many Blows to break it. I may say with the *Psalmist*, *I have been afflicted from my Youth up*, and from my Youth up have I met with Opposition: From the Prelates, being persecuted by them meerly for Conscience sake. It is near twenty Years since I was cited to the Bishops Courts: I have been often troubled for hearing of Sermons, and discharging other Exercises of Religion, which were an Offence in those Days. When I was a Scholar in *Oxon*, and Master of Arts, (I do not speak it out of vain Ostentation, but merely to represent unto you, that what I was I am, and what I am I was) I was the first Scholar I know of, or ever heard of in *Oxon*, who did publicly refuse in the Congregation-House to subscribe unto those Impositions or Canons imposed by the Archbishop, touching the Prelates and Common-Prayer; and for which, though they would not deny me my Degree, yet I was expelled the Congregation-House, never to sit as a Member among them. When I came first to *London*, which is about twelve Years since, I was opposed by the Bishop of *London*; and though I was called as a Lecturer to *Ann Aldersgate*, yet it was near three Years before I could fasten upon any Lecture. After this, about the Year 1640, or 1641, I was imprisoned in *Newcastle*, merely for expressing my self against the Errors of the Service-Book, and was removed from Prison there, by a *Habeas Corpus*, to this Place; and in this Court of *King's-Bench* I was acquitted. After this, about the beginning of the Wars between the late King and the Parliament, I was the first Minister that I know of in *England*, who was accused for preaching of Treason and Rebellion, merely for maintaining in a Sermon, in *Kent*, at *Tenderden*, the Lawfulness of a defensive War, at the first Breaking-out and Irruption of our Troubles; but was then publicly acquitted in a Court there, and recovered Costs and Damages of my Accuser. After this I had a little Breathing-time, whilst the two Houses of Parliament were in Power; only I was once complained against by the King's Commissioners at *Uxbridge*, for preaching a Sermon

mon there. I did not know that I should preach there till the Psalm was sung; and did only preach a Sermon which I had preached the Day before at *Windsor-Castle*. I was, I say, complained of by the King's Commissioners to the House, for that Sermon; but within three Weeks I was acquitted and discharged by Order of the House of Commons. That Sermon is much spoken of, because it is so little seen, it is so obscure a Piece; and many imagine as if the Keeness of my Affection was blunted from what it was in that Sermon. But I declare unto you, that I come up to this Day to every Tittle of that Sermon. I hear it is lately printed; and if it be printed according to the first Copy, I will own every Line of it, as that to which my Heart and Judgment concurs to this very Day. After all this, since the late Change of Government, I have been three times in Trouble: I was once committed to Custody by, and twice cited before the Committee of Plunder'd Ministers; but there was no sufficient Proof against me, and so I was discharged.

But now last of all, this great and last Trial and Trouble is come upon me. I have been kept several Weeks in close Prison, and now I am arraigned for my Life; herein is my great Comfort, even that which was the Apostle's, *2 Cor. 1. 10. God that hath delivered me, he doth deliver me, in whom I trust that he will yet deliver me*: And that that shall be made good to me, *Job 5. 19. He shall deliver thee in six Troubles, yea in seven there shall no Evil touch thee*. As *Cato*, he was accused thirty two times by the unkind State whom he faithfully served, and yet after thirty two times Accusation, his Innocency and Uprightness brought him off. Why should not I be confident in my God, who have had a Life-time of Experience of his Care and Love towards me? It is not the Danger of my Life troubles me; I am a sickly Man, and I know a Disease will ere-long kill me, whatever you do with me: but this grieves me more, That I should suffer from their Hands, for whom I have done and suffered so much in my obscure Station, and according to my weak measure. Had it been an Enemy had dealt thus by me, and made such an eager Prosecution of me, and such high Aggravations of that which in the Simplicity of my Heart I have done, it had not been so much; and as I told the Committee when I was examined by them (who charged me with Jesuitism and Non-Ingenuity, because I would not confess against my self and others) that tho I honoured them as private Gentlemen, and should acquaint them with what my self had done, when it should not be a Snare to me; but when they shall apprehend me by a Warrant for Treason, and examine me in order to a Trial for my Life, in no Judicature in the World will I confess a Word, till I first hear what will come in against me. Now, as I told them then, I never wrote Letter, nor received Letter, nor sent or lent Money to any Person of the *Scotish* Nation. Now that I should meet with this hard measure, to have the most rigid and severe Interpretation put upon all my Actions, to be look'd upon with so jealous (I might say with a worse) Eye, that have in my measure ventured my All in the same Quarrel that you were engaged in, and lifted up my Hands in the same Covenant, that have took sweet Council together, and walk'd in Fellow-

ship one with another: that from these I should have such hard measure, this, this troubles me greatly. Had I been so dealt withal at the Junctō at *Oxon*, I should not have been so troubled at it; but to be dealt so with at *Westminster*, this is that at which I stand amazed: yet blessed be God, I am not afraid; my Conscience doth not tell me of any personal Act of mine proved against me, that brings me under any of your Laws as to Treason.

And thus having express'd my self, concerning my Charge, and the Witnesses, and my self; I shall now in the close of all say (whatever tortured Collections or Inferences are drawn from my Practices, and however Lawyers may aggravate those things that in part have been proved against me) yet I do declare in the presence of God, that whatever I have done, in the Simplicity and Integrity of my Heart I have done it; and did deem it to be consonant and agreeable both to my Conscience, and to the Protestations and Covenant I have taken: and I have done nothing out of Animosity, or from a Spirit of Revenge. And thus I have done concerning myself.

I have only a few humble Proposals to make to your Lordship and the Court, and then I shall leave all to God's Determination and yours. To you that are my Judges, I humbly crave this of you, and I do it upon your Lordships Words the first Day of my Appearance here. When you were pleased to deny me Counsel, you said you would be Counsel for me; and I beseech you be so, for you are Judges both of Matter of Law and Matter of Fact. I may make use of that Passage, *Prov. 31. 8. Solomon* says there, *That Rulers must open their Mouths for the Dumb, in the Cause of all such as are appointed for Destruction*. Truly, my Lord, I am as a dumb Man before you; dumb in Matters of Law, I cannot plead one word for myself: I beseech you be as *Solomon's* Rulers were, and open your Mouths for him that is appointed to Destruction; you who are my Judges, be my Advocates, my Life lies in your hands. And then I beseech you let me make this humble Motion to you, That you would not count any thing that I have done to be out of Animosity or Stoutness of Spirit: Truly, nothing but Conscience could carry me through all my Sufferings; I could not leave such dear Relations that God hath given me, and such a loving People, and comfortable Livelihood, as any Minister hath within the Walls of *London*: nothing but Conviction of Conscience can carry me another way; and till Conscience be fully satisfied, I cannot stir one step.

The next thing I beg, is, to beseech your Lordship and the Court to put a candid and fair Interpretation upon all that I have done, or that by Witness you have heard; that it was no malignant Design, tho I do not own the Management of any Design: I never writ Letter, nor sent Letter to any of the *Scotish* Nation; yet thus far I own the thing, that it was agreeable to my Judgment and Conscience. For I thought the Interest of God and Religion, and the Good of the Nation, would be more advanced if the King went into *Scotland* upon Covenant-Terms, than if he should fall into the hands of the *Irish* Rebels, or offer this Nation to the *Turk* or *Spaniard*, or any other to come in and make a Prey

of it. I did judge it would be a Foundation laid of great Troubles and Blood, if he were not received by that Nation. And tho I did not, and do not in the least own either the Commission or Instructions, or the Way of Management of that Business; yet I confess the Agreement between the King and Scots I desired, and deemed it my Duty upon this ground, one Clause of the Covenant being, to seek the Union and Good of both Nations; and those who endeavour the contrary, are declared by the Covenant to be Incendiaries, Malignants, and evil Instruments, who not only divide the Kingdoms one from another, but divide the King from his People. Now they declaring him to be their King, according to my apprehension I thought it agreeable to my Covenant, to pray and desire, as a private Man, and no more, for an Agreement between the King and them, upon those Terms consistent with the Safety of Religion, and the Terms of the Covenant.

And thus I have opened my Heart to you: The favourable Interpretation I humbly beg of you, is this; That things might not be taken in the worst sense: *Non est reus, nisi Mens sit rea*; he is not guilty, unless the Mind be guilty: I heard your Lordship say so at *Guild-Hall*, as I remember.

The Lord knows in the Uprightness of my Heart I have done what I have done. It is a Maxim in the Law, (I have read it in Divinity-Books) *Ampliandi sunt Favores, & in Pœnis benignior Interpretatio facienda*: Favours are to be amplified and enlarged by Magistrates; but in Punishments the most benign and favourable Interpretations must be made. Now of my Actions the harshest Interpretations are made: I have a Charge laid against me, which I deem (and as my Counsel tells me) to be rather a Flourish in Law, than Reality of Matter.

I stood amazed when I heard the Charge against me, I thought it had rather been against some other Man than against me. As if I should send to the Queen, *Piercy*, and *Jermin*! herein I did rather venture my Life upon a Trial, than to lie under all that Obloquy which that Charge did lay upon me. Therefore I again beseech you, put a fair and candid Interpretation upon what is proved against me.

I remember a Phrase, *Summum Jus est summa Injuria*; To be over-just, is to be injurious. *Be not over-righteous*, may refer to Courts of Judicatory. Herein I acknowledge, that my not revealing what my Accusers have done, this layeth me under the Fault of a Concealment, for which I lay my self at your feet.

The next humble Request I have to make, is this, To intreat your Lordship and the Court, that you would not hearken to any politick Suggestions that may be laid before you: I know under what disadvantage I lie, that am the first Minister in *England* try'd for Treason, in a business of this nature, and what a prejudice this is to me, to make an example upon.

The first Suggestion that I humbly intreat you would not hearken to, is, That it will not be for the Honour and Interest of the State, if I be not condemned. Truly, it is for the Honour of the State for you to do Justice: if you have found, that I ever writ Letter, or sent or received Letter, or lent Money; if in these regards you have found me within your Acts, spare

me not: but if I have been only present at the reading of Letters, and have been silent at what others have done; therein I lay my self at your mercy, to shew me favour. It was a Suggestion to *Pilate*, *If thou sparest that Man, thou art no Friend to Cæsar*; and so if you do not condemn me, you are no Friends to those who commisionate you: but be Friends to yourselves and Families, and take heed that you bring not guiltless Blood upon you.

And here (and so I shall have done) in the Close of all, I do acknowledge, that in many Particulars, as touching not revealing (I say not as to personal Actings, nor do any prove it against me) I do fall within your Acts, as to the Censure of a Concealment; and herein I humbly beg your Mercy. And however I may be judged to be a Man of a turbulent and unquiet Spirit, yet those that know me in my Relations, will not say so of me; and my People, over whom God hath called me (I think) will say, I am a Man who desireth to live quietly in the Land. But however my Spirit and Principles are questioned, yet I resolve by the Grace of God to lead for the future a quiet and peaceable Life, in all Godliness and Honesty.

I have but one word more to close all I have to say for my self, (for I have made no Plea in Law; in those matters I am as a dumb Man, and cannot open my mouth) and 'tis this: The Charge and Depositions lie before you, and I will but lay this before you also, That if so be my Fact should deserve Death, which I believe it doth not, and I hope you cannot find me under your own Acts as to Treason; yet if you do censure me rather upon a political Interest, than from the Merit of the Fact, the Scripture accounts not that Justice, but Murder. *Jehu* put to death *Abab's* Sons, and that by the Command of God; but he did it upon a political Interest, to establish himself in his new-gotten Government: and when God reckons for this, he says, *I will avenge the Blood of Jezreel upon the House of Jehu*. To do any thing upon a political Interest, tho the Fact may deserve Death, the Scripture counts this Murder, not Justice.

And I beseech you, let me suggest one thing to you, tho I am a *Worm*, and no Man, and deserve not to be regarded amongst the Children of Men; yet what I have done and suffered, let it be a little thought on by you: And let me urge that of *Abiathar* the Priest, he did an Act that was not justifiable, and saith *Solomon*, *Thou art worthy of Death*; but I will not at this time put thee to death, because thou barest the Ark of the Lord God before David my Father, and because thou hast been afflicted in all wherein my Father was afflicted. I leave it to your own Consciences to make Application. Many things else might be suggested against me, and all to exasperate and exulcerate your Minds against me, to make you with less regret of Conscience to pass a doleful Sentence upon me; which I hope you cannot, and for the fear of the Lord you dare not: but if you should, (and so I have done) I will say to you as *Jeremiah* did to the Rulers of *Israel*; *As for me, behold I am in your hands, do with me as seemeth good and meet unto you: but know ye for certain, that if ye put me to death, ye shall surely bring innocent Blood upon your selves*. But I will say as the Apostle did, *I hope better things of you, tho I thus speak*.

And

And thus I commit myself, and my All, unto God, and to your Judgments and Consciences.

Mr. Attorney-General's Reply to Mr. Love's Defence.

Attorn. Gen. MY Lord, you have heard him say much, and it had been much better for him if he had said less. My Lord, when Men go out of the way of their own Calling, they very often err; and truly I may attribute much of Mr. Love's Confidence to his Ignorance; my Lord, to his Ignorance of the Law: and when Men meddle beyond their own bounds, they do transgress. Mr. Love hath made you a continued Speech; my Lord, I do find the old Proverb commonly true, *In multitude of Words there wanteth not Evil*. And should I say nothing against Mr. Love, my Lord, he hath said enough against himself, in that that he hath now repeated, even to his own Condemnation, in that which he acknowledgeth, my Lord, (I cannot say ingenuously, tho himself hath said so) to be rather a Misprision of Treason and a Concealment. My Lord, Acts of Concealment are not so long continued, they have not so long continuance: And, my Lord, you very well know (for the Satisfaction of the Gentleman at present, and some else that hear me) that he that hears a Treason, (for I do go now a little in his own way) he that hears a Treason, must not look back before he go to the Magistrate and reveal it, and if he be at the Plough, he must leave his Plough; if this Gentleman were in his Pulpit, he must leave his preaching: he that knows a Treason, must go presently and reveal it; there must be no Repetition of Treason, my Lord: Mr. Love, my Lord, will be mistaken in that. But truly, my Lord, I was very sorry, considering the Condition Mr. Love now stands in, to hear those Expressions from him that he hath made to you in relation to the past and present Authority: my Lord, I am not willing to repeat them, Mr. Love must hear of it another time. Truly, my Lord, here is little of Ingenuity (all Men will believe) in this Gentleman, that hath now laid it for a Principle to himself, and all that shall hear him (and I think it not to be so christian, so ingenuous) not to confess any thing any time; but that is Ingenuity, that what is proved, that he will confess; and that is a high piece of Ingenuity, that those things that are proved, he will ingenuously acknowledge: I, my Lord, do not take that to be Ingenuity, neither in my Law, nor I believe in his Divinity will it be. My Lord, there hath been a great deal of Care and Pains taken by Mr. Love to take in pieces the Evidence; I shall not undertake now to join them together, but in convenient time I shall, I doubt not, for the Satisfaction of the Court and their Judgments, who, I must say, have been threatened by the Gentleman; and, my Lord, I hope for the Conviction of himself. My Lord, he knows there are shrewd pieces against him that he hath acknowledged, but he would take them off one by one; but when they are put together, they will not be single Evidence, nor single Testimony, nor single Facts, but a continued Reiteration and Repetition of Treason, a continued and Series of Time. My Lord, you are pleased to observe, that he himself doth appear from 1648 to 1651, so that in 1648, 1649,

1650, and 1651, in all these Years, my Lord, there hath been this constant Repetition and transacting of Treason.

My Lord, I learn from him, and 'tis very true— It is not good dallying with holy Things, nor is it with States and Commonwealths, it is very bad dallying with them; those that flutter there, will burn their Wings at last; and it is not Quirks of Wit, nor Strains of Sense or Nonsense, will, my Lord, clear these things; it will not do it, my Lord. My Lord, he hath desired you will not hearken to private Examinations; my Lord, I have said so too, and there hath none been offered to you, but that which hath been publick, and *viva voce*; all have been so. But surely, my Lord, I could wish this Gentleman, and all others of his Profession, would meddle in their own Sphere, and not to walk out of that, to come and teach Courts what they should do, to teach the Magistrate what is his Duty. My Lord, I do hardly think it belongs to them ever in the Pulpit to do those things: but to tell us we must not examine before-hand, and ask Questions in private; my Lord, we cannot then be prepared for Felons and Treasons. And, my Lord, I say this Confidence is much from his Ignorance; for these things are very familiar, and must be continued to be done: so that these things are not well broached by him, and I do think he will say at last, he understands not himself; and those, I hope, that hear, my Lord, will say, I do not use it: For, my Lord, I must say, it must be otherwise in all well-governed Commonwealths. My Lord, he hath not denied, but acknowledged Meetings at his House more than once, twice or thrice: and truly, I did expect from this Gentleman that he would not have continued those fearful Imprecations of calling God to witness, that he did never write Letter, nor send Letter, nor lend Money. I had thought he would not have gone upon these Equivocations: Did he never move other Men to write? Did he never move others to lend Money? It is not to say, this and this I have not done; but I had thought he would have cleared himself totally of any Guilt that way, either in relation to receiving, or hearing Letters read; or lending or receiving Money, or moving for Money. My Lord, to put it upon a particular Case, this will not blind the Eyes of Justice, but you will be able to see it. He is pleased to say, my Lord, he will not lay it to the badness of the Witnesses Consciences, but to the badness of their Memories. My Lord, I hope in the Conclusion their Memories will appear to be right, and some body's Conscience else to be bad. And, my Lord, for to hear this said by this Gentleman that is a Minister of the Gospel, that it is a Crime for these Men to acknowledge their Offences, this is strange: I had thought the first Step to Repentance had been Confession; and that it had been no Offence for any Man living that hath committed a Fault, or that thought he had committed a Fault, to acknowledge it. In my Law and Divinity I thought it so, and I have not learned otherwise; and shall this Gentleman take Exceptions, because these Gentlemen who have thought they have done amiss, have acknowledged their Errors, and have craved Mercy? My Lord, I must say thus, if any deserve Mercy, it is those that do acknowledge their Offences, and crave

Mercy, and are sorry for them; and not those that are obstinate, and bid defiance to Justice: Prove what you can, I will confess nothing; that is not so conscientious or christian a Way. And for the Witnesses, I do wonder that Mr. *Love*, of any Man, should find fault with them; I cannot say they have taken sweet Counsel together, but I shrewdly suspect they have taken very bad Counsel together: these Gentlemen are of his own Choice, and of his own Companions, and those that were conversant with him; and if you please to observe, at every word, *Will. Drake*; methinks that is a word of Familiarity. But, my Lord, for these, they were his Companions, and whether I might say more, his Household-Friends or Guests, but sure they were in his House very often, and were private with him, and in his Chamber and Study; and to cover all these Actions, and these treasonable Practices, and Letters and Designs, here they must come to hear News, and this must cover it all: They come for nothing but News, and our Contributions must be for charitable Uses; but you must not ask why or wherefore we lend Money, but it is for charitable Uses: Neither God nor Man will be blinded in these things; and if these Fig-leaves be sewn together, it will neither cover Nakedness nor Treason. My Lord, Mr. *Love* hath said, (and in that given Judgment against himself) that either to treat or advise with the King of *Scots* in *Scotland*, he detests them both. My Lord, if he be guilty of both, then, I hope, he doth detest and renounce himself, and then I think he hath laid your Judgment somewhat, his own having past first, yours will easily follow. My Lord, he confesses, That for this Act of the 2d of *August* 1650, he was ignorant of it, and of the Danger of it. My Lord, he very well knows that Ignorance is no Excuse; the Act is a publick Act, and hath been long printed, now ten Months since, himself saith; And yet methinks I cannot reconcile that, (that he that goes to make others differ) that he knew not of this Act, and yet *Sterks*, the *Scotch* Agent, was banish'd upon this Act, and there was a Contribution for him for his going away: The same Act that doth the one, doth the other. My Lord, he hath been pleased to cite a Saying of Cardinal *Farnesus*, *That if he knew any part of him infected with Lutheranism, he would cut it off, and throw it into the Fire*: And so can he speak truly of himself, he would do, if he knew any thing of Malignancy by himself. My Lord, the Question between him and us, is, What is Malignancy? I doubt we differ in that; I doubt his Sense of Malignancy: I am sure by some words I shrewdly guess at, that I count that Malignity, and I hope all this Court, and all that hear me count that Malignity, that I doubt his Judgment leads him not to it, so I doubt we differ upon that.

My Lord, he hath said, he was never an Incendiary, or evil Instrument; I wish there were not Cause for you to think otherwise: but surely the Gentleman hath made large Imprecations, and hath spoken much for himself; but I believe he knows there is so much Justice here, that he expects not to be believed in what he says. If it were enough to accuse, who should be innocent? And if it were enough to deny, who should be guilty? He doth not expect to be believed for his word *certainly*; for now he knows he stands in another Capacity; and as things are al-

ledged and proved on both sides, so he is to be believed, and no otherwise. My Lord, he hath been pleased to reflect upon my self in many Particulars; yea, and the Court knows in what a Capacity I stand here, as a Servant to the State to do my Duty faithfully, and I must do it: and yet I must say, it doth not become me to prompt Witnesses; that word, my Lord, was not well spoken. He is pleased to say in the Commendation of himself, that he hath a Place in *London* where he hath a very good Congregation, and a very good Competency of Maintenance; and I heartily wish he had thought so really, and had kept himself singly to that. I do not think he will say, that in the Duty of his Place, as a Minister of the Word, to preach, to instruct, to exhort, rebuke, reprove his People, or any under his Charge, that ever the State did interpose or meddle with him, neither the Parliament nor the Commonwealth: Then for God's Love, my Lord, why should this Man interpose or meddle with the State? Had you not enough to do in your own Calling? Had you not Charge enough lying upon you, but must you be going abroad, and put your Sickle into another Man's Harvest? I will say, the State did never trouble the Gentleman in his Duty; he did go on with as much Peace and Quietness as himself could desire, we interrupted not him; let him reflect upon himself, and whether others have dealt so kindly with him: when had he that Liberty that now he hath had? You may be pleased to observe, himself says, twelve Years ago he could not in three Years in *London* get an Admission to be a Lecturer; and when he spoke in the Congregation-house at *Oxford*, he was expelled there; he hath had no such measure here. Doth Kindness provoke him to these things? Those that sin against Kindness, are the highest Transgressors. What Provocation hath this Gentleman had in his Ministry, that he could not follow that, and have let the Parliament and State alone? Doth he not receive Breath here to live, and his Livelihood to sustain himself and his Relations? Why should you interpose to disquiet your self and the Commonwealth, when they did not provoke you? And let all judge whether this should not convince you; and let me say thus much, That you have dealt foolishly, and have gone beyond your Bounds, and have not kept within your Limits, in what you have done in these things that you have acknowledged.

My Lord, I speak this, that those may hear now that may not hear the other; for that which Mr. *Love* hath said, we must have some time to recollect, and to speak in the Vindication of the Proceedings of the State against this Gentleman, which, though I think it needs not much, in respect of the Court that hath heard him say so much, and confess so much as he hath done; yet for the Lenity of the State, that hath moved them to take care of their own Preservation: And I would not do it, but that he hath stood upon all Terms of Defiance with Justice and Majesty; and you have heard from a Fellow-Minister what he did the last day, and the Principles he urgeth this day, which, let me repeat again, there will be no living in Society, if these things be let alone. My Lord, it is much insinuated by him, that his Blood will be upon you and the Court; I would he had thought upon

upon Blood before these things had been so transacted by himself: I am afraid (between God and his own Conscience be it, and those that have had Correspondency with him) that much of this Blood that hath been spilt in *Scotland*, hath been made by their Means: You hear him say, That what was desired by them (and in order to what it was) was, That the King of *Scots* might join with the *Scotish* Nation, and not go to *Ireland*, that was his Conscience. I do not know his Conscience led him to meddle with those things, to meddle with State-Affairs: But, my Lord, if it be so, and this hath been brought on by them, that one hath encouraged the King to join with the *Scots*, and the other hath encouraged the *Scots* to join with the King by hopes of Parties here, which he himself acknowledgeth now, was undertook in the Name of a Presbyterian Party; though I think, and do believe it, for very many honest Presbyterians, that they would spit in his Face, if he should say it of them: But I say these doings have occasioned the shedding of much Blood, and a great deal of Variance between the two Nations, and the Lord knows when it will end. But, my Lord, as he concluded for himself, you will be pleased, my Lord, to give me leave (though not in that way of Conjurament as he hath done) to say for the State, I shall not prevent your Judgments; but it is better that one Man, than a State, should perish. And if this Man be guilty of the Treasons proved against him, I believe himself will judge, he had better perish and suffer death, than the State should perish. All these Actings of his have been Underminings of the State clean through, carried on very closely and covertly in Disguises, and not discovered: but he that dances in a Net, will be catch'd tripping at last. My Lord, before you give your Judgment, you will consider that Justice to the Commonwealth —

So, My Lord, I have added what my bad Memory (I hope not bad Conscience) hath repeated to me, as might give some Answer to what he hath said: But since he hath been pleased to take such pains to run through all and every one of the Evidence so exactly, and hath had three Days given him for it; my Lord, I shall ask but one for my self, and for those that are the Counsel of the Commonwealth. My Lord, this is all I shall say at present to you, and shall say no more till next meeting.

[Judge *Keble*, the Lord President, speaks after the Attorney-General: the very beginning of his Speech was not heard, he beginning very softly.]

Ld President. But again in this Point, for the Presbyterian Government, if it be rectified, doubtless it tends to the Peace of this Nation, and all Places, but not with a *Scotch* Limitation. I deny that; nor limited by a *Scotch* Covenant,

The next thing is this; because you often fall upon Distinctions of the Law, and that you are ignorant of the Law, the more to blame you that profess the Learning of the Law of God; for there is no Law in *England*, but is as really and truly the Law of God as any Scripture-Phrase that is by consequence from the very Texts of Scripture: for there are very many Consequences reasoned out of the Texts of

Scripture; so is the Law of *England* the very Consequence of the very Decalogue it self: and whatsoever is not consonant to Scripture in the Law of *England*, is not the Law of *England*, the very Books and Learning of the Law: whatsoever is not consonant to the Law of God in Scripture, or to right Reason, which is maintained by Scripture; whatsoever is in *England*, be it Acts of Parliament, Customs, or any judicial Acts of the Court, it is not the Law of *England*, but the Error of the Party which did pronounce it; and you or any Man else at Bar may so plead it. And therefore to profess you are knowing in the Laws of God, and yet to be ignorant of the Laws of *England*, when yet the Laws of *England* be so purely the Laws of God, as no Law in the World more practical at this day, for you to be ignorant of them, is not to your Commendation, nor to any of your Profession.

Then, Sir, for your going on in these ways: The Court with Patience hath heard you, I think, two Hours, or thereabouts, and you have done nothing but anticipated the Court: What! do you think they have not Understandings, and Judgments, and Consciences? They would have done it, they would have examined these Witnesses precisely, and would have compared them, but you have taken up all this time by way of Anticipation; and in a Rhetorical Way to do it! Let me tell you, that Orators among the Heathens have been the greatest Incendiaries; and those Orators in Christendom that do not set their Judgments upon right ends, they are the most unworthy Men in Christendom: for there are no Heresies, Murders, traitorous or treasonable Practices and Attemptings, and all the highest Wickednesses that ever were committed in Christendom whatsoever, or in this Nation in particular, but they have had some of that Profession that have called themselves Ministers of Jesus Christ, as the Jesuits of Jesus, and the Priests of those; and all these Things and high Actings have still had some Tincture of your Coat in them. Therefore it is not your Office can excuse you; your Office is sacred, as other Christian Offices are, and you are no more Divines by your Office; but you are to remember, and you must know, that Christian Justice that you teach in the Pulpit, to act it in the Court, is of a higher nature than Preaching is: And therefore in this, that you should advance your Profession beyond the Judicatories of this Land, know, that Judgment and Justice is the highest Religion in the World, both in Christendom and out of it. And this, Sir, we would have you know, That Lawyers Doctrine tends to this, and I hope hereafter you will be more obedient, and better vers'd to know these Grounds of the Laws of *England*, by which now you are called here. I shall say no more, but take advice with the Court about you.

[The Court adjourns, and Mr. *Love* is commanded away.]

The Fourth Day's Proceeding, June 27, 1651.

Mr. *Hall*, the first Counsel for the Commonwealth.

Mr. *Hall*. MY Lord, the Prisoner at the Bar, Mr. *Love*, stands impeach'd before

fore your Lordship of High-Treason, which Impeachment hath been read before your Lordship and the Court. My Lord, by that he stands charged with High-Treason, with several Offences of High-Treason; That he in the Years 1648, 1649, 1650, and 1651, with *William Drake, Henry Jermin, Henry Piercy, John Gibbons, Edward Massey, Syllas Titus*, and others his Accomplices, did traitorously, wickedly and maliciously confederate, plot and endeavour to stir up a new and bloody War in this Nation, and to subvert the Government now established, without a King and House of Lords.

My Lord, That in the same Years, since the Death of the late King, he did, with other his Accomplices, endeavour to promote *Charles Stewart* to be King of *England*, contrary to an Act of Parliament before that time made in this Nation.

My Lord, That in the same Years he and his Accomplices did traitorously and maliciously aid and assist the Nation of *Scotland*, to the end that they might invade this Commonwealth; and hath adhered to the Forces raised by the Enemies of this Commonwealth.

My Lord, That in the same time, between the Month of *March* and the first of *June*, this present Month, he hath traitorously and maliciously held and maintained Correspondency and Intelligence by Letters, Messages, Instructions and otherwise, with the Enemies of this Commonwealth, and to the Prejudice of this Nation; and in particular with *Charles Stewart* and the late Queen his Mother, and with *Jermin* and *Piercy*, and other Persons of Counsel abiding with *Charles Stewart*.

My Lord, That he hath likewise held Correspondency and Intelligence with the *Scotish* Nation, prejudicial to this Commonwealth, and to the end they might invade and bring a bloody War upon this Nation.

My Lord, These Treasons and traitorous and wicked Practices of the Prisoner at Bar, were and are to the apparent Hazard of the publick Peace of this Commonwealth, and Free-State, and the Parliament and People of *England*; and in Contempt and Violation of the Laws of the Land, and contrary to several Acts of Parliament in such Cases made and provided.

My Lord, There have been several Witnesses and Proofs of these particular Charges against the Prisoner: And, my Lord, I do conceive that there hath been such Proof made, that in your Lordship's Judgment he will appear to be guilty of all these particular Actings. But, my Lord, I will not enter upon the Proof, only make a summary Relation of the Beginning and Continuance of this Plot and Design.

My Lord, this Plot did begin very suddenly after it pleased God to take away the chief Enemy of this Nation. The King died in *January*, 1648, and this Plot began in *February*, the very next Month following: and in the same Month, my Lord, the *Scots* Nation did proclaim *Charles Stewart* King of *Scotland*; and they did not stop there, but proclaimed him likewise King of *England*; and then, my Lord, this Plot began here. For in the Month of *February*, the next Month after the King died, the Meeting was at the *Swan* at *Dowgate*, where were several of the Correspondents at that time; as *Drake, Huntington, Titus*, and others: and the end of

that Meeting was to contrive a Way that they might agree the King and the *Scotish* Nation; that was the end of their Meeting at that time.

My Lord, within a few Days after that, they met again, all these several Persons, at the *White-Hart* in *Breadstreet*, and to the same purpose; and at length it was resolved to make their Addresses to the Queen, and to *Piercy* and *Jermin*, (first it was to the King himself) for a Compliance between the King and the *Scots*: Letters were sent accordingly, and several Meetings, and several Returns of Messages were had of them. My Lord, at length it was resolved, That they should send Messengers to the King at *Jersey*, and agreed upon one *Titus*; and they raised Money and gave it to *Titus* to undertake the Journey. My Lord, *Titus* accordingly went in the Month of *May*, 1649, and returned in *August* following. After he had done his Negotiation there, he returned to *Calais*: but being afraid this wicked Plot was discovered, by reason of Letters that were intercepted, he durst not come into *England*; but sent Letters to desire some Correspondents might be sent to *Calais*. My Lord, all this time I do not find that the Proof discovers the Prisoner at the Bar to be any Actor, or present at any Meeting hitherto: But when these Letters came from *Titus*, then the Letters were brought to Mr. *Love's* House; which is the first time I find him by Proof to be present. The Letters were read in his House, and in his Study, as some of the Witnesses say that were there present; and it was then agreed, my Lord, That *Alford* should go to *Calais* to *Titus*. My Lord, accordingly he went, and there *Titus* did communicate unto him the Affairs that pass'd at *Jersey*. Within four or five Days after, *Alford* returns again, and where should the Meeting be but at Mr. *Love's* House again, where Mr. *Love* and divers of the Accomplices were in his House: a Letter from the King was read, the Diary, the Narrative from *Titus* likewise was read there; and there was the Consultation what should be done, and what further Course they should take to join the King and the *Scots* together. My Lord, afterward they did agree that there should be some sent to treat with the King at *Breda*; the Instructions were drawn in Mr. *Love's* House, (I think one Witness says so) and Mr. *Love* present; Money was raised, and Mr. *Love* himself did speak to one of the Witnesses to raise Money, which was *Far*: *Far* accordingly did bring in five Pounds, and laid it down upon Mr. *Love's* Table, Mr. *Love* being present then in the Room.

My Lord, I shall not trouble you with the Relation of more Particulars; but, my Lord, I conceive that Mr. *Love* doth upon these Proofs stand guilty of endeavouring to promote the King to be King of *England*: For, my Lord, what should be the end of uniting the King and the *Scots* together, after that the *Scots* had proclaimed *Charles Stewart* King of *England*, but that they might come in a warlike manner to invade this Nation, and set up his Authority as King among us?

My Lord, I conceive (I shall submit to your Lordship's Judgment) that he is guilty of Intelligence from a profess'd Enemy. The Intelligence is, my Lord, That divers Letters were sent, and these Letters were read in his presence, as himself doth confess he was at the reading of divers Letters,

Letters, and did not consent to them; and thereupon makes it as it were but Misprision of Treason. My Lord, I conceive that this is apparently Treason: For if Letters were sent to one Person, and did occasionally come into another Man's hand, and he conceal them, being not sent to him, there peradventure it is but Misprision of Treason. But when there are sent to these particular Persons Letters from the King and Scots, and divers Persons in Hostility against the Commonwealth of England, and received by the Confederates in Master Love's House, and there were read and debated, though they did not agree to some Particulars, yet they are Actors: They are — in the very Intelligence it self; and did likewise return several Letters.

My Lord, this Intelligence was with the Scottish Nation; which truly, my Lord, I do conceive hardly an Englishman, that had the Blood of an Englishman running in his Veins, would join in Confederacy with that Nation, of all the Nations of the World, against this Commonwealth; a Nation that hath been known (and I am sure the Prisoner at the Bar is well read in the Histories and Stories of this Nation) to have been a constant Enemy to this Nation in all Ages through the Memory of all Histories; and, my Lord, of late, not three Years since, came and invaded this Nation with a puissant Army, which it pleased God to deliver us from: And this the Prisoner could not be ignorant of, that we had lately a Fight with them at Dunbar; that Hostility could not be unknown unto the Prisoner at the Bar neither. And yet for all that, to Confederate with a Nation that were such constant Enemies to us; my Lord, I could not conceive it had been in the Heart of an Englishman, much less in a Minister and Preacher of the Gospel among us.

My Lord, there are some particular Charges upon him, more than upon any of the rest: after Drake fled away, being doubtful that his secret traitorous Plot would be discovered, Mr. Love supplied his room; all the Meetings, and Confederacies, and Letters, and Agitations in this Business, were constantly at Mr. Love's House, himself being present. And, my Lord, Money, as I said before, by Mr. Love himself desired to be raised for the furthering of this Design; and several Sums of Money were raised. I shall trouble your Lordship with no further Relation, but leave it to the Proof that was made before your Lordship and the Court.

Sir Thomas Witherington, the second Counsel for the Commonwealth.

Sir Tho. Witherington. My Lord, Mr. Love's Defence which he made for himself, as he did it for his Life, so he took a great deal of pains in it, and was very accurate in the Defence he made, especially in the Witnesses. My Lord, I shall not take upon me (for it is not my Charge at this time) to reply unto the whole Defence that Mr. Love made.

My Lord, that I shall say shall be in two Particulars, for Mr. Love divided that which he said into four Parts: the first concerning the Charge; the second concerning the Witnesses and Testimony; the third concerning himself; and the fourth concerning some Proposals to the Court.

My Lord, I shall only meddle with that which is concerning the Witnesses; and secondly, to some part of that he said concerning himself: I shall only reply as to these two, and the rest I shall leave to Mr. Attorney-General, that better knows what is for the Advantage of the Commonwealth.

My Lord, I shall begin concerning the Witnesses, to clear them, (for now we are in our Reply for the Commonwealth.) Mr. Love, who did profess a very great deal of Ignorance in the Laws of the Land, yet he did insinuate something that implied some Knowledge of them, in that, my Lord, he took some Exceptions to the Witnesses. My Lord, I take it, that these Exceptions were:

1. That the Witnesses were not *probi Testes & legales*. And,

2. That they were *Participes criminis*: And that indeed is included in the other.

My Lord, First, I shall speak to this, That the Witnesses produced against him are *legales Testes*: They are competent Witnesses, and sufficient Witnesses, without Exception against them. I shall first speak to that they are *Testes legales*: For Mr. Love did object, That they themselves confessed themselves to be guilty of the same Crimes; and so their Confession is upon the Matter a Conviction; and so they are convicted of the Crimes in which they are Witnesses against him; and so are not competent Witnesses.

My Lord, I shall clear this: Under favour, I take it they are very clear and good Witnesses, notwithstanding the Exceptions. And, my Lord, this I take to be a very plain Case; the Case which is in our Common Law: The Case is — which proves it fully; for if a Man be accused of High Treason, indicted of High Treason, and will confess the Indictment, and become an Approver, yet he may be a Witness against all those Parties guilty of the same Treasons with himself; he is *Particeps Criminis* with them, and they with him: And yet this Man thus becoming an Approver, will at Common Law be a Witness, and a legal and good Witness against them.

My Lord, I shall a little open that, because it clears the Case. My Lord, an Approver can only approve, it is true; that is, when a Man is indicted of High Treason, and other his Accomplishes with him, and he upon the Indictment says it is true, and then desires he may have something assigned to him, and then he accuses such and such Persons of the same Crimes: In this Case this Man, after he hath confessed the Indictment, and takes his corporal Oath to reveal all Treasons he knows in the Indictment, (for he can accuse no further) after this done, he shall be a Witness; he is a Witness against those with whom he is *Particeps criminis*: Nay, my Lord, it is of Merit and Justice that he shall have this Reward, he shall be pardoned his Life. Now, that I prove to you, because that shews the Reason, that even the Man, after Indictment and Confession, yet being an Approver, shall be an Accuser of his Brethren, those that were *Particeps criminis* with him, and a good Witness. And the Reason of that goes to this Case in hand: For although these Men had a hand in the same Plot and Design with him, and have confessed, and did confess it upon Evidence, that they were there present, and did many Things, yet

yet I take it they are clear, competent, and good Witnesses, and that is no Objection against them, that they are *Participes criminis*. My Lord, if the Law were otherwise, it were impossible to prove many Offences; for many Offences cannot be proved, but by some Men that had a hand in them. In an ordinary Case, an Action of Trespass and false Imprisonment, if three Men are guilty of it, it is an usual Thing in Courts of Justice to admit one of them a Witness. True, they are not Parties in the Action, and so may be Witnesses: For these Things may be so secretly done otherwise, that their Treasons could never be revealed to recover against the Prisoner.

There is a Case, I think, in all our Knowledge: It is the Case of the Earl of *Castlehaven*. He was accused of a very grievous Fact: The Witnesses which came against him, were one or two Footmen, that were *Participes criminis* in the very same Fact; and these Men, by the Opinion of the Judges, were competent Witnesses. My Lord, he was arraigned, indicted, and convicted, and suffered Death: Nay it is very true, that one of these Persons was afterwards hanged for the same Offence. So that I think, under favour, as to that, I take it that they are clear and good Witnesses, notwithstanding that Objection.

The next Objection is, That they were not *probi Testes*. Truly for that, my Lord, I must appeal to your Judgment in it whether these Men be not *probi Testes*, & *honestes* too: For in case of an Approver, as I mentioned before, that Man that accuses his Brethren upon the same Treason, it is said, that of Merit and Justice the King ought to grant him his Pardon; for they that discover the Traitors against the Commonwealth, these certainly are *probi Testes*, and good Commonwealths-men. And so I take it, that this is no Objection against them in that, but as before they were *legales Testes*, so they are *probi Testes*. My Lord, I mention these Things, to shew that the Witnesses for the Commonwealth are good and competent in this Case.

The next Objection touching these Witnesses, is, That though they be admitted for good Witnesses, yet there is not to any one Fact two Witnesses: There is not any one of the most criminal Parts of the Charge proved by two Witnesses. And so as before they were incompetent in regard of the Quality and Participancy of their Crimes, so now he would make them incompetent for want of Number.

My Lord, I shall first agree to the Ground of this Objection: For truly, my Lord, I take it, that it is by the common and antient Law of *England*, that in Cases of Treason there must be two Witnesses; and it is by a Law more antient than that, that is, by the Law of God. But, my Lord, it is true, the Law of this Land is explained by several Statutes, the Statute of the first Year of *Edward the Sixth*, and the fifth Year, and the second Year of *Philip and Mary*. My Lord, I take it, upon all these Statutes; the one Statute says, To accuse another, there must be two Witnesses: I take it, the Accuser and Witness are all one; that is, the same that in one Statute is called a Witness, in another is called an Accuser. But there must be two: That is the Objection. But then give me leave to consider this Case, and to consider how those two Witnesses shall be. My Lord, I say, under

favour, that in a Case that consists of a complicated Fact, that is, the Reiteration of many Actions, my Lord, I conceive none of these Laws are to be intended, that for every of the particular Facts there should be two Witnesses: That cannot be the Intention of any of these Laws, that in every particular Fact, that is to say, whether Mr. *Love* was present at the reading of the Letters; if you have one Witness to that, another for the writing of them, another to the sending of them; though these three Witnesses speak to several Parts of the Business, yet they are a concurrent Testimony, for all agree to the Fact. I well remember, my Lord, a Case in the Star-Chamber, against *B. of Leicestershire*: I think there was an Information against him for Bribery, and extorting of Fees. The Matter came in the Conclusion, that one Man proved a Bribe, and another Man proved a Bribe: One proved a Bribe of forty Pounds, and another a Bribe of forty Pounds; but there were several Witnesses to several Bribes. The Question now was, Whether he took Bribes, or no? And these tending to the same general Charge, it was the Opinion of all the Judges that he did extort and take Bribes. The one Witness spake to one Bribe, and another to another; and in that Case, as two Witnesses, made good a Charge against an Offender: Yet in that Case it was taken, that where Witnesses, though they speak not in every Particular, yet all tending to the same general Charge of Bribery, these were taken for plural Witnesses, and that was a good Conviction. That was the Opinion of the Judges then. I mention this Case only for an Instance to express my self in this: For Mr. *Love* cannot expect, that to every particular Thing laid to his Charge two Witnesses should be produced. But, my Lord, when one Witness proves this Thing he hath done, this Letter hath he written, and another that another Thing he hath done, which all tend to the Treason; now these are more Witnesses, and two or three Witnesses of the same Thing, tho not to the same individual Thing, it is—— So that upon the Matter they are concurrent Witnesses in this complicated Fact, though not concurrent in this or that Circumstance; for that is impossible almost in any Action to be done.

But then Mr. *Love* did further enlarge this Objection, which was out of a Saying he had, That in case of Treason, *Probationes oportent esse lucidiores*, The Proof must be as clear as the Sun. Truly, my Lord, it is very hard that Works of Darkness should need so much Light for Discovery, and that so clear a Proof should be necessary when the Things are done in Darkness and Secrecy. My Lord, I think, under favour, though in this Particular we have our Witness, as I take it, to speak very plainly and clearly; for it is their own Faults if they do not, for they were present at the Meetings, at the Consultations and Debates: But yet I do observe, that in this Case Things were carried on in a very secret manner. For I do observe, first, at these Meetings, all of them were done under a Disguise, every Thing acted in this Business. I observe it upon Evidence, first, That the very Meetings themselves, they go under the Title of Prayer and Fasting; for so *Huntington* told you, He was spoke to go to Prayer at Mr. *Love's* House. The Contributions made for raising of Money, for sending of

Messages

Messages and Dispatches, was under the Disguise of Charitable Uses. So that here was Darkness all along. And then for the Letters, there were no Names subscribed to them: All were done without Names, only the Letter L. was upon one. And the Place, truly I must say, that was obscure too: For what Man would have thought that the Place of Meeting should have been at Mr. Love's House? A Man that hath been so much for, and shewed so great an Affection to the Parliament, as he said himself in Substance. A Man would sooner have thought to have found this Treason in any Cellar in London, than in Mr. Love's House. For the Instructions, for the Directions and Dispatches, some were sent in Table-Books, written in Sack in a Table-Book: But, my Lord, I am afraid, in the Conclusion, the Letters will be written in Blood. But, my Lord, this I do observe, that through these Difficulties, though we past through our Evidence, yet your Lordship heard how plain the Proof was in most Particulars.

My Lord, I shall say no more as to these Witnesses, because the other Part of answering the Witnesses belongs to the Attorney-General; for Master Love went over all the particular Witnesses.

My Lord, I shall only say one Thing, and that is this, concerning Mr. Love himself; and it is only concerning this Point. My Lord, Mr. Love himself did say, He would be ingenuous so far as he took himself to be guilty. But, my Lord, I know your Lordship and the Court observes that that Ingenuity did follow the Proof that was for the Commonwealth. My Lord, he confesses he was present at them; he was silent after all these Meetings and Debates: I mean the Meetings after they began at his own House; for I speak not of them that were at *Dowgate*, for there is no Proof that he was there. My Lord, this he confesses; and this he says is Misprision of Treason. Truly, my Lord, I must be bold to differ from him in that Particular: I take it that that he confesses is High Treason. I shall speak a little to Misprision of Treason, and so conclude.

My Lord, Misprision of Treason is when a Man hath notice of a Thing that is Treason, and he conceals it. Now, my Lord, under favour, the Concealment must not be long; it must not sleep long with him. My Lord, I remember an Axiom an Author hath in our Law, and that is *Bracton*: He hath a Discourse of Misprision of Treason; he hath it in *Latin*—Says he, *He that knows a Treason, he must not stay in one Place a Day and a Night, but he must go on; he must go toward the Magistrate. Nay (says he) though he have most urgent Business, yet he must set it aside, and go on, and must not stay in any Place till he hath revealed it. Nay (he says further) he ought not to look back till he hath given Information to the Magistrate.* The Man that doth not after this manner forthwith reveal it, this only is Misprision of Treason. But considering this Case of Mr. Love's now confessing the Fact, he takes it to be Misprision of Treason; but I take it to be Treason it self. My Lord, I shall observe what Mr. Love did: He was at these Meetings; these Meetings were continued for divers Days and Months. My Lord, was there any Discovery made by Mr. Love? Was there any Revelation of his to

any Magistrate? Did he tell it to any Man? Nay, did he confess it upon his Examination, when examined? Nay, did he not deny it when he came to the Bar before your Lordship? Can this be said to be Misprision of Treason, that a Man should hold so long in Treason, and not reveal it? My Lord, as every Treason includes a Misprision of Treason in it; so I conclude that Misprision of Treason may grow up to Treason it self. Now when a Man shall so long sleep upon it, and be violent in it, and not reveal it, I take this Misprision of Treason grows up into Treason it self.

My Lord, I shall say no more of that, but I shall conclude; because the other part lies upon Mr. Attorney-General, who is better able to do it. Only one thing I shall take notice of to your Lordship, and I am troubled at it; and that is, That as he saith, that he that hath been so much for the Parliament, with whom he hath gone along, and took sweet Counsel together, and hath been active for, and passive with, thro all the Passages of the late Wars; that he should suffer from them, this, he says, stuck very much upon him. But, my Lord, for him that hath been so much for the Parliament, so familiar with their Proceedings, that hath been so active for them, and hath suffered so much for them; my Lord, for him to kick the Heel against the Parliament; for him, after all this, now even in the Infancy of this Commonwealth, that this Child should be destroyed, and by one with whom we have took sweet Counsel together: And by one, I may say this, that tho he had no hand in making this Commonwealth, yet I dare say he had in the Preparations to it; for himself all along hath gone with the Parliament: So that, my Lord, I take this to be an Objection against him. But, my Lord, I shall say no more in it, but refer the other Part to Mr. Attorney-General.

Mr. Attorney-General, the third Counsel for the Commonwealth.

Attorn. Gen. My Lord, I am sorry Mr. Love hath given me the occasion of this Meeting, and of my speaking at present; I could much rather have wished to have been silent: But now I am drawn hither, I am forced to it. Mr. Love, my Lord, in the beginning of his Tryal, did desire God so to assist him, that he might go through it with Gravity, Meekness, and Wisdom, as became a Minister of the Gospel. I wish that God had heard his Prayers, that he had so gone through it. What he hath done, the Court hath observed.

My Lord, in that Part I have to do, I do heartily desire I might do it with Faithfulness to you, and the Duty of the Place I ought to discharge, and to the Court.

My Lord, the Work that this Day lies upon me, is to reply somewhat to what was said by Mr. Love in his own Defence, and to make a faithful Repetition to the Court, and to do the Witnesses and the Prisoner right; to repeat that, and that only, that hath been said; and in that, that I may do no wrong to mis-lead the Court, and offer nothing to the Prejudice of the Witnesses, nor to the Prisoner. And truly, my Lord, I shall not (in his own Words) have any tortured Collections, nor any Inferences, nor Strains of

Wit;

Wit: He hath shewed his Oratory in his Defence; my Lord, I shall shew the Simplicity of Law in the Reply.

My Lord, the Charge hath been repeated to you; and for that insisted upon by Mr. Love for the Witnesses and Testimony, you have had Answer: I shall not trouble you; there hath been Pains taken in it. My Lord, I think all Men were satisfied that it was clear enough; yet to make it more clear, Mr. Love, my Lord, insisted upon one Thing more, and that is upon Point of Time, and the Point of the Jurisdiction of the Court, which (by your favour) I shall first begin with.

He stands charged, he says, for Crimes done in 1648, 1649, 1650, and 1651. And those Crimes, he says, were before this Court was, or had a Being; and so had not Power to take Cognizance of them.

That, my Lord, I shall endeavour to clear to you, and I think in much Clearness; clearer than the Light, as he will have his Evidence. He stands charged (I say) positively, my Lord, with no Crime before a Law was emitted, that did give an Inhibition, and was published and known. He stands charged with no Crime before the Law was published, that did declare what the Crime was, and gave notice to beware.

My Lord, that that was first, was the Law that was made the Thirtieth of January, 1648, that doth declare, (and upon that Law I shall fetch the Foundation and Rise of this Treason) That whoever shall proclaim, declare, publish, or any way promote *Charles Stuart*, or any other Person, to be King or chief Magistrate of *England* or *Ireland*, without Consent in Parliament, shall be adjudged a Traitor, and shall suffer Pains of Death as a Traitor. Here was this Law published, and notice given what every Man should trust to, and, I may say, my Lord, Obedience expected. Against this Law hath Mr. Love transgressed, and, under favour, in a very high measure; so that, my Lord, I charge him upon this Law, and since this Law was made; and to this Law there is no Limitation of Time for Men to be questioned for it: And for this Law, it is in express Terms given in Commission to this Court to take Cognizance of it: So that, I think, this is a little clear to him.

My Lord, the next is a Law published in July, 1649, that is entitled, *An Act declaring what Offences shall be Treason*: That, I think, he is not ignorant of, though he pretended to be ignorant of another. My Lord, that Law likewise, though it was before this Court was erected, yet this Court hath, by express Words of the Commission, Power to take Cognizance of it. And this Court, in these Things, is not like other Judicatories, that when Offences are committed, the State takes care to appoint Courts and Judges to judge those Offences. Let it be no Offence to Mr. Love, if this Court were erected especially to try him. But the Law was not made especially to punish him; for the Law was made before, and the Offence committed before: and so, I think, in all *England* the Offences are committed before the Judges go their Circuits, and have their Commissions.

My Lord, the next is the Law that constitutes this Court, and says in what Particulars this Court hath Power to take notice of Offences,

besides those mentioned before, and the last concerning the *Scots*: That was but lately, which Mr. Love says he was ignorant of; but he was not ignorant to do somewhat against it. My Lord, these are the Laws that Mr. Love is impeach'd upon.

The next thing that I have to do, is (and in that I humbly beg your Favour, that as I am now to do Justice, if I may so say, to the Court, and to be faithful to my Trust and the Duty imposed upon me) to repeat the Evidence right unto you; and in that, as the Gentleman, the Prisoner at the Bar, hath had that Favour from you to have a Notary by him, to take all that was said of all Parties; so, my Lord, by your Favour we have had some here to help our Memories: With whom I have conferred; and by the Help of their Notes and our Memories, my Lord, we think we have faithfully transcribed that which was said by the Witnesses. And, my Lord, I humbly crave Favour, as not now being a private Examination to be read, but a publick Testimony in the Presence of Mr. Love himself and the Court: I hope it is not private now, but I may use Notes to do him right, and may read those Things that they testified upon their Oath here.

In the first Place, my Lord, I shall, according to my best Judgment, do him no wrong. For the first, I shall acknowledge it was but a Hear-say, and that from *Drake*, of Letters sent from *Scotland* to the Presbyterian Party in *England*, to let them know what had been done of proclaiming the King there, and that care should be taken for their Interest. This I do acknowledge was but a Hear-say; but that which followed not long after that time, my Lord, was positive; and there (my Lord) I shall begin the Rise of this. And thus, as hath been observed by my Fellows, that are Counsel here, though there was not acting, nor Presence, nor knowing, yet (my Lord) under a second, it will appear he was consenting and approving, and so guilty of the first Fact. My Lord, there was a Meeting at *Dowgate*: I suppose you remember it full well; it hath been several times repeated to you by several Persons; and *Titus*, the Party now beyond the Seas, and *Drake*, and other Traitors fled, were prime Sticklers for this, and moved others to come in, and to be there present, and hear what was the Design. As I did crave your Lordship's Favour, so I shall, that I may not (as he says) trust to a fickle nor roving Memory, that I may be faithful, to read to you that I have taken, and what was said by them. I suppose Mr. Love hath by him one that can controul me, if I do not right.

I begin with this Meeting at *Dowgate*, and continued at the *White-Hart* in *Bread-street*: *Alford* gave you this Evidence, *That one Morning he was wished by Drake to go to the Swan at Dowgate*: *When he came there, there was one Titus who gave relation of the good Disposition of the Prince, and how inclinable he was to take the Covenant, and to cast off the Cavaliering Party, and those about him, if there were opportunity found, how to make him know there was a considerable Party in England that would stick close to the Ends of the Covenant; and upon that, we that were there did think we were bound in Duty, in relation to the Covenant, to press the Prince to take it, and to prosecute*

secute the Ends of it. And for that Titus said, if we would appoint another Meeting, he would draw up something in way of Application of the Presbyterian Party to that purpose.

We afterwards met at the Bear in Bread street, and there he drew forth something he had framed to that purpose, and read it, and it was agreed to be sent over to the Prince; the Substance of it was to press the Prince to apply himself to take the Covenant, and to prosecute the Ends of it, and to cast off all the Cavaliers and that Party about him, which had brought so much Mischief to his Father, and would do likewise to him: And this (I believe) was sent over, for Titus undertook to send it over. We asked him how the Prince could be made to believe that this coming from so inconsiderable a Party as we were, should come under the Notion of the Presbyterian Party of England? He said he would undertake it by means of my Lord Piercy. And, my Lord, I think you do remember there was one Mason, Servant of Piercy, that was sent over hither, so testified by some, to reconcile the Royal and Presbyterian Party. This Mason, my Lord, was Piercy's Servant, so testified here by divers. My Lord, here is now the Foundation: Drake is he that moves Alford; and Titus I may suppose the Mover of Drake; and both of them fled as Traitors.

My Lord, if they were Traitors, and this is Treason; then whoever had a hand in carrying on this Design, himself is a Traitor, and his Action is Treason. My Lord, this is the Testimony of Alford.

My Lord, there is another Witness, and that is Lieut. Col. Bains, who I think was present only at this Meeting, and had enough of it, and did leave it; and yet was present at this, and gave in Evidence of what was there proposed. I think he was present at no other Meeting, he was satisfied this was too much; his Testimony, as I take it, was this, for I shall read it, that I may do no wrong to no Party: Bains said, It was also proposed by Titus, that something should be done, in order to restoring the Presbyterian Interest, by Application to the Prince, and to assure him that he had a considerable Party in England, which look'd upon it as a Duty, and lying upon all of them by the Covenant. And that it was necessary somewhat should be done by some Parliament-Men, Ministers and Citizens, that were leading active Men, that he might have an Assurance that somewhat would be done for him; and somewhat to the Queen, Jermin, and Piercy, whom he said were their Friends. This, my Lord, was that which Titus said at this Meeting; and testified by Bains.

My Lord, there is another, Colonel Barton, who was produced as an Evidence. My Lord, I think that he spoke not much more than to this, and gave off here. My Lord, his Testimony was this; for I do conceive, under favour, we have taken the very precise Words spoken by them: and, my Lord, so as spoken and taken, so written, and so, my Lord, read to you. Barton, my Lord, said, That Drake would have him to be a Messenger; and to that purpose there were several Meetings at the Swan and White-Hart. This was what Barton testified.

My Lord, then there was Major Huntington, which was at this Meeting, and one more at Mr. Love's House, which he full well remembers. My Lord, Huntington says this, That a-

bout March 1648, (in January was the Law published) Alford told him that Titus was in Town, and that he was newly come from beyond the Seas from their Friends, Massey, Bunce, Graves, and others; and that Titus was to meet the next Day at Dowgate, where he fell into high Praises of the Prince, and told them that tho' he was taking unhandsome Courses, yet they had great hopes his Inclinations were otherwise. Titus said further, he feared his inclining to the Irish, unless something should be gotten from his Friends here to divert him; that you remember was Mr. Love's Charity too, as you will hear anon. Titus proposed to get Letters from Persons of Honour, to perswade him to a good Opinion of the Scots, to take the Covenant, and to join with them.

Afterward they met at the White-Hart in Bread-street, where Titus declared that he should gain these Letters, and hoped to set something a-foot to the same effect; and there said, they were confident they could see no way under Heaven for him else, but by taking the Covenant, and engaging the Scots against England: to which purpose he drew forth a Paper, purporting that they were bound in Honesty, Conscience, and Loyalty, to maintain and help him to his just Rights, if he would go along and join with the Covenanting Party in England and Scotland.

My Lord, this is that now that hath past in proof by Evidence concerning this first Meeting at the Swan at Dowgate, which I do humbly conceive was the Rise and Foundation of what follows afterward. And this, my Lord, if true, I suppose no Man will say, but that was Treason that was transacted there. I do not say, my Lord, that Mr. Love was present at it, nor as yet, can I say, knowing of it; but what follows after, my Lord, will bring him in danger.

My Lord, here, you have heard, was this Meeting, and what was propounded to be done here, and how active Titus was, and that he was to go (you have heard by the Testimony) to Piercy; and it is not doubted by any but he did go thither; it is not doubted by any but he was sent, and did go thither. To that purpose I shall now read you two Witnesses more, which I have caused to be transcribed too, in the words as spoken by them, as I do conceive, that is, Adams and Far: That there was Money agreed upon, to send Titus to Piercy; that there was Money collected, and that they themselves did contribute. Adams he expresseth it thus: That upon a Meeting, the Place and Time I remember not, where I think were present Drake, Titus, Alford, and myself, and I cannot tell how many more; it was agreed that Titus should go to Piercy: the End of his going was to promote an Agreement between the King and the Scots, according to the Covenant; (and, my Lord, you shall hear in due time what that Covenant is, that Mr. Love hath said in his late Defence.) In order to his going, we did agree to furnish him with Money for the present, and made some kind of Promise to keep him while he was out: about an hundred Pounds was furnish'd; for my part, I paid twenty Pounds of it. This is Adams.

The next is Far. He says, He did understand by Drake, that Titus, who was here requested as one to be present at the Treaty at Jersey, which Titus did undertake to go thither: he undertook to go himself. That after he was gone, Drake desired

Far to let him have Ten Pounds, saying, Titus was in want, and upon this I lent him Ten Pounds: the Letter was read at Mr. Love's House when he came from Calais. So, my Lord, here is now, under favour, his Proof before you of this Meeting at Dowgate, at the Swan there, finish'd in Bread-street, carried over unto Jersey, Titus the Messenger furnish'd with Money by a Party from hence in this Errand, as we told you. My Lord, all this while I do not hear of Mr. Love; if he were, my Lord, he was like the Mole under ground; but however, my Lord, Mr. Love hath carried himself (as some have said) like a Rat among Joint-Stools, a Man can see him, but cannot hit him. But, my Lord, I doubt he will appear to be too busy in what follows, and that he had a hand in it at first.

My Lord, the next to go on with is this, in time; That when Titus finish'd his Work at Jersey, he was then to give an account to his Masters that employed him, and upon his Return he was to do it faithfully, as he thought. But being informed, that the State had vigilant Eyes, and they discovered him what he had been doing there, and he having notice from some of his stedfast Friends here of it, he thought it was not safe for him to come in person, so that his guilty Conscience kept him off. But then he did desire that he might give an account by the hand of some others, by their Memories; and for that purpose wrote a Letter, to whom I cannot tell, I think to Drake: the Letter was written, and under favour, my Lord, this Letter from Titus was read in Mr. Love's House, to have one sent to him; and there it was propounded for some to be sent. Adams was propounded, for him to go; Far propounded for him to go: but not them, but Alford was agreed to go, and did accept of it; but not that he was there, my Lord. My Lord, for this I shall crave the same Favour from you, to read Adams and Far, as to that Particular. This is Major Adams; It was moved in Mr. Love's House, Mr. Love being there present, that I should go to Calais to meet Titus; but Alford going thither, did at his Return give an account of the State of things at Mr. Love's House. My Lord, that I read him for, is for that part, that it was moved in Mr. Love's Chamber, Mr. Love being then present: That I should go to Calais to meet Titus; it was moved that Adams should go: my Lord, this I read to show Mr. Love was privy to this before the Messenger was sent. My Lord, the next is Captain Ralph Far: I was in Mr. Love's House in his Study, wherein (in Mr. Love's Study) a Letter was read from Titus, desiring one might be sent to him to Calais; and thereupon it was moved that I should go, but afterwards it was agreed that Alford should go, who went accordingly. That is now as to that particular, that before any Man was sent unto Calais, it was made known in Mr. Love's House, and some propounded for to go, and at last another did go; this, my Lord, I offer to you, as that which will not be controverted by Mr. Love, for I have read you two Witnesses to it. The next, my Lord, is, in which (I think) we do not differ; but that when Alford had been at Calais, and had taken the account that Titus gave him, the Copy of the Letter which he said was from the King to the Presbyterian Party here, the Narrative of all the Transactions and Proceedings to Jersey: that upon his Return, I

think we do not differ, nor is it denied; I am sure Mr. Love acknowledged it in his last Defence, because proved by four, therefore confessed, my Lord, that this Narrative, the Copy of this Letter was read in his House; and for that I have the Testimony of Adams, Alford, Jaquel and Far; which, if it be your Pleasure, I shall humbly read unto you.

The first is Major John Alford; Having received at Calais a Narrative in writing of Titus's Transactions in Jersey, I brought the same to Drake, to whom it was directed. Now it appears to whom the Direction was. And he brought it to Mr. Love's House, where it was read; afterwards there was a Commission so called. But, my Lord, if you please, that is for this in the first place, That this Narrative brought from Titus by Alford, was read at Mr. Love's House.

The next is Adams; But Alford going to Calais, did at his Return give an Account of the State of things at Mr. Love's House, which Account was the Narrative from Titus, and the Copy of the Letter said to be the King's Letter: The Contents whereof I remember was as followeth, The King expressed a great deal of Affection to the Ministry in general in England, and promised them great Favours when he was in a condition, and desired them to continue stedfast in the way they were in; which Letter was read and publish'd in Mr. Love's Study, and Mr. Love was there some times of the reading. At the same time a Motion was made, of giving thanks to Titus for his well managing Affairs there, and at the same time the Commission and Instructions were. So that here is another Testimony, that this was done at Mr. Love's House; the Narrative, says this Gentleman, and the Copy of the King's Letter.

My Lord, the next I shall read unto you, is Mr. John Jaquel: After Alford's coming home, I was at Mr. Love's House, where was Potter, Drake, and Alford; and Mr. Love was there some times, though divers times somebody came to speak with him, and called him, and he went to speak with them. A Narrative from Titus was there read by Alford or Drake, wherein was declared the King's Inclination to make peace with the Scots, but his wicked Council hindered him. I think it was a Narrative of what had pass'd between the King and Titus at Jersey. This is that that Jaquel says.

The next, my Lord, is Far. Alford being returned, he gave an Account of his Employment at Mr. Love's House; a Copy of a Letter was there read, from the King to the Presbyterian Party in England; the Substance was to send Commissioners to the Treaty at Breda. The Narrative brought from Titus was communicated at Mr. Love's House, where were present ten or twelve Persons. So, my Lord, you have heard these four Witnesses, what they have said concerning this: Now you shall give me leave to make Application of this to the former, I shall crave your favour to go thorough this: There follows more at Mr. Love's House, this is not ended yet. My Lord, after this, there was somewhat propounded to be done upon this Narrative and a Letter from the King; somewhat was propounded at this Meeting: My Lord, then there was (as I know the Court remembers) Speech of a Commission that was somewhat controverted. There was Speech of a Commission, and a Commission read; Mr. Love ingenuously acknowledgeth, and it was proved, and he

he declared his dissenting from it, and that he was against it, because as private Persons they had no Power to do any such thing. But, my Lord, that there was a Commission read there, brought by Drake (I do not say that this proves that Mr. Love corrected it;) that there were Instructions and Letters read for to be sent over, I think, is not denied: But, my Lord, for that, if you please, I shall read you the Witness. The first is *Alford*: *Afterwards there was a Commission, so called, agreed among us, sent over to the Lord Willoughby of Parham, Massey, Graves and Titus, at Breda, to advise with the Scots Commissioners there, in behalf of the Presbyterian Party in England. This Commission was read in Mr. Love's Study, and at the same time Instructions for the Commissioners to walk by, were agreed on to be sent; which Commission and Instructions were the Substance of the Petition formerly sent, to press the King to take the Covenant, and to prosecute the Ends of it. This Petition was (I conceive) what was formerly agreed upon at Dowgate; which Commission and Instructions one Mason, the Lord Piercy's Man, carried over. This is Alford's Testimony as to this. And being ask'd by Mr. Love, Did not I dissent from sending the Commission and Instructions?* he says this, *It was agreed in the general, that the Commission and Instructions should be sent, Mr. Love being then present. All present are Principals, my Lord.*

My Lord, in the next place is Major *Huntington's* Testimony; and the first is this, *That at Mr. Love's House in the beginning of March, 1649, I found Drake and others, and there was read a Paper in the nature of a Commission, commissionating my Lord Willoughby of Parham, Graves, Titus, Massey and Bunce, to treat in the behalf of the well-affected Party of England, and to join with the Scots Commissioners, according to such Instructions as should be therein inclosed. And this Question being ask'd, What Power have we to give or send such a Commission? Drake answered, We have the King's Command for it, and the Authority of some secluded Parliament-Men; for I look upon them beyond the Power that is now sitting. Whereupon Mr. Love replied, Come, come, let it go. You have heard Huntington's Testimony, and Mr. Love's Paraphrase upon those Words.*

The next is *Adams*: *At the same time a Commission and Instructions were spoken of at Mr. Love's House to be drawn up and sent: As I remember Mr. Gibbons brought the rough Draught. I am very confident that Master Love was there some part of this time, and it was in his Study where this was generally consented unto. The Instructions were there agreed also, and read by Drake, as I remember. Sterks, the Scottish Agent, met with us sometimes at Master Love's House. This is what was testified by Adams. There is another to this, and that is Captain Far. William Drake read there a Paper, of the nature of a Commission, which was not agreed to by the Company, because private Persons had no Authority to give Commission. The Commission was in the Name of the Presbyterian Party. A Letter and Instructions was then agreed upon; the Commissioners were to be the Lord Willoughby of Parham, Bunce, Massey and Titus, who were to move in the behalf of the Presbyterians. Papers then were read, to have been sent to the Queen, to persuade the King to give Satisfaction to the Scots: but they were not assented to.*

My Lord, I have done with this that concerns

this Meeting; and now I shall apply that which I intended, and spoke of before. The Design you heard, that, my Lord, was at the *Swan at Dowgate*, was treasonable enough in Conscience, high enough; a Party employed to agitate! And though we do not find Mr. Love to have been knowing or privy to it at first, yet, my Lord, if there be a Treason hatch'd and design'd, a Party sent in it, and any subsequent Act of any other Party that shall come into this, and approve of it, and join in it in what way soever, this Man, my Lord, is guilty of the first Transaction of Treason. So that though Master Love did so walk under ground, that we cannot bring him in to be knowing at first, yet I bring him approving at last: And, my Lord, tho here be his first appearing, it is enough, and too timely. And, my Lord, *Titus* departing, and an Account given of all, and for ought appears, not to be proved by me, nor by any for the Commonwealth, whether Master Love did approve or not, or how far he went in it. But he was present, and at the Debates and Discourfings about it, and Actings in it. My Lord, this is far from Misprision of Treason; for Misprision of Treason is a bare silent Act that carries nothing of Discourse nor Debate with it; it is a simple Act of Omission. But when Treasons are hatch'd, and are design'd, and others shall come and treat, and debate, and discourse upon carrying them on; my Lord, by the subsequent Act he hath approved of all that pass'd before, and made himself Party to it. Here is an Account given by *Titus* of what had pass'd there; this is brought into Master Love's House, there are Debates concerning a Commission; whether they took the King for the Authority, or the King wrote of it, it doth not much move me. A Copy of a Letter from the King was read there, let them take it among themselves as they please. Here was a Commission debated, and Master Love acknowledgeth he debated against it. My Lord, under favour, if he had declared an utter Dislike, and (as he himself says) a Detestation and Abomination against it; but he goes on, though not in that Particular, yet in another, and he is guilty of all. In Treason there are no Accessaries, all present are Principals.

The Crime of Treason is beyond the crying Blood of Murder; one is but private, the other is publick: so as, my Lord, though Mr. Love acknowledgeth, that he so far owned the Narrative from *Titus*, and the Proceedings there, the reading of it, but did dissent from the Commission, and did speak against it, and at present I shall take it so too; yet for the Instructions sent, and for the Commission named, you have had four Witnesses named to you. My Lord, Dissent will not serve his turn, and yet to that there is not a Pretence of a Dissent from the Instructions, and what was sent, and that is a Consent and Concurrence, and that is an Approbation of all precedent Actions, and makes himself a Party in it, and that is by one Witness: And, my Lord, you have heard by Master Serjeant *Witherington*, that to every Circumstance there needs not two Witnesses, but to the Design there must be two: And *Adams* himself says, it was propounded to have given *Titus* Money, as you shall hear by and by; and *Far* tells you, That there was going on so far in it, that a Paper was read for Letters to be sent to the Queen, to move her to persuade the King, but that

that was not assented to; but it was moved among them.

My Lord, the next thing I shall take, as near as I can, was when this was done, and this Transaction pass'd over, and the Instructions sent, that were agreed upon for Commissioners at Breda, then begins the Troubles in Ireland. You have heard of a Paper-book sent, written in Sack, and returned a Year after; that comes next. There was sent over from Col. Bamfield (Mr. Love says he knew not the Face of the Man) but he lik'd his Employment it seems, that would be privy to such Proceeding from a Man he knew not. There came a Servant over, I take it from Bamfield, and that was about Christmas last, that is the time express'd after Dunbar Fight. My Lord, this was brought, the Letter was delivered to Potter, and their Supercription was singly with the Letter L. which I may say, may be better applied to Master Love, than to any other, all Circumstances considered; yet I shall not conclude from it, but though he says he had no Letters directed to him, I shall say as truly, that they were directed to him, as much as to any Man else, and a little more; for Master Love was very unfortunate that these Letters should be brought to him, read in his House, the Transactions there, and Mr. Love to have no hand in it, this is hardly to be believed.

My Lord, in the next place are these Letters that came from Bamfield; if it please you, for that I shall read Potter. *I received Letters out of Scotland from Bamfield, with the Letter L. upon it, wherein was a large Narrative of the Affairs of Scotland, from Dunbar Fight, to the time of the Date of them, which (I think) was about Christmas. I carried those Letters to Mr. Love's, where was one or two more with us, Jaquel, and, I think, Dr. Drake; we three, I am sure of it. There were Letters from a nameless Person, whom we supposed to be Master Bailey; and a Letter from my Lords of Argyle, Lothian and Lowdon. These Letters wrote for Ten Thousand Pounds for buying of Arms, and hiring of Shipping; and for Five Thousand Men to be landed in England. These Letters were disliked and dissented from; and it was agreed to give a negative Answer: And we thought fit (for our own Safety) to raise some Money for the Messenger and Bamfield: The Sum agreed on was Forty Pounds, to which I contributed Ten Pounds. I carried the Letter to Mr. Love's to take Advice upon it. Mr. Love, and I, and Jaquel, read those Letters that were opened, and those that were not opened we did open and read, and discourse on them; and upon Advice resolved to do nothing in it: Neither did they reveal it. And then being demanded, Whether at Mr. Love's House there was not a Discourse for raising 4 or 500 l.? he answered, There was. Being demanded, Whether Letters were not returned to Bamfield, with the Money sent him? He answered, A Letter was left at my Shop, and I apprehended it came from Master Love, or Mr. Drake. And Jaquel being demanded, Whether Mr. Love and Mr. Drake were not appointed to draw up the Letter? He answered, Yes, they were. And that is Potter's Testimony.*

The next mention is, That Jaquel was present there, here is sure of it, Master Love himself and Jaquel. This is Jaquel's Testimony: *At a Meeting at Mr. Love's House, Master Love being present, it was thought fit that Forty Pounds should be*

raised for Bamfield. A Letter was read from Bamfield at Master Love's House, Mr. Love being present: Mr. Love declared, he never saw, or knew Bamfield. The Letter was for Five Thousand Pounds to hire Shipping. And another Letter from my Lords of Argyle, Lothian and others, at the same Time and Place were read, to induce the Confederates to give Credit to Bamfield. Potter moved, that Ten Pounds might be given to the Messenger that brought the Letter, and thirty Pounds to Bamfield; which was considered of, and nothing said against it: There was no Agreement, but it was thought convenient by all then present. Upon this, Mr. Love ask'd Mr. Jaquel a Question, and he said, I cannot say that Mr. Love said, it was convenient; but it was not dissented from, or spoken against by any.

My Lord, I suppose this is a faithful Relation of what the Witnesses said. My Lord, you have heard of this, and the time when it was, that Bamfield's Servant was sent, and Letters brought from Scotland, giving an Account of Proceedings there: Letters from Argyle, Lothian, Lowdon and Belcarris, to give Credit to what Bamfield should relate: Money provided, though not the Sum, nor the Means those Letters did hint to them; perchance their Purfes could not reach that; but so far as they could go, they would: they would reward him that brought it, and him that sent it; and thereupon 40 l. was provided, ten Pounds for the Messenger, and thirty Pounds for Bamfield. In this Repetition I think I have not wronged Mr. Love.

The next is the Letter that came from Massey and Titus, who were then in Scotland; and in what Condition, I think every Man knows, in what Condition they are there: though by the way I should be sorry to repeat that which Mr. Love did say the first Day, That it did not appear to him, that the Scots were in Arms against the Parliament of England, but in Arms for their own Preservation; and therefore did desire Counsel. Here was one of his Reasons why he desired Counsel to be informed, to advise him whether they were in Arms for their own Preservation, or in opposition to the Parliament of England. This was that Mr. Love was pleased to say the first Day. My Lord, this of Massey and Titus gives them an Account likewise of the Affairs in Scotland after Dunbar Fight too. If you please, my Lord, I will read you three Witnesses to that, and that neither doth Mr. Love deny, but that these Letters were read at his House.

This is Major John Alford's. *After Dunbar Fight we met at Mr. Love's House in his lower Room, where a Letter from Massey was read, which gave an Account of the Fight there; wherein he also wrote for Arms, mentioning his own and Titus's Necessities. Thereupon a Proposition was made for raising of Monies for the supplying of their Necessities; and Five Hundred Pounds being propounded, it was brought down to Two or Three Hundred Pounds to be raised among our selves. Mr. Love did then move for Contribution-Money to that purpose; and I thereupon promised Ten Pounds, which my Man paid. This, my Lord, is the Testimony which Alford gives, as to this concerning Massey.*

The next is Adams. *When the Money was propounded to be raised for Massey and Titus, certainly Mr. Love was then present; [and this after the Fight at Dunbar] and the Money was agreed to be raised*

raised by those that were privy to the Correspondency. Mr. Love had then a Paper in his Hand, and did write something, I saw not what he did write; and so every Man that was there did write what he would lend; I conceive Mr. Love summed up every Man's Sum. Massey's Letter was for Arms, and the Money propounded was for Titus and Massey; for Titus, because he was sent by us; and Mr. Love was there. This, my Lord, is Adams's Testimony; and though he did not know what Mr. Love writ, yet he knew what Mr. Love moved.

My Lord, here is another, and that is Captain Far, which I shall make bold to read to the Court likewise, concerning the same Action. After Dunbar Fight I came somewhat late to a Meeting at Mr. Love's House, where Mr. Love told me a Letter was come from Massey, to assist the King with Money and Arms; but it was not agreed that any Money or Arms could be sent. And I understood from Mr. Love, they could not do it. Mr. Love then likewise told me, they agreed to raise a Sum of Money for Titus, Massey and Graves, to be sent to relieve them in their Necessity: which Sum, whether it was 250l. or 300l. I cannot positively say; but Mr. Love moved me to contribute. I told him I would give him Five Pounds, which I brought wrap'd up in a Paper, and laid it down on Mr. Love's Table, Mr. Love and several others being in the Room; it was so done, that there might be no Discovery. And Mr. Love asking him some Questions upon this, Whether it was done so by Mr. Love, or no? he did not know that; but it was done so by himself, that there might be no Discovery. My Lord, Mr. Love did not disagree: Far being cross-examined by Mr. Love, did not say, that Mr. Love did disagree to the sending the Money to Massey and Titus. So I have done with that Particular likewise, the receiving Letters from Massey, and of the Account from Scotland, and the Fight there.

That which Adams saith, Mr. Love having replied unto it, concerning a Letter writ to the General Assembly and Kirk of Scotland; and in that, my Lord, he is pretty positive. Adams's Testimony is; *There was a Letter written to the General Assembly and Kirk of Scotland, at Mr. Love's House, Mr. Love was sometimes present at this Meeting: which Letter was taken to be penn'd by Mr. Love and Mr. Drake; and I thought it to be so, because of the Language of it: and that after Drake escaped, all the Meetings I know of, were at his House; [and so, my Lord, say some others.]* Being examined, he says, *I saw Letters which were read in Mr. Love's House, Mr. Love was present and privy to the debating of them, and did not declare any Dissent.*

My Lord, I have now done with these Particulars; you have seen Mr. Love at the End, though you found him not at the Beginning: it is not good to come at the ending of the Quarrel. But, my Lord, under favour, by the Laws and Rules of Justice, if any ill thing be contrived and plotted, and afterwards any other Person shall come into the Contrivance of it, and carry it on; my Lord, I think I shall not need to say much in it, but he is culpable and guilty of the whole, from the first to last. And that Mr. Love should be but a mere Spectator, a mere concealed Person, it is very hard to be believed by any that are rational Men: for after that once Titus had done his Errand at Jersey,

and gives his Account here, my Lord, That his Transactions, and the subsequent Employment, all that we know of, are all transacted, and carried on in Mr. Love's House, in Mr. Love's Study, in Mr. Love's Presence: It was not one or two, or three times, which had been enough, and very well had it been for Mr. Love, if he had done as Baines did, or as Barton did; they, when they heard (though they were too much for them, my Lord, to conceal, as they have done, yet did confess it when required) they left off when they heard of it, they would go no further in it, they knew the Danger of it. Mr. Love, my Lord, as you will hear anon, by what himself hath proposed, what Judgment and Conscience led him to carry on this; it was a Conscience of his own covenanting Interest and Principles for the Scots and Religion, that led him on to carry on this Design.

My Lord, I have done with this, that is, the Evidence against him; for Application to it, you have heard the several Laws read before the Charge opened: that Man is guilty of High Treason, and is a Traitor by the Laws of the Land now, that doth any way promote, declare, or publish Charles Stuart to be King of England. My Lord, you have heard the Evidence, what Titus hath plotted, what Drake hath carried on; what Mr. Love hath approved of, and how far he hath consented and joined in the Design. My Lord, I shall say it again, if Titus and Drake be Traitors, as their own guilty Consciences have made themselves judge themselves so: he that flies, confesseth the Fact; my Lord, they are fled. My Lord, if they be Traitors, Mr. Love must be the same with them; for Mr. Love was carrying on, and hath agreed, and concurred, and approved of carrying on the Design that Titus and Drake have acted: Consenters and Agents are to have the same Punishments; in Treason there are no Accessaries. My Lord, the next Point is this; the next Act is that of the 17th of January, 1649. Having given you the Evidence, you will give me leave now shortly to repeat the Law. The first is, for promoting Charles Stuart, &c. That if any Person shall maliciously and advisedly plot, contrive and endeavour to stir up, or raise Forces against this present Parliament, and for the Subversion of the same, and shall declare it by any open Deed, &c.

My Lord, Mr. Love is pleased to express himself, That none can accuse him, nor none have sworn against him, that he hath raised any Seditions, any Insurrection, any Rebellions; my Lord, I cannot say it fully, whether he be guilty of that, or no: but this I will say (the Judgment I shall leave to the Court upon the Evidence heard) if Mr. Love be guilty of any thing moving or tending towards the raising of Forces, Seditions or Rebellions; though the thing be not done, yet, my Lord, it is Treason; those Practices, those Purposes are Treason by the Law, though they never come to Act. We shall not look, I hope, to see a Rebellion raised before we shall say it is Treason, and endeavour against it; but for that, how far he is guilty upon the Evidence of being instrumental of the War in Scotland, and to have endeavoured to have a Party got in England, my Lord, I shall leave it to your Judgment, upon the Evidence you have heard.

My Lord, there is likewise another in the same Law: If any Person procure, invite, agree, aid or assist any Foreigner or Stranger to invade *England* or *Ireland*, or adhere to any Forces raised by the Enemies of the Parliament, or Commonwealth, or Keepers of the Liberties of *England*; this is High Treason. For this you have heard the Evidence what Mr. *Love* hath done towards this; still upon the same foot of Account it is Treason, though but proposed and intended, though not acted. Then there is another Clause upon the Law that Mr. *Love* hath insisted upon, of constituting this Court. But for those former I have said, and you shall give me leave to repeat it again, That these Laws offended against, though in time before this Court was constituted, yet this Court hath, in express Words, Commission and Authority given them by the Parliament, to take cognizance of all Facts and Offences done after that Law, though done before your Commission; and that, my Lord, is not to be doubted, to be a very good and legal Authority. And yet for this the Law that constitutes this Court, of the 26th of *March* 1650, That no Person after the 29th of *March* 1650, shall give or hold any Intelligence by Letters, Messages, or otherwise, with *Charles Stuart*, *James Stuart*, or the late Queen their Mother, or the Council abiding with any of them, prejudicial to the Commonwealth; or with any that shall be in Arms against the Parliament of *England*, or shall bring or send in *England*, *Ireland*, or any Dominions of this Commonwealth, Letters, Messages or Instructions, tending to raise Insurrections, or a new War within this Nation, and shall not forthwith reveal the same to the Speaker of the Parliament, or to the Council of State, or two Members thereof, or to two Justices of Peace, shall be guilty of, &c. That is a Clause in the Law that constitutes this Court. And no Person shall voluntarily relieve any Person in Arms, or that shall be in Arms against the Parliament, with any Money, Victuals or Ammunition, on pain of Death, or other corporal Punishment. And whosoever shall voluntarily take up Arms against the Parliament, and shall encourage others to do so, shall die without Mercy.

These, my Lord, are Clauses contained in the Act that constitutes this Court; and I read the Law before the Charge: and now, my Lord, I have repeated the Evidence faithfully, now let it be considered how far the Evidence goes with them. There are three Acts of Parliament, I suppose Mr. *Love* knew not of the next; for he says, he knew not of that of the 2d of *August*; but it was publish'd solemnly at the *Exchange*, and at *Westminster-Hall*: but Ignorance cannot excuse him, that no Man will pretend. This, my Lord, is in relation to *Scotland*; it was made in *August*. The Battel at *Dunbar*, I cannot well tell whether it was in *September* or *October*; in *September* this Correspondency from *Bamfield*, *Argyle*, *Lowdon* and *Lothian*, *Belcarris*, *Massefey* and the rest, were all since *Dunbar* Fight; that is clear, they were since that time: The Words of the Law are these; 'Whoever, after the 5th of *August*, shall use, hold or maintain any Correspondency or Intelligence with any of the Scots Nation residing in *Scotland*, without Licence from the Parliament, or with any other Person or Persons of the *Scotish* or any other

Nation, whom they know to adhere to the *Scotish* Nation against the Parliament; or shall abet, assist, countenance or encourage the *Scotish* Nation, or any other Person adhering to them in their War against the Parliament and Commonwealth of *England*, or shall send, or cause to be sent and conveyed any Money, Horse, Arms, Ammunition, or any other Furniture of Plate, Goods, Merchandize, or any Supply whatsoever, to the *Scots*, or to any Port or Place thereof, or in their Power, or in Confederacy against this Nation, these Facts are High Treason by this Law.' And the High Court of Justice is to take cognizance of the Contents by express Provision of that Law.

My Lord, I shall not need to repeat the Evidence again; but upon these, my Lord, I must leave him to your Justice and Judgment to do what in your Consciences you think is just upon these Laws, and what Mr. *Love* hath done in Transgression against them.

My Lord, Mr. *Love* was pleased, at the Beginning of his Tryal, to make some deep Protestations; I think he did move all honest Men that heard him: and truly I did think, and did hope that they were not made with any relation to Equivocation, or mental Reservation, but to a positive Denial of any Facts of Treason, or looking that way; that it had been made in that Sense, that he had been clearly not guilty of any thing. But, my Lord, having looked upon them, and caused them to be transcribed to me, I do find that they are somewhat cautious, and perchance they may be true, my Lord, in the Sense spoken by Mr. *Love*; but whether true in the Sense they should have been spoken by a Christian in a publick Assembly, that I shall not judge. His first Protestation was, in the presence of God and this Assembly, 'That I never wrote any Letter to the King, or to the Church, nor to the Queen, or Church and State of *Scotland* in general, or to any particular Person of the *Scotch* Nation, since the War began to this very day.'

My Lord, this may be true, but whether any Letter hath been sent from the King, or from the *Scotish* Nation, or others, or by *Massefey*, or the rest, that shall be believed as the Evidence is.

Mr. *Love*. It is in my second Protestation.

Attorn. Gen. 'Again (saith he) I do likewise declare in the presence of the same God, I never received Letter written to me from the King, or from the Queen his Mother, or from the Church or State of *Scotland* in general, or any particular Person of the *Scotish* Nation since the War began. I protest and declare likewise in the Presence of the same God, I never collected, gave or lent Penny of Money either to send into *Scotland*, or any foreign Parts, either to the King of *Scots*, or to the Queen his Mother, or to the Church or State of *Scotland* in general, or to any particular Person of the *Scotish* Nation, since the Wars began.' But that Mr. *Love* did not move others to contribute, we have not a word of that. Truly, I did think it when he spoke it? But it seems these Asseverations were studied to evade, and that he would speak true, but not the whole Truth. I have given them but a touch; these may be true, my Lord, but, under favour, there is something else that is as true, and goes almost as near as this.

My

My Lord, Mr. Love the last day had your Patience and Justice to make a large Defence, and he was very large in it; and though he did beat us down that are the Counsel for the Publick, that we should not use Oratory, nor Flourishes, nor Quecks of Law, nor Niceties, in which I shall be guided by him, and shall not do it; yet he is pleased fully to make use of all Insinuations to the Court to trip up every Witness upon Niceties, upon Not-expression, upon Non-sense, and such, my Lord, which I shall not follow him in: for I shall deal as Truth ought to deal, in pure Nakedness and Simplicity, and not use any Oratory, but to set the Matter of Fact before you, and leave it unto the Court, who are the Judges between the Commonwealth and himself for Life and Death. But, my Lord, you shall give me leave to touch upon some few things in the late Defence of his; it was divided into four Parts.

The first, the Charge; the second, the Witnesses and Testimony, both in one: The Witnesses for the Persons, the Testimony for the Fact. The third, concerning himself; the fourth, some Proposals to the Court; which truly, my Lord, might better have been termed rather Threatnings than Proposals.

My Lord, for the Charge, you have heard it hath been gone through, and the Evidence concerning it. Concerning the Witnesses, my Lord, I have read unto you (for I do take it upon my Conscience) what I knew, and nothing but what was true: I have not varied, that I know of, a Syllable; and I think I ought not to do it; the Duty of my Place requires it not from me.

My Lord, concerning himself, he is pleased to say something, and much of his Merit: But, my Lord, it is a Grief to this Court, to myself, and all that are Well-wishers to the Publick, that any Man that hath been a Friend to the Parliament, that hath gone along with them, acted for them, suffered for them, done as he hath done, that this Man should be called to publick Justice: I hope, my Lord, all that hear me bear witness, that I think, my Lord, we are all sensible of it.

But, my Lord, look upon who hath been the Cause of it; let that be look'd into, and every Man will be satisfied in his own Judgment and Conscience, whether Mr. Love were provok'd, or no, or whether he hath not provoked the State to bring him to be thus exemplary in Justice. Mr. Love says, my Lord, (I shall desire to make use of the Paper) *I confess it is not so much the Danger of my Life; I am a sickly Man, and I know a Disease will ere-long kill me, whatsoever you do with me: But this grieves me more, That I should suffer from your Hands, for whom I have done and suffered so much in my obscure Station, and according to my weak Measure. Had I been so dealt with at Oxford, at the Juncto there! But to be so dealt withal in Westminster-Hall, this troubles me.* And, my Lord, it doth trouble me to deal so with him. My Lord, whether may we or himself take up this Complaint? Had the State been thus used by a Cavalier, by a profess'd open Enemy, it had not been so much Trouble to us; you would have come to Justice upon a little more Desire than now: But that Mr. Love, a Minister, a Minister of the Gospel, a Man that hath preached for us, prayed for us, acted with us, gone along with us; that he should go to

undermine us, that he should be joined, or in Confederacy with others to undermine the State, where he did live peaceably and quietly, where none interrupted him: He had a free Liberty, as much as a King in this Commonwealth: Truly, that Mr. Love should do this, it is (I think) an Aggravation; and not an Aggravation upon the Court or State, that they should prosecute where a Man is prosecuting them. What he hath done, my Lord, you have heard; what his Offences have been, and who gave the Cause: That a Minister should do this; one that had a Calling otherwhere, and better to imploy himself, than to meddle with States and secular Affairs: And these Things to be done in Mr. Love's House, and in his Study, where he should have been studying better Things. My Lord, next he says, *I could not leave such Relations as I have, nor such a loving People and competent Living, as any Minister hath within London, only Conscience carried me another way; and till Conscience be satisfied, I cannot stir one jot.* My Lord, this his Conscience, I do not know what it hath to do in Government, or what Mr. Love's Conscience had to do in these Affairs: He had a Calling of his own to use; and should I go out of my Calling, and meddle with other Men, I humbly conceive I were a Busy-body. Mr. Love had a Calling enough for any one Man to imploy himself in; and, methinks, when he says he had such a relation to a loving People, a Competency of Livelihood, that he should not apply himself to return to them, but to wander abroad: And when we once wander, it is hard coming in again, till perchance we are fetch'd in again with the Whip. But, my Lord, Mr. Love had other Relations, of Wife and Children, which he might have look'd upon also, and taken care of them.

In the last place, he is pleased to say, (and that I believe hath carried on his Design) *The Covenant-Interest.* You have heard what Titus did, what Drake did, and what the rest did; that all this, it was upon the Covenant; and the Covenant is urged, I am sure, to Things the Parliament hath forbid. Mr. Love is pleased to declare himself still to retain his old Principles, from which (by the Grace of God) he will not be taken off by any Terror. My Lord, you will hear by and by what the Covenant he supposes leads him to: And, my Lord, I shall take it asunder, and bring it next, if you please, that is, the Covenant-Interest. Says Mr. Love, *Though I own not the way of managing any Papers, I neither writ them, nor sent them, yet thus far I own the Thing; I confess it was agreeable to my Judgment and Conscience, and I thought the Interest of Godliness would be more promoted if the King went into Scotland upon Covenant-Terms; it would be more for the Good of the Nation.*

Mr. Love. No, Sir, those are not my Words: I said, *Than to fall in with the Irish Rebels, or to offer this Kingdom to the Spaniard.* I thought a greater Foundation of Trouble would be laid, if this Reception were not laid by that Nation. And the Covenant hath a Clause in it, That we are to seek the Good and Union of both Nations; and they are judged to be Incendiaries and Malignants that not only divide the King from his People, but the Kingdoms one from another.

Now they declaring him to be their King, according to my Apprehension, I thought it agreeable to my Covenant to pray and desire, as a private Man, and no more, that there might be an Agreement upon those Terms, consisting with Religion, and the Terms of the Covenant.

Attorn. Gen. But had you gone on as a private Man, Mr. Love, we had not stir'd you now. My Lord, this is plain of it self, what Interest this Covenant-Interest is, *Till the King and the People in the two Nations, &c.* Truly, my Lord, Mr. Love is pleased to express himself somewhat obliquely against the present Government: He saith, my Lord, *When I look upon all the Vows, Covenants, Declarations, Protestations, of both Houses of Parliament, I find a Suitableness between my Judgment and them, and am not conscious to my self of any thing I have done in Opposition or Contradiction thereunto; I repent not of whatsoever I have done; though I could wish the Ends of that just War had been better accomplished: Then should we have been happy, and united among our selves, and honoured among the Nations round about us. I am so far from repenting of what I have done, both by doing, and contributing, and suffering in the Parliament's Quarrel, that were it to be done again upon the same unquestionable Authority, for the same declared Ends, and against the same malignant Persons, I should manifest as much Readiness of Mind to engage, according to my measure.*

After this, where he had mentioned his Troubles at Oxford, when a Scholar there; and at London, when he came to a Lecture here; at Newcastle, when he spake for the Parliament there; and in Kent, when he spake against the King there; when these were over, after this he had a little Breathing, whilst the two Houses of Parliament were in power. This Gentleman was troubled in the Time of the King, in the Time of the Bishops, in the Time of these Wars, for being for the Parliament: But I appeal to his own Conscience and Judgment, whether ever he was troubled or disturbed by this Parliament, or by this Government of the Commonwealth; whether he had not as free and as full Liberty to preach the Gospel, to instruct others, and to save Souls, as his Heart could wish; and I desire to know whether ever the Parliament did interpose with him, till he did interpose with us. He went out of his Way, my Lord: He was quiet and safe, in as much Security as any of us; and, my Lord, even those that were the Watchmen for the Safety of this Commonwealth, did watch and take as much Care even for his Preservation, as for any one of ours: And thus he hath requited them. My Lord, I will repeat it: I appeal to his own Conscience, and to any of his Friends here, whether ever, till his Judgment and Conscience did interpose in State-Affairs, to dispose of Kingdoms and Commonwealths, whether ever he were in the least interrupted.

My Lord, he says himself, when he came to be a Lecturer in London, the Bishop would not admit of him in three years; yet, my Lord, he is admitted here three Years, and none hath interrupted him. And your self say, you have a competent Livelihood, and a People very loving to you; and you might have so continued, if you would.

My Lord, his Proposals to the Court, I do say, were hardly fair Proposals; for they had a

little of Threatning in them: *For (says he) if you censure rather upon a political Interest, than of the Merit of the Fact, the Scripture counts it not Justice, but Murder.* Truly, my Lord, I think Justice is a political Interest, the Preservation of the general: But surely I do not think the Person will come in Judgment before you, but the Merit of his Fact; and as yet I may say, I suppose the Treasons he hath committed, if those find him guilty, if the Court finds him guilty of those Facts laid to his Charge, and if you are satisfied in your Judgments that they are proved, my Lord, it is Justice, not Murder; and it is Justice that which political Interest requires of you, that Justice be done upon the Prisoner. And he is pleased to say in his last Defence, That he denied the Commission to be sent, and entitling the Presbyterian Party to it: and he hath acknowledged it had been very high Presumption if they should have done it, and a notorious Falshood. And in that I join with him; and whether he hath not done so, my Lord, that I shall leave to you. That the Presbyterian Name was made use of, you have had many concurrent Evidences; and Mr. Love was present when these Things were mentioned: And if it be a Fault, which himself hath acknowledged, it is Right done to the Presbyterian Party, who, I am sure, will not own him in it.

My Lord, but a Word more: This last Day he was pleased to mention his *Sermon; which made me a little to enquire after it: It was preached at Uxbridge, (my Lord, I had the Honour to be at the Treaty) which hath been so much spoken of; and truly I wonder this Gentleman did not remember what he said then. If you please, my Lord, I shall put you in mind of some Passages: I have the Sermon here.

[Mr. Attorney-General reads out of the Book, which he said was Mr. Love's Sermon.]

I have ever thought that too much Mercy towards Malignants hath made more Delinquents than ever Justice hath done. Mercy should not weigh down Justice; (My Lord, these are good Instructions.) In God they are both equal; why should it not be so in Man? Pity to the Bad, hath proved Cruelty to the Good: The sparing of Offenders hath made many worse; few or none better. (And, my Lord, we know it.) To them that have shewed no Mercy, let Judgment be shewed without Mercy: Much Guilt contracted, much innocent Blood spilt; which either must be avenged on us, or by us. My Lord, that is one of his Clauses; and here is another: 2. The Lord heals a Land by cutting off those distempered Members that indanger the Health of a Land. (Here is good Doctrine, my Lord.) It was the Lord troubled Achan, and cut him off, because he troubled Israel. Oh, that in this our State-Physicians would resemble God, to cut off those from the Land who have distempered it; (I suppose he meant, or shall do.) That, my Lord, was his Opinion then. And those who lie under the Guilt of much innocent Blood are not meet Persons to be at peace with, till all the Guilt of Blood be expiated either by the Sword of the Law, or the Law of the Sword; and a Peace can never be safe nor just till then. What Mr. Love hath endeavoured since, my Lord, I shall say nothing. And I have but one Word more, and it is this; My Lord, he

says it is not likely to have a Peace with such Men as these, the Malignant Party, while they continue thus. *We can as soon make Fire and Water agree, yea, I had almost said, Heaven and Hell, as their Spirits and ours; for either they must grow better or we worse, before we can agree.* My Lord, I think there is little hope of their growing better; and, my Lord, we have not grown worse.

My Lord, I shall trouble you no further: I shall use nothing of Aggravation; but as Justice is blinded, so let the Evidence appear to you in pure Nakedness.

My Lord, you have heard the Evidence (as I humbly conceive) in the same Language, in the same Habit, in the same Words, as spoken by the Witnesses: And, my Lord, having heard those, and the Laws, and the Charge against him, upon the whole I shall humbly leave him to stand or fall by your Justice and Judgment.

Mr. Love. My Lord, I humbly crave leave to speak but one Word: Mr. Attorney-General hath replied to my Defence, as to the Matter of Fact. Concerning his Reply I shall not insist upon it; yet I shall humbly crave leave to insist upon two Particulars. —

Attorn. Gen. If I have given any new Evidence, Mr. Love ought to be heard: But, my Lord, I have declined it. And for those Passages in his Sermon, I do not urge one Word of Evidence against him; and for the rest, they are his own Words, which he hath said the last Day; And I have brought nothing new before you. And if the Sermon preached at *Uxbridge* should be an Occasion, I shall cast it aside.

Mr. Love. I humbly conceive there are new Suggestions expressed in Court by those worthy Gentlemen, whose Names I know not, nor their Employments neither. But as to those I shall humbly crave leave in a Word or two; and then, as to the whole Matter of the Depositions, I shall humbly offer some Matter of Law, arising upon the whole Matter given in. —

Attorn. Gen. I shall crave leave too, my Lord, and leave it to you: For any Suggestions, they are but Suggestions, as Mr. Love says himself; and that is nothing for the Evidence. Mr. Love, my Lord, had the last Day, and I should have this. Had he said he had any thing to say, or if he had had any thing more, he might have said it; I did wait if he would have said any thing: But, my Lord, then the whole was clos'd, and no new Evidence. I did not answer all the Suggestions of Mr. Love the last Day: His Evidence and Depositions will conclude the Court, that it is not Suggestions and Insinuations; the Court are above these. When the Evidence is clos'd for the Commonwealth, let it be concluded there: If they offer any new Evidence, Mr. Love may have Liberty to answer.

Mr. Love. Though I dare not tax Mr. Attorney-General for discharging his Duty in his Place; yet for the Preservation of my own Life, I must not be wanting to my self, if your Lordship and the Court will give leave; and that is humbly to beseech your Lordship to take notice that Mr. Attorney-General, in the Relation of the Matter of Fact in the Depositions, is pleased to raise the Correspondency (as he is pleased to call it) as high as *Fersey*; and so makes me to be *Particeps criminis*, that I should be judged by you upon the whole Matter. Now *Alford* upon

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Oath did declare, That *Drake* and *Titus* held Correspondency; and that the Ministers knew nothing of it.

Attorn. Gen. I do not say you did.

Mr. Love. Therefore I beseech you I may not be judged upon that Matter: and then I beseech your Lordship to observe that Mr. Attorney-General is pleased to say he would not insist upon Inferences, nor Strains of Wit; but truly I have discerned both.

Ld President. You totally err from the Way you ought to walk in, and take upon you to judge others. The Court will consider whether he hath offered any thing or not: We have Notaries, and so have you. You spent the last Day only in making Comments and Collections; yet that you might have some Liberty of Discourse, we sat here patiently two Hours, and did hear that which we ought not, nor you ought to have spoken. And now you are entering the same way of Inferences and Collections, as though we did not sit here to take notice of what was done, but we must receive the last Word from you and your Comment. If you had new Matter the last Time, you might have been heard: We expected you would have brought new Witnesses; but they were in the same Crime with your self; and you would rather betray your self than them, and God and the Truth than them. But we will be as careful of any Comments as you your self can be. And I think that we have so much Piety and Charity, that we sit here with as good Affections of Justice and Piety, as are in your own Breast. This Book was not given as Evidence against you; and all that is in your Comments, we shall understand it.

Mr. Love. My Lord, I have only one Motion: I have some Matters in Law to offer to your Lordship, to consider by way of Exception to the Charge, and also to the Depositions of the Witnesses. I have a Paper that I humbly desire might be read in Court as Matter in Law, arising from the Charge, and from the Depositions of the Witnesses.

Attorn. Gen. Why did you not this before?

Mr. Love. I am ignorant of the Customs of the Court.

Ld President. I believe you have wronged your own Breast in many Things you have said; and you have said you have been ignorant in many Things that you have known very well: It is not good to dally. You will be ignorant at one time, and at another time more knowing than others.

Mr. Love. I beseech your Lordship, it is a new Suggestion of the Attorney-General, That Concealment of Treason for a Tract of Time is Treason.

Ld President. There is no new Words of Suggestion: If Mr. Attorney hath not spoken it, nor read it according to the Truth, we will examine it.

Mr. Love. He hath done it with disadvantage to me.

Ld President. If he have, he shall not do it with disadvantage to us; for we will be as indifferent as your own Breast: Therefore be not you a Commentator of that. We understand so well as God enlightens; for whether he hath done it with advantage or disadvantage, that is our part to consider.

Mr. *Love*. I desire to have Counsel upon this Matter of Law arising from the Evidence, That Concealment of Treason, by your Acts, suppose it be for Continuance or Tract of Time, yet by the Law it is not Treason. And my Counsel informs me, That the Act of the 26th of *March*, that constitutes this Court, gave you Power to inquire into Treason, but could not take Cognizance of Misprision of Treason till there was a subsequent Act. Therefore I desire this Favour, That seeing it is so much suggested in Court, and seeing the Witnesses none can prove a personal Act of mine, to bring me under your Law, as to Treason, I desire my Counsel to clear this, That Concealment of Treason, though for never so long a Tract of Time, is not Treason by the Law of the Land.

Attorn. Gen. I will out Mr. *Love* of that Scruple: He is not charged for Misprision of Treason, tho I could have done it; but that I insist upon, is flat Treason. It is true, Sir *Thomas Witherington* was pleased to express it in the way of Argument, That Concealment of Treason long, comes to be Treason: But here are Acts, and I insist upon the Evidence; and the Court will judge, for they have heard the Evidence.

Mr. *Love*. I beseech your Lordship that the Paper might be read, the Exceptions that I have against the Indictment, and the Matters of Law arising from the Evidence.

Attorn. Gen. My Lord, truly I profess, I hope I am not in my Nature cruel, that I should do Injury to Mr. *Love*: But, my Lord, I cannot favour him, to do Injury to the Law of the Nation. My Lord, he hath one by him that hath taken every Word of the Charge.

Mr. *Love*. I did plead upon your Lordship's Promise that I should have a fair and indifferent Hearing; and if Matter of Law did arise from Matter of Fact, which could not, you said, be known till the Witnesses were deposed, I had your Lordship's Promise, and I think the Court's, that I should have Counsel to plead to Matter of Law.

Attorn. Gen. My Lord, I think here is no Legislative Power in this Court to change Laws. My Lord, I appeal to all here, whether the Evidence we gave were not closed upon Saturday, and all the Depositions; whether Mr. *Love* did not take Care and Pains to make his own Defence, as to Matter of Fact, and spent so many Hours on Wednesday last. My Lord, he had all before that; if he had Matter of Law, it was more proper to move then: But when he hath gone so far, and we have closed all, do but consider the Consequence, that when this is done, and all the Evidences heard, then to come with Matter of Law.

Ld President. Mr. *Love*, that you have said hitherto, is nothing but of the same Nature of that you said the last Day; and the Court will take it into Consideration, and judge of it: But if you have any thing in your Paper that is so included upon the Evidence; for I tell you the Evidence was ended the last Day, and your Reply; and if you had any thing, you should have offered it the last Day. Here hath been nothing new offered concerning you, but as it is usual for the Counsel for the State to state the Matter of Fact to the Court; for they have the last Word: But you had fully ended before; and shall we go out of the Way for you, more than

for a whole Generation which the Law runs unto? I do not know how to do it: You had this Paper in your Pocket; you might have pulled it out; and you have had Time in a nearer degree to it: Yet the Court is willing, if you can out of your Paper, by Advice of Counsel, shortly read what you insist upon for Matter of Law, they will hear it, if such Exceptions are not of your own, but by the Advice of Counsel.

[Mr. *Love* gives in his Exceptions.]

Exceptions taken by Christopher Love, Clerk, to the Charge of High-Treason, and other high Crimes and Offences, exhibited to the High Court of Justice against him by Edmond Prideaux Esq; Attorney-General for the Commonwealth of England.

[These Exceptions are not here printed, for that they come in more properly afterward; being again in Substance given into the Court, and signed by Mr. *Love*'s Counsel, and the Substance of them then debated in Court by Mr. *Hale*, a Counsel for Mr. *Love*.]

Attorn. Gen. My Lord, you have now some Fruits of the Notary. By the Law of *England*, he that is impeached of High-Treason, is not to have the Copy of the Indictment: It is said the Court are Judges for the Prisoner, and Counsel for him. To you all Things be substantially charged. That there is a substantial Charge, the Evidence makes out. But this Precedent being admitted, and the former of *Lilburne*'s cited, I shall have little Encouragement to go on with any Charge of Indictments.

Ld President. Though it be more than the Law permits, yet the Court will take Consideration of it.

Attorn. Gen. He did read his Papers: I think it is more than ever was heard of in any Court in the World. But to take his Papers in by your Clerk; I hope this is no Replication to the Charge: I hope he answers not that way; then we shall dispute that way again. If he gives Papers, I may; and, as Ambassadors, treat by Papers.

Ld President. Mr. *Love*, we have gone out of our Way for you: And whatever hath been suggested by the Counsel this Day is nothing, unless they had offered new Matter; and they have offered none; and therefore it is against any Law that was ever yet practised in *England*. You were concluded before, though haply the neglecting of it might have been a Prejudice to you: Yet you have offered a Paper, which the Court will take as a Paper to consider of.

[The Court adjourns into the *Painted Chamber*: And upon their Return, the Lord President speaks.]

Ld President. Mr. *Love*, our long Absence upon this account may seem to you and others, that we have had something of great difficulty among us, which we have considered of. That which

which hath been upon your Papers last offered, in which you have set down the Parts of the Charge, and the Statutes, and your Exceptions; these we have considered of. But to these, though you do affirm it here to us, that it is by Advice of your Counsel, yet it is not under your Counsel's Hand, nor your own, which in order it should be. We have considered of them; and our examining of them hath taken up a great deal of this Time we have been absent. We find that there may haply be some Mistakes in your Notes: Therefore it is resolved, though there seem not much Difficulty to us, yet you shall have Counsel, thus doing, That they shall set it down under their Hands, what Matter of Law they will argue to, and bring it under their Hands upon Tuesday next at Eight a-clock to this Place, or to the *Painted Chamber*.

Mr. Love. Shall the Counsel have only bare Liberty, or will the Court assign them me?

Ld President. If you desire it, and name them, they shall be assigned you.

Mr. Love. I desire Mr. Maynard, Mr. Hale, Mr. Waller, and Mr. Archer.

[The Clerk was called upon to read the Order.]

Clerk. 'Friday, the 27th of June, 1651. Ordered by the High Court of Justice, That if the Prisoner's Counsel shall under their Hands assign any Matters of Law, fit to be argued and presented to this Court, on Tuesday next at Eight a-clock in the Morning, this Court will take the same into further Consideration.'

Mr. Love. I would know whether they are assigned to plead here in Court, or to bring a Paper under their Hands.

Ld President. If they will, under their Hands, set down what they will stand to for Law, it shall be considered, and they shall plead.

Mr. Love. I humbly thank your Lordship's Favour, and the Favour of the Court.

[Mr. Love is commanded away. The Court adjourns.]

The Fifth Day's Proceedings, July the 1st, 1651.

THESE Exceptions following, signed by Mr. Love's Counsel, were delivered this Morning by Mr. Love's Solicitor into the Court, sitting in the *Painted Chamber*.

Exceptions to the Charge of High-Treason, and other High Crimes and Offences, exhibited to the High Court of Justice, by Edmond Prideaux Esq; Attorney-General for the Commonwealth of England, against Christopher Love, Clerk; and Matter of Law, humbly presented to the said High Court, according to the Direction of an Order hereunto annexed.

[For this Order, see above.]

First, THE Charge is, 'That Christopher Love, as a false Traitor and Enemy

' to the Commonwealth of England, and out of a traitorous and wicked Design to stir up a new and bloody War, and to raise Insurrections, Sedition, and Rebellion within this Nation, in several Days and Times, that is to say, in the Years of our Lord God 1648, 1649, 1650, 1651, at London, and in divers other Places within this Commonwealth of England, and elsewhere, together with William Drake, and divers other Persons, did traitorously combine, confederate, and complot together, to stir and raise Forces against the present Government of this Nation, since the same hath been settled in a Commonwealth and Free State, without a King and House of Lords, and for the Subversion and Alteration of the same.'

The Act of the 17th of July, 1649, is, That if any Person shall maliciously or advisedly plot, contrive, or endeavour to raise Forces against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by open Deed, that every such Offence shall be Treason.

Exception 1. The Words *Maliciously* or *Advisedly* are left out of the Charge.

2. That the Words of the Act are omitted, which are, *Plot, Contrive, or Endeavour*.

3. It is not Treason within the Act to plot, contrive, or endeavour to stir up or raise Forces against the present Government, or for the Subversion or Alteration of the same, unless the same be declared by some open Deed. But the Charge is, 'That Christopher Love did combine, confederate, and complot to stir and raise up Forces against the present Government, &c.' And it is not charg'd that he the said Christopher Love did declare the same by any open Deed.

Secondly, Whereas the said Christopher Love is by the said Articles charged, 'That for the Subversion and Alteration of the same, and to carry on the said traitorous Design, that he did traitorously and maliciously declare, publish, and promote the eldest Son of the late King to be King of England, (meaning this Commonwealth) without the Consent of the People in Parliament first had, and signified by Authority or Ordinance to that purpose.'

The Act of the 30th of January, 1648, is, That no Person do presume to proclaim, publish, or any way promote Charles Stuart, Son of the late King Charles, commonly called the Prince of Wales, or any other Person, to be King or Chief Magistrate of England, by colour of Inheritance, Succession, Election, or any other Claim whatsoever.

Exception. It is not expressly charged that the same was done after the said Act made; neither doth the Charge pursue the Words or Intent of the Act.

Thirdly, The Charge is, 'That to accomplish the said traitorous and wicked Design, the said Christopher Love, on several Days and Times in the Years aforesaid, at London, &c. together with William Drake, and other Persons, did traitorously and maliciously invite, aid, and assist the Scots, being Strangers, to invade this Commonwealth of England, and hath adhered to the Forces of the Enemies, raised against the Parliament.'

The Act of the 17th of July, 1649, is, That if any Person shall procure, invite, aid or assist any Foreigners or Strangers to invade *England* or *Ireland*, or shall adhere to any Forces raised by the Enemies of the Parliament or Commonwealth, or Keepers of the Liberties of *England*, every such Offence shall be taken to be Treason.

Exception 1. That it is not alledged in his Charge who in particular were the Strangers that were invited to invade *England*.

2. That it is not alledged that at the Times of the Invitement, Aid, and Assistance, laid in the Charge, the *Scots* were Strangers.

3. That it is not alledged particularly in the Charge, to the Forces of what Enemies, raised against the Parliament, *Christopher Love* did adhere.

4. It chargeth the Prisoner for a treasonable Assistance in some Years that were before the said Act of the 17th of July, 1649, was made.

5. To advance the said traitorous and wicked Design, is uncertain to what Design it shall have reference, several Charges of Treason being before expressed.

Fourthly, The Charge is, 'That *Christopher Love*, divers Days and Times between the 29th of March, 1650, and the 1st Day of June, 1651, at *London* &c. did traitorously and maliciously give, hold, use, and maintain Correspondency and Intelligence by Letters, Messages, Instructions, or otherwise, prejudicial to this Commonwealth, with *Charles Stuart*, Son of the late King, with the late Queen his Mother, and with *Henry Jermin*, *Henry Piercy*, and divers other Persons, being of Counsel, and abiding with *Charles Stuart*.'

By the Act of the 26th of March, 1650, the Matters charged herein are only prohibited, but are not made Treason.

Exception 1. That this Charge is mislaid, being charged to be done traitorously.

2. The Charge is uncertain, being alledged in the Disjunctive (or otherwise) and shews not in what other manner.

Fifthly, The Charge is, 'That *Christopher Love*, within the Times and at the Places aforesaid, did traitorously and maliciously use, hold and maintain Correspondency and Intelligence with divers Persons of the *Scotish* Nation; that is to say, with the Earl of *Argyle*, and others of the *Scotish* Nation, and with divers other Persons of other Nations, whom *Christopher Love* well knew to adhere to the said *Scotish* Nation in the War against the Parliament.'

The Act of the 2d of August, 1650, is, That all and every Person that shall use, hold or maintain any Correspondency or Intelligence with any Person or Persons of the *Scotish* Nation, residing in *Scotland*, without the Licence of the Parliament, the Council of State, or the Lord General; or with any Person or Persons of the *Scotish*, or any other Nation, whom they shall know to adhere to the *Scotish* Nation in this War against the Parliament.

Except. 1. That it is not laid, that the Persons of the *Scotish* Nation mentioned in the Charge were residing in *Scotland*, nor expressly alledged that they did adhere.

2. That it is not aver'd, that such Correspondency

was holden without the Licence of Parliament, Council of State, or the Lord General, nor in what War the Correspondency or Intelligence was held.

3. It is not laid, with what particular Persons of any other Nation adhering to the *Scotish* Nation, Correspondency or Intelligence was holden, nor of what Nations.

4. This Correspondency and Intelligence is not laid to be after the fifth of August 1650, mentioned in the said Act of the 2d of August 1650, but refers to a time preceding that Act.

Sixthly, The Charge is, 'That *Christopher Love*, within the Times and at the Places before-mentioned, did traitorously and maliciously abet, assist, countenance and encourage both the *Scotish* Nation, and divers other Persons adhering to them in this War against the Parliament: And did send and convey, or cause to be sent and conveyed, Moneys, Arms, Ammunition, and other Supplies to *Scotland* and other places, and to the said *Titus*, &c. in Confederacy against this Nation, without Licence of the Parliament of *England*, or Council of State, or General of the Army.'

The Act of the 2d of August, 1650, is, That no Person that shall abet, assist, countenance or encourage the *Scotish* Nation, or any other Person or Persons adhering to them in their War against the Parliament and Commonwealth of *England*; or shall go, or send, or cause to be sent, &c. any Money, Horse, Arms, Ammunition, or other Supplies into *Scotland*, &c. or to any Person under their Power, or in Confederacy with them against this Nation, without the Licence of the Parliament of *England*, Council of State appointed by their Authority, and of the Captain-General of the Parliament's Forces as aforesaid.

Except. 1. That there are no particular Persons named, who were abetted, assisted, countenanced, or encouraged, neither of the *Scotish* Nation, nor of any other Persons adhering to them.

2. In the Charge, the sending of Money, &c. is not laid to be done without the Licence of the Parliament of *England*, or of the Council of State, or General of the Army.

The words of the Act are, 'Without the Licence of the Parliament of *England*, or Council of State appointed by their Authority, or of the Captain-General of the Parliament's Forces.'

3. The Time to which this refers, is between the 29th of March 1650, and the 1st of June 1651; and so it takes in the time between the 29th of March 1650, and the 2d of August 1650, which is before the making of the Act.

Seventhly, The Charge is, 'That the said *Christopher Love*, at the Times and Places before mentioned, did traitorously and voluntarily relieve the said *Sylas Titus*, and one *Sterks* a *Scotchman*, which then were, and yet are, under the power of the *Scotish* Nation, and in Arms against the Parliament of *England*, with Moneys, Arms, and Ammunition.'

By the Act of the 26th of March 1650, the Matters charged herein are only prohibited, but not made Treason.

Except. 1. That this Charge is mislaid, being charged to be done traitorously.

2. It

2. It is laid to be at the Times before mentioned, whereas there are several Times before mentioned; so as it is uncertain to which of those Times this Charge relates.

3. And of these Times, sundry of them are laid to be in several Years before the making of the Act upon which this Charge is grounded.

Allegations by Christopher Love, touching the Matters and Proof upon the Charge.

TH O I do not conceive any sufficient Proof is made of the Charges against me, yet I shall be ready to make it appear upon Proof:

That one of the Principal Witnesses hath deposed against me upon Promise of Reward, and upon Menace of Punishment.

That one hath received extraordinary Rewards for his deposing.

That divers of the Witnesses against me have been by their own Confession detected of contributing of Supplies and Assistance, sending and receiving Letters, contrary to the late Acts.

That no two lawful Witnesses produced prove any one Treasonable Fact.

That no Witness doth depose farther than Concealment, or Misprision of Treason at the most.

Christopher Love.

AS this Case is stated, we conceive these Questions may arise:

1. Whether in this Case these be lawful and sufficient Witnesses, as by Law is required?

2. Whether here be two lawful Witnesses?

3. Whether any Concealment of Treason be Treason within the late Acts?

We have not seen any Authentical Copies of the Charge or Evidence; but upon the Copies we have seen, we humbly conceive fit to tender these Matters and Exceptions to the Consideration of this High Court. And we shall be ready to speak to them, or any of them, or to any other Matters arising upon the Case, as we shall receive further Directions.

Matthew Hale.

John Archer.

Thomas Waller.

After the Court had received the precedent Exceptions, and were sat in Westminster-Hall, Mr. Love was commanded to the Bar.

When Mr. Love appeared at the Bar, he desired the Court that his Counsel might be heard to these Exceptions. And when Mr. Archer and Mr. Waller, who were of his Counsel, appeared in Court, the Court demanded of them, whether they were of Mr. Love's Counsel? they answered, they did understand they were assigned to be of his Counsel by the Court. Then the Attorney-General demanded of them, whether or no they had subscribed the Engagement? they answered, they had not done it; and spake further to this purpose, That they were by the Court assigned to be of Mr. Love's Counsel, and were sent for into the Court, and in obedience thereunto they had appeared, and were ready to speak, if they might be heard. It was demanded of them by the Court, whether

or no they would subscribe the Engagement? they answered, That they desired time to consider of it: and so withdrew.

After they had withdrawn, Mr. Love moved the Court that Mr. Hale, another of his Counsel, might be sent for.

[Upon the coming in of Mr. Hale, the Lord President said;]

Ld President. You come as Counsel for Mr. Love; the Gentlemen that were here, are brought into an Incapacity of doing him service that way; we ask'd them whether they have engaged: we doubt not you, but tell you the reason why we did it.

Mr. Hale. My Lord, I have done it.

Ld President. Therefore you are assigned.

Mr. Hale. I had very late notice of this Business, it was Saturday Night late before I had notice of it, and the next day was not a day to think of those things. Yesterday was Monday, and the most part of that day I spent in looking over those things that had been, I think, presented to your Lordship and the Court; we did not know what Command your Lordship would put upon us, whether you would admit us to speak, and to what you would admit us to speak, and when you would admit us to speak. It is impossible, (my Lord) I must deal plainly, I profess it is impossible for me, in a Business of this great consequence, to undertake to speak any thing for the present, till such time as I know your Lordship's Directions; and this was that we acquainted this Gentleman with, as soon as ever I saw him, and the first time that ever I saw him, which was but this day.

Attorn. Gen. I think that Mr. Hale hath put somewhat under his Hand.

Mr. Hale. We have done so.

Attorn. Gen. Nay, you must stand single, the other two are set aside, it must be you only; I suppose Mr. Hale knows what he is to speak to.

Mr. Hale. Truly we know what we are to speak to; but to speak upon such a Business on such a sudden, when we did not know what Directions the Court would give, that I could not undertake, and I think Mr. Attorney-General will not press it upon us, it were a hard case if he should.

Attorn. Gen. Mr. Hale knows as well as any Man what is to be done in these Cases, none better than himself; the Court useth not to assign Counsel to pick Flaws, but those that are just Exceptions: and the Court is doubtful too, how they will allow Counsel to debate them, and stand to the Judgment of the Court. I suppose he comes to speak to that that the Party hath alledged.

Mr. Hale. It is true, we do so: but Mr. Attorney-General knows likewise, that when Matters of Law are assigned, that there is some reasonable time, we expect not long, but some reasonable time is assigned also for the Parties to prepare themselves; for truly otherwise I should not do that Duty I owe to the Court and my Client, if I should speak *ex improviso*, in such a manner as I have done: for the first time I saw any thing of it, was on Saturday Night, between Eight and Nine of the clock.

Ld President. Tho that was the first sight of this Paper, as it is now set down, it was not the first

first notice you had to be of his Counsel, but himself hath declared it here long ago, that the former Paper was by your Advice.

Mr. *Hale*. No, my Lord, if he did so, I will plead Not Guilty.

Ld *President*. I will not say your Name, but when he gave us in his Paper, before this, the last Day, you said it was the Advice of your Counsel.

Mr. *Love*. Not Mr. *Hale*.

Ld *President*. Then haply we shall ease you a great deal: that that is under your Hand, is very short, and we shall ease you of some of that too; and you know that upon all Assignments in the Upper Bench and Common Law, when they first open it, they show some Causes upon which they will argue it; and when you have had time already, now shew something that may be worthy of it, and we will consider of it.

Attorn. *Gen*. Before he speak, my Lord, I desire that he will give it under his Hand positively, not Queries, but positive, that this in his Judgment he thinks fit to be Matter of Law, and to be argued.

Mr. *Hale*. My Lord, we think that these things are such.

Ld *President*. Then you must upon the first sight open it so far, that it may be your Judgment.

Attorn. *Gen*. But not suffer it to be debated unless you think it doubtful.

Mr. *Hale*. We are here assigned Counsel for him, and if your Lordship will please to give us that Time that may be convenient for us to do our Duty for him; if not, we shall do but your Lordship wrong, and our Client wrong if we should speak.

Ld *President*. You may have some convenient time, but you must open it now, that we may judge what time is proportionable; if you will not open it, that this is the Point you will argue upon, we can say nothing.

Mr. *Hale*. Then the reading of that which we have exhibited to the Court, will be as much as possibly I shall be able to do at this time, for we have had no Copy of the Charge.

Ld *President*. Nor must have.

Mr. *Hale*. And we have taken a Copy at random, according as it hath been offered to us by those that have taken Notes, and we have presented upon those Notes, and we have applied ourselves to Mr. Attorney for a Copy of the Charge, and he conceived that it was not fit for him to do it without Direction of the Court; but for a Copy of the Charge when Exceptions are taken, it is usual to have it granted: and for us to speak and spend your Lordship's time upon Matters that are contained in a Charge, whereof for my own part I never heard, and which is usual upon Exceptions offered to be granted, it would be very —

Ld *President*. It is an excellent thing to speak to Men of Understanding: Did you ever know an Indictment in this nature, a Copy of it delivered upon the Prisoner's Prayer?

Mr. *Hale*. Yes, I have known it very often.

Ld *President*. He shall, as his Memory serves him, speak to the Substance; but to have a Copy of the Charge, I take it, you have not known.

Mr. *Hale*. Thus far I have known it. I have been commanded to be of Counsel with Persons

that have been impeached of Treason by the Parliament; I know that the Archbishop of *Canterbury*, when he was impeached of Treason, had a Copy of his Charge, that I know he had: I know this is the usual Course, that if a Person takes Exceptions to a Matter contained in an Indictment, tho it is true he shall not have the Copy of the whole Indictment, yet he shall have a Copy of so much whereupon his Exception grows; that hath been done, and will not be denied: but for the other matter, I know that in the Archbishop of *Canterbury's* Case there was a Copy of the whole Charge granted, and the like was done in the Case of the Lord *Strafford*.

Attorn. *Gen*. I shall give that Answer a little more than I did: Parliamentary Proceedings are no Rule for other Courts to walk by; besides, my Lord, you sit here upon a known published Law, and the Offence charged is against those Laws. I believe Mr. *Hale* well remembers, that both my Lord of *Strafford's* Case, and the Archbishop of *Canterbury's* Case, were both of them for many several Facts several times a long time committed; which several Facts being judged by Parliament, were judged to be Treason not against any settled positive Law: And for *Strafford's* Case, you know how the Judgment at last was given by Act of Parliament, King, Lords and Commons. And for the Archbishop of *Canterbury's* Case, you know what the several Complaints against him were, many of them not Treason, but so many of them together, that in Parliament they thought fit to judge him guilty of Treason; but those Privileges are not to be parallel'd, he knows very well it was not against such and such and such a Law, to make those Offences Treason. Having given thus much Favour, I may say to the Prisoner, that he may by Memory exhibit his Exceptions, he hath done it; if you judge that those Exceptions are worth the debating, be worthy of it, you may (as Mr. *Hale* saith) give Directions for so much to be given him, otherwise (for my part) I did never give it unto any; but those that have been in my place before, did never give it but by immediate Warrant from the King, or the Parliament now, but for so much as the Court thinks fit, for so much as concerns the Exceptions.

Sir *Tho. Witherington*. For that that Mr. *Hale* objects to the Indictment, it stands with a great deal of Justice; for if a Prisoner lays hold of part of an Indictment, and say there is a Mistake in it, there is reason it should be so, because the Court must judge it whether it be so or not, therefore there is necessity of it that there should be a Copy of so much; but I think he never knew that all the Indictment was, but that part, and that is of necessity for the Court, that they may see whether the Exceptions accord with the Indictment, or no: if there be any Exception to an Indictment, if that Exception remains not as a Doubt or Question, there shall be no Copy of so much of the Indictment given. If he shall raise a Doubt that there is any Doubt in Law, or any Question and Variance between the Acts and the Charge, if he shall raise any such Doubt, then I think according to the old Law he may have that part of the Charge; but we desire he may raise some Doubt to the Court.

Mr. *Hale*. My Lord, we have raised the Doubts, and we are ready to deliver in those that we conceive

ceive to be Exceptions to the Charge; if we be over-ruled in them, we have no more to say: but if your Lordship, upon the view of these things we have offered, think them worthy to be spoken to before your Lordship, then surely that is agreeable with that very Rule which the Council of the State is pleased to state; that is, that in case we alledge that which the Court shall think fit for us to debate before them, that then we may have that whereby it may appear whether we debate upon that which is, or is not.

Attorn. Gen. Mr. Hale saith he hath given them in, but I have seen none of them, my Lord.

Ld President. Whether their Memory be perfect or imperfect, that we shall help you withal; and then I will tell you what you were best do, for Time goes away: we will, before you take it, take the several Statutes and the Charge, and your Exceptions, and compare them all together before you, and you shall except to every one as you go.

Attorn. Gen. I desire the Exceptions may stand as they are.

Ld President. Ay, but he shall see whether there be any material Variance between the Notary and the Charge.

Attorn. Gen. That Notary was upon favour too, Mr. Love will acknowledge it.

Mr. Love. I do with all Thankfulness acknowledged it, my Lord.

Attorn. Gen. I desire it may be no Precedent for After-Times.

The Clerk. If you please, read your Exceptions.

Mr. Hale. My Lord, we begin with the first, and these are the Exceptions: We take it, that the Charge is grounded upon the Act of the 17th of July 1649, and we take some Exceptions to that first part of the Charge; that is, concerning what Offences shall be adjudged Treason.

Ld President. Read your Exceptions, and then you shall hear the Charge.

Mr. Hale. Our Exceptions are these; first, That whereas the Words of the Act are, 'That if any Person shall maliciously and advisedly plot, contrive, or endeavour to stir up, or raise Forces against the present Government, or for the Subversion or Alteration of it;' that the Words *maliciously* or *advisedly* are left out of the Charge, which we conceive are material Words.

Attorn. Gen. Read.

Mr. Barnard the Clerk. That be the said Christopher Love, as a false Traitor and Enemy to this Commonwealth and Free State of England, and out of a traitorous and wicked Design to stir up a new and bloody War, and to raise Insurrections, Seditions, and Rebellions within this Nation, did several Days and Times in the several Years of our Lord 1648, 1649, 1650, 1651, at London, and in divers other Places within this Commonwealth of England, and elsewhere; together with William Drake late of London Mercer, Henry Jermin late of London Esquire, Henry Piercy late of London Esquire, Richard Graves late of London Esquire, Edward Massey late of London Esquire, John Gibbon late of London Gentleman, &c. and other their Complices yet unknown, did traitorously and maliciously combine and confederate themselves together, and plot, contrive, and endeavour.

Attorn. Gen. What say you, Mr. Hale?

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Mr. Hale. Now we find what the Inconvenience is, of coming to put in our Exceptions, when we have not a clear Copy of the Charge; and that was the Cause why we did subjoin this, that in case any Mistake arise by mistake of the Copies, that we may amend: it is true, we find *maliciously* is in.

Attorn. Gen. Traitorously will be enough.

Mr. Hale. I think not. That is over; for if it be maliciously alledged, that is over. Then the next thing we except to, is, *be traitorously combined, confederated, and conspired together*: it is true, there is *Plot* in it, but there wants the words *contrive* and *endeavour*; but that is not the principal matter we stand upon.

The Clerk. They are in.

Mr. Hale. Then that is answered too. The next Exception that we take to the Charge, is, That the Act upon which this part of the Charge is grounded, says, that he must manifest it by an Overt-Act, by an open Deed: now we say, there is (as we conceive) nothing charged upon him in pursuance of this Act, that is, there is no overt or open Deed laid in the Charge; for the words of the Act are so, *That if any Man shall maliciously plot, contrive, and endeavour to stir up, or raise Forces against the present Government, and shall declare the same by open Deed, that then every such Offence shall be Treason.*

Attorn. Gen. If Mr. Hale hath read the Copy of the Charge as it was taken, I think he finds divers of them in the Charge of open Acts.

Mr. Hale. The Business is not, whether there be open Deeds, but whether they are applied to this Act, or be Substantive Charges of themselves.

Attorn. Gen. I would ask him, whether that open Act must be in the Indictment, or in the Evidence?

Mr. Hale. In the Indictment: it must be expressly laid in the Indictment, or else it is no good Indictment.

Attorn. Gen. But for that, that we may not dispute upon those things, my Lord, there are the several Charges against the several Acts; there are several open Acts that are laid in the Indictment, and (I think) if he look upon it, he will find that they are laid to every one of them, and relate and refer to every one of them.

Sir Tho. Witherington. There is writing of Letters, contributing of Money, and receiving of Messages.

Mr. Hale. That will appear by the subsequent parts of the Charge.

Ld President. The subsequent parts of the Charge will make that appear, for if he did lend Money, &c. if they be really there, we shall hear it by and by.

Mr. Hale. I take it, that the Law is very plain, that the Act must be mentioned in the Indictment.

Attorn. Gen. But we will not debate that when we are express in the thing; we are not so tyed to Form, as to pin them to every word of it.

The Clerk. And further to carry on and accomplish the said wicked Practice and Design, be the said Christopher Love, divers Days and Times between the 29th of March 1650, and the 1st of June in the Year of our Lord 1651, at London, and other Places as aforesaid, did traitorously and maliciously give, hold, use and maintain Correspondency and Intelligence

telligence by Letters, Messages, Instructions, and otherwise.

Ld President. These are open Acts.

Mr. Hale. Then favour us in this: we take it that between this, and the first Charge, there comes a particular Charge, that relates to *Charles Stuart*, that is intervenient between the first Charge and this that is now read, or else we are misinformed by the Prisoner; and if there be so, then we think our Exceptions will take place.

Sir Tho. Witherington. It is all contained in one Indictment, and then that that explains the Overt-Act follows afterwards, as a distinct thing in the Indictment; and so it was in my Lord *Cobham's* Case in that Indictment, and in my Lord of *Essex's* Case.

Ld President. He may make Overtures.

Mr. Hale. We confess it; but we suppose it very certain, that both as this Act is penn'd, and as the Act of ——— is penn'd, which are much at one as to the manner of penning them, there is of necessity an Overt-Act to be laid, to make good that general Charge: that, we conceive, will be plain; and that is admitted and agreed by the Lord *Coke* in his Collections of the Pleas of the Crown, fol. 12, 13, where he saith, 'The Indictment of the Earl of *Somerset*, in the time of *Edward VI.* and all other of the like form, were against Law:' Because he said, that he did not follow the Words of the Act, and that he did it *per apertum factum*, and shews not what that open Deed was; that was not a good Indictment, for the Fact must be set forth in the Indictment; that must be done. Then the question is, whether this be so done here or no? We conceive by this Charge it is not so done here, upon this ground; we say, there follows after this a particular Charge concerning his Promotion of *Charles Stuart*; and then subsequent to that, there follows this that the Court hath now read. We say, that in this Case here is not a Charge of an Overt-Act, neither by the one nor by the other; there is not a Charge by the former, because that is a distinct Treason, made distinctly treasonable by another Act: and therefore that which is made a distinct Charge of Treason by another Act, shall not be an Overt-Act within the former; that is one thing we say. And another thing we say is this, That in this Case, the Second, that is that which the Court hath been pleased to direct to be read to us concerning his holding Correspondence, that shall not be an Overt-Act relating to the first Charge; for it is an uncertain Relation: for there be two Designs mentioned before, the one is a Design contained in the first Charge, the other a Design contained in the second Charge, for the promoting of *Charles Stuart*; and we say, the third shall not be coupled up to the former, because it is a distinct Charge of Treason in itself, and because it is uncertain to which it relates: for it refers not more to the first Charge than to the second concerning the promoting of *Charles Stuart*, that is called the Prince of *Wales*.

Ld President. For this, I take it for the present, that the Charge is founded upon four Statutes; if he lay the Offence against the first, second, third, and fourth, and he shall come and conclude it without relation to any Particular of these Treasons, he did thus and thus by Letters

and Correspondencies, that will relate to them every one, tho it come but in the conclusion; and tho the Statutes be various, yet the Indictment is but one, and he may put in this of the Overtures in one place sufficiently, to be a sufficient Overture to every one: and therefore tho to one of them there should be no Overture in it at all, but *valet ut valere potest*, it will hang upon so much, as it will bear an Overt-Act, and then you will not deny but that those Words are Overtures.

Mr. Hale. It is true, they are so; but yet still we conceive this third, which we call the third Charge, that is concerning holding Correspondence, the third or fourth, I cannot tell which it is, but it is one of them; we say, that that is not an Overt-Act applied to the first Charge. When we come to the Substance of that Charge as it stands by itself, then our Exceptions will rise upon it, as it stands singly by itself; but we conceive that shall not be a supplemental Charge to make good that first Charge, that is concerning endeavouring to subvert the State as it stands established, it shall not be used as an Overt-Act to make good the first Charge. When we come to that particular Charge, that is concerning the maintaining of Correspondence, whether it be a good Substantive Charge of itself, then we shall offer our Exceptions to that; but in the mean while we are but upon Debate of the first, whether the first containeth such a Charge, as by the Act of the 17th of *July*, 1649, is required.

Attorn. Gen. My Lord, we are heard before you concerning it; *Mr. Hale* will find, that after all these Laws are repeated, and after all his Offences against those Laws are repeated, it is concluded that all are against the several Acts of Parliament in such Cases made and provided. If *Mr. Hale* will single them, the Impeachment doth not, but relates to all of them; and, I think, that in this way of Impeachment, we are not tied to those very nice and strict formal Rules upon Indictments: but if Substance doth appear, it doth appear to you, my Lord, that in Substance the Acts are pursued, and that upon the whole Impeachments there are, even this that is required, the Expression of an open Deed, an Overt-Act; those are laid, and it will be acknowledged by *Mr. Hale*, that they are in themselves sufficient, being thus express'd and concluded, that those several Practices, and Designs, and Treasons, are against the Form of the several Statutes in that Case made and provided, not in relation to the 17th of *July*, nor the 2d of *August*, but to all of them. And I believe that all of these Facts, all of this Treason, all of this Design, whether with the *Scotch* Nation, or Members of the *Scotch* Nation, or those adhering to the *Scotch* Nation, had all but one Foundation, the Subversion of this present Government, that was the Foundation and Treason of the whole, that was it that was intended: for to bring one in, and not to cast out the other, would have done no good; but upon the whole, that was the Treason. And upon all these Circumstances and open Deeds and Designs, the Sum, though it be a Treason to hold Correspondence, though it be a Treason to promote *Charles Stuart*, though it be a Treason to do other things; yet the Treason is in this, the *Scots* Nation to come in with intent to subvert the Government, *Charles*

Stuart to be made King to subvert the Government. So that the grand Work at heart, at root, was the Subversion of the present Government; and as for that, I wish heartily, for Mr. Love's sake, there were not so many open Deeds express'd by him.

Sir Tho. Witherington. Mr. Hale speaks of the Charge; the Words are these: *And further, to carry on and accomplish the said traitorous and wicked Practice and Design, he the said Christopher Love (now this I take to be the Overt-Act) divers Days and Times between the 29th of March 1650, and the 1st of June 1651, at London and divers other Places, as aforesaid, did traitorously and maliciously use and hold Correspondence and Intelligence by Letters, (those are open Acts) Messages, Instructions, and otherwise, to the Prejudice of the Commonwealth: and these are laid within the Time, and not a distinct Charge, as Mr. Hale would infer; but they do directly set forth an Overt-Act done by Mr. Love.*

Mr. Hale. Is it your Lordship's Pleasure I should reply any thing, because I come utterly unprovided for it, I must profess?

Attorn. Gen. We may give him this, and one or two more.

Ld President. Go on, Master Hale; if you have that that is material for another Reply, do; but take this, Master Hale, I take it very strong both in Grammar and Logick too, as well as in Law, that when all the whole Charge is radically and fundamentally but one Treason, though there be many Branches of it, the Charge hath knit them all together, and made but one Act of so many complicated Treasons as are here; and when he comes to the latter end, if some of them were *de facto*, not by an Overt-Deed published, yet if he come and prove, that it was so done by the Proofs, that there was Correspondence, and these things *de facto* done, and that Charge *de facto* done, you cannot break it there, to say that this Fact did not reach to all: for if there be any one, it is sufficient; but here it is to all, even to that one that you speak of.

Attorn. Gen. My Lord, I shall read a Word to Mr. Hale; *All which Treasons, and traitorous and wicked Practices and Designs of him, the said Christopher Love, were, and are to the apparent Hazard of the publick Peace of this Commonwealth and Free State, Parliament and People of England, [Mr. Hale findeth not these in any Indictment.] and to the manifest Breach, Contempt and Violation of the Laws of this Land, and contrary to the Form of divers Statutes and Acts of Parliament in such case made and provided; in general, my Lord.*

Mr. Hale. We conceive, under favour, and we think that it cannot be denied, that such a Conclusion will not serve the turn,

Attorn. Gen. No, not in an Indictment.

Mr. Hale. If there be a substantial part of the Charge omitted, that ought to be alledged in Fact, it is not in the Conclusion, *that contrary to the Form of the Statutes in this Case made and provided*, will help it. My Lord (I come unprovided) the Case of my Lord Dyer, that known Case upon an Indictment for Recusancy, or for a wilful or knowing harbouring of a Jesuit or Priest: Saith my Lord Dyer, *It is not enough to say, he did harbour him contrary to the Form of the Statute, but he must say, he did it knowingly: he must alledge and pursue the substantial words of the Act of Parliament.* And so again, an Indictment

for absenting from Church; it is not enough to say, He did it *contrary to the Form of the Statute*; but that he did it *obstinately*. Therefore that general Conclusion, that this was *to the Hazard of the Commonwealth*; (it is true, it is an ill thing for a Man to do such a thing that is to the Hazard of the Commonwealth) but those Words serve not the Statute neither: and then to say at the Conclusion, *contrary to the Form of divers Statutes*, that will not help it, under favour, in case of an Indictment. Then Mr. Attorney makes a Difference between the Case of an Indictment and this Charge. I conceive that in this Case there is no Difference; the Matter is the same, the one concerns the Life of a Person, and so doth the other: the Offence is the same; the one is a Charge of High Treason, and so is the other. It is true, those Formalities that concern the Manner of the Trial, those (it is true) are laid by, because here is no Jury to come before your Lordship; but your Lordship trieth upon the hearing of the Testimony, and according to things alledged and proved. But for other Matters that especially are substantially required by the Act of Parliament, we conceive that those shall be supplied no more by an Intendment in case of a Charge before your Lordship, than in case of an Indictment for Treason. To this I shall say no more, but leave a word or two to your Lordship's Judgment. For the other thing (we are still but upon the first Charge, the first Article) it hath first of all been insisted upon, that an Overt-Act is not necessary to be alledged, because supplied by the Words of the Conclusion, *contrary to the Form of the Statute*. To that I have answered, I conceive, it is not, nor can it be supplied, because it is a substantial thing in the very Words and Bowels of the Act, and cannot be supplied by a general Conclusion. Then it hath been said by Sir Thomas Witherington, the State's Serjeant, That in this case those subsequent Matters and Charges shall be an Overt-Act within the Statute; that is that which he hath read to you; it is in the fourth Article (as I take it) *That Christopher Love divers Times between the 29th of March 1650, and the 1st of June 1651, did traitorously and maliciously hold and use Correspondence and Intelligence by Letters and Messages.* But that cannot be; I may say it, that is not a sufficient Manifestation of an Overt-Act, because there do precede it these particular Charges of Treason within particular Acts of Parliament. Why then, if so be (to maintain his Design, for the carrying on of his Design aforesaid) this should be said to relate to the first Design, why not to the second Design of promoting *Charles Stuart* to be King? And why not to the third Design? So that where there are three several Designs before, all made Treason by the Acts of Parliament, that cannot be an Overt-Act to make good the first part of the Charge, with Submission to your Lordship's Judgment. And then another thing we say, That this Charge which Sir Thomas would carry up to the first Charge, and make it as an Inforcing and Overt-Act within the first Charge, that cannot be, for this other Reason; because it is charged as a traitorous distinct Act in him. Now we have this Learning delivered by Sir Edward Coke in his Comment upon this, in the 25th Year of *Edward the Third*; that is, where there are several Acts made Treason, the one is an Act for levying of War: Now there

the Case was Treason against the Person of the King, Queen, Prince, &c. that one part shall not be an Overt-Act in case of an Indictment, shall not be construed as an Overt-Act for the making good of another part; because where all are made equally traitorous, and all are charged as equally traitorous, we think, with Submission, those parts shall not be made an Overt-Act to another Treason. So when here is a Treason made by the Act of the 17th of *July*, and another by a subsequent Act, that which is charged as a Treason in the subsequent Act, shall not be said to be an Overt-Act for the making good of the former; if the former be not a Treason, able to maintain and support it self, this subsequent Act shall not serve as a Bolster to uphold it, and to supply that which is laid as a distinct Treason of it self. Now these are the three things we insist on: First, That an Overt-Act is necessary to be laid. Secondly, That it is not supplied by the general Conclusion, nor can it be. Next of all, That this Act that is here laid to be done traitorously, to hold Correspondence and Intelligence, it refers no more to the first Design, than to the second or to the third Design, which are charged as three distinct Treasons; and this is charged as a distinct and positive Treason of it itself, and therefore shall not be carried over as a Supplement to another.

Attorn. Gen. We granting that an Overt-Act is necessary to be express'd; grant it should be so, but no more but in Evidence: and then granting in the next place, That the general Conclusion will not be sufficient to maintain it, when it is requisite an open Deed should be express'd. Then for the third, I cannot be of his Judgment in this way of Impeachments; but as we see one Person may commit four or five Treasons, and one Act may be an Offence against four or five Acts of Parliament; and this is the Truth: for where the several Acts are repeated, that (my Lord) are those Laws against which this Treason, and this treasonable Practice and Design is laid to be; then follows the several Enumerations of those Practices, Designs and open Acts of his, now applied by us: but *Mr. Hale* would take them and apply them to one singly. But I observe to your Lordship, that those open Acts of his, are Offences by an open Act against the several Acts of Parliament; but it serves his turn for his Client to apply them so: but I hope you will not apply them so; but when they come between the Offences, and the Overt-Acts follow it, and the Conclusion upon the whole, that all those traitorous and wicked Practices and Designs are against the several Acts of Parliament: And if there be an open Act so express'd in the Impeachment, that in Law is an open Act, suppose it should be required to be express'd, if there be an open Act, then I hope you will be satisfied, when it has been well proved, if it be express'd in the Indictment an open Act, that I hope will satisfy your Judgments and Consciences; especially when open Acts shall appear to you to be an Offence against the Acts of Parliament. I shall leave this to your Judgment, and trouble you no further; and you will find in its place whether it be requisite or not.

Ld. President. That that *Mr. Hale* said, if it were a thing of absolute Necessity in an Indictment, then the Conclusion will not help; if the thing were of absolute Necessity there charged,

and not charged *contra formam Statuti*, will not do it: but if I understand it right, it is fully laid in this Charge, that he did by open and Overt-Acts do the thing; it is laid so: the Words of open Act are not, but the Value, that is, that he did by Writing, by Words, by Messages, by Money; and these are really Overt-Acts, though he did not call these Overt-Acts; these are laid fully in the Charge: and then, if they be laid fully in the Charge, and we satisfied in the full Proof of that Charge, that we have heard Overt-Acts to maintain it, then I think this cannot come within any of those Cases, that when an essential thing is left out of an Indictment, there the Conclusion will not help: this I conceive so far. Then the next, what Method or Order this can be, by setting down the Statutes, and then withal these Overt-Acts of Letters, of Messages, of Money, will reach to every one of the Qualities, that these Treasons are manifested by this Act; but if it were a Treason of such a nature, that none of these could reach to the Manifestation of it, then you say well: but when these Words reach to the Manifestation of every Charge laid in the Charge, then it is effectual and real, and the Conclusion is sufficient.

Attorn. Gen. Before he goes to the next, I shall crave your Direction in it; for I profess, my Lord, to you, that I, in drawing the Impeachments, take not my self to be so strictly tied to the Forms of Indictments in Letters and Syllables; and the Forms I have taken and do take, are those that have pass'd heretofore, and I follow them; and till I receive your Direction to the contrary, I take not my self bound but to express the Substance of that which is laid to his Charge, by which he may know his Offence, and give an Answer: But to Forms, and Quiddities, and Niceties, I conceive I was not bound to that.

Mr. Hale. I press not Forms, nor Quiddities, nor Niceties in this Business. The next is concerning the Charge of promoting the Prince of *Wales*.

Attorn. Gen. No, there is no such thing in it; your Copy is amiss again; read it.

Mr. Hale. Our Exception is this (we have been but upon the first all this while, I take it so) the next is, That he did traitorously publish the Son of the late King of *England*, to be King of *England* (meaning this Commonwealth) without the Consent of the People in Parliament first had or signified by Ordinance to that purpose. I think we shall not trouble your Lordship much with that; for if that be as our Copy is, it is true, it is not well laid: but if it be never so well laid, I conceive, as I am informed, there is nothing of that endeavoured to be proved.

Attorn. Gen. That we leave to the Court, *Mr. Hale*.

Mr. Hale. Then the next is, That to accomplish the said traitorous and wicked Design, *Christopher Love* did at several Days in the Years aforesaid, traitorously and wickedly advise the *Scots*. Our Exception to that is this: There is a treasonable Assistance charged, in some of the Years that were before the making of the Act that did prohibit it.

Attorn. Gen. And afterwards too, *Mr. Hale*.

Mr.

Mr. *Hale*. It lays it in some of the Years before the making of the Act, and that is sufficient to invalidate this Charge.

The Clerk. *And further, to carry on and accomplish the said traitorous and wicked Practices and Design, be the said Christopher Love several Days and Times in the respective Years aforesaid, at London, and divers other Places within this Commonwealth of England, and elsewhere, as aforesaid, together with the said William Drake, Henry Jermin, and other their Complices aforesaid, did traitorously and maliciously invite, aid and assist the Scots, being Foreigners and Strangers, to invade this Commonwealth of England, and hath adhered to the Forces raised by the Enemies of the Parliament and Commonwealth aforesaid, and Keepers of the Liberties of England, as aforesaid.*

Attorn. Gen. You will find this in a Statute before this.

Mr. *Hale*. Not before the 17th of July 1649, and then your Charge is repugnant; you charge us for an Offence which is precedent to the Statute.

Attorn. Gen. For that, you go and take them and pick them; but we lay them all together: there were Treasons he committed in 1648, and that which I pitch upon still is this (that Mr. *Hale* thought was waved) That this Man did not promote the Interest of *Charles Stuart* late King, or that he had not endeavoured a Subversion of this Government; I lay that against this Act made in 1648. Then by consequence to maintain that, he did it to promote his Interest, and to subvert the Government; and there was a Law in 1648 that did inhibit that: there is a Law inhibits the calling in of Strangers; and it follows by that, that he who calls in Strangers, may promote the Interest of *Charles Stuart* too: and that Foundation is to this purpose, that he did promote him to have been King of *England*: and you know what he express'd to you, what Tenderneſs of Conscience he had to take care that he might not go elsewhere.

Mr. *Hale*. If it be so, then we must desire that part of the Charge may be read.

Attorn. Gen. I have not charged them, nor until I receive Command, shall I vary from what I have received formerly, that I shall charge this to be against this, and that against that; but I have laid down the Acts of Parliament that have made things Treason, and the Offences severally, and upon the whole conclude, that these are Treasons against several Acts of Parliament severally; if one or all together serve turn, I hold it well enough. If you put me to every one of them particularly, I must have more time, and better Clerks to draw the Indictments.

Mr. *Hale*. Still the same Objection meeteth (with Submission to the Court and Mr. Attorney, the same Objection meets) with them; we say then, he will make this a kind of an additional Charge to the first or to the second, or to both; but we know not to which.

Attorn. Gen. Yes.

Mr. *Hale*. But we say, That that is not sufficient, upon these Reasons, because it is a Charge of Treason in it self, and therefore shall not be made an additional and supplemental Charge to make out another. And then we say, that this is uncertainly charged, whether you will make it supplemental to the first Charge of Treason,

that is, the endeavouring of the Subversion of the Commonwealth; or to the second Charge of Treason, which is a distinct Charge of Treason, of the Promotion of the Interest of *Charles Stuart*.

Attorn. Gen. I cannot divide them.

Ld President. Are not these as perfect as before? Doth not the Subversion of this Commonwealth promote the Interest of *Charles Stuart*? And doth not the Promotion of *Charles Stuart* subvert the Interest of this Commonwealth? If he hath laid it, that he did both of these by assuming it, by a double or multiplied Act; and all these multiplied Acts are but one Subversion: if I subvert it by one, or by twenty Acts, both of them are the same in nature; for the Subversion of the one, is the bringing in of the other; and the bringing in of the one is the Subversion of the other; and so they are Relatives fully one to the other, and there cannot be more express'd in the Charge than this. And notwithstanding all these Acts, though that Act hath made the Treason, cannot it be by another Act? You may prosecute by vertue of this subsequent Act, any thing that was understood to be general Treason by the Law of the Land.

Mr. *Hale*. My Lord, this is that we insist upon. It is true, we do conceive, though the Promotion of the Interest of *Charles Stuart* is not consistent with the Preservation of the Interest of the Commonwealth, yet every Destruction of the Interest of the Commonwealth is not therefore a Promotion of the Interest of *Charles Stuart*; for then there could be no Treason against the Commonwealth, but it must be a Promotion of the other's Interest. Now there may be a Treason against the Commonwealth, without the Promotion of the other's Interest. I urge it to this purpose, to make it appear, that they are several Charges bottomed upon several Acts; and therefore the reference here made to promote the Design aforesaid, is uncertain to which it shall relate: it may fall out the Party may be guilty upon the first Article; it may fall out he is not guilty upon the second Article, and then it is uncertain to which Article it relates, that he is guilty of, or not guilty of: and here may be the Consequence of it, then you will make a Treason, which to this third Clause is a Substantive, and contained in it self, to be an Overt-Act to another Charge of Treason, and that you cannot do; you cannot make a Treason which is so charged, to be an Overt-Act, or Exposition, or a Declaration of that which is contained in the former; like that Case I instanced in before, of the 25th of *Edward the Third*, That no Man shall go about to destroy the Person of the King, nor to raise War against his People: so that we use it not in any other reference, but only to explain and bring the Reason of that antient Law to this Law. In that Case a Man cannot charge the Overt-Act of going about to destroy his Person, which is a distinct Treason of it self, to be an Overt-Act to the Charge of levying War, which is another distinct Treason. And if he alledge, such a one did go about to destroy the Prince, or the Consort of the King, or the King, and to make the levying of War to be an Overt-Act to it, this he cannot do; because though it is true, it might be an Overt-Act to it, yet notwithstanding it being made a distinct Treason, it cannot be an Overt-

Overt-Act to another Treason: And so here, this very assisting and inviting of Forces is made a distinct Treason. And so if you take it substantively, it is insufficiently laid: And if relatively, you may not do so, because it is a Treason of it self, and shall not be brought in relation to another Treason laid before it.

Attorn. Gen. For that, I hope Mr. *Hale* will leave me to that Liberty I have; that is, That if one Act be an Offence against several Acts, I may aggravate it so, as to make him know it is so. And I take it for an Aggravation of his Offence, when he hath offended against so many several Laws, which he hath done; and that I may have Liberty to say so, though perhaps that Subversion of this Government is not in every respect a promoting of the Interest of *Charles Stuart*: But the Subversion of this Government, as it is here laid in this Indictment, is a Promotion of the Interest of *Charles Stuart*. And so it is here. And I have done now with that.

Ld President. Then, Mr. *Hale*, I will add a Word, because that you did put the Case of a Man destroying the Person of a King, and levying of War. If it be laid; those very Acts, if they be laid as a continued, or a *Medium*, or an Enterprize, that he had taken up a War to destroy the Person of the King; those Words in one Sense, if it had been laid solitarily by it self, and destroying the King in another; but if he shewed that by levying of War, he endeavoured it, then the Denomination is from the End in that place: And though they be two Treasons substantively, yet when they are laid as one continued Act, they are but one. And so it is in this Case: All these, though there are several Statutes, and several Treasons, these multiplied Acts make up but one compleat in the Conclusion. If there want one of these, if there be sufficient in the other, it is Treason enough, and too much too, (I would it were not so:) If they be laid in Subordination, as all these are, every one of them further to promote this, and to promote that, so they are laid in Promotion of it to every one: And then they are contiguous, and depend one upon another, and are substantive; and so substantial, as that they may be Relatives one to another. And so are these.

Attorn. Gen. The next, Mr. *Hale*.

Mr. *Hale*. The next is the fourth Charge; and that is concerning holding Correspondence by Letters and Messages with *Charles Stuart*, and the late Queen his Mother: We say that this Part of the Charge is ill laid also. It is laid in nature of a Felony by the Act, and laid to be done traitorously in the Charge; and that a substantial (not a mere Formality, but a substantial) Mistake: For if so be a Woman be indicted of Petty Treason, because it is *Proditoria*, yet in truth it amounts but to Felony. Now, in Case where she is an Accessary to a Felony, the Indictment is naught. If a Man be accused that he did traitorously such an Action, which in it self amounts but to a Felony, that Charge is nought. And so it is here; it is mislaid: For by the Act of the 29th of March, 1650, the Matters therein charged are not made Treason, at most but capital, but we think it only prohibited, and then we say it is an uncertain Charge. And so it is, under favour: For though the Act saith no Man shall hold Correspondence by Let-

ters, Messages, or otherwise; yet when we come to inform upon it, or to indict upon it, it is not enough to say he held Correspondence by Letters, Messages, or otherwise: but, if you will ground your Deed upon that Act, you must shew what that *otherwise* is. And that is the Exception to that Part of the Charge.

The Clerk. *And further, to carry on the said traitorous and wicked Practice and Design, be the said Christopher Love divers Days and Times, between the 29th of March, 1650, and the 1st of June, 1651, at London and other Places, as aforesaid, did traitorously and maliciously give, hold, use, and maintain Correspondence and Intelligence by Letters, Messages, Instructions, and otherwise.*

Mr. *Hale*. Or *otherwise* was our Notes; then that is out of doors: But our Exception is, That it is alledged to be done traitorously.

Ld President. And the Statute saith it shall be Treason.

Mr. *Hale*. No, it saith not so: The Act lays it only in nature of a Felony, and in the Charge it is laid to be done traitorously; and so the Charge is mislaid.

Attorn. Gen. I confess it is exprest so in the 29th of March, 1650, and it is not said what the Offence is; but I conceive, in the first place, that by the Law of *England* he that holds Correspondence with a Traitor will go very near it, my Lord. And then I humbly conceive that still, he going upon the first Act, it is laid to be with *Charles Stuart*, and the Queen and Counsel with him, (I think) it is a promoting of his Interest: He to hold a Correspondence with him whom the Parliament hath said, You shall in no case promote his Interest.

Mr. *Hale*. I must be bold still a little, to crave Mr. Attorney's Favour, to reply upon him in this kind of way; for I have not had Time.

Attorn. Gen. You have had more Time than I; for I heard not of it till now.

Mr. *Hale*. We say the Charge is not good, because it is made Felony only by the Act, and laid in the Charge to be done traitorously; and then we say that Charge is uncertain to what Design it relates: If it relates to the Business concerning the promoting of *Charles Stuart's* Interest, if it be so, we conceive it is not proved: For the Proof I mention not; but that is not insisted upon, that Master *Love* did promote the Interest of *Charles Stuart*, contrary to the Act of Parliament; that (I think) is not insisted upon.

Attorn. Gen. O, yes.

Mr. *Hale*. I conceive no.

Attorn. Gen. I conceive very much otherwise, Mr. *Hale*.

Mr. *Hale*. I desire that Charge once more may be read, concerning the promoting the Interest of *Charles Stuart*.

The Clerk. *And the better to carry on and accomplish the said traitorous and wicked Practice and Design, be the said Christopher Love, with the said William Drake, &c. (since the Death of Charles Stuart, late King of England, who, for his notorious Treasons, and other Tyrannies and Murders by him committed in the late unnatural and cruel Wars, was by Authority, derived from the Parliament, justly condemned to Death, and executed) several Days and Times, in the respective Years aforesaid, at London aforesaid, and sundry other Places within this Commonwealth, and since this Nation*

Nation was settled in the Way of a Commonwealth, or a Free State, as aforesaid, did traitorously declare, publish, and promote Charles Stuart, eldest Son to the late King, to be King of England.

Mr. Hale. We are informed that there is nothing of any particular Act of his concerning that: But we have nothing to do with the Fact. But we conceive that no subsequent Thing, by way of Construction or Interpretation, shall make a publishing and promoting in such a manner as this is, it must be such a Thing as expressly publisheth and promotes him to be the chief Magistrate of *England*, according to the Words of the Act, and not by way of Dilation: We say this is not a Thing to be applied to serve the Turn, upon this Reason; we say that the holding of Correspondence and Intelligence with *Charles Stuart*, eldest Son to the late King, cannot be coupled to the Promotion of the Interest of *Charles Stuart*, to be King of *England*, seeing that is but by way of Interpretation to bring it within the first part of the Act.

Attorn. Gen. For that, I shall crave your Direction.

Ld President. It is not interpretative, but positive.

Attorn. Gen. But I shall crave your Pleasure; Whether I shall in my Impeachments afterwards put in all my Evidence? What is charged, and Evidence proves, that you will judge upon, I hope.

Mr. Hale. Then the next part of the Charge, and that is the fifth, That he did hold Correspondence with divers Persons of the *Scots Nation*. Our Exception to that is plain: We conceive that part of it is not well laid neither; it is not laid in pursuance of the Act of Parliament, as our Notes are. This is that we say, That it is not expressly alledged, that they were Persons residing in *Scotland*, our Notes are.

Attorn. Gen. Like enough so, Sir.

The Clerk. *And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, several Days and Times in the respective Years aforesaid, at London aforesaid, and divers other Places within this Commonwealth of England, and elsewhere, as aforesaid, did traitorously and maliciously hold and maintain Correspondence and Intelligence with divers Persons of the Scots Nation, viz. with the Earl of Argyle, Lowdon, Lothian, Bailey, Belcarras, and divers other Persons of the Scots and other Nations, whom he well knew to adhere to the Scots Nation in this War against the Parliament and Commonwealth of England.*

Mr. Hale. This we conceive is not a good Charge; for the Words of the Act of the 2d of *August*, 1650, upon which this is grounded, are, That no Man shall hold Correspondence with the *Scots Nation* residing in *Scotland*.

Attorn. Gen. You were best read further, Mr. Hale.

[Then Mr. Hale read part of that Act, beginning at these Words, [*Be it enacted, ordained, and declared by this present Parliament,*] and ending with these Words, [*Without the Allowance, Licence, &c.*]

Mr. Hale. It is true, there is no Residing; for that yet comes not home, we conceive, to part of the Charge. There are two Parts of the

Charge; the one, That he did maintain Correspondence with divers of the *Scotish Nation*; and with divers other Persons of divers other Nations, whom he well knew to adhere to the *Scots Nation* in this War against the Parliament. As to the first, that is out of doors: Then here is no full Charge of holding any Correspondence with any of the *Scotch Nation*; for that part of the Charge rests upon this, that it must be with holding of Correspondence with any such Persons as are residing in *Scotland*, and with any other Person residing there. Then as to the other part —

Ld President. It is a continued Speech; Not with the *Scots*, nor any other.

Mr. Hale. Then here is another Thing in it: That it is not averred that such a Correspondence and Intelligence was held without the Licence of Parliament.

Attorn. Gen. You are mistaken in that; your Notes are not true.

The Clerk. *And he the said Christopher Love, within the Times, and at the Places before mentioned, did traitorously assist, encourage, without the special Licence of the Council of State, or Parliament, or Captain-General of the Parliament Forces.*

Mr. Hale. We say then, these are two distinct Charges, and grounded upon two distinct Parts of an Act. But there is this more in it, which we conceive is not to be answered, with Submission; under favour, it is said he did it within the Times aforesaid: The Times that are aforesaid are between the 29th of *March* 1650, and *June* 1651. Now this Act, whereby this is made traitorous or treasonable, takes not place till the 5th of *August* 1650: So that it might be done within the Times aforesaid, that is, between the 29th of *March* 1650, and *June* 1651, and yet not contrary to the Act of the 2d of *August*, which was 1650.

Sir Tho. Wither. We lay it within all the Times aforesaid: And I suppose the Matter of the Evidence hath told you the Times, which now we are not to dispute.

Mr. Hale. Whatsoever is done between the 29th of *March* 1650, and the 2d of *August* 1650, is not done contrary to the Act of the 2d of *August* 1650, upon which Act this Charge is grounded: There is a Time between them, and between the Time of exhibiting of these Articles. Whatsoever is said to be done between the 29th of *March* 1650, and the exhibiting the Articles, is not said to be done after the 2d of *August* 1650: For if it be done between the 29th of *March* and the 2d of *August*, it is done within the Time aforesaid, that is, between the 29th of *March* 1650, and *June* 1651; and yet not done contrary to the Act of the 2d of *August*, because done before the Act came forth.

Attorn. Gen. Though Mr. Hale will not consent to it, we will strike out the 29th of *March*; and then he will not deny but that is good enough, with that stricken out, before the first of *June* 1651. Whether it be not good enough, and no Time laid before it?

Mr. Hale. No indeed, it is not good enough.

Attorn. Gen. Why not? It is after the Offence committed.

Mr. Hale. Because it may as well be before the Act, as after the Act.

Attorn. Gen. If we lay it after the Offence committed, I suppose it is well enough; and the wisest

wisest will think so. Lay it to be the 1st of June 1651: Suppose it were in September before, it is good enough.

Mr. Hale. If you lay it upon the 1st of June, it is a Year; before it is not good enough.

Attorn. Gen. That that Mr. Hale insists upon, he may say it is before the 1st of June 1651, so long since; but in a just and reasonable Intendment, when we insist upon that Law that makes it Treason to hold it after such a time, and we say that before the first of June 1651, he did commit Treason in holding Correspondence, and sending Provisions of War before that Law, though it were before the second of August 1650, that were not against that Law.

Mr. Hale. Still we say, That contrary to the Form of the Statute, or contrary to the Form of the Law, which is but the Conclusion, shall not supply that which is material to be alledged. Now when here is an Act laid to be done, certainly it is material to alledge that it is done in such a Time as may appear to be after the Time of the Prohibition of it to be done. The Prohibition runs to the 2d of August 1650, That no Man after the 5th of August shall do such an Act: Then it must be laid to be an Act done after the 5th of that August. But it is not laid so here; but laid so as may be intended to be done before the 5th of August: For here is a Time laid between the 29th of March 1650, and the Time of the exhibiting the Articles, which is in June 1651, and that he did this within the Time aforesaid. Now he that saith he did it the 30th of March, saith he did it within the Time aforesaid; and yet saith not that it is within the Act.

Sir Tho. Wither. We have given an Answer to that: We have laid it within and without the Time. That is within the Time, the Witness doth prove it; and Mr. Hale speaks not to what we have proved, and cannot speak to it.

Mr. Hale. The Proof shall never supply the Insufficiency of the Charge: For we may as entirely offer you an Exception to this Matter after you have heard the Proof, as before you have heard it; for it stands no ways upon the Charge singly; so that it shall not be supplied out of Matter that appears in the Proof, but it must be considered whether the Charge can supply it self, or not: for that that is alledged against the Charge before the Proof made, is alledged as well afterwards. If it were not good before the Proof, the Proof shall not be supplemental to it: For upon that Reason, if an Indictment did want Time or Certainty, then after the Party were heard upon his Defence, it might be said, when this Exception was taken to the Indictment, all this might appear upon the Evidence. But that will not supply the Defect of the Indictment.

Attorn. Gen. I am sure we have laid it late enough, the first of June 1651, before that Time; and Mr. Hale's Exception is still upon that way of Proceedings upon Indictments: He must have that positive and strict Certainty in it in each Particular. I must give it that Answer still, that if you do in these Cases put me to it, to express every particular Circumstance of every particular Fact, and every particular Time, and that it must conduce in the Conclusion of it, I must make you Impeachments that will not be fit for you to read, nor hear: But, under fa-

vour, if that it contains in it in this way of Charge that convenient Certainty, that Convenience that may put the Prisoner to the Knowledge of it, and to prove it. For this relates not singly: For if I should go that way Mr. Hale hath laboured to draw me, that is, to take every one of these severally, and that I must make a distinct Charge upon one, and upon the other, and a distinct Evidence upon one, and upon the other; I conceive these run quite through all the Laws, every one of them. Had I confined this now between the 5th of August 1650, and June 1651, then what had become of all the Laws before that Time? Therefore to make them relative to all, I have express'd such a Time as may relate to all: For had I confined it singly upon this or that Act, whereas I humbly conceive that these Acts, and these Offences of Mr. Love, are relative to more than one Act of Parliament, and go to several Acts: And therefore I cannot confine my self to one Act, and say it was done at such a Time, and there limit it, and let it die. But my endeavour hath been, and upon this Particular we debated it, when we did draw it: we put it so that the several Acts may have the several Effects, and Mr. Love's Treasons look upon every one of them, and they upon every one of his Treasons; and as his Offences run through, and against all the Acts, so must our laying it upon him run, and the Evidence also. And though we took care to lay it back far enough, that was, to the 1st of June 1651, and so laid it high enough to the other, that it might reach the rest. And in this way we are not tied so to express it in every Particular, as other Indictments run.

Mr. Hall, Attorney of the Dutchy. He would charge it upon the Times between the 29th of March, and the 1st of June; that be not the Times that we have express'd in this; for it is that within the Times aforesaid we have positively laid, that it was in the Year 1651: For we have laid before, that in the Year 1648, 1649, 1650, 1651; then in the Times aforesaid we have positively laid that this Fact was done in the Year 1651, which of necessity must be since that Act concerning the Scots was made: And that I conceive is an express positive Time mentioned in the Charge, and gives a full Answer to that Objection; for it is not within such a Time, but in the Year 1651.

Mr. Hale. That Charge is within the Times aforesaid, which is last mentioned, between March 1650, and 1651.

Mr. Hall. That we shall submit to the Court, whether in the same Times aforesaid shall not relate to all the Times before mentioned, as well as the particular Times he hath picked out; for we mention that in the Year 1651 these Things were done.

Attorn. Gen. For that I have given you, that that is the general Answer, if I be put to it: Whereas Mr. Love had transgressed against those several Acts of Parliament, we have put it so, that we conceive his Offences run through them all; and so we have laid them: And (I hope) we are not upon those Niceties, that we must express the direct Days and Times, as Indictments run: But here is enough to make him know his Offences.

Ld President. I conceive it is much better as it is too, and more obvious to every Understanding, and

and their Interpretation, than as you would have it, a great deal: For the Necessities of the Day, it is not material, that you will agree; nor the Week, if they lay a Time so many Months before, or after, if the Proof come and fall within the compass of the Charge. As the Proof is laid, so is the Fact; The Proof determines whether it were within the Times without the Law, or within the Times aforesaid; for it is not within that Time, and every of them, but within the Times generally laid, all those Acts were done. And those must be laid in particular which was at one Time, and one at another, which were two Years a brewing, and are by the Proofs laid in general; that is best to say one Fact was done at one Time, and another at another Time, and at such a Time, and not at such a Time. It can be no Man's Judgment to be so laid in an Indictment or Charge; but they must be laid thus in general, and the Evidence must make it particular, that it was within the Times that are laid; as when there are no Times, as from *March* to *June* and *August*; and after, if they be both laid, if the Fact be within such a time that is within the Law, all the other is out of doors.

Mr. *Hale*. My Lord, thus, if it please your Lordship, I think, with Submission to your Lordship's Judgment, that in such a Case it is not in the Proof to make good a Charge: If the Charge do not contain a sufficient Certainty, it is not in the Proof to make it good. My Lord, I insist now upon the Necessity of a Day to be precisely laid. I know (though it is true, it hath been otherwise held in some Cases) yet in a Case of this nature, the Day is now material; for now we are upon Act of Parliament. As now, if so be the Statute of the 29th of *Elizabeth* enacts that every Man that shall knowingly entertain a Jesuit, that that Man shall be a Traitor, shall stand guilty of Treason; if so be a Man would say in an Indictment, that such a Man between the 28th of *November* in the 28th Year of the Queen, and the 28th of *December* in the 29th Year of the Queen, did entertain such a Jesuit, this Indictment would be naught, not upon the Uncertainty of the Day, but because it takes in a Time which is not prohibited by the Statute. The Indictment may be true, that he did receive a Jesuit within that Time, and yet that he did not receive him contrary to the Form of the Statute; and to say in the Conclusion *contrary to the Form of the Statute*, will not help it. For that is our Objection, that it is not done contrary to the Form of the Statute, because it takes in such a Time, as that it might be done before the Statute came forth. We say, that when there is a Time laid between the 29th of *March* 1650, and *June* 1651, and that within that Time he did do thus and thus, there is the Fault; it doth over-reach the Time of the Prohibition of the Statute, for any thing appears to the Court: The Court may find the Indictment or Information true, that he did it within this Time, that is, between the 29th of *March* 1650, and *June* 1651, and yet for all that the Party not in fault to be impeached, because he might not do it contrary to the Act; for he might do it between the 29th of *March* 1650, and *June* 1651, and yet do it before the Act came forth, which was in *August* 1650.

Mr. *Hall*. My Lord, I conceive Mr. *Hale* hath not answered that I alledged: But now, if

there were no other Times mentioned in all the Charge, but only between the 29th of *March* and *June* 1651, then it were somewhat; but when the Times are express'd before, though that it was in the Year 1651, and then we say in the Times before said, I conceive that in the Times aforesaid shall relate expressly to that Time in the Year 1651, and then it must be within the Act.

Mr. *Hale*. That cannot be; that will make the Charge worse.

Ld. *President*. That I conceive you are upon, is this, The very Letter of the Charge: For you say, At this Time that is laid he could not be a Traitor, and you join it with a Time in which he might be a Traitor. This (you say) they lay in the Indictment, That he did in such a Time of *March*, and afterward; and at that Time there was no Law to prohibit it, and so that could not be a Crime against him; and this, you say, no Proof will help it: I take it, Mr. *Hale*, this is the Substance. But if this be thus laid, and the Proof doth come in, this is very essential in my Judgment, when upon the Matter, if this be, as you see it appears upon the face of the Thing, that the Proof must go to that Time within the Law; and therefore that will not vitiate at all such an Indictment, if it were so as you say. But I take it, that this being complicated with more Laws, as I said before, though he were not guilty upon this, yet in the Conclusion he is found guilty of that which is as to other Offences.

Attorn. *Gen*. I shall say but this: We all know that a Time is express'd but for Formality; and that Time that is express'd, is not material, so it be laid far back enough. But if I lay it in *June*, and prove it in *June* Twelve-months, it is time enough for this, as your Lordship was saying. That which I do say is, That I cannot confine this very Act that is supposed to be, and yet not laid to be against that Act of the 2d of *August* 1650, from this Clause, in express Terms, not singly. But that which I humbly insist upon is this, That never a one of these Offences singly transgresses one single Law, but is an Offence against several Laws. I conceive I had done myself and the Commonwealth wrong, had I limited it to any one; for his complying with the *Scots*, and joining with them, and contributing with them, and receiving Intelligence, it is more than against that single Act. It is Promotion of his Interest, and Subversion of the Government, and against every one of the Laws. And therefore, I conceive, I had not done right to the Place I am entrusted with, if I should have laid it singly. But he is indicted, That as a false Traitor he hath done these Things: that is the Preamble. And then we instanced the Particulars, and give a Time; which Time he will acknowledge is not positively necessary to be true, that that Time must be the Day the Fact was committed; but if it be before, it is enough. But he infers, because this seems to be an Offence within the Statute of the 2d of *August* 1650, and is laid between the 29th of *March* 1650, and the 1st of *June* 1651, and so whether this can relate to that Act: And by Evidence you know it is afterwards. But this being an Offence against several Laws, I cannot charge it to be against one Law: But the Art is now, as Mr. *Love* began, to take it asunder and singly, and then it is nothing: And Mr. *Hale* takes it singly. It is not

against this, nor against this; but it is against every one of them; and not against this singly, but against the rest of them.

Sir *Tho. Wither*. My Lord, it cannot be contrary to the Form of the Statute, unless it be done after the Time, so that the Conclusion shews it was laid within the Time. But for the Case, as Mr. *Hale* instanced in: He puts a Case of one Act of Parliament; we are now upon Offences against several Acts of Parliament. In that Case, of retaining a Jesuit, he is a Traitor by the Act of the 29th of *Elizabeth*; so that if he lays it between the 28th of the Queen, and the 29th, if the Jury find that he did retain him knowingly on the 10th of *May*, 29, then it will not be denied but that it is an Offence against the Statute.

Mr. *Hale*. But still we say the Indictment is naught in that Case, because it takes in a Time which was before the Act came forth; so that the Party might do it within the Time express in the Indictment, and yet not do it contrary to the Act: And this is our Case.

Attorn. Gen. My Lord, you have heard us for that.

Mr. *Hale*. The last Thing is concerning Contribution to *Silas Titus*, and *Sterks* a *Scotchman*. And to that we have the same Exception; That that is not made Treason by any Act of Parliament: And therefore it is mis-laid to be done traitorously; for the Statute of the 26th of *March*, 1650, only prohibits it, and so makes it penal, but not Treason. But then we say again, it is laid very uncertainly too, that is, at the Times before mentioned. If Mr. Attorney of the *Dutchy's* Constructions should stand, that is, that the Times before mentioned refer to the Time past, then he may refer to a Time before the Act. But we conceive the Thing it self is not Treason by the Act, but only prohibited; and we conceive, under favour, still, that by way of Reduction to any of the former Charges, this shall not be made as an Instance or an Overt-Act, by way of Reduction to any of the former Charges, because it is charg'd particularly to be traitorously done, because there are several Charges of Treason before: And that which Mr. Attorney was pleased to observe upon another occasion, That in this Case the Charge is against several Acts of Parliament, it is true; but tho it be against several Acts of Parliament yet it must bind and pinch upon one: For we say one Treason is not to be made an Instance to another, and so to be made accessary, and depending, and accidental to another. And then we say in this Case, that this being not a Treason in itself, and being as uncertain to which of the former Treasons it is apply'd, it cannot be well laid, nor well apply'd, that is, to the last, that he did voluntarily relieve *Silas Titus*, it is not made Treason.

Attorn. Gen. It is against the Act of the 2d of *August* 1650, in express words: read the Impeachment.

The Clerk. *And further to carry on and accomplish the said traitorous and wicked Practice and Design, he the said Christopher Love, within the Times and at the Places last aforesaid, did traitorously and voluntarily relieve the said Silas Titus, Edward Massey, Col. Bamfield, one Mason late of London Gentleman, and one Sterks late of London Gentleman, who then were, and yet are under*

the power of the Scotch Nation in Arms against the Parliament and Commonwealth of England, with Moneys and Ammunition. Which Treasons and traitorous and wicked Practices and Designs of him the said Christopher Love, were and are to the apparent Hazard of the publick Peace of the Commonwealth and Free-State, Parliament and People of England, and to the manifold Breach, Contempt, and Violation of the Laws of this Land, and contrary to the Form of divers Statutes and Acts of Parliament in such case made and provided.

Mr. *Hale*. Then we say, it is uncertainly alledged, and uncertainly laid; but we take it, it is not within the Words of the Act: we desire that Act may be read.

The Clerk. *That shall from and after the 5th of August 1650, use, hold, and maintain any Correspondence, &c.*

Mr. *Hale*. Then this is not within this Act, because that this is concerning sending to Persons that are in *Scotland*; I observe not that it is charged that they were in *Scotland*.

Attorn. Gen. Or shall abet, assist, countenance or encourage the Scotch Nation, or any other Person or Persons adhering to them in their War against the Commonwealth. What think you of relieving, is not that abetting and encouraging?

Mr. *Hale*. It should be laid so then. I desire that part of the Charge may be read again.

The Clerk. *And further to carry on, &c.*

Mr. *Hale*. My Lord, we think this is not fully charged according to the Act.

Attorn. Gen. I will read you another, of the 26th of *March* 1650.

Mr. *Hale*. That makes it not Treason.

Attorn. Gen. It comes very near it; but I insist upon it, it is under the other, relieving them with Money, buying of Arms.

Mr. *Hale*. Still the same Exemption lyes upon it, within the Times aforesaid, which certainly cannot be acknowledged.

Attorn. Gen. We acknowledge the same Exception; and the same Answer lyes to it, that of the 26th of *March* 1650, it is, he shall suffer Death: and upon this it is Treason upon both together, we cannot divide them, but must express them so.

Mr. *Hale*. Under favour, the one makes it Felony, and the other a Treason.

Attorn. Gen. But it is a deadly one.

Ld President. If a Statute Law makes a thing Felony that was not Felony, or recites a thing that is Felony, and saith it shall be punished with Death, being a Petty Larceny, therein you say well; but if the Statute recites that that is Treason in itself actually, and saith that they that do these things shall suffer Death, according to the nature of that Offence that is formerly recited, and limits it so in the Recital, if the Recital be Treason in the beginning, and then say, that that Traitor shall suffer Death without mercy.

Mr. *Hale*. We have shewed our Reasons in the Case, my Lord; it is as much as we can say upon this sudden, concerning this Charge; there are some other things that are mentioned here by Mr. *Love*, as how far forth there be sufficient Witnesses, admitting the Charge were good; how far forth the Witnesses are sufficient in themselves; and then whether here be two concurring Witnesses to any one Act, and whether any thing be more proved than Misprision of Treason,

Treason, and Concealment of Treason: these are things Mr. *Love* takes upon him in fact to say. And now for those, when the Case is made, we shall be ready to speak to these things; for truly it is sudden and new to me, for these matters came not to my knowledge till this Morning after Eight a-clock; that is, concerning the last Paper he offers to your Lordship, and that is, Exception to Witnesses, Proof, and Matter of the Proof, whether the bare Concealment (for thus it is stated unto us, the *Concealment*) of any thing that is Treason, whether that be Treason or no in the Party that conceals it; these are things that if we were prepared for, we should speak to. First, we conceive by the Statute of *primo & quinto Elizabethæ*, there is a necessity in this Proceeding before your Lordship, to have two lawful and sufficient Witnesses. Next of all, we think, that if these Witnesses be such as he hath stated them to be; which whether they be or no, we know not, for we are utterly unacquainted with the Evidence, yet we should think they are no sufficient Witnesses: and then admitting they were sufficient Witnesses, yet if so be one Witness speaks to one Fact, another to another, we conceive these are not sufficient Witnesses within the Statute, not sufficient to convict him. And then, if that which they have witnessed be nothing that amounts to Treason, haply committed by others, that makes him not guilty within the Acts. If we had time to understand, and digest, and consider, what were the Matters that are alledged, we should be able to say somewhat to it. My Lord, that which we have said, we have said of a sudden; and so it appears, because we had not that clear understanding of the Charge, as otherwise we might have had, and so have saved much of your time.

Attorn. Gen. For that that hath been said suddenly by Mr. *Hale*, I shall suddenly give it this Answer: He hath had more time than I, he hath said from Mr. *Love*, and not from himself: he saith when the Case is made; I think it will appear then, that these Exceptions have been made to the Court, that the Witnesses have not been competent neither in Quality nor Number, they have been spoken to. For the Witnesses, the Exception to the Quality, because they were of the same Gang, they had a hand in the same Treason, that was the Exception; I think that will not be allowed to be a legal Exception, they are Persons that (as Mr. *Love* pretended) had a hand with him in this Fact, and therefore they should not be competent Witnesses; that I shall appeal to Mr. *Hale's* Judgment, before Conviction, and upon a Proceeding, whether they may not discover (and after Conviction) if they be Approvers. For the next, for two Witnesses; when the Case is made, you will find one, two, three, four, five, six, and to most of them two, three, and four, for so I may make bold to say, for so I read them to you the last day. And then for the last Exception, that was for the Concealment of Treason, it is far from it, for I know not what a Concealment Mr. *Love* may intend; I am sure Mr. *Hale* will not think that a Concealment, to run on one, two, or three Years, and run on, and send Letters; that when he acts along with them, and hath the Meetings at his House continually, moves them to receive Money, and contribute; I think he was the highest Actor amongst them, for the Meetings

were continually at his House, the Advices were there resolved upon Debates, there he gave his Advice one way, and they another way: I think he will not think this is but Misprision of Treason; and we never did charge it, nor intend it so, but went a little higher.

Mr. *Hale*. If that be declared to be insisted upon, that the non-revealing of Treason, though it be a Month or two, or a Year or two, can be no Treason, then we have done with that Question; for that it will rest singly upon the Fact before your Lordship, whether there be any thing more proved than such a Concealment, then it is true we are discharged of that Question. But then concerning the Proof, if Master Attorney will please to admit, that the Proofs are such as Master *Love* hath stated in this Paper—

Attorn. Gen. That I shall not do before-hand, but to debate upon the Proof, I shall crave your Lordship's Directions; I have gone over them already, and it hath been trouble enough to me; if it be your Lordship's pleasure I must go over the Proof again, I shall submit to you, but not to him.

Ld President. Mr. *Hale*, there are no Witnesses that have been heard, but they have been of the said Confederacy, that was one Exception Mr. *Love* made; it was debated at the producing, and over-ruled, and I believe your Judgment will go well with us, that it was no Exception. Another was, That they have been promised Rewards; that was likewise moved and over-ruled, the Court was of opinion that they may do it; that if there be a Treason, and there be many Correspondents in it, and one out of remorse, as some of these did say, that when they had been there they did not like their ways, but went from them, and came to them no more; if this Man, or any other Man afterwards shall come and reveal this, it is in the power of the State either to reward him with Moneys, and to promise him Life too, if he shall faithfully do it. And this, we say, is a stronger Case than the Case of an Approver, which afterwards when they became Approvers, they must confess the Fact, and say they are guilty of the Fact plainly and openly, and yet then they are good Witnesses to discover this, as it was plotted in Hell, for this was no other, tho they had a Vizard upon them, which was no otherwise: I say, if any one will discover such; nay, haply it was offered to Master *Love* himself, if he would have done it; I believe there were some Overtures made to him. But this is Law too, by the Law of this Land, which is the Law of God; for we have no Law practised in this Land, but is the Law of God; and so did the Lawyers maintain it before the King, in *Henry* the Eighth's time, the Pope's Legates, and chief Archbishops and Bishops of *England*; and did then prove it to them, that there was no Law practised in *England* but the Law of God, which our Ministers are loth to touch, and busy themselves to study, but study the Ceremonial Laws of the *Jews*, which are *Mortuæ Mortiferae*, which are not to be practised by any other Nation, till they be established by a Law: and that which is the Law of God in this Land, that hath so much preserved it, these they are wilfully ignorant of, and say, it is Civil; but I say, it is Christian Law. And therefore never distinguish

in a Christian Nation, that the Laws are Moral and Ecclesiastical, with that feigned Distinction; but all the Laws of this Nation are Christian, and stand with Evangelical Truth, as well as with natural Reason, and they are founded upon it: and therefore, Master *Hale*, we are here now to go on by these Laws, which are the Laws of God, and we must walk in them, as we would walk to Heaven. And for that you speak of now, Mr. Attorney hath answered all the Exceptions every one; and I think for that Matter of Fact, every one of them particularly. Mr. *Love* did take his Exceptions too, and they were over-ruled. Now to come whether these are lawful Witnesses over again, when it is in Matter of Fact, and over-ruled by the Judgment of the Court, Master *Hale* will not think that is regular. And then, whether there be two to one Point or not, that is another of your Exceptions; that, I take it (Master *Hale*) is not Matter of Law, but for the Judges to consider of it: that which should be Matter of Law, is this, whether that single Proofs, some to one, and some to another, joined all together do issue out all this Treason. We want not Precedents for that, for this is a heterogeneous Treason; every Particular that these Statutes make a Treason, they are all of them complicated, he hath gone through them all in his Act, and we must pass through them all in our Judgments: tho every one is particular Treason, had it been singularly laid by itself; yet now being laid as one concatenated Treason, they all of them make but one. For the next, for that of Misprision, he is not charged here with Misprision at all, but direct Treasons; and if it be but Misprision, we shall not for Misprision judge him a Traitor upon this Charge. But then, what is in his Judgment Misprision? If this be nothing but a Concealment, I think that the Court upon the Evidence will judge that it is more than a bare Concealment; and whether Mr. *Hale* will think, if I be a Promoter and Concealer from one to another, and have so many continued Meetings, whether two or three Years together acting with them, and concealing them, for it is not a bare Concealment, but a complicated Act: for if it were but a bare Notion of it, we should have much ado to prove it; but (I think) the Court is satisfied, it is more than Notion.

Sir *Tho. Witherington*. I shall speak a Word to that Mr. *Hale* moved last, whether you will be pleased to hear any more of Counsel in these three Particulars; for, under favour, these three Particulars concerning the Witnesses, concerning their Quality and Number, and the Treason itself, these are Matters of another kind of nature than all the rest he insisted upon, for the rest are mere Matters of Law, upon the Formality and Insufficiency of the Charge: these Questions of the Witnesses are Questions that are mix'd, for they depend upon the Matters in Fact, and cannot be otherwise stated. Now Mr. *Love*, tho he had no Counsel appeared before, yet he had in his Defence all these Objections too; as of the Incompetency of them, because they were *Participes criminis*, and for that I think (under favour of your Lordship's Judgment) he had a full and clear Answer to it: in case of an Approver, he is *Particeps criminis*, and accuseth Men that are *Participes criminis*, yet that Man, even ex

merito justitiæ, he shall be pardoned, saith our Law: and therefore that Objection that is made against the Witnesses, that they are promised Rewards and Pardon, that is no Objection, for in that case the Approver shall have his Pardon *ex merito justitiæ*. Then for the other Point, that is, whether by two Witnesses in such a Plot or no, to prove a Treasonable Act, that is, consisting merely upon the Matter of Fact; that I shall not take upon me to repeat, you have heard it: but this I said then, and this I humbly offer now, that if there be two Witnesses, tho they concur not in the same individual Act, yet if they concur in two Acts, concurring to the same Treason, they prove the same Treason; if one prove the sending of Letters, and another the sending of Money, I take it these are two Witnesses, tho they speak of two distinct Acts: but in our Proof we have gone on to two Witnesses, three or four in most Points. But then for the Misprision of Treason, we did apprehend that that which Mr. *Love* himself hath confessed, is Treason itself; but Mr. *Love* is pleased to make his own Collection upon his own Confession: *For I confess my Presence and Silence after these Meetings and Consultations, but this I take to be Misprision of Treason*. To this I replied, we took it to be Treason itself; for our Books say, a Man must not sleep, nor look back, but go presently to a Magistrate to reveal it: but when a Man will not only sleep upon it, but keep it back, and act in it, this is more than Misprision. But our Charge is for a Treason itself, and truly Treason comprehends a Misprision of Treason in it; but this Point I think neither will come in question now: for we say and charge, that it is a Treason itself, not Misprision; and that Collection Mr. *Love* makes, it is his own, but the Judgment is yours, whether it be a Treason or not.

Mr. *Hale*. If it be your Lordship's Pleasure, we are ready to say what we can in the shortness of time; but if it be not your Lordship's Pleasure, we shall not say it.

Attorn. Gen. If your Lordship please to declare what he should speak to.

Mr. *Hale*. These Points I shall only mention them, I cannot argue them now. This is that I conceive; first of all, according as the Case is stated, that is, Whether a Person menaced, that he shall lose his Life if he discover not a particular Person, and that he shall have his Life if he do discover him, whether such a Person be a competent Witness or no?

Attorn. Gen. Hear a word; I appeal then to you, whether any such Person were produced before you.

Mr. *Hale*. First, we only go upon what Supposition Mr. *Love* makes.

Mr. *Love*. I humbly crave leave to that effect, to prove that Particular.

Attorn. Gen. No, not now, Sir.

Mr. *Hale*. We conceive such a Person is not a competent Witness: then that is out of the Case, it should seem, Sir. Truly, then the Case that is put concerning an Approver, comes not to the Question, under favour; for tho it is true, an Approver at Common Law might be an Accuser, yet we are not now upon a Proceeding at the Common Law, when we talk of Witnesses now, but we are upon a Proceeding how far forth warranted for the Witnesses, by the Statute of the first and fifth of *Edward 6*. So that what is said con-

concerning an Approver, comes not to this Question; he that may be a competent Witness at Common Law, he is not a competent Witness upon those Statutes, for the words of the Statute are expressly, *That he shall be a lawful and a sufficient Witness*. And if so be that such a Case were now, it is not to sample this Case that is before you with the Case of an Approver, which is a bare Accusation at Common Law, and where the Jury likewise are to have other Evidence: for either the Defendant may wage his Battel, or put himself upon his Country; and then it is at the pleasure of the Jury, whether they will believe the Approver or no. But by the Act of the first and fifth of *Edward 6.* it is expressly said, *There shall be two sufficient Witnesses in case of Treason*: so that that hath made an Alteration of what was in the Common Law before; one Witness was enough before, now two Witnesses are requisite: and we conceive, the words *lawful and sufficient* conclude such Persons. If there be not any such, we are not to say we know, or know not: but if so be any Person is drawn to make such a Testimony for the Preservation of his Life, and shall make such an Expression, we think, that tho it is true he is not a Person that is attainted, yet he is a Person that is thus drawn, and we think he is not such a Witness as is intended, especially in such a Case as this is, where the Trial of the Fact is before your Lordship, which is both Jury and Judge, to try the Fact, and determine the Law; and therefore perhaps here will be a more rigorous Expectation who should be, and who should not be a sufficient Witness, than in case it were a bare Trial by Jury: there may be those Exceptions alledged against a Witness when the Trial is as now it is, that may not be when a Trial is by a Jury; and therefore if so be that a Party be thus drawn to testify for the Preservation of his Life, we think that this is not such a lawful and sufficient Witness as is required in such a Case. Next of all it is said in the Paper, That they have detected themselves, being Parties of as deep a Guilt as the Person that is accused. I will not dispute that at this time; for it is not the Case, whether a Person that is a Plotter and Confederate with one that commits Treason, may be a Witness; but when a Person is detected by lawful Authority, before the Charge exhibited, whether such a Person who is so detected, whose Life is in the hands of the State, be one of these competent Witnesses, we must leave it to your Judgment in that: but we think he is not a competent Witness; for there is not a bare Accusation of a Person, but (as the Case is stated to us) by a Person that should be examined, and confess himself guilty of those things whereof Mr. Love is impeached, and that before the Charge is exhibited. My Lord, the next Matter is concerning the Plurality of Witnesses, the number of them; we think, under favour, with submission, that in this case suppose the Charge had been singly upon one Act of Treason, we conceive, that in that case there is a necessity of two Persons to prove that Charge: If the Charge be upon several Acts of Treason, be the Charge so; yet if you will bring them within any one of the Acts, you must have two Witnesses to bring them within that Act. For suppose a Man were indicted of Treason heretofore for levying of War, and another Treason for adhering to the Enemies, and

another Treason for counterfeiting of the Coin, or those kind of things; these are several Treasons, tho they are all put into one Information, and haply may be put, in case of necessity, into one Indictment, as here are several Acts put into one Charge. But now a Proof of Treason within one of the Acts by one Witness, and a Proof of a Treason within another of the Acts by another Witness, will not be esteemed and accounted a Proof by two Witnesses; for it must be a Proof, not that he is within the Charge, but within that part of the Charge upon which he is to be arraigned: and here is not a proving each distinct part of the Charge by two Witnesses, as the Statute requires. And then to come nearer, suppose the Charge were but upon one Act, as that he held Correspondence with the *Scots*, and did invite them, &c. I conceive that in this case, under favour, that that particular Act with which you will charge him to be a Traitor within any one Law, must be proved by two Witnesses. The Star-Chamber Course, I know what it was, that in case there were one general Charge, and then it did descend to several Particulars; one Witness would serve for one, and another to another, and a third to a third, and these should make up two Witnesses to convict the Party: but we are not now in a Proceeding of Star-Chamber, that is laid by, it was not altogether so regular in all things; and then we are not in a thing barely criminal, but in a Case of Life; and not in the Case of Life ordinarily, but in a Case wherein a Party is accused of Treason, wherein the Statute doth provide that there shall be two Witnesses (as I conceive) to swear to the same thing, by which you would bring him within it; otherwise they stand as single Witnesses, every one apart. I have heard of a Case (I have not had so much time as to look into it) concerning Mr. *Rolph*, indicted at *Winchester*; I will not so much as repeat over the Case upon my Credit to the Court; but I take it, it was thus: He was indicted for somewhat about the Person of the King; one Witness deposed about the presenting of a Pistol, or that he said he would; another about poisoning, or that he said he would: these two things did conclude in one and the same Act; and tho they concluded in one and the same as Evidences, complicated Evidences to make good one Charge, and either of them had been sufficient, if proved by two; yet as I am informed (this is the Inconvenience, upon the sudden we cannot offer it upon the confidence of our own Knowledge, which a little time would make us wholly decline the mentioning of it, or affirm it upon our Credit; but this I am informed) was not held a Case proved by two Witnesses: and if that be so, then I conceive these Steps; the first will be agreed, that the Proof of several Charges by several Witnesses, against several Acts, will not make a Proof by two Witnesses; it must be a Proof by two Witnesses against one Act. Therefore the Proof of any thing against the Act of the 17th of *July 1649*, and another Proof of a thing done against the Act of the 30th of *January 1648*, and another for a thing done against the Act of the 2d of *August 1650*; here the Offences are several, the Treasons several, and the Witnesses to either stand singly by themselves. How the Case of the Fact is upon the Proof, I cannot tell; that is, whether this falls out to be

the Case. But again, if the Charge were single, as now upon the Act of the 30th of *January* 1648, for proclaiming of the King, or promoting the Prince of *Wales's* Interest to be King of *England*; we think, with submission (which we shall leave to your Judgment) that in that case there is a necessity of two Witnesses to speak to one thing; and not one to supply one part, and another to supply another: That shall be as much as I shall say concerning that; and I could wish that we had had so much time as to look into it, to inquire what the Truth of that Case was which was try'd at *Winchester*, as I take it. Now for the other Matter, that is, Whether Misprision of Treason, Concealment of Treason, be Treason; if that be not insisted upon.

Attorn. Gen. No, no.

Mr. Hale. Under favour, the Law is, That Concealment of Treason is not Treason; but if that be not insisted upon, then the Question of the Fact is, Whether there be any more than a Proof of a Concealment, or of a Misprision of Treason? which if so be it be not, I can say no more.

Attorn. Gen. Truly, my Lord, I did intend to speak to that of *Mr. Love's* Case, and as of his making, but not now of his making, but as he hath made it formerly; surely, it is a great deal of Patience and Favour you have afforded him, that for Matter of Fact and Law you have heard it all over again. As for that first, of the Competency of the Testimony, I shall remember his own Division; First, of the Charge; Secondly, of the Witnesses and the Testimony; the Third, concerning himself; and the Fourth, his humble Proposals to the Court. One part of his Defence was concerning the Witnesses and Testimony, that he made a long Defence to; and if it be not good Evidence, that Parties that are of the same Robberies may not accuse their Fellow-Thieves, I think some must be unhanged that have been hanged: but that I shall not speak to, for I think not that *Mr. Hale's* Judgment leads him to it; but if they were threatned, and should be made afraid of their Lives, that were somewhat; but that is not the Case here. The next is for two Witnesses: I might say, that by the Common Law of *England* one Witness was enough before the Law of *quinto Edwardi sexti* was made; for else it was not needful to be made. And *Mr. Hale* knows again, that as to Trial, those Laws are repealed. But not to trouble you with these things, or to say wherein they must concur, I did crave the Favour of you to read the Witnesses as they deposed, and I did tell you when it was by Hear-say, and when upon Knowledge, and when by two, three, and four, to several Acts of *Mr. Love's* own acting, two, three, four Witnesses, I think they are number enough to accuse, and detect a Person of as high Quality. And for the last, for Misprision of Treason, *Mr. Love* hath said that which never came into my Thoughts, that such Actings done by *Mr. Love* could be judged Misprision; he that acted with them, consulted, and debated, and plotted, gave his Judgment one way, moved to raise Money, received Intelligence, all brought to his House, and transacted there: I would appeal to *Mr. Hale's* Judgment, whether this could be Misprision of Treason, when a Party acts in it, hath the Meetings at his own House, and hath there Debates of Commissions, and Instru-

ctions, and Letters; I think this goes as far beyond Misprision, as Treason is beyond Misprision. But seeing these are new Cases before you, you have spent enough of your time, I shall not spend more to argue the Cases that are not.

Mr. Love. I humbly crave leave, that seeing my Counsel some of them are rejected by the Court, as not fit to plead before you; and seeing another of them, *Mr. Maynard*, the Necessity of his Affairs is such, he could not be here this Day to plead here; and seeing this worthy Gentleman came here unprepared, whose Face I never saw till this Morning; therefore I humbly pray there may be more Time and Counsel assigned me, with your Favour and Leave, that they may fully debate the Argument before you, those Matters of the Law which are under his Hand, and the Hands of the two worthy Gentlemen rejected by you to plead here, that others may be added to *Mr. Hale* to plead the Matters of Law before you, and that I may have a Copy of the Charge.

Attorn. Gen. I hope we have had Delays enough, it is with the Court, now we have done.

Mr. Love. And, Sir, there are Witnesses here present that will prove that which *Mr. Attorney-General* thought none could prove, to wit, not only general Threats, if they would not confess in the general, but Promises of Favour, and Threatning of Death if they would not testify against me in particular: and I have manifold Exceptions touching the Incompetency not only of Number, but Quality. One Witness said, he could not in Conscience, and did not swear till he was threatned, nay, fined by you, and drawn out of the Court: Another Witness had Money laid to him by *Cobbet*, which was given his Wife, which did seem to conceal the Bribery the more; but he confessed himself, that the Money was laid down in his House, and given him to make use of, and to be the Price of my Blood (Sir) to testify against me. I have Witnesses to produce, *Major Adams* said, he should be hanged, if he did not testify against me; for he had given Information, and been in hire for many Months together. *Major Cobbet*, and three other Messengers have come to him, and offered him Preferment, for four Months together, if he would reveal what he calls a Design against the Commonwealth; and he hath not revealed this, till he had these Promises of Preferment, and did not declare against me till he was threatned by Death if he did not do it: therefore I beseech you, hear what Witnesses I can bring in, to invalidate the Testimonies of these Men.

Attorn. Gen. My Lord, it seems I must be for all. Now *Mr. Love* begins with the Court, that you threatned them, and punished them: I appeal to all here, whether a Witness brought into a Court in Matter of Property, and refuse to take his Oath, whether that Court be not bound in justice to punish him; and yet if he shall see his Error, and submit himself to do that which to Justice belongs, then (I think) it is Justice and Mercy in you to remit him of both: and that is the Case of this Gentleman; in Conscience he could not swear against him, a Conscience well wrought upon; he could not in Conscience swear against him: for him it was done

done in the Court, and by the Court, and (I think) undeniably justified.

Mr. Love. He is not under an Oath to this Day, he hath declared it himself.

Attorn. Gen. This is to satisfy other Men, but it is not so regular and orderly to be done: but my Lord and the Court are pleased to give you a fair Hearing and Proceedings, that no Exceptions may be taken to it. There was another that was as good as his Word, that he could not find in his Conscience to swear against Mr. Love, and that was a Minister; that Conscience deserved to be rectified more than Five Hundred Pound comes to, and perpetual Imprisonment: that Man that cannot find in his Conscience to judge him that was a godly Person (as he thought) and against him he must not give witness, not for Treason, not to save a Commonwealth; and he hath had your Sentence, and most justly: I think all that was, was too little, my Lord. Then for the rest, this is a Discourse to satisfy People, the Spectators here; for surely these are Extravagancies, and total Irregularities; he hath had his time to except, and heard to except, and said all that he hath said now: and so there is nothing more to be done, but now for us to rest in your Judgments what you will do further.

Mr. Love. I beseech you, I acquainted your Lordship and the Court, that some of the Witnesses were not well, others I could not get them here present, but did make offer to bring Witnesses to prove against Major Adams, that he hath confessed himself he was threatned with Death if he did not inform against me; and he said these Words, He could not tell whether he should in Conscience think rather better to be hanged, than to come in against me; and he could swear only Generals, and could not swear that ever I did write or receive Letters. And Mr. Jaquel himself, since he was sent away from the Court, hath said he was not under an Oath.

Attorn. Gen. What Course shall we hold? If you will not be regular, let the Court be regular: had you not time for to do it then? Did he not demand Indemnity for them? And rather than he would produce others to hurt themselves, he would rather die himself first.

Mr. Love. But these are not under a Crime; I beseech you, the Court would be tender in Matters of Blood.

Attorn. Gen. Be tender of Justice.

Ld President. I would you had been so too.

Mr. Love. This Man declares himself he is not under an Oath to this Day, he did but put his Hand upon his Buttons.

Ld President. Those were your very words, and very uncivil and indiscreet; you have not spoke at any time yet, but you have hurt yourself more than any body else hath, and yet your Language is so liberal, that no Man shall escape the Lash of your Tongue.

Mr. Love. I fear no Man, my Lord.

Attorn. Gen. That is a bold Word.

Ld President. You have as ill Comments as any Man that wears a Cap; your Guiltiness appears in this you say; we have heard all this that you require before: those very Words that you say of this Man now particularly, go to them first, that he was saying, he was not under an Oath: It was said so again and again, and again

at that time we brought him, and before he was examined, holding up his Hand, we asked him it, and he said, he did; and put it to him again and again, Are you under an Oath? till at last he did conclude and testify he was under an Oath. I testify this before all the Company here, this is noised abroad again by many People, the Care we had of that very Man you speak of; you asked him three or four times then, and at the last, upon the Conclusion, he confessed himself he was under an Oath: he did not do as you do, you will say things are Truth, but you will not speak those Truths before God in a testimonial way; though some of your Witnesses that proved it, said it was true in the presence of God, what they gave under their hands: These Men that do thus, are no better than Jesuits in Reality, though not in Name. You made a Confession of Misprision of Treason, you said, but you have confessed Treason. I will tell you who did the like in the very words almost that you did, and that was Father Garnet; when he came to see the Evidence produced so full against him by those that were *Participes Criminis*, as you are, himself confessed when he came to the last. Had I thought (said he) that the State had had such clear Proof against me, I would have ingenuously confessed it, and not trifled with them as I have done. So you said, you did not think it would have been proved so far as Misprision: but when it was proved sufficiently in your Apprehension, and convicted, and your Council had informed you it could not be less than Misprision, then you would ingenuously confess; so did Garnet. The other Witness that was threatned, it was testified by a worthy Captain; I speak it again, was not it debated as much as the Wit of Man could? Did you not object that then, that you do now? And did not the Court then satisfy you, or at least satisfy themselves that it was not so? For I tell you in that very thing wherein you say he was threatned, it was told you, That the Captain that was here then, deposed what he had done, and how he had done it, and at what time it was delivered; for you were discovered long before that, and your Examinations taken long before that. Upon this, now when your Treason was discovered and declared by several Witnesses, and that such a one was in Confederacy; and I think the State might safely promise him Life, and Reward too; for there is more in the Plot yet, than is yet found out, and that some are like to hear of within this Fortnight, that were here, which is a dangerous thing: but this you did declare, and the Court was satisfied, that all that was promised as a Reward, was for discovering of a Plot against the State; and that was lawful by the Laws of God and Man. And now you bring Witness; you were at first demanded, whether you would bring them or no? and you asked Indemnity for them; and the next time you denied, you would bring none; and now you asked, What you have to offer to the Court? and after all this time, what come you to do now? To prove that that was acted here in the Court: you say, we threatned them; true, that we did threaten some; and I think we went thus far, that if he would not, we would set Five Hundred Pounds Fine upon his Head; but he would none of that, but came in again, and delivered his Knowledge. But you had another

nother of your own Robe too that came in, and he would not testify; and why? His Conscience was tender; his Science was perfect enough to speak against you, for he was Confederate with you, and hath confessed enough of it: but his Conscience was tender. No Man can tell here whose Conscience is crazy and tender: Conscience is a thing betwixt God and Man only; and they that lay nothing upon their Consciences to prove their Integrity, they had as good say nothing before a Judge: For though we have a Law of Conscience in *England*, yet that Law is judged by Rules: and therefore he, whoever he be, that pretends Conscience, there are so many Consciences as there are Men; and no Men have Power to judge of it, but God. But, Sir, for that cause that he would not for his tender Conscience we did set a Fine of 500*l.* upon him, and sentenced him to the *Fleet* till he paid it. We call not this terrifying, neither doth the Law; nor any Reward, Favour, or Affection for the Discovery of a Traitor, is no illegal Act; this we told you before, but you must have it again, and again, and again; so that you may delay, no time shall be omitted by you.

Mr. *Love*. I have but a few words more: Your Lordship was pleased to say, that you could justify promising Rewards to those that would discover, and threatening Punishments to those that would not; but you said, if I could prove promising of Rewards or Threatnings to them that would not testify against me, they should be heard: now I produce not Witnesses in general, that they were promised Favour, or threatened if they would or would not; but I offer to produce Witnesses that can witness against some of the particular Witnesses that said, They should be hang'd, if they did not witness against me: and this, as your Lordship promised, I humbly crave.

Attorn. Gen. Truly, he will not want Suggestions, he hath had his time to prove it; and one Favour I shall beg of the Court, that this your Patience to Mr. *Love*, your just Favour toward him, may be no Precedent hereafter; but for this, when we closed the Evidence Saturday was sevensight for the Commonwealth, he had till Wednesday following to make his Defence. For his Witnesses he offered them, you offered to receive them; he said, he would have none; now he comes to offer: we produce you no new Witness, nor offered nothing since Saturday was sevensight; if we come to Witnesses again, we shall come to an aspersing one another; we shall make it a pretty endless Work: we have done our parts, and followed the Rules of Justice; and Mr. *Love* hath had his full Liberty to justify, to say what he could, and prove what he could for himself; if he neglect his own time, to his own Peril be it; the Court, I hope, will not be guilty of it, to alter the ways of Justice.

Mr. *Love*. I could not compel Witnesses, there was no *Subpœna's*; but they must come when they offer themselves.

Ld. President. You were asked, and you would produce none.

Mr. *Love*. They were not in a Capacity to come, my Lord.

Attorn. Gen. There is nothing resting more to be done, but now all being done (if you please,

my Lord, all being done) for the Issue of the Fact, all his Exceptions to the Impeachments, which are Matters of Law, we are now humbly craving your Judgment upon this Impeachment between the Keepers of the Liberty of *England*, and Master *Love* the Prisoner at the Bar. I now humbly demand your Judgment.

Mr. *Love*. I humbly pray, that since I never saw the Face of this worthy Gentleman till this Morning, and so could have no particular Advice from him, that there might be longer time allowed to this Gentleman, and an Addition of three Gentlemen more, and a Copy of the Charge.

Attorn. Gen. You have had more than ordinary Prisoners have had before, I will assure you, Mr. *Love*.

Ld. President. Mr. *Hale*, you have heard a little opened of our Passages and Proceedings, which you did not before, but every Man else hath lift up his Voice; you have gone over a great deal of the Fact: now for Matter of Law, for that of Misprision, that will rest, I think, in the Judgment of the Court; there is no Misprision laid, but Treason: and I think the Court will find Treason upon the Proofs that are before them; they will not need to have any Argument of Misprision, if the Court think there is sufficient Treason laid, then that Argument, we need not desire more time for that; and if it be Misprision, that the Court shall judge it so, then upon the Matter there is no Charge against him for us to proceed upon; so that by that Charge, I cannot see what you can ground your Argument upon.

Mr. *Hale*. The Charge is not only for Treason, but for Treason and other high Crimes and Misdemeanours.

Attorn. Gen. But not Misprision.

Mr. *Hale*. Though the Word be not in, we think it will reach it.

Ld. President. It will not indeed.

Attorn. Gen. We insist upon it for the Commonwealth, for the Charge is as it is laid.

Ld. President. For the two next, so I told Mr. *Love* before, and he spent two Hours at the least in recapitulating the Evidence of the State, not any thing of his own, for he gave no Witnesses; but he did go over the whole Evidence of the State from Point to Point, and made, I think, himself (as he said) the Exceptions that were made against them: these he went over, though we might have shut him up at the first. For him to sum up that which was the Duty of the Court, when he had no Evidence, to sum up the Evidence of the State, which we might not have let him: but this he did; and it is our part to examine the Evidences, and the Nature of them, and what the Nature of the Thing is, and how many Witnesses are to every Point; whether there be two Witnesses to a Point or no, cannot fall under Dispute of Law, it is Matter of Fact.

Mr. *Hale*. It is true, we are here only to do that Duty which your Lordship enjoins us to, my Lord. It is true, for us to dispute whether this Evidence proveth such a thing or no; haply it may not belong to us to do that. But thus far, if your Lordship think fit, this may haply be allowable (with Submission to the Court, that is, Whether, if the Proofs be admitted, this Man positively proves thus, the other Man proves

proves positively thus; whether that these two Proofs do make a Proof of one Act? Haply (if your Lordship shall think so fit) there may be somewhat of Law in that; that is, whether it make a double Testimony within the Statute of *Primo* and *Quinto*. For (with Submission to your Lordship) the Statute of *Primo* and *Quinto* is not repealed as to point of Testimony; it is repealed as to the Place from whence the Trial is to come, but not in point of Witnesses; therein it may come in, questionless, if your Lordship shall think fit. But truly, I have not seen one word of the Evidence from the Beginning to the End: and if so be that any Matter should rise, that the Court should think fit as well as proper for me to offer in the Defence of this Gentleman, I must profess I cannot, unless I had seen the things; for I have not seen one word.

Ld President. For seeing the Evidence further than Memory, you, nor no Man else ought to know, tho we have given you leave to write; and therefore tho we have given leave to take notice of them, yet that is more than ever any Court did, or we need to have done, but only to trust to their own Memories. But in that you speak of now, for you to have Day to argue, when you are not able to say, nor we neither, that there is any such thing; did you ever hear such a thing, to pray Day to argue, that you do not know positively it is so?

Attorn Gen. We have spent a great deal of time, and all that can be said, will be to run a round; what is to be done, is your own Consultation among your selves.

Ld President. Withdraw your Prisoner.

Mr. Love. I beseech you, allow me time for Counsel.

The Court adjourns.

The Sixth Day's Proceedings, July the 5th,

1651.

THERE was but little said this Day besides the Sentence. When *Mr. Love* appeared at the Bar, the Attorney-General spake to the Court to this purpose; That there had been much time spent, and *Mr. Love* had had a fair Trial, and therefore he desired the Court to proceed to Sentence. Upon which the Lord President spake to *Mr. Love* to this effect; That he had heard what the Attorney-General desired in the behalf of the Commonwealth; and therefore demanded of *Mr. Love* what he had to say why Sentence should not be pass'd upon him? *Mr. Love* answered, That he had somewhat to say, and desired longer Time, and more Counsel to argue those Matters of Law contained in that Paper that he had formerly given into the Court: But the Court would not yield to him in it. Then *Mr. Love* would have spoken further, but the Lord President told him, he would speak *ad Populum*. *Mr. Love* answered, No, he would speak *ad Magistratum*. But the Court presently overruled him in it, and would not suffer him to speak. Then the Lord President told *Mr. Love*, That he had gone out of his Place and Calling in what he had done. Then speaking something about an Elder, That an Elder was one that was so, either in respect of his Age, or in respect of his Office, with some other things about Presbytery; and when he had done, he commanded

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the Clerk to read the Sentence, which was in this manner: the Clerk read over the whole Charge, beginning thus; *Whereas Christopher Love, the Prisoner at the Bar, stands charged (on the behalf of the Keepers of the Liberties of England, &c.) of High Treason, and other High Crimes and Offences, &c.* [and so he read on as it is in the Charge; and ending thus] *For all which Treasons and traitorous and wicked Practices of him the said Christopher Love, this Court doth adjudge him to suffer the Pains of Death, by having his Head severed from his Body.*

Mr. Love. My Lord, I would speak a word.

Ld President. You cannot be heard now, *Mr. Love*.

Mr. Love. But a word, my Lord, and 'tis this, in the words of the Apostle; *I have received the Sentence of Death in my self, that I should not trust in my self, but in God, which raiseth the Dead.* And, my Lord, though you have condemned me, yet this I can say, that neither God nor my own Conscience doth condemn me.

Mr. Love withdraws, and the Lieutenant of the Tower takes him into custody.

Mr. Love was ordered for Execution the 15th of July, but by the favour of the Parliament it was respited till the 15th of August, and from thence to the 22d, during which time, (it is said) such application was made to *Cromwell*, that he granted him a Pardon, but the Express who brought it from *Cromwell* (then in the North) fell into the hands of some Cavaliers, before he arrived at *London*; and they, considering that *Mr. Love* had been a great Incendiary, and had pursued the King's friends with great violence, detained the Express, till the Execution was over, which was on the said 22d of August.

Mr. Love was then brought from the Tower by the Sheriffs of *London* to the Scaffold on *Tower-hill*, about two a-clock in the Afternoon: The Ministers that accompanied him were *Mr. Ash*, *Mr. Calamy*, and *Mr. Manton*. When he was upon the Scaffold, Sheriff *Titchburn* shewed him the Warrant for his Suffering, telling him, that he took no Pleasure in this Work, but it was a Duty laid upon him.

Mr. Love. I believe it, Sir.

Sheriff *Titchburn*. I have done my Duty for you.

Mr. Love. The Lord bless you.

Lieutenant of the Tower. The Lord strengthen you in this Hour of your Temptation.

Mr. Love. Sir, I bless God, my Heart is in Heaven, I am well. Then turning to Sheriff *Titchburn*, said, May I have the Liberty to speak and pray?

Sheriff *Titchburn*. Yes: But I desire you to consider, we have the other [meaning *Mr. Gibbons*] to execute afterwards, and fix a-clock is our Hour; but we will give you as much time as we can.

Mr. Love. I shall be the briefer. Then he put off his Hat two several times to the People, and spake as followeth:

Beloved Christians,

I AM made this Day a Spectacle unto God, Angels, and Men: And among Men, I am made a Grief to the Godly, a Laughing-stock to the Wicked, and a Gazing-stock to all; yet blessed be God, not a Terror to myself. Altho there be but little between me and Death; yet this bears up my Heart, there is but little between me and Heaven. It comforted *Dr. Taylor* the Martyr, when he was going to Execution, that

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there were but two Stiles between him and his Father's House; there is a lesser Way between me and my Father's House; but two Steps between me and Glory; it is but lying down upon the Block, and I shall ascend upon a Throne. I am this Day sailing towards the Ocean of Eternity, thro a rough Passage to my Haven of Rest; thro a Red Sea to the promised Land. Methinks I hear God say to me as he did to *Moses*, *Go up to Mount Nebo, and die there*: So to me, *Go up to Tower-hill, and die there*. *Isaac* said of himself, that he was old, and yet he knew not the Day of his Death; but I cannot say so, I am young, and yet I know the Day of my Death, and I know the kind of my Death, and the Place of my Death also. I am put to such a kind of Death as two famous Preachers of the Gospel were put to before me, *John* the Baptist, and *Paul* the Apostle, they were both beheaded; you have Mention of the one in Scripture Story, and of the other in Ecclesiastical History. And I read in *Rev. xx. 4*. *The Saints were beheaded for the Word of God, and for the Testimony of Jesus*: But herein is the Disadvantage which I lie under in the Thoughts of many, they judge that I suffer not for the Word of God, or for Conscience, but for meddling with State Matters. To this I shall briefly say, That it is an old Guise of the Devil, to impute the Cause of God's Peoples Sufferings, to be Contrivements against the State, when in Truth it is their Religion and Conscience they are persecuted for: The Rulers of *Israel* would have put *Jeremy* to Death upon a civil Account, tho indeed it was only the Truth of his Prophecy that made the Rulers angry with him; and yet upon a civil Account they pretend he must die, because he fell away to the *Chaldeans*, and would have brought in foreign Forces to invade them: The same thing is laid to my Charge, of which I am as innocent as *Jeremy* was. Yea, I find other Instances in Scripture, wherein the Cause of the Saints Sufferings were still imputed to their meddling with State Matters. *Paul*, tho he did but preach Jesus Christ, yet he must die, if the People might have their Will, under Pretence that he was a Mover of Sedition. Upon a civil Account my Life is pretended to be taken away, whereas indeed it is because I pursue my Covenant, and will not prostitute my Principles and Conscience to the Ambition and Lusts of Men. Beloved, I am this Day making a double Exchange, I am changing a Pulpit for a Scaffold, and a Scaffold for a Throne; and I might add a third, I am changing this numerous Multitude, the Presence of this numerous Multitude on *Tower-hill*, for the innumerable Company of Saints and Angels in Heaven, the holy Hill of *Sion*; and I am changing a Guard of Soldiers for a Guard of Angels, which will receive me, and carry me into *Abraham's Bosom*. This Scaffold is the best Pulpit that ever I preach'd in; in my Church-Pulpit, God thro his Grace made me an Instrument to bring others to Heaven; but in this Pulpit he will bring me to Heaven. These are the last Words that I shall speak in this World, and it may be I shall bring more Glory to God by this one Speech on a Scaffold, than I have done by many Sermons in a Pulpit.

Before I lay down my Neck upon the Block, I shall lay open my Cause unto the People that hear me this Day, that I might not die under all that Obloquy and Reproach that is cast upon me;

and in doing it, I shall avoid all Rancor, all Bitterness of Spirit, Animosity and Revenge; God is my Record, whom I serve in the Spirit; I speak the Truth, and lie not; I do not bring a revengeful Heart unto the Scaffold. This Day, before I came here, upon my bended Knees I have beg'd Mercy for them that denied Mercy to me, and I have prayed God to forgive them who would not forgive me; I have forgiven from my Heart the worst Enemy I have in all the World; and this is the worst that I wish to my Accusers and Prosecutors, who have pursued my Blood, that I might meet their Souls in Heaven.

I shall divide my Speech into three Parts: I shall speak something concerning my Charge, and a Word concerning my Accusers and touching my Judges, without any Animosity at all; and then something concerning my self, for my own Vindication, and then a Word of Exhortation, and so I shall commit my Soul to God.

Concerning my Charge, it is black and hideous, many things falsely suggested, hardly a Line of it true, and nothing Capital sufficiently prov'd against me by any one Act that I am conscious to myself I did. The Charge is high and full, but the Proof empty and low; tho there were eight Witnesses that came in against me, yet none of them did prove that ever I writ any Letter, or directed any Man to write a Letter into *Scotland*, or into foreign Parts; no Man did prove that I sent away any Letter, that I received any Letter, that I collected or gave, or lent any Money to assist or promote the *Scottish* War: This is all that is sworn against me, that I was present where Letters were read, and that I made a Motion for Money to give to *Massey*; so that (Beloved) my Presence at, and Concealment of Letters that were receiv'd and sent from foreign Parts, is that for which I must die.

As concerning my Accusers, I shall not say much; I do forgive them with all my Heart, and I pray God forgive them also. Yet what the Evangelist said concerning Christ's Accusers, I may (without Vanity or Falshood) say of mine, That they did not agree amongst themselves: One Witness swears one thing, and another the quite contrary; yea, not only did they contradict one another, but sometimes a single Witness contradicted himself. And tho their Testimony did condemn my Person, yet I have condemned their Testimony. And truly there are many remarkable Circumstances that I might take notice of, either in, or before, or since the Trial, that might be worthy Observation; but I will not insist upon it, only in the general (for I shall name none of my Accusers) some of them have sent to me, to pray me to forgive them the Wrong they have done me: And one of them hath written to me under his own Hand, to pray me to forgive him the Wrong that he hath done me; and told me withal, that that Day I should die a violent Death, his Life would be no Comfort to him, because he was an Instrument in taking away of mine. Others of the Witnesses were some terrified before they would testify; some were hired, some fined before they would bear Witness against me. But I will be off of this. As concerning my Judges, I will not judge them, and yet I will not justify them: I will say but this of them, I believe that what moved *Herod* to cut off *John* Baptist's Head, that moved them to cut off mine; and that was for his Oath's sake: *Herod*, to avoid Perjury, would

would commit Murder; whereas if *John's* Head had been upon his Shoulders, he would have been guilty of neither.

I have something in the second Place to speak concerning myself, and then I shall come briefly to a Conclusion. Concerning myself, I have gone thro' various Reports; there are many Sons of Slander, whose Mouths are as open Sepulchres, in which they would bury my Name, before my Friends can bury my Body; but my Comfort is, there will be a Resurrection of Names as well as Bodies at the last Day: God will not only wipe off all Tears from my Eyes this Day, but he will also wipe off all Blots and Reproaches from my Name before many Days be over; and tho' my Body will soon rot under Ground, yet my Hope is my Name will not rot above it. I am not ignorant what Calumnies are cast upon me, and more likely to be after I am dead and gone. The very Night before my intended Execution, the last Month, there was an insulting Letter written to me, to tell me, that after my Death there should be something publish'd against me to my Shame. I hope you will have so much Charity as not to believe Reproaches cast upon a dead Man, who will be silent in the Grave, and not able to speak a Word in his own Justification. I am aspersed both as to my Practice, and as to my Principles. I shall begin with the first. There are five Aspersions, as to my Practice, that are laid upon me, That I am a Liar, an Extortioner, an Adulterer, a Murderer, and a turbulent Person: Crimes scandalous in any Man, but much more abominable in a Minister. Now I hope you will believe a dying Man, who dares not look God in the Face with a Lie in his Mouth: I am accus'd of lying, that what I denied before the High Court of Justice, that that afterwards I should confess, or else was proved against me. Now in the Presence of God I tell you, as I would confess nothing that was criminal, so I did deny nothing that was true; and that I may seal it to you with my Blood, the same Protestations I made before the High Court, I shall make briefly now. 1. That I never writ Letter to the King, Queen, Church or State of *Scotland*, or to any particular Person of the *Scotish* Nation, since the Wars began, to this Day. 2. That I never received any Letter writ to me, either from the King, or from the Queen, or from the Church or State of *Scotland*, or from any particular Person of the *Scotish* Nation, since the Wars began, to this Day. 3. That I never collected, gave or lent one Penny of Money, either to the King, Queen, Church or State of *Scotland*, or to any particular Person to send into *Scotland*, to any Person of the *Scotish* Nation, to this Day. It is true, I did confess, tho' it was not prov'd (and haply upon that Ground the Mistake might arise) I did give Money to *Massey*, and I did also write a Letter to him; but he is of the *English*, not of the *Scotish* Nation. That for which I come here, is only for moving for Money for him, and that not upon a military Account, but merely to relieve his personal Necessities, and for being present where Letters were read from him and others. And altho' Man hath condemned me, yet I am so far from thinking that either God or my own Conscience condemns me, as sinning in what I am condemn'd for, that both God and my own Conscience doth acquit me: And what I said at the Bar, when I re-

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ceiv'd my Sentence, that I shall say upon the Scaffold, That for those things for which I am condemned, neither God nor my own Conscience condemns me.

Again, I am accused to be an Extortioner; and this is in the Mouths — I am loth to name them, because I will avoid all Rancor: But I am charged as if I should be a grievous Extortioner, to receive thirty Pounds for the Loan of three hundred Pounds, besides eight Pounds *per Cent.* for Interest, which in the Presence of God, and of you all, I do declare to you, is a most notorious and abominable Falshood.

I am accused likewise to be an Adulterer, and this Report is not in the Mouths of mean Men, but in the Mouths of those that sit at the Stern: As if I were a debauched Person, and were guilty of Uncleaness. Now I tell you, as *Luther* said of himself in another Case, that he was not tempted to Covetousness; so thro' the Grace of God I can say, I have not been tempted in all my Life to Uncleaness. It doth not much grieve me, tho' these Slanders be cast upon me: I know my Betters have been worse accused before me: *Athanafius* was accused by two Harlots, that he had committed Folly with them; and yet the Man was chaste and innocent. *Beza* was charged not only with Drunkenness, but with Lasciviousness also; and many others have been accused with the same, if not with worse Slanders than I have been.

But (that which goeth nearest my Heart) I am accus'd to be a Murderer also; and this is a Charge high indeed; I am charged with the Guilt of all the Blood of *Scotland*; whereas, did I lye under the Guilt of one Drop of Blood, I could not look upon God with so chearful a Countenance, and I could not be fill'd with so peaceable a Heart and Conscience as I have at this Day. I bless my God, I am free from the Blood of all Men: Those who lay this to my Charge, they do to me as *Nero* did to the Christians: He set *Rome* on fire, and then charged the Christians with it: So they put *England* and *Scotland* into a Flame, and yet charge me with the Guilt of that Blood, who have poured forth Tears to God Night and Day, to quench the Burning which these Mens Ambitions and Lusts have kindled: And I would fain know of any Man what Act it is that I have done? Or what is it that was proved in the High Court against me, that makes me guilty of *Scotland's* Blood? Did I ever invite the *Scots* to invade *England*? What Man doth lay that to my Charge? Did I ever encourage the *English* Army to invade *Scotland*? What Action is it that I have done that makes me guilty of that Blood? Indeed this I have done, and this I have, and this I do stand to; I have, as a private Man, prayed unto God many a Day, and kept many a Fast, wherein I have sought God that there might be an Agreement between the King and the *Scots*, upon the Interest of Religion and Terms of the Covenant; Now, by what Consequence can this be strain'd, to charge me with *Scotland's* Blood? For my Part, I was but only at one Meeting where the Question was propos'd (Fasts only excepted) what should be thought fit to be done to promote the Agreement between the King and the *Scots*? and that was moved in my House: And to that End, when there were some things there proposed which they call'd a Commission, or In-

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structions to send to *Holland*; as soon as ever I heard them, I did declare against them. I did declare that it was an Act of high Presumption for private Persons to commissionate; an Act of notorious Falshood, to say it was in the Name of the *Presbyterian* Party, when none knew of it (that I know of) but only those few then present. Now this is only a political Engine to make the *Presbyterian* Party odious, who are the best Friends to a well-order'd Government, of any sort of People in the World.

I am accused likewise to be a Man of a turbulent Spirit, to be an Enemy to the Peace and Quiet of the Nation. Now, as to this, let my Congregation and my Domestical Relations judge for me, whether I am not a Man that would fain have lived quiet in the Land: I am as *Jeremy* was, *born a Man of Contention*; not actively; I contend, I strive with none: But passively, many strive and contend with me. God is my Witness, my Judgment hath put me upon endeavouring after all honourable and just Ways for Peace and Love among the Godly. The Grief of my Heart hath been for the Divisions, and the Desire of my Soul for an Union among God's People. But when I speak of an Union, I would not be misunderstood, I do not mean a State Union, to engage to the present Power, that is against my Principles; that is to say, *A Confederacy with them that say, A Confederacy*: That is rather a Combination, than a Gospel Union: O join not with them, lest ye be consumed in their Sins; they who get Power into their Hands by Policy, and use it with Cruelty, will lose it with Ignominy. It was said of Pope *Boniface*, He did enter into the Popedom like a Fox, reign'd like a Lion, but died like a Dog. Beloved, the Union for which I plead, is a Church Union; to wit, Love among the Godly; for this the Desires of my Soul have ever been, that those that fear God might walk Hand in Hand in the Fellowship of the Gospel, both in Truth and Love: If this Union be not, I am afraid, through our Divisions, a Company of loose Libertines will arise, who will endeavour not only to overthrow the Doctrine of Faith, and the Power of Godliness, but even good Manners also. I remember an Observation of holy *Greenham's*, giving his Judgment upon the State of *England*, saith he, *There is great Fear that Popery is coming into England, and I fear it too; But (says he) I fear more the coming in of Atheism into England than the coming in of Popery*; and truly, that is my Fear also. Thus as to my Practice: A Word now as to my Principles.

I am accus'd to be an Apostate, to be a Turncoat, to be this, to be that, to be any thing but what I am: In the general, I will tell you, I bless my God, a High-Court, a long Sword, a bloody Scaffold, have not made me in the least to alter my Principles, or to wrong my Conscience: And that I might discover to you my Principles, I hope I shall do it with Freedom; I will irritate and provoke none; what I shall say, shall not be an Irritation or Provocation of others, at least not intended by me; but only as a genuine and clear Manifestation of my own Principles how they stand.

First then, my Principles, as to Civil and Religious Affairs, I do declare that I die with my Judgment set against Malignity, I do hate both Name and Thing; I still retain as vehement a

Detestation of a Malignant Interest as ever I did; yet I would not be misunderstood: I do not understand, nor count the godly Party, our covenanting Brethren in *Scotland*, to be a Malignant Party; nor the *Scots* defending their Nation and Title of their King to be a Malignant Interest, but an honest and justifiable Cause.

Secondly, Tho I am against Malignity, yet I am not against, but for a regulated Monarchy; a mixt Monarchy, such as ours is, I judge to be the best Government in the World: I did, it's true, in my Place and Calling, oppose the Forces of the late King, but I was never against the Office; I am not only against Court-Parasites, who would screw up Monarchy into Tyranny, but against those who pull down Monarchy to bring in Anarchy.

Thirdly, I was never for putting the King to death, whose Person I did promise in my Covenant to preserve: It is true, I did in my Place and Calling oppose his Forces, but I did never endeavour to destroy his Person. There is a Scandal rais'd of me, that in a Sermon at *Windsor* I should have these Words, that *It would never be well with England, till the King were let blood in the Neck-vein*; which Speech I utterly detest, professing, as a dying Man, in the presence of God and of you all, I never spake such Words, as relating to him: Tho my Judgment was for bringing Malignants, who did seduce him and draw him from his Parliament, to condign Punishment; yet I deem'd it an ill way to cure the Body-Politic, by cutting off the political Head.

Fourthly, I die with my Judgment absolutely set against the Engagement; I pray God forgive them that impose and subscribe it, and preserve those that refuse it.

Fifthly, I would not in the next place be look'd upon, now I am a dying Man, as a Man owning this present Government; I die with my Judgment against it: It is true, in a Case of Life, I did petition the present Power, and did give them the Titles they take to themselves, and that others give them; but herein I did not wrong nor thwart my Principles; there are many Instances in Scripture to justify this: *Hushai* did give the Title of King to *Absalom*, tho *Absalom* had no Right to that Title; for *David* was the lawful King: And *David* himself gave him that Title as well as *Hushai*. And *Calvin* he gave the Title to the French King, calling him *the most Christian King*, yet we know he was a Papist: And we give a Title to King *Henry VIII.* and call him *the Defender of the Faith*, and yet he had no Right to that Title; for he was an Opposer, not a Defender of the Faith; that Title was given him upon an evil ground, because he opposed the Faith; he opposed the Doctrine of *Luther*, therefore the Pope gave them that Title, *The Defender of the Faith*; and yet none did scruple to give him that Title that was then commonly given him.

Sixthly, In the next place (I discover my Judgment, I provoke none, only tell you what my own Thoughts are, that so after I am dead and gone, I might not be belied, for I dare not now bely my Principles) my Judgment is against the Invasion of the *Scottish* Nation by the *English* Army. They, who gave us a friendly Assistance, who are joyned with us in the same Covenant, who drew a Sword with us in the same Quarrel, should I live a Thousand Years, I should never draw
Sword

Sword against them; but the *English* Army have forgot the Brotherly Covenant: So that *Scotland* may say as *Edom*, *The Men of my Confederacy, who were at Peace with me, have risen up and prevailed against me*: Because *Scotland* will not be a Commonwealth, they shall not be a People; because they will not break Covenant, some Men would have them broken; because they will not lay their Consciences waste, their Land must be laid waste.

Lastly, And so I have done, (only with a Word of Exhortation) I die cleaving to all those Oaths, Vows, Covenants, and Protestations that were imposed by the two Houses of Parliament, as owning them, and dying with my Judgment for them; to the Protestation, the Vow and Covenant, the Solemn League and Covenant. And this I tell you all, I had rather die a Covenant-keeper, than live a Covenant-breaker.

I am now come to the third and last part of my Speech, and so I shall have done, and commit my Soul to God who gave it. My Exhortation first shall be to this great City, unto the godly Ministry of it; and unto my own Congregation, from whom Death parts me, which nothing else could.

To the City I wish an Affluence and Confluence of all Blessings upon it; and yet I fear grey Hairs, as the sad Symptoms of a Declension, are here and there upon *London*, and yet she knows it not. O *London, London*, God is staining the Pride of all thy Glory. Thy Glory is flying away like a Bird; Contempt of the Ministry, Opposition against Reformation, general Apostacy, Covenant-breaking have brought *London* low, and I fear will yet bring it lower; I tremble to think what Evils are coming upon it: This City it is the Receptacle of all Errors; that as your Commodities are vented and spread from hence into every Corner of the Land, so have Heresies and Blasphemies had their first Rise from this great and populous City, and from hence are spread into all Countries.

To the Inhabitants of this City I commend but these few Particulars: First let me beg you to love your painful and your godly Ministers: If they be taken away, you are like to have worse come in their rooms. I know the Presbyterian Ministers are the great Eye-sore, who have formerly been counted the Chariots and Horsemen of *Israel*: But I will say of *London* (as was said of *Leyden*, *That after Junius, an Orthodox Minister, was taken away, Arminius, that pestilent Heretick, came in his room.*) If your godly Ministers (and there have been Ten already at one blow taken from you) if they be taken away, *Arminians, Anabaptists, nay Jesuits*, are likely to supply their rooms, if God in Mercy prevent not. 2. Submit your selves to Church-Government; that would lay a Curb and Restraint upon your Lusts: It is a golden and easie Yoak, to which if you do not submit, God may lay a heavy and an iron Yoak upon your Necks. 3. Take heed of those Doctrines that come under the Notion of *New Light*: Those Doctrines you ought to suspect, whether true, which the Broachers of them say are new; for Truth is as old as the Bible. A remarkable Passage I would suggest unto you, in *Deut. xxxii. vers. 17*. It is said there, *They chose them new Gods that were newly come up; and what were these new Gods? The next Words tell you, they were old Devils; for they sacrificed to*

Devils, and not to God: Now their sacrificing to old Devils is call'd a *sacrificing* (to deceive the People) to new Gods, that were newly come up; yet their new Gods were but old Devils. Why, so I say, tho' many things go under the notion of *new Light*, yet they are but old Darknes, old Heresies rak'd out of the Dunghil, and which were buried in former Ages of the Church, with Contempt and Reproach, many Hundred Years ago. 4. Bewail your great Loss which you have, in the taking away of so many Ministers out of your City; there are Ten Ministers (if I mistake not) that have been taken away and remov'd at one Blow, who were burning and shining Lights in their several Candlesticks, and bright Stars in their several Orbs; tho' I am not worthy of the World, and therefore am taken out of it; yet, as for my suffering Brethren, who are now in Bonds and Banishment, the World is not worthy of them. 5. Again, in the next place, take heed of engaging in a War against your Brethren of the *Scottish* Nation: For my part, I have oppos'd the Tyranny of a King, but I never oppos'd the Title. — Take heed what you do.

I have something in the next place to speak to the godly Ministry of this City: Were it not that I am a dying Man, I would not speak to such reverend and grave Men; I would say as *Elihu* did (being but a young Man) *Multitude of Years should teach Wisdom*, and I would hold my Tongue; but the Words of a dying Man take, whether they be discreet or no; or so well order'd or manag'd, or no; as to them, I would first desire God to shew them Mercy, who have beg'd Mercy for me; now at the Day of my Death I would beg but this of them, that as they have not been asham'd of my Chain, so they would now wax confident by my Bonds, and by my Blood. I know they are malign'd and threatened, yet my Prayer for them is that in *Acts iv. 29*. *And now, O Lord, behold their Threatnings, and grant that thy Servants may preach thy Word with all Boldness*. Tho I am but young, yet I will offer my young Experience to my grave Fathers and Brethren, and that is this; Now I am to die, I have abundance of Peace in my own Conscience, that I have set my self against the Sins and Apostacies of this present Age. It is true, my Faithfulness hath procur'd me Ill-will from Men, but it hath purchas'd me Peace with God: I have liv'd in Peace, and I shall die in Peace: That which I have to beseech of the Ministers is this, to beg them to keep up Church-Government; whatever God doth with the Governments of the World, turning Kingdoms upside down, yet the Government of the Church shall stand; and of all Governments, I die with this Persuasion, that the Presbyterian Government makes most for Purity and Unity throughout the Churches of the Saints. I would beg them therefore to keep up Church-Government, that they would not let their Elderships fall, that they would take heed of too general Admissions to the Lord's Supper, that they be not too prodigal of the Blood of Christ, by too general Admissions of Men to the Supper of the Lord, that sealing Ordinance. And now I am speaking to them, I shall speak a Word of them, and so I have done: I have heard many Clamours since I came to Prison, as if all the City-Ministers were engag'd in the Plot (as 'tis call'd) that I am condemn'd

demn'd for: Now, as a dying Man, I tell you, that all the Ministers that were present at the Meetings, and had a hand in the Business for which I am to be put to death, are either in Prison, or they are discover'd already; and therefore I do here, upon my Death, free the Ministers of the City, who are not yet in Trouble, nor discover'd to the Committee of Examinations; none of them had a hand in the Business in which I was engaged; in which my Conscience tells me, I have not sin'd. I have done immediately, for I would fain be at my Father's House.

I have but a Word to speak to my own Congregation; I return Praises unto God, and Thankfulness to them, for the Love I have had from them; I found them a solid, judicious, and many of them a religious People: The Ministry of that learned Man, Mr. *Anth. Burgess*, did much good amongst them; tho' I have cause to be humbled, that my weak Ministry did but little. They afforded me a great deal of Love, and a liberal Maintenance; and this is all I desire of them, that they would chuse a godly, learned, and orthodox Minister to succeed, such an one as may keep up and carry on Church-Government: It would be a great Comfort to me before I go to Heaven, if I had but this Persuasion, that a learned, orthodox, godly Man should fill that Pulpit. And for Encouragement to any godly Minister whose Lot may be to succeed me, I will say this, that he will have as comfortable a Livelihood, and as loving a People, as are any People in *London*, a few only excepted: I had as much Satisfaction among them as ever I had in any Condition in all my Life, and should never have parted from them, had not Death now parted us; to which I do submit with all Christian Meekness and Chearfulness. I am now drawing to an end of my Speech, and to an end of my Life together; but before I do expire my last Breath, I shall desire to justify God, and to condemn my self in all that is brought upon me. Here I come to that which you call an untimely End, and a shameful Death; but (blessed be God) it is my Glory, and it is my Comfort: I shall justify God, he is righteous, because I have sinned; he is righteous, tho he cut me off in the midst of my Days, and in the midst of my Ministry: I cannot complain that Complaint in *Psalms* xlv. 12. *Thou sellest thy people for nought, and dost not encrease thy wealth by their Price.* My Blood it shall not be spilt for nought; I may do more good by my Death, than by my Life, and glorify God more in dying upon a Scaffold, than if I had died of a Disease upon my Bed. I bless my God, I have not the least Trouble upon my Spirit; but I do with as much Quietness of Mind lie down (I hope I shall) upon the Block, as if I were going to lie down upon my Bed to take my Rest. If Men hunger after my Flesh, and thirst after my Blood, let them have it, it will hasten my Happiness, and their Ruine, and greaten their Guiltiness: Tho I am a Man of an obscure Family, of mean Parentage, so that my Blood is not as the Blood of Nobles, yet I will say it is a Christian's Blood, a Minister's Blood, yea, it is innocent Blood also: My Body, my dead Body, it will be a Morsel, which I believe will hardly be digested, and my Blood it will be bad Food for this Infant-Commonwealth (as Mr. *Prideaux* call'd it) to suck upon:

Mine is not malignant Blood, tho here I am brought as a grievous and notorious Offender. Now, Beloved, I shall not only justify God (as I do without a Compliment; for he were very just, if my Prison had been Hell, and this Scaffold the bottomless Pit; I have deserved both; so that I do not only justify God) but I desire this Day to magnify God, to magnify the Riches of his glorious Grace, that such an one as I, born in an obscure Country (in *Wales*) of obscure Parents, that God should look upon me, and single me out from amongst all my Kindred, to be an Object of his everlasting Love; that when as the first Fourteen Years of my Life I never heard a Sermon, yet in the Fifteenth Year of my Life God (through his Grace) did convert me. And here I speak it without Vanity (for what should a dying Man be proud of?) tho I am accus'd of many scandalous Evils, yet (I speak to the Praise and Glory of my God) for these Twenty Years God hath kept me, that I have not fallen into any scandalous Sin; I have labour'd to keep a good Conscience from my Youth up, and I magnify his Grace, that he hath not only made me a Christian, but a Minister, and judg'd me faithful to put me into the Ministry: And tho the Office be trodden upon and disgraced, yet it is my Glory that I die a despised Minister; I had rather be a Preacher in a Pulpit, than a Prince upon a Throne; I had rather be an Instrument to bring Souls to Heaven, than to have all the Nations bring in Tribute to me: I am not only a Christian and a Preacher, but whatever Men judge, I am a Martyr too, I speak it without Vanity; would I have renounc'd my Covenant, and debauch'd my Conscience, and ventur'd my Soul, there might have been hopes of saving my Life, that I should not have come to this place; but blessed be my God, I have made the best Choice, I have chosen Affliction rather than Sin, and therefore welcome Scaffold, and welcome Ax, and welcome Block, and welcome Death, and welcome All, because it will send me to my Father's House: I have great cause to magnify God's Grace, that he hath stood by me during mine Imprisonment; it hath been a Time of no little Temptation to me, yet (blessed be his Grace) he hath stood by me and strengthened me; I magnify his Grace, that tho' now I come to die a violent Death, yet that Death is not a Terror to me; through the Blood of sprinkling, the Fear of Death is taken out of my Heart; God is not a Terror to me, therefore Death is not dreadful to me; I bless my God, I speak it without Vanity, I have formerly had more Fear in the drawing of a Tooth, than now I have at the cutting off my Head: I was for some Five or Six Years under a Spirit of Bondage, and did fear Death exceedingly; but when the Fear of Death was upon me, Death was not near me; but now Death is near me, the Fear of it is far from me: And blessed be my Saviour, that hath the Sting of Death in his own Sides, and so makes the Grave a Bed of Rest to me, and makes Death (the last Enemy) to be a Friend, tho' he be a grim Friend. Further, I bless my God, that tho Men have judg'd me to be cast out of the World, yet that God hath not cast me out of the Hearts and Prayers of his People; I had rather be cast out of the World, than cast out of the Hearts of godly Men. Some think me (it is true) not worthy

worthy to live; and yet others judge I do not deserve to die: But God will judge all, I will judge no Man.

I have now done, I have no more to say, but to desire the Help of all your Prayers, that God would give me the Continuance and Supply of divine Grace to carry me through this great Work that I am now about: That as I am to do a Work I never did, so I may have a Strength I never had: That I may put off this Body with as much Quietness and Comfort of Mind, as ever I put off my Cloaths to go to Bed: And now I am to commend my Soul to God, and to receive my fatal Blow, I am comforted in this, *Tho' Men kill me, they cannot damn me; and tho' they thrust me out of the World, yet they cannot shut me out of Heaven.* I am now going to my long Home, and you are going to your short Homes; but I will tell you, I shall be at Home before you; I shall be at my Father's House, before you will be at your own Houses: I am now going to the Heavenly Jerusalem, to the innumerable Company of Angels, to Jesus the Mediator of the new Covenant, to the Spirits of just Men made perfect, and to God the Judge of all, *In whose Presence there is Fulness of Joy, and at whose Right Hand are Pleasures for evermore.* I conclude with the Speech of the Apostle, 2 Tim. iv. 6, 7. *I am now to be offer'd up, and the Time of my Departure is at hand; I have finish'd my course, I have fought the good Fight, I have kept the Faith, henceforth there is a Crown of Righteousness laid up for me; and not for me only, but for all them that love the appearing of our Lord Jesus Christ, through whose Blood, when my Blood is shed, I expect Remission of Sins and eternal Salvation.* And so the Lord blefs you all.

Then turning to the Sheriff, he said, May I pray?

Sheriff Titchburn. Yes, but consider the Time.

Mr. Love. I have done, Sir. Then turning to the People, he said, Beloved, I will but pray a little while with you, to commend my Soul to God, and I have done. After which he pray'd with an audible Voice.

His Prayers being ended, Mr. Ash said, *You make a Christian End, I hope.*

Mr. Love. *Ay, I bless God.*

Then turning to Mr. Sheriff Titchburn, he said, *I thank you for this Kindness, you have express'd a great deal of Kindness for me.* Well, I go from a Block to the Bosom of my Saviour.

Mr. Love. *Where is the Executioner?*

When the Executioner came forward, he said, *Art thou the Officer?*

Executioner. Yes.

Mr. Love. (Lifting up his Eyes) *O blessed Jesus, that hath kept me from the Hurt of Death. O blessed be God! blessed be God!*

Then taking leave of the Ministers, he said, *The Lord be with you all.*

And taking leave of Sheriff Titchburn, he kissed his Hand; then kneeling down, he made a short Prayer privately.

Rising up he said, *Blessed be God, * I am full of Joy and Peace in believing: I lie down with a World of Comfort; as if I were to lie down in my Bed: My Bed is but a short Sleep, and this Death is a long Sleep, where I shall rest in Abraham's Bosom, and in the Embraces of the Lord Jesus.*

And then saying, *The Lord blefs you,* he laid himself down upon the Scaffold with his Head over the Block; and, when he stretched forth his Hands, the Executioner cut off his Head at one blow.



XLVII. The Trial of Mr. JOHN GIBBONS, before the High Court of Justice, for High-Treason, July 18, 1651. 3 Car. II.

POTTER and Gibbons were both brought to the Bar together.

Potter's Charge was first read, unto which he pleaded Guilty, and made a large Narrative of all his Crimes against the State: very much was he examined against Master Gibbons, but no hurt at all he did him. After they had done with him, the Charge of Master Gibbons was read, which when he heard, he spake in this manner.

Gibbons. My Lord, this Charge is very new to me; I have been a Prisoner under close Imprisonment for many Weeks together, and ne-

ver knew before this time what it was, in particular, that was laid to my Charge: And now I do hear my particular Accusation, it is so strange to me, that I do not know what to say to it at the first hearing; therefore I humbly beseech your Lordship, that I may hear it read again.

* Attorney-General. My Lord, * Mr. Prideaux. Master Gibbons heard Potter's Charge read, which was very like to his own; so he hath heard it twice already: however, my Lord, he may hear it read again; for he may hear it thrice.

Keble.

Keble. Come let him hear it again, he is a young Man, let him have what Favour he may have: mark it well, now you hear it again.

After reading, Master Gibbons spake in this manner:

Gibbons. My Lord, I am brought hither by an Order of this Court, which Order mentions a Charge of Treason exhibited against me; I should betray the Liberty I am born unto, if I should not desire a Trial, according to the Fundamental Laws of this Nation, which is by a Jury of my Neighbourhood: the Benefits and Advantages are exceeding great, therefore I do earnestly crave to have them.

Keble. The State hath thought of another way of Trial, which you must have, and submit to; this is best for your Advantage, and more honourable, than any other you can have; therefore you must plead Guilty, or Not Guilty.

Gibbons. My Lord, I shall never be so prodigal of my Blood, as to throw away my Life by refusing a Trial before you, though I am not satisfied in this new way of Trial; yet I shall not refuse to plead in Confidence of my own Innocency, and in hope of your Tenderness in Matters of Blood. But before I plead, and answer to my Charge, I have this humble Motion to make.

Here he spake very much on the first Day of his Trial, moving very much for Counsel; but after he had used many Arguments to persuade the Court to incline to it, and could not have it, he desired the Court to be the Counsel for him, and take care of his Life, and not suffer him by his own Ignorance to weave a Web for his own Ruin and Destruction. After much said of this nature, he pleaded Not Guilty: the which being entred in the Book, they proceeded to the Trial.

Attorn. Gen. The Attorney-General began with a long Speech, how Master Gibbons had plotted and contrived these Treasons; named the Meetings and the Places, where he said it began presently after the late King's Death, under the pretence of getting the King to Scotland, but the Truth was, they intended to settle him upon this Commonwealth. And further, That he the said John Gibbons, as a false Traitor, and out of a malicious and wicked Purpose and Design to raise Insurrections in this Nation, did several Days and Times in the Years 1648, 49, 50, and 51, and at divers other Times and Places within this Commonwealth, together with *Christopher Love, Piercy, Jermin, Maffer*, &c. and other their Complices, being false Traitors to this Commonwealth, traitorously, maliciously complot, contrive and endeavour to raise Forces against this Commonwealth, settled in way of a Free State, without King or House of Lords: and for the Subversion of the same, did raise and collect divers great Sums of Money, and did hold Intelligence by Letters, Messages and Instructions, with *Charles Stuart*, Son of the late King, and with the Queen his Mother, and divers other Persons, being false Traitors to this Commonwealth.

And further, he the said John Gibbons, together with *Christopher Love, William Drake, Piercy, Jermin*, &c. and other their Complices, since the Death of the late King, several Days and Times in the Years aforesaid, within this Commonwealth of England, and elsewhere, did traitorously and maliciously declare, publish, and

promote *Charles Stuart*, Son of the late King, commonly called the Prince of Wales, to be King of England, meaning of this Commonwealth.

And further, to carry on the said Design, he the said John Gibbons several Days and Times in the respective Years aforesaid, together with *Christopher Love, William Drake, Piercy*, &c. did endeavour to procure the Scots to invade this Commonwealth of England.

And further, That he the said John Gibbons on the 6th of April 1650, and on divers other Days and Times between the 20th Day of March 1650, and the first Day of June 1651, at London, and elsewhere, did give, use, and hold Correspondence with the said *Charles Stuart*, Son of the late King, and the Queen his Mother, *Jermin, Piercy*, &c.

And further, to accomplish the said Designs, he the said John Gibbons, on the 6th Day of April 1651, at the Places afore-mentioned, did hold and give Correspondence and Intelligence with divers Persons of the Scottish Nation, as *Argyle, Lowdon, Lothian*, &c. Enemies to this Commonwealth, and adhering to the King in the War against them.

And further, the said John Gibbons did traitorously and maliciously abet, assist, countenance, and encourage the Scottish Nation, and divers other Persons adhering to them; and did convey great Sums of Money, Arms, and Ammunition into Scotland, and elsewhere. All which wicked Practices and Designs of him the said John Gibbons were against this Commonwealth, Parliament, and People; and in manifest Contempt of the Laws of this Nation and Acts of Parliament, in such Cases made and provided.

[After he had ended, the Witnesses were called: The first was Major Adams; the second Colonel Barton; the third was Captain Hatsell; the fourth Colonel Baines; the fifth Major Alford; the sixth Captain Far; the seventh was Master Jaquel; the eighth was Major Huntington; the ninth Master Harvey; the tenth was Major Corbet. Adams being first examined, his Testimony was to this effect.]

Adams's Testimony.

That the Correspondency of John Gibbons with the rest aforesaid, was to endeavour an Agreement between the King and the Scots. The first Meeting was at the Swan in Fish-Street, where Master Gibbons was. At that Place there was only a Consideration how to carry on the Correspondency. There was also a Petition to be sent to the King, (as I was informed;) and the Meeting in this Place was in reference to that also. There was Letters written to Scotland, and some received thence; which Mr. Gibbons was privy to.

After Master Drake went away, we met at Master Love's House, where Master Gibbons met also. There were Letters read; and I think Master Gibbons did hear them, and did confer about them. The Letter sent to *Jermin, Piercy*, &c. at one time or other Master Gibbons was present, and heard them read. This was before Titus's going away.

Then

Then after there were Letters sent from the King, which were read at Master *Love's* House; where Master *Gibbons* was present, and heard them read. Master *Gibbons* brought likewise a rough Draught of the Instructions that were to go to *Holland*.

Also there was a Letter read at Mr. *Love's* from Alderman *Bunce*, where Master *Gibbons* was present. Also a Letter after *Dunbar* Fight from *Scotland*, relating how Affairs stood there, (and that Letter, as I remember, was for Arms and Money) was read at Master *Love's* House; where Master *Gibbons* was present at the reading of it.

Master *Gibbons* was a constant Man at all Meetings.

A Letter was sent from *Massej*, read at Master *Love's*, for Arms and Money: Master *Gibbons* was present. And three or four hundred Pounds agreed to be sent.

A Letter was written to the Estates of *Scotland*, to procure *Massej* and the *English* to be in esteem.

Master *Gibbons* sometimes acquainted me where we were to meet.

Lieutenant-Colonel Baines's Testimony.

A little while after the Death of the late King, there was a Meeting at the *Swan* at *Dowgate*, where several Persons were: But whether Mr. *Gibbons* was there, I know not. But Captain *Titus* was there, and gave a large Commendation of the young Prince; and moved that a Petition might be drawn up, and sent to the Prince from the Presbyterian Party here. There was a Debate upon it; and this Design was looked upon as the only visible Way to preserve the Presbyterian Party, and to bring the Prince to the Crown.

Colonel Barton's Testimony.

A while after the Death of the late King I was going into *Cannon-Street*, and at *Dowgate* I met with *William Drake*, who desired me to meet him at the *Swan* at *Dowgate*. When I came there, I found Captain *Titus*, Lieutenant-Colonel *Baines*, and divers other Persons: I believe Mr. *Gibbons* was not there. I came in while they were in discourse, and I could not well hear them. But at their rising, I asked Mr. *Drake* what was the occasion of their Meeting; and he told me that Captain *Titus* had given a good Report of the Prince, and did desire that some Addresses might be made to him, that thereby he might be taken off from his Cavaliering Counsellors.

After a while *William Drake* came to me for 10*l.* which he said was to furnish a Friend of his which did want 100*l.* He desired I would not deny him; and because he was a good Customer to my House, I did lend it him. And after I heard it was for Captain *Titus*. As for the Prisoner, I think he was not at the *Swan* at *Dowgate*; for I did not know him till afterwards.

Major Alford's Testimony.

At the Meeting at the *Swan* at *Dowgate*, where divers were, Captain *Titus* made a large Narration of the Prince's Deportment, declaring how inclinable he was to cast off his Cavaliering Adherents, if he were but assured there was a Peo-

ple in *England* that stuck to their Covenant; he was weary of his other Counsels, and was ready to apply himself to the Ends of the Covenant.

A Petition was brought to the *Bear* in *Bread-street*, where it was read, and debated among us, and agreed to be drawn up; and Captain *Titus* and *Drake* were sent away with it.

I do not remember that Master *Gibbons* was at either of these Meetings.

There was Money raised for *Titus*: *Drake* had 10*l.* of me; he had it in private. Captain *Titus* had 30*l.* for his Journey. He went over twice, I think; and if so, the second time Master *Gibbons* was there. The second time I saw Master *Gibbons*, he brought me to his Chamber; and the third time he and I went with some Papers to *Gravesend*, agreed on at Master *Love's*. These Papers were either a Commission, or Instructions, or both together in one. But this was the Substance, That the Lord *Willoughby*, and others, should go to the Treaty at *Breda*, and to press the King concerning this Agreement with *Scotland*.

Master *Gibbons* was at Master *Love's* House when the Commission and Instructions were agreed upon. He and I went to *Gravesend*; and (I think) he carried the Papers. But of this I am sure, That he knew the end of our going. We tarried there all Night; and delivered the Papers to Mr. *Mason*.

I did go to *Calais* when I came back; but I do not know whether the Papers that I brought over (being read at Master *Love's* House) were read all at one time, or not: If they were, then Master *Gibbons* was there.

I was present when the Letters came, after *Dunbar* Fight, at Mr. *Love's*. The Letters came from Colonel *Massej*: They gave an Account of the Fight there, and of the State of Affairs; and withal, writ for Money and Arms, to be sent by way of *Holland*. I cannot say Mr. *Gibbons* was present. There was Money agreed upon there to be raised for *Massej* and *Titus*. Mr. *Gibbons* was many times at the *Swan* at *Dowgate*; he was constant at the Club. But after Mr. *Drake* fled, we did take in other Men into the Club: Mr. *Gibbons* was as little absent as any Man.

Mr. *Gibbons* did put me upon it, to shew Friendship to Mr. *Mason*; and he gave me this Reason, That so Mr. *Mason* might represent our good Affections to the King: And Mr. *Gibbons* did desire me to defray the Charges of that Night's Expences at *Gravesend*; where Mr. *Mason* was telling me, That if I were not allowed it by our Friends, he would do it.

Master Harvey's Testimony.

I came to the Knowledge of this Design at several Meetings and Places. Mr. *Gibbons* told me of 2000*l.* which was to be sent into *Scotland*; and that *Massej* was to land Forces in the *West*: And concerning my Lord General's Soldiers, that many of them were run away: And concerning the Trained Bands of the *North*, he said they waited but for one Blow to be given in *Scotland*. He told me also of a Town that was to be delivered.

Major Huntington's Testimony.

The first that made me acquainted with this Design was Mr. *Gibbons*; who told me, That

if I would come to Mr. *Love's* House, I should hear the News. I went to Mr. *Love's*: And when I came there, that which I heard was a Paper sent from *Maffey*, *Graves*, and *Titus*, brought by *Drake*, and read by him. Mr. *Gibbons* was there then: There was many more there in Mr. *Love's* Closet; but I cannot say well who they were.

[The Testimonies of the rest of the Witnesses could not be well heard; neither can they be had, the Books being so close kept.]

[After all was ended, Mr. *Keble* desired Master *Gibbons* to speak for himself.]

Gibbons. My Lord, I have now stood here near five Hours, and am both spent in my Body and Spirit; and that I am as unable in Body to speak for my self, as I am disabled to make my Defence without the Court grant me Time, a Copy of my Charge, the Depositions of the Witnesses, and assign me Counsel. And therefore, before I plead or answer to my Charge, I have this humble Motion to make, (I being a Man altogether ignorant and unacquainted with the Laws) That this Court would be pleased, as I said before, to assign me Counsel to advise me in my Chamber, and to plead for me in the Court; and that your Lordship and this Court would be pleased to give me a Copy of my Charge, and to assign me a Solicitor, to solicit my Business for me.

Keble. Mr. *Gibbons*, you must proceed to make some general Defence for the present.

Gibbons. My Lord, I hope you will do as God use to do, allow some grains of Allowance, that a Man that hath nothing but Weakness and Ignorance may help himself.

Upon this Motion the Court adjourn'd, and Mr. *Gibbons* was taken away by the Keeper of *Newgate*; and thereafter came a Warrant to bring him to the Bar the Wednesday following.

In the mean time there were several Friends that went to mediate and speak for him to the Judge, who did lay out his Simplicity and Innocency, labouring what they could for the saving of his Life. The Judge answered, That he was not so simple as he was set out by them; and that he doubted not but he was a Servant to greater Persons, who had imployed him: But if he would be ingenuous, and discover the Parties that were in that Design, he would labour to save his Life, and do him good; but if he would not confess, he could not help him. Yet still they interceded for him, until at last the Judge told one of them, That verily he was persuaded that he was innocent: But nevertheless, if he did not reveal all those whom he knew to have any Knowledge of the Business besides himself, nothing could be expected but Death. He was extremely desirous to have a Discovery of some Persons of Quality: But Mr. *Gibbons* constantly affirmed he knew of none; neither would he accuse any; for he had rather die than be a means to scandal or hazard any good Man. This he constantly affirmed with an undaunted Resolution to the last.

Wednesday, the second Day's Trial, July 23.

After *Gibbons* being brought before the Court, my Lord *Keble* spake as followeth:

Keble. Master *Gibbons*, the Court out of abundance of Favour to you, have given you time from Friday till now, whereby you may be able to make your Defence: Therefore it is now expected you should proceed, and plead what you have to say.

Gibbons. My Lord, the last time I was before this honourable Court, after I had desired a Jury, and was denied it, I did in Confidence of my own Innocency, and your Tenderness in Matters of Blood, submit to a Trial, tho I was no way satisfied in this new Way of Trial: But before I could plead, I made this humble Motion, perceiving the Charge against me for High Treason, was against several Statutes, Laws, and Acts of Parliament, which I never saw, heard, or read them in my Life.

My Life and Estate thus being drawn into question, my Lord, it did very much concern me to be well advised, there being many Things in the Statutes which made for my Advantage, both in my Plea, and Defence: Therefore I did humbly beseech your Lordship and this High Court that I might have Counsel in Law assigned me, both to advise me in my Chamber, and plead for me in this Court, that so I might be able to take all those lawful Advantages which the Statutes and Acts of Parliament afford me; which I was not able to do my self, being ignorant of the Laws. This being denied, and I seeing I could no way obtain Counsel to preserve my Life, as I did see the State had got great Counsel against me, to prosecute me for my Life; I did humbly beseech your Lordship, and this High Court, that you would be so far of Counsel for me, a poor Prisoner standing at the Bar, drawn in question before the Justice for my Life, that you would not let the learned Counsel of this Commonwealth take any advantage against me, thro my Ignorance or want of Skill in the Laws; but that if the Statutes and Acts of Parliament, and Laws of the Land, did afford me any Advantage, which I might overslip through my Ignorance, that your Lordship and the Court, out of your Bowels of Compassion to a poor Prisoner, would stand for me, that I might not have any Wrong done, nor Law denied me, which by right was due unto me. Upon these Considerations, my Lord, I did plead Not guilty. I do humbly thank your Lordship and the Court for the Time you have given me; but am as unable to answer or speak for my self now, as I was the last time I took my leave of this Court, being wholly unfurnished, and altogether disabled to make my Defence: For when I came back to my Prison at *Newgate*, with an Expectation of meeting both the Copy of my Charge, and the Deposition of the Witnesses, I found all was taken away from my Notary, whom I brought on purpose to this Place to help me therein. Seeing my self thus totally deprived and cut off from all Helps and Hopes of making my Defence, I could not tell whither to go or send, but to your Lordship, whom I thought, upon my humble Petition, might have granted both a Copy of my Charge, and the Depositions of the Witnesses: But seeing that could not be granted, I am left without all Possibilities of pleading, or making any Defence. Therefore I do now again, with all Humility, address my self to your Lordship and this honourable Court, and do most earnestly desire a

Copy

Copy of the Charge, also the Depositions of Witnesses, and Counsel assigned me to come to my Chamber, to advise me there; also Counsel to plead for me before this Court, and a Solicitor assigned me, to follow my Business. And if God shall not incline your Hearts to shew this Mercy, I do not look upon my self as able to make my Defence, as to stand before a Company of armed Men.

Keble. The Court will be very tender of your Blood; and they must and will be as tender to preserve the Blood of the Commonwealth, in execution of Justice upon Traitors, that seek to destroy them. You have had a great deal of Favour, and Time given you; therefore now you must make your Defence.

Gibbons. My Lord, if ever Prisoner that came before this Court had reason to cry and call for all possible Helps and Advantages that may be allowed them, much more have I cause to do the same; verily believing never until now there was ever any brought before Justice so unable to help or answer for himself, as I am. Therefore I humbly beseech your Lordship, and this High Court; and I do withal earnestly desire Counsel, a Copy of my Charge, the Depositions of the Witnesses, without which I am never able to plead, or make any Defence for my Life: And the rather am I invited to crave and desire the same, for that I have both heard and seen Precedents before mine Eyes of this nature. Major *Rolfe*, that was accused for High Treason, had Counsel assigned him; by whose Assistance he saved his Life. Sir *John Gell*, before this Court of Justice, had his Brother, Master *Gell*, to speak for him. And since, Mr. *Love* had Counsel to plead for him in this very Place.

Keble. Mr. *Gibbons*, you will not be denied Counsel, or any thing else, that may help you, if there be found Matter of Law. Go on, and make your Defence; and make it appear to the Court that there is Matter of Law, and you shall not be denied Counsel, and whatever else may do you good.

Gibbons. My Lord, had I the several Advantages the others have had, to offer such Matters of Law, I should be as ready as any else to do it: But being deprived of all these Helps by the Officers of the Court, who took away the Book from my Notary, after he had written the Charge; therefore, my Lord, without a Copy of the Charge, and the Depositions of the Witnesses, it will be in vain for me to trouble this honourable Court, when I never had sight of the Charge, nor Depositions of the Witnesses; the want of which have so disabled me, (seeing I could not have Help of Counsel to advise me) that I cannot tell what in the world to say my self.

Keble. Mr. *Gibbons*, you must proceed to plead, or else you will incense the Court more than you are aware of: For you to stand out thus, and plead for that which cannot be granted, will do you no good; therefore I advise you no longer to stand out, but make your Defence.

Gibbons. My Lord, if I should begin to proceed, and make my Defence, being (as I said already) totally ignorant in all the Laws, and utterly unable both in Memory and Parts to take all just and clear Objections against the Advantages of the Charge and Evidences; if I should make my Defence when all Means are thus taken a-

way, I should certainly throw away my own Life, and become guilty of shedding my own Blood: Therefore I had rather, a hundred times, leave my self to the Mercy and Justice of the Court, who, I hope, are very sensible how much the Life of a Man is worth; and withal, consider the hard Measure I had in taking away the Books of those that wrote for me, that so I could never have sight of the Charge, nor Depositions of the Witnesses, which all others have had, nor no Counsel to advise me. Thus being left naked and destitute of all Helps, I had rather submit to the Mercy of the Court, than ever plead to save my Life. My Lord, I am persuaded I stand to be judged by a Court, where I see the Faces of those that truly fear God; and that they will seriously weigh and consider that the Blood of any for whom Christ hath died, is exceeding precious in the sight of God, who will not take any Advantage against any for their Ignorance; and that you also do remember that all your Judgments will be judged over again at the Tribunal of Christ, who will both be a Counsel and Advocate for me, a Prisoner now standing at the Bar. Thus hoping that you will reckon the Life and Blood of the meanest Person, for whom Christ hath died, as much worth as the Life of the greatest, I will rather submit to your Mercy than plead, if I cannot have what I do desire. But being very unwilling to have any hand to destroy my self, and so become guilty of my own Death, therefore though for want of Help I be not able to make my Defence, yet I shall make an Appeal to the Court; which is all I can do. And therefore I desire you seriously to weigh and consider how far short the Evidences come, and how full of Contrarieties and Contradictions. By the Law there ought to be two lawful and sufficient Witnesses to make a Man guilty of Treason: These Witnesses must agree punctually in their Testimony, and the Treason they prove must be against the express Words of the Act. Also the Law will not suffer those that are guilty and convict of the same Crime by their Confessions, whereof they accuse me, to give Evidence against me: These Witnesses therefore cannot be lawful and sufficient against me, they having confessed thus much against themselves, and so do either witness against me out of fear of Death, or promise of Reward. This I am certainly inform'd will be proved against Major *Adams*, and was declared in the Face of the Court at Mr. *Love's* Trial, concerning the Testimony of Major *Adams*, which is the most material Witness against me. I hope your Lordship and the Court will look upon it, as not only he hath been offered, received, and taken Money to discover the Design, and witness against me; but also in regard to whatsoever he swears, as that I should bring in the rough Draught of Instructions to Mr. *Love's*: And as to my Presence at the *Swan* at several Meetings, was both contradicted, and positively sworn against by several other of the Witnesses. None but he doth say that I was present at the reading of any Letters of the Fight at *Dunbar*: Nor none but *Adams* saith I was present at Mr. *Love's* House, when any Moneys was debated: Nor none but *Adams* saith I was a constant Man at Meetings; that ever I invited any to a Meeting. I hope your Lordship and the Court will consider, that though there are ten Witnesses produced against me, be-

sides several Questions asked Captain *Potter* at the Bar concerning me, yet many of them neither said nor swore any thing that touched me at all; and of those that do reach me in their Testimony, not any two did agree in proving the same Fact. As concerning the particular Testimony of Mr. *Harvey*, unto which no one Witness but himself either said or swore the least Tittle of it to be true; being struck with Wonder, and amazed to hear these Things given in against me, which my Heart never thought, nor my Tongue never spake; I do both before your Lordship and this High-Court, and Presence of all the People, lay it before the righteous God to plead my Cause, and judge between me, a Prisoner at the Bar, and Mr. *Harvey*, that falsly accused me. I did further desire, that this Appeal might be set upon record, and meet me before the Tribunal-Seat of Christ, and that both your Lordship, and them that sit in this honourable Court, might follow this my Appeal to the Judgment-Seat, and there witness it before the Presence of the Lord against me when I am pleading for Mercy, if ever I spake or heard of these Things which he hath accused me of. My Lord, I shall go further, and did offer unto the Court, That if in all *England* they could find a Man that would say any of these Things Mr. *Harvey* accused me of, then I said more particularly, if any whom I had most frequently convers'd withal, or any of those that kept me Company, would say they ever heard me say any of these Words, the next time I came before this honourable Court, I would come and plead guilty. And I do now say, if it please your Lordship and the Court to give me Time, I shall be able to produce Witnesses, I shall make it appear Mr. *Harvey* is as unfit to be a Witness in any Court of Record, as he was unfit to be a Justice of Peace in *Essex*, where he was indicted for many and notorious Offences. If I might have Time, I should produce Witnesses that Mr. *Harvey* was the original Reporter of some of those Things he accused me of. And concerning Major *Corbet's* Testimony, I know little in it, but that I shall call God to witness I knew not *Mason*. I did then in the Face of the Court declare how much he had wronged me; for that I had acquainted the Committee who examined me, that I both knew *Mason*, and told them the Place, and how I came to know him. Besides, there is a Copy of my Examination abroad that doth confirm the same, That *Corbet* came to me more like a Murderer than a Christian; and because I did call God to witness against these Untruths he charged me withal, he did in effect judge my Soul to the Devil, and my Body to the Gallows, and so he left me. For which unchristian Carriage of his, I both complained to Mr. *Price*, Clerk to the Warden in the *Fleet*, my Keeper, and some others. My Lord, I am charged with being a Solicitor, and represented as a Man that had nothing else to do but follow such Businesses as here I am accused of; which is a Life so unlike an *Englishman*, and so ill becoming a Christian, that I have all the Days of my Life walked a contrary Course: If it were necessary, Multitudes of Witnesses will testify the same for me. I was entertained by my Master to wait upon him in his Chamber: After he was gone to the House, I had constant occasions to go into the City, either to lay out, pay, or receive Money.

So much Experience had I gained, as I entred upon a Merchant's Trade, dealt with many and several merchantable Commodities; having a Wife and Children then living, that was the Trade I resolved to follow. My Wife dying, I went over to *France* some little Time after with my Master, and carried many merchantable Commodities with me, where I found Liberty to encrease my Experience. My Master returning to *England*, where he staid not a Year, but went back again into *France*, I was left behind to wait upon my Lady. My Employment in my Lady's Service is sufficiently known to be such as daily led me to go into the City. The 19th of *July* 1650, my Lady went from the City; there was a Necessity one Man she must leave behind in *London*, which fell to my Portion. And my Business called me daily into the City; sometimes to go to Counsel, sometimes to shew Bills of Exchange, sometimes to pay Moneys, sometimes to lay out Money, and buy several Things which both my Master and Lady did daily send for to me: There was some Letters that came constantly every Week from my Lady, some out of *France*, to one Mr. *Charboner's*, whose House was in *Tower-Street*. I missing these Letters often on the Monday, went on the Tuesday for them, which was the Day we met at the Club, which was the main reason of my being so constantly there. Where I met for no other end than to see the Faces of my Friends, and to discourse of the News of the Town. Most of whatever I heard there discoursed on, I found in the printed Books: Nothing do I know was ever said or done there prejudicial to the State. But since it is looked upon as a Crime, I would I had never come there. Concerning my Master, were it necessary, I would here make a Declaration that he never left me to do any Business but to wait upon his Lady, and to provide, buy, and send those Things into *France* that were necessary for him. For Letters, I never received any from him, but such as might have looked all the World in the Face: Neither, think I, I need say much to clear this, for that the State have seen most of those Letters that my Master sent, before they ever came to my Hands. My Lords, this is all I can say, being unwilling to trouble the Court any longer; but must declare how much I am amazed to be indicted by so high a Charge of Treason, as I dare say never looked any such Man as I am, in my Condition, in the Face till now; and do fully persuade myself that your Lordship will rather pity my Ignorance and sad Condition, than look upon me as a Man either fit for Plots, or any such Matter I am charged with. I do protest, that if I would make a Declaration of every Act I have done, of every Word I have said, of every Line I have written, I never knew it came up to the Border of Treason, whatever is laid to my Charge. And whereas Major *Adams* charges me of being at several Meetings presently after the late King's Death, I did not see them in nine Months after the Death of the King: And after that, I came acquainted with *Alford*, and all that he lays to my charge, is going down to *Gravesend*, but he did not say whether he or I carried the Commissions or Letters he speaks of. It is hard for me to remember what the Discourse was a year and half since, but I dare say he doth most falsly charge me that I should bid him shew Kindness

Kindness to *Mason*, that so he might represent the Presbyterian Party considerable to the King; and that I should bid him disburse some Money, and pay all the Charges, and if it was not paid him by the Company again, I would; this, to the best of my remembrance, is all false. Capt. *Far* (who is another of the Witnesses, who went along with me, and *Alford*) did declare it in the face of the Court, that he knew no such thing, and that Major *Alford* was the Man that invited him to *Gravesend*; and so I do protest he did me, or else I had never gone.

For Letters, I do not remember that ever I touched any; nor did Major *Alford* in the least swear positively I did; only he saith, either he or I did deliver them. *Alford* doth not swear that ever I wrote, that ever I saw them open'd, or ever heard them read. All this, my Lord, was done above a Year and a half ago; and I hope if there shall be any thing found done amiss in that Journey, the Acts will clear me; for that it is said, If a Man be not indicted within a Year, he is not to be arraigned or questioned. All that Major *Huntington* says, is, He saw me at Master *Love's* when the Instructions were read, but whether I heard them, he could not swear; but he saw me go out of one Room into another: And since he says, I met him in the street, and asked him if he would not go to Mr. *Love's* to hear News; and when we came there, after Prayer half an hour, *Will. Drake* pulled a Letter out of his pocket, neither swore he what it was, nor that I heard it read. My Lord, upon the whole, I do say, among all the ten Witnesses, there is not one that doth say or swear that ever I wrote Letter, sent Letter, or received Letter; that ever I collected Money, paid Money, or received Money; or that ever I discoursed any thing prejudicial to the State; not any one Witness doth lay any one thing to my Charge done for more than this Year and half, besides Major *Adams*: and all that ever he swears, is, being present at Letters read; he neither says I heard them, or ever discoursed any thing concerning them. So, my Lord, except it be one single Witness, there is nothing laid to my charge done this Year and a half: so, my Lord, the utmost that the whole Proof against me doth amount unto, is but hearing of Letters read at the second hand; and all this but in the utmost were but Misprision of Treason, if fully proved; but being but one single Witness to swear this, I cannot imagine it will ever hurt me. For *Potter*, *Jaquel*, *Far*, or *Alford*, (who knew as much by me as *Adams*) did not say any such thing; and all that *Adams* did say, is but hearing of Letters, he doth not say that ever I sent Means to the King: tho I never did this, yet I have weakned myself, and opened my Purse to help the State. About the time the King and *Scots* were agreed, I furnished my Brother with a considerable Sum of Money, and sent him into *Ireland* to do the State Service, where he gained a Command under my Lord, and did very good Service for the State. My Lord, had I ever such a mind to the War in *Scotland*, I could have sent my Brother thither, and not into *Ireland*. Thus, my Lord, I have gone as far as I can, in making my Appeal to the Court; being utterly unable to make any Defence, I do hope there will be no advantage taken by my Ignorance, but you will be pleased

to take my Condition into your consideration, and yet grant me both Time and Counsel, and give me a Copy of my Charge, and the Depositions of the Witnesses; which is no more Favour than was allowed to the Archbishop of *Canterbury*, and Deputy of *Ireland*. I crave leave of your Lordship, and the Court, that I may not suffer for want of Experience, nor that my Ignorance may be made use of to work my Ruin and Destruction. From my Youth I have studied the Scripture, but never have studied the Laws in my Life; and therefore all that I have to help my self with, is from the Scripture, where I find that Ignorance hath constantly the Plea at the Bar of Heaven, and so I am certain should have at the Bars of all the Courts of Justice. *Abimelech* that committed a very great Sin in taking another Man's Wife from him, he pleaded his Integrity, and God did spare him, because he knew it not. God hath always been wonderful tender of the Life of a Man, and that in the time of the most strictest Laws; so much care did he take to preserve the Life of Man, that he provided Cities of Refuge to fly unto, if any killed a Man by accident, or unawares. Murder is a great crying Sin, yet were it done unawares, God made a City of Refuge to fly unto, that the Man might be safe, and out of danger of the Revenger. My Lord, whatsoever I have done amiss, I do profess it is out of Ignorance; I never knew I broke any of the Acts of Parliament, nor that I offended the Laws of *England*: and therefore I hope my Ignorance shall have the Plea at your Bar, as I am sure it shall have at the Bar of God. I have often heard that the Law of *England* is the Law of Mercy, and that there is no Law in the world looks with more Tenderness and Compassion upon a Man's Life; therefore I say as *David* concerning the Sword of *Goliath*, *There is none like that, give it me*. The same I do say this day, no Law is like to our *English* Laws, therefore let me enjoy them: I know the Benefits and Advantages thereby is wonderful great. I do verily believe I am before a Court that are fully persuaded that the strict beholding Eye of God looks upon them, and beholds all your Intentions, and the Thoughts of your Heart towards me, and sees whether you do deny me any Help or Advantage that may save my Life. Therefore I earnestly beseech your Lordship, and this Honourable Court, to look upon the Laws of *England*, and see whether there be not some Helps, some City of Refuge to fly unto, where I may be out of danger of all that I am here charged with. My Lord, this is the first time that ever I was brought upon a Stage, the first time that ever my Name was heard of, or I known to be an Offender against the State: And whatsoever shall now be found in me amiss, I desire there may be a favourable Construction made of it, and not to be strained beyond what my Intention was, who have always abhorred from my very Soul all Designs that have tended to Blood. I have always stood firm to the Cause of Liberty and Religion, and all the Interests thereof: these are the Principles I first took up, these are the Principles I have always held; from which Principles I never yet departed. I have always had a bleeding Heart when the Church hath been in a suffering Condition; I have never been of a bitter Spirit; but have

always

always carried a most Tender and Christian Respect towards those that were of an unblamable Life and Conversation: And where I thought there was Truth of Grace, however contrary to me in Judgment, yet I have loved them, and embraced them as Christians. I have always lived peaceably, never no Disturber of the Church or State, either by writing, or printing Books, or any thing else. May it please your Lordship, it is my desire you should do as God did, when the Cry of *Sodom* came up before him; *I will go down, saith he, and see whether they have done altogether according to the Cry which is come up to me; if not, I will know*: The Lord that knows all things, knew before what *Sodom* had done; but after the manner of Men he came down, to teach all Courts of what they should do before they proceed to Judgment. My Lord, here hath been a great Charge against me, a great Cry come up unto your Ears; I desire you to do as God did, that is, to know whether it be according to the Cry, that you would seriously weigh all that the Witnesses have said, gather all the Circumstances together, and see the utmost that it doth amount unto; and then I am sure you will see the Evidences to come so infinite short of what the Charge and Cry hath been against me, that you will find Arguments to incline to Mercy: and if I might not be quitted, yet at least you will let me have those Helps and Advantages that the Laws afford me, and God hath commanded you to give me; that you will not keep any thing from me, that I, according to Justice, have demanded, and for the want of which see me destroyed before your faces. Therefore I do once more with all earnestness desire you will not deny me a Copy of my Charge, also the Depositions of the Witnesses, and assign me Counsel to come to my Chamber, and plead for me at the Bar, without which you take from me all those Helps that should enable me to make my Defence; without which it is impossible for me to go any further, and must declare that I want all the material things that should help me to save my Life, when I see before my eyes all possible Advantages to undo me. My Lord, I am able to say no more; if this my just Request shall be denied, I have gone as far as I can without them, both to clear my Innocency, and vindicate my self from that which is laid to my charge; and am most confident, if you would let me have what you cannot justly deny me, a Copy of my Charge, and the Depositions of the Witnesses, I should stand as clear in the eyes of the Law, in the eyes of your Lordship, and all this Court, as I am clear in the eyes of God, and my own Conscience, from what is unjustly charged upon me. And thus much I have done, and am able to do no more; therefore if you do deny me, I shall be abundantly satisfied, howsoever it shall please God to suffer you to deal with me. Concerning the Witnesses, I have little further to say, but desire that the Lord would forgive them, as I do freely; I would not change Conditions with them, tho I were sure to die in Fire flaming, or in the Mouth of Lions, even in the worst Condition that could be imagined. I both pity and desire to mourn for them, who have so desperately wounded their own Souls and Consciences to destroy my Life. And the Lord grant, that not one Drop of my Blood,

which they have endeavoured to shed, may stand betwixt them and Mercy, when they are upon their dying Beds a crying for it. And this is the worst hurt I wish them for all the wrong they have done me. Now the Lord of Heaven direct your Lordship, and this honourable Court, that you may not suffer the Witnesses Testimonies to be strained, for me lose my Life upon Circumstances, or what is supposed to be, or in Conscience thought, but according to clear Proof and Evidence. Do that which may give you Comfort upon a dying Bed, and no more than you dare look God in the face withal, and answer to me his poor Servant, who am innocent, at the Bar of the Lord Jesus Christ, where I shall have free liberty to speak, and you must and shall hear me. The Lord of Heaven direct you, that you do no more than what the Law will allow; and that what you do, may be according to the Mind of God, and most for his Glory, and the Good of me a helpless Prisoner at the Bar. And so let it go which way it will, I shall submit with abundance of Content and Satisfaction, and with a quiet Spirit say, *The Will of the Lord be done*.

Thus having ended his Speech, the Court adjourned until Friday next; and so Mr. *Gibbons* was carry'd back by his Keeper, and ordered to be brought before them again on Friday after.

Friday, about Twelve a-clock, Mr. *Gibbons* was brought to the Bar.

Keble. COME, Mr. *Gibbons*, what have you to say?

Gibbons. My Lord, I have not much to say, being totally dis-enabled, and cut off from those Means that might help me to save my Life; which the last time I was here, I fully declared, and as earnestly desired both a Copy of my Charge, and the Depositions of the Witnesses, and Counsel assigned me: this I pleaded for, until your Lordship told me the Court would be incensed, if I did not proceed to my Defence. Which made me dare to go no further, but rather chuse to submit to the Mercy of the Court, and make an Appeal to their Justice; where I desired that you would seriously weigh and consider how wonderful short the whole Evidences come; there was not any two agreeing: *Adams*, the material Witness, most what he said, was disapproved by the other several Witnesses that came after. I hope the Court is very sensible how little is laid to my charge by Major *Adams*, after so great an Inquisition, as he daily set upon me, inviting of me to his House in the City, to his House in the Country, going from one Shop to another, where he thought I did come; to *Aldermanbury* Church, and all other places where he did hope to find me: after all this sifting, and trying, what was it he got out? nothing but the hearing of Letters read, which none but himself swears. My Lord, all that I have to say, is, to desire both your Lordship, and this Court, to consider with what great Aggravation the Attorney-General did multiply, and aggravate against me beyond all that ever the Witnesses said, leaving out all what might serve for my advantage. My Lord, how the Attorney General could bring Major *Alford* and Major *Adams* together, and so make them double Witnesses

Witnesses against me, that is not possible for me or any Man else to understand. First, what *Adams* says, is concerning of my bringing in of the rough Draught of Instructions, which I wholly deny, and so do all the Witnesses that came after him, to the best of my remembrance: and some of them swear positively that *Drake* brought it in; none but himself says that I brought it in. To testify unto this, Major *Alford* says nothing: but all that he says, is, That I went down to *Gravesend* with him, and did not say or swear that I either carried the Instructions, or delivered them, or that ever I heard them read: all that he can say, is, that I went with them, but whether he or I delivered them, that he cannot tell. He speaks of some Discourse concerning shewing of Kindness to *Mason*; it being a Year and half ago, I am not able to charge myself with what I said then, but dare say he hath falsely accused me. What Major *Alford* says more, is only that I should bring them to *Mason's* Chamber in the *Strand*, delivered not, nor says that we had any Discourse at all, but took our leaves, and came away presently. Another time, said *Alford*, I brought *Mason* to *Titus* to Mr. *Whitarr's* a Bookseller's, and that *Mason* and *Titus* went up to the Chamber, where they had private Discourse together: he did not say, that I went up to the Chamber, or heard, or knew any thing what their Discourse was. Now, my Lord, I hope by this time both your Lordship and the Court are satisfied what slender Testimony there is against me. First, my Lord, I was never heard of, till I came to *Gravesend* with Major *Alford*; only something that Major *Adams* saith of me, meeting at the *Swan*, which all the other Witnesses do acquit and clear me from. Now, my Lord, to what Major *Alford* saith, is nothing but giving a Visit to *Titus* and *Mason*, which, I hope, will never be thought any Crime; for that neither of them both were declared Enemies to the State, and therefore certainly it could be no hurt for me to see them. And besides, whatever Major *Alford* charges me withal, is a Year and half since, therefore am acquitted by your own Acts. So that it cannot enter into my Thoughts, by what Act of Parliament or Law you can pass any Sentence against me: for all that ever is laid to my charge done within this Year, is nothing but hearing of Letters read: which not any one but Major *Adams* says, and he neither saith what these Letters were, and that I ever discoursed, or said any thing concerning them. Thus, my Lord, you see there is but one single Witness throughout. My Lord, I waited upon a Gentleman that led me to two or three Meetings, by which means I gained a nearer Acquaintance, which now proves part of my Unhappiness, seeing it is become a Crime to meet Friends at the Club, and other places, and hear Letters, and other News read, which is all that I am charged with. My Lord, I hope I am before a Court that doth consider, that all those Days Works will be judged over again; therefore I cannot imagine that any Court of Justice in the world will proceed to Sentence upon so slender a Testimony that lyes before you, but that you will rather allow me those Helps that may enable me to end the Difference that is betwixt the State and me: that is, to let me have a Copy of my Charge, the Deposition of the Witnesses,

and Counsel assigned me; without which, it is as impossible to defend myself, as for a little Child to encounter an armed Man with a drawn Sword in his hand. My Lord, I have no more to say, but shall submit to God, whatsoever comes; and as I said before, so I say again, I do freely forgive the Witnesses, but do desire that the Court will not proceed upon so slight and slender Testimonies, which never can, nor will hold water in the sight of God, or Law.

Keble. Mr. *Gibbons*, most of what you have said now, you said before, only you made some little addition. The Court hath debated your Business and Life, with as much care as if you were the greatest Nobleman in *England*; and upon the Debate, they are persuaded in their Consciences that you deserve to be sentenced.

Attorn. Gen. My Lord, Mr. *Gibbons* pleads for his Life, and I for Justice in the behalf of the Commonwealth, therefore I desire you will proceed to Sentence according to the Judgment of the Court.

Whereupon Sentence was read. After that, all the whole Charge was read, and Mr. *Gibbons* sentenced as a false Traitor, to return to that place from whence he came, so to suffer Death, by having his Head sever'd from his Body.

After Sentence, *Keble* spake in this manner:

Mr. *Gibbons*, you have nothing to do, but to prepare yourself for God; you have a great Acquaintance among the Ministers, you should do very well to send for them, and reveal what you know, and so do the State what good you can before you die. Have you any thing more to say?

But Mr. *Gibbons* said not one word more, but took his leave of the Court, humbly bowing to them; and after that, he bowed to the Attorney-General, and took his leave of him, and so came down the stairs with abundance of Cheerfulness, speaking to his Friends, and shaking them by the hands. And in this manner he went along the Hall, until he took Coach to go to Prison.

He was afterwards Executed, in pursuance of the Sentence, on *Tower-Hill*, the same Day with Mr. *Love*, the 22d of *August*.

Being come upon the Scaffold, he spoke in the following manner.

Gentlemen,

I AM brought here to the Stagc, where I am made a spectacle to God, to Angels, and to Men; an object of pity and compassion to my Friends, where they see before their eyes a Man in the prime of his years and in the flower of his youth cut off as an untimely fruit, and as a Tree that burdeneth the ground, therefore they are sorry; but this is no new thing, it is God's ordinary way to suffer men to be cast out, that he may receive them to Mercy; the poor blind man was thrown out, but he was received to Jesus Christ; the three Children were thrown into the Furnace, but they were received to God; that was the way that he delivered them: Do not stand wondring at God's proceedings, whatsoever the men be, yet I bless God to eternity;

nity; I take it well at his hands, though it seem strange; It is God's ordinary way, and if it be, Christians should not shun any extremity, if it bring them to Jesus Christ; and therefore I bless God, I come to this Scaffold, to this place, with as much willingness as ever Bridegroom did to receive his Bride: I know the passage of blood is but short, and the way to the Crown; though my Head be severed from my Body, yet my Soul to all eternity shall be joined to the Lord Jesus Christ; and I in the presence of you all, desire you to witness, that I from my soul desire that the present Power and Court that is set up, have done themselves no more hurt than they have done me; for I am assured that all that ever their Sentence hath done, hath put me in the way that I am going; from Earth to Heaven, from Friends, and Comfort, and Creature-relations, that of necessity ere-long must be left; and it were a great deal of folly to desire that that we cannot keep; I am going to receive the end of my Faith, the reward of my Hope, the comfort of my Prayers, and of all the Prayers and Tears of God's people; where I shall enjoy the Society of all Believers, the sight of God, the fellowship of the Saints, and imbrace God to all eternity; these things none can take from me: Therefore why should I desire to keep these things that the Providence of God calls for? and therefore I need not stand grumbling and repining at God's Will: And I freely submit.

I come not hither to tell a long Story, or to make a discovery of my Sins; the Lord knows (upon the examination of my heart) how many thousands and hundred millions of Sins I have, and I desire to pour out floods of Tears for them; and I desire that through the Merit of Christ, the atonement might be made to God for them. From my child-hood I must needs say, I have been such; I have seen a Father buried in the grave, and a Sister, and a Wife, and a Child laid in the grave; but all that ever I could do to this day, could never put my Sins into the grave, with all my endeavors and all the afflictions and mercies I have had: It is an infinite comfort, though I enjoy nothing else; after this day I shall assuredly never sin any more, nor grieve the Spirit of God any more, nor dishonour God any more; I profess, though I should not come to Heaven, it is a comfort to me that I shall not sin and grieve the Spirit of God any more; Blessed be God to all eternity, I shall be out of the power of sin.

That is not all, but further, since I can remember that I set my face towards God; from my childhood I have hedged in my way with thorns, that I might go the strictest and straitest way, my way to bring me to the Lord Jesus Christ; it is a wonderful comfort, and blessed be God for this day's work; I profess I would not change my condition for ten thousand worlds: I bless God I find the reward and benefit of the Prayers of good people in a wonderful manner; they have more cause to go home and seek days of rejoicing and days of praise, than to mourn and repine.

In the Bishops time I was one that was a Mourner, that lamented the Time and the State, and desired to shed tears when the Church was under affliction.

And truly, I further declare, that I have always been and gone upon Gospel Principles; I

have always desired to apply particular Promises to my particular Condition: I know ten thousand generals will do me no good, only particular Faith and application will do me good and strengthen and support me this day: I have always ingaged upon pure Principles of Religion to the best of my knowledge, and the utmost of my endeavours; I have always ingaged upon those Principles, from those I never departed; and in those Principles by God's Grace this day I shall die and come to seal with my Blood; I always owned the ways of God, when they were most persecuted; I think an hundred, nay (I may say) a thousand can tell, that I did never dare to save my Life, or my Skin, or any thing, to quit Religion, though it were never so much clouded, and despised, and disdained; I do now this day rather a thousand times willingly lay my Neck on the Block; believe it, I am a dying man, I chuse it, and had rather have it, then enjoy the most glorious life and liberty with those that are Betrayers of the Truth of God and a good Conscience; O Sirs, believe it, carry it from a dying man: In the time of afflictions a good Conscience will stand you in more stead, and more comfort, then a thousand worlds: I bless God more that he now smiles on me, than if all the Emperors and Princes in the world did own me.

I have never been without a trembling heart, since the Spouse of Christ was clothed in mourning; I always thought it my duty, and the least I could do, to be in tears when the Church rowled in blood; and the Lord grant that every Christian Soul may make it his work: It is the great breaking of my heart, that I could never get my heart to break enough, to see the Church of Christ in misery: Though God have called, and Christ have called, and there was never such calling; It wounds my Soul that I could never mourn more for the Church's afflictions, and the Lord keep all that fear the Lord and his Name, keep those from days of rejoicing and thanksgiving for the death of those that God owns, and will wipe all Tears from their Eyes, and those God accounts their blood precious: Have a care of being of the number of those that rejoyce over the heaps of the carcases of God's people.

I am now at the last brought to suffer death as an enemy to the STATE, though my Conscience tells me I am a friend to the Lord Jesus Christ, His Church, and Members; and though the *Jews* heretofore told *Pilate*, if he did let the Lord Christ go, he was no friend to *Cæsar*: Must I not say truly, my Conscience bids me say it in the case I am in, whosoever desires to keep the Lord Jesus, to keep Integrity of heart, and Innocency of life, and desires to walk in an unspotted life and conversation, whosoever desires to let these old broached Heresies go, and draw their sword for Christ, are not these declared to be Enemies to the STATE, and are against them that desire to keep a good Conscience; and if there be no Law of God to condemn us, (as the *Jews* said) There is a Law found out, and by that Law he ought to die.

I will not make a discourse of the manner of my Trial; ten thousand Men, and Angels, yea God himself can witness the hard measure I had.

I am in Charity with all the World, the Lord of Heaven forgive them; I say nothing my self, only I will tell you what a Gentleman said that was an Eye-witness at my Trial, that knows all

the Actions and Laws as well as any man in the place; He professed that he saw so much, that he would not have a hand in my Sentence for all the Gold that could lye in *Westminster-Hall*. I must say for mine own part, and in my Conscience I believe it, if they do not repent, the Lord will call them to an account for this day's work, I believe they have gone against God, and his Laws, and the Laws of Nations; I believe so, I speak not this from a bitter Spirit; the Lord of Heaven forgive all them that ever had a hand in it, as now I desire mercy when I shall come before the Lord; I look upon them as a Company of poor Instruments that the Lord knows how to deal with, and will call to account; it will be time enough when they come to lye upon their dying beds: The Lord grant that my Blood may not stand between them and mercy when they put up their prayers, that nothing concerning me may stand in the way of all the Mercy that their Souls shall stand in need of: Truly, if you will believe me, I would not leave this Scaffold to enjoy all the pleasures that this World can give, I would not change my condition with them; not with my Witnesses, not with my Judges I would not change my condition; my Conscience tells me, and so I speak, I forgive them, the Lord of Heaven lay not this great sin to their charge; let all the People of God so pray; they will one day see what it is to lose a good Conscience; and that it is better a great deal to have the light of God's countenance, than to have a Conscience upon the Rack: They will one day see, that there is nothing to be feared but sin and wrath; and what a comfort and happiness the peace of a good Conscience is, the Lord shew it you.

I am brought here to die for Treason; for plotting against the State: and this is such a Treason as is proclaimed to all the World; such a Plot as was never before: blessed be God I am of another mind; I should appear sadly before God, if my Conscience told me what hath been represented: But I must needs declare my Opinion without offence to any; It is a pretended Plot, to beget a greater Plot: God grant that it be not so; a Plot, I fear, to destroy all Church-Government, and the faithful of the Lord and the godly: For other Plots I understand none; I profess in the presence of God, I know of no Plot, or had a hand in any Plot: I would not for ten thousand Worlds be guilty of the blood of any man: I am sensible how many thousands, and ten thousand thousands of sins I have committed, as the number of minutes of one hundred thousand thousands of days; that I am sensible of, and desire to bring them before the Lord to stone them to death, and to pour out floods of tears for them before this that I am to die: But I am put now to appeal to the righteous God, whither I am going, to stand before the Bar of an impartial Judge, that knows the intents and thoughts of my heart, and what all my endeavours have been, I never had any other thought than the honour of the Gospel and Religion, and to bring these precious things into the Channels that the Lord would have them in. This was my desire.

Not long since I told a Gentleman (now in Heaven) that so great is the wound that it breaks my heart, to see the wonderful scorn and contempt that lyes on the face of Religion in the

eyes of Papists, Turks and Heathens, and all reformed Nations, that I profess I have sometimes wish'd to have swim'd out of my Chamber in tears, and said to the Gentleman, that it was a mercy if ever the Lord would find a means to wash away the stain of scorn and contempt of the Gospel, though it were with the blood of his Ministers and faithful Servants: Who knows what this day's work may do? who knows what God hath for this Land? Let none despise the day of small things; if it be clay and spittle, if God take it in his hand, it shall cure the blind: What do we know what the blood of two men may do to fill up the the measure of blood? what the blood of two men may do towards all the prayers and endeavours of God's People? therefore be not troubled. But I pray give me leave: whatsoever is written concerning me, or the blessed servant of God who is gone before me, and now singing Hallelujahs to all eternity, this day's work will be written in Heaven, it will be written by the Lord Jesus: Suffering for God and Religion, confident I am you will find it so. I can look in the face of God (excepting my weakness and failings) that in all this business I had no ill intention: you are to believe a dying man: I am sensible what it is to die to God, to the ocean of eternity; to go to stand at his Bar: Believe me, believe me; I profess before God, Angels and Men, I know not what I die for this day: whatever reports do say, believe the words of a dying man: I am confident the odium of this day's work (were an Angel of Heaven to write a book) will never be washed off: that this day's work will lye upon some: the Lord grant they may see their sin, and repent in time.

But let me say a little further: I confess I cannot but wonder, how the men now in Power can look any Christian in the face, my Conscience tells me, that it is the original of all Plots, that hath torn the Nation asunder, and the Kingdom, and the Liberty, and the Profits asunder: whatsoever belongs to Christians and rational men, is all torn from us; Have they not thrown the three Kingdoms into that misery, that I am confident all the enemies of the Church could not have done the like? but rather how shall they be able to look the great God in the face, when he shall make inquisition for Blood? To whose door shall all the Blood of *England*, and *Scotland*, and *Ireland* return? Who knows not, that within these three years there was the most glorious promising Morning that ever looked *England* in the face? how comes it to pass that we have such days of trouble and misery? God knows who hath had a hand and been Instruments in it. He knows that these are the Plotters with a witness: These are the *Egyptians* that all the People of God groan under: and all —

Then the People interrupted him, and some said, He is going to die with a lye in his mouth, Mr. Sheriff. When they were quiet he went on thus.

I must needs say, that the Blood that was shed in *Queen Mary's* days was a delightful sight and persecution, and it was a pleasant sight to Antichrist in the Bishops time, and there have been many delightful sights of late that I will not speak of, because it gives offence; but the most

joyful fight that ever Antichrist saw, he beholds this day in the blood of the faithful Ministers and Servants of God; and now I come upon the Scaffold to fight this bloody Field the Lord grant I may be enabled to overcome it.

I confess, I believe it is a sad fight to the People of God, to see all their Prayers, Fastings, and Tears come to this, to see the piercing Sword thrust into their Bowels; but I desire them to take heed of repining and murmuring: look who stands on the top of the ladder, and not on the next step; see God ordering and contriving all; look not at the hammer, but God; God is the best contriver, he knows what is best for you, and us, and blessed be his Name: I am come hither to witness of his Glory, there is none knows what Glory a suffering condition brings to God, and to his Saints, how many flowers it adds to their Garland, we should see as many run to it, as now shun it. When Christ shall come, and all shall call to the Mountains and Rocks to fall on them and cover them, what a blessed fight will it be for Christ to put forth his hand to them! If they saw but the infinite reward Christ hath for them in Heaven, it would be sufficient to invite them to come in and suffer for the Lord; nay we may be ashamed we have done no more, nor looked after the gaining of that precious eternal Mansion, where we shall see God, and be in the arms of Jesus Christ, where we shall suffer no more, but enjoy an infinite weight of Beatitude and Glory.

Let the word of a dying man prevail; for the Lord's sake hold to the Truth, part not from the Truth; it were better that Heaven should fall, and the World be on fire, than that God should be dishonoured. The least Error is as a barrell of gun-powder that will blow up the Church and Kingdom; Error draws a Sword against Christ and his Truth; take heed of Error, lest you fall into a gulf that you can never come out of. Ask your own experience, how many Ministers and Professors have fallen into Error, and have gone away with guilt upon their Conscience, and a blot upon their Names: Error is like a chain, if the Soul would go to Christ, it cannot: Error is as a partition, under what gloss soever it come: though in the habit of a Saint or Angel, it is dangerous poison; be like *Athanasius*, own the Truth, though all the World were against it; or as *Martin Luther*, who set himself against all the power and force of Antichrist; own the Truth, though eminent Ministers and Professors that seem eminent in Faith and Grace fall from it, as many do.

I shall now suddenly conclude; I am very unwilling in my condition to speak any thing that may be offensive to any, I have only this to say, and I have done; whatsoever chargeth me nearest, I am confident the Lord will one day clear my innocence; he hath written down the actions and proceedings, and he will one day shew it, and vindicate my name in the sight of all; there will be a Resurrection, and all Men shall be called to an account for all the reproaches that have been cast upon the faithful of the Lord.

All the Churches of Christ are now in the furnace; the Church of *Scotland*, *England*, and *Ireland*; the Lord grant that all may mourn, and never dare to keep a joyful day, till the Church of Christ be delivered; for God calls, and Christ calls, and the Church calls; and I had rather be

(and let all that fear God chuse rather to lye) in the Den of Dragons, than to be of the number of those that rejoyce when the Churches of God are in Sorrow. The Sun shined upon *Sodom* a little while, but presently a shower of fire and brimstone came and destroyed them all; so the prosperity and flourishing state of the wicked is like that: the children of God may sit in darkness for a while, but they shall have light to eternity: wicked Men may rejoyce for a moment, but there is an eternal night that will follow, that shall never be blown over: A child of God had rather that all the Lions in the Wilderness should roar, than to have God angry. What were it for a Man, though like *Alexander*, he had prosperity, and had as much peace and glory as *Pompey*, and did ride in as much state as *Cæsar*, when he is under the frowns of God that hates wicked Men, as much as he is hated of wicked Men? The Bush may burn, but it shall never be consumed; the Church hath been 5600 Years under burning, and persecution, and flame, but the Church shall remain to the end of the World.

Thus I have endeavoured to declare my self and my Conscience, though with much brokenness and distemper: and now I am to take my leave of the World, I have only this word to say, that you bear me witness, that whatsoever may be charged on me, or may be said after my death, I am confident God will own me for an innocent person; I never to the best of my remembrance had a hand or a heart, I had rather die a thousand deaths than ever to have a hand in the blood of any of God's People; and now God hath brought me hither, and not Men, it is his hand; I again desire to forgive all the World, every Man's Person; the Lord grant that they may have mercy, and I desire, as now I desire Mercy, the Lord to forgive all their sins. I know all things are under God's dealing and Commission, and this condition had never come to me if God had not seen it good; and though the Ax be so near, if I had more to do for God, and for his Church and People, he would do with the Ax, as he did with that of *Abraham*, God would take hold of it, and could, and blessed be his Name that he takes the ordering of it to himself, therefore I have a quiet Spirit, I have no discontent in the World: and now not to speak of Death, alas that is nothing; but of Eternity that my Soul is now lancing into: I am now to enter into Eternity, where to stand with a naked Soul before God, whose Eyes are ten thousand times brighter than the Sun, that cannot indure to behold iniquity: I am now going to God, that will be as a consuming fire, and as armed thunder against me, if I did not see his infinite mercy, and my blessed Saviour standing between me and the Lord, presenting all that I do: if I had all the righteousness of all the Angels in Heaven this day to go to God the Father, woe, and ten thousand woes to me, if I had not interest in the Lord Jesus Christ; if I had the sin of all the Persons that are here, and that have been ever since the Creation, if I come and stand cloathed this day with the righteousness of the Lord Jesus, I am confident I should have pardon for them all, as for one; there lyes my strength, and my hope, and my happiness. All my righteousness, and all my prayers, and all my performances, are but as filthy

filthy Rags; and should God draw out the best Sabbath that ever I kept, and the best Prayer that ever I made, and the best Syllable of that Prayer, it would be a Sin; I have scarlet Sins, Sins of all sorts and ranks, I desire you that you would all mourn and help me this Day. Blessed be the Lord of Heaven for the Benefit and Support of the Prayers of God's People; I am persuaded that there was never any Man in my Condition, that went to Heaven upon the Wings of so many Prayers: Be ye all content, and go home and rejoice before the Lord, be certain that you keep a Day of Thanksgiving for this Day's Work, and our Souls shall bless God to Eternity for this Day's Work; there is not one Drop of Blood could be spared, if it could, it should have been kept; God knows how to answer your Prayers and Tears, though we must not be heard, he hath summoned us to come to the Arm of his Mercy, why do I stay from God longer? I bless God I am coming.

Now I shall only desire as *Samson* when he made his last Request, only this once help me; my call to you all is, that you would pray and mourn for me, this once help me; after a little while your Prayers will do me no good, nor your Tears will do me no good; therefore now for the Lord's sake help me off the Scaffold, lift up a Prayer to God for me, let there be some Compassion, you know not what Fightings may be in me; but I bless God, I hope to walk triumphantly to God presently, but do you act your Parts, your Strength, and your Interest, whatever your Prayers and Tears can do, help me, I beseech you now, for I shall never more need your Help.

And now is Christ taking notice what was cast into the Church's Treasure, he looked upon the Widow's two Mites, Christ is looking this Day

who helps me a poor Creature, and supports me, and faith Christ, Is there none will help him? O pray help me to commend all my Conditions to God, that he would rebuke Satan, and make me die sincerely as a Christian, that I may willingly lie down on the Block, as I would to lie down on a Feather-bed after I am weary, that I may be willing to come to him; pray for me, that all the Graces that my Soul wants they may be strengthened.

Most glorious God, I now into thy Hands commend my Spirit, and all that is in me; O blessed God, I never was in want but thou didst relieve me, I was never in Distress but thou helpedst me, never, never, and I am confident thou wilt not leave me, till thou see my Soul in Heaven. O blessed Saviour! thou wentest up and down on the Earth, thou knowest what it is to suffer, what it is to be betrayed, what it is to be scorned and tempted; blessed Saviour, thou sawest me when I was running from thee; wilt thou leave me now I come to thee? Lord Jesus, I commend all into thy Hands, hoping that after this Day I shall never suffer more, nor never pray more.

His Prayer being ended, he put off his Doublet, and askt for his Friend *Dr. Bastwick*, and embraced him: after that he embraced his Uncle, and others of his Friends on the Scaffold; then laying his Head on the Block, *Dr. Bastwick* came to him, and wish'd him to take off his Rings, which accordingly he did, by raising himself upon his Knees, and gave them to his Uncle; which done, he laid his Head on the Block, and holding up his left Hand, the Executioner at one Blow and a small Rase severed his Head from his Body.

XLVIII. *The Case of Capt. JOHN STREATER on an Habeas Corpus, at the Upper Bench in Westminster-Hall, November, &c. 1653. Mich. & Hil. 5 Car. II.*

The Habeas Corpus was read.

Y the Keepers of the Liberty of England by Authority of Parliament. To the Keeper of the Prison of the Gate-House in the Liberty of Westminster, in the County of Middlesex, or to his Deputy, These, Greeting. We command you that the Body of John Streater, in the Prison under your Custody detained, as it is said, together with the Day and Cause of his taking and detaining, by whatsoever Name the said John is called therein, you have before us in the Upper Bench at Westminster, Wednesday next after the Morrow of St. Martin; to undergo and receive those things which our said Court of Upper Bench shall then and there order

concerning him in this part. And this you must not omit at your peril. And have you then this Writ. Witness Henry Rolle at Westminster, the 12th of Novemb. in the Year of our Lord 1653.

By the Court.

Ex. Broughton.

Cap. Streater. My Lord, I desire that this Writ with the Return may be filed.

† Judge. What say you, Mr. Prideaux?

Prid. Nothing.

Judge. Let it be filed. Have you any Counsel?

Capt. Streater. Yes, my Lord.

Judge. What do you say to it?

Capt. Streater. I desire to have a Copy of the Return, and that I may be bailed.

Judge. It cannot be: you are committed by the Parliament, and you must shew Cause first.

Capt. Streater. I am ready: I desire to speak to it now, both I and my Counsel.

Mr. Twisden. I was a Counsel for the first part of the Return, but not for this.

Judge. What say you?

Mr. Freeman. I desire he may have a Copy of the Return.

Judge. Do so; and let him be here again on Friday next: let it be so.

Capt. Streater. I desire, my Lord, I may not be put to the trouble to sue for a new *Habeas Corpus*.

[And then *Mr. Streater* not being permitted to speak any more, he was taken away by the Marshal of the Court of the Upper Bench, and carried to the Prison of the Upper Bench in Southwark.]

Colonel Barksted then appeared upon *Lieut. Col. Lilburne's Habeas Corpus*, and gave this following Reason for his not bringing the Body of *Lieut. Col. Lilburne*. *

'According to my Orders, my Lord, and the Return of the *Habeas Corpus*, I brought the Body of *Lieut. Col. John Lilburne* on Monday to the Court; at which time I was ordered to attend the Court again with him here as this Day. But this Morning I received an Order from the Council of State to the contrary: And here it is, my Lord.'

Clerk. *Wednesday, Novemb. 23.*

Whereas the Body of *Mr. John Lilburne*, by an Order of Parliament, was committed to the Tower for the Peace of the Nation; and whereas there was an Order to the bringing of him forth thence to the Upper Bench this day: It is ordered by the Council of State, that they do not bring him, but that he there abide the Pleasure of the House.

Mr. Lilb. Couns. My Lord, on Monday it was agreed that they should bring him again on Wednesday; and I have no Instruction from my Client, for I have no Access to him, nor he to me.

Judge. Well, pray advise with your Client.

Mr. Lilb. Couns. My Lord, I desire to have an *Alias Habeas Corpus*.

Baxt. I have only learned, my Lord, to obey Orders, and I shall obey them.

Judge. You do well. The Council of State have a Reason for what they do in this Business.

Mr. Lilb. Couns. My Lord, when must we attend the Court?

Judge. On Saturday.

The Return to the *Habeas Corpus* for Captain *Streater* being filed, the Cause of Imprisonment shewn in the Return was grounded upon two Warrants: first from the Council of State.

THESE are to will and require you to take the Body of *Streater*, and him you shall safely keep Prisoner in your Prison of the Gate-House; he being committed for publishing of seditious Pamphlets against the State: Of which you

are not to fail. And for so doing, this shall be your sufficient Warrant. Given at the Council of State sitting at White-Hall, the 12th Day of September, 1653.

To the Keeper of
the Gate-House

S. Moyer.
R. Tichburn *Presid.*
R. Lawrence.
John Hewson.

The second Warrant was signed by the Speaker, by Order of Parliament.

BY virtue of an Order of Parliament, bearing date this present 21st Day of November, These are to will and require you to receive and take into your custody the Body of *John Streater*, and him to keep and retain in safe custody, until he shall be delivered by Order of Parliament. Whereof you are not to fail, as you will answer the contrary at your peril. Given under my Hand this 21st of November, 1653.

To the Keeper of
the Gatehouse,
Westminster.

Francis Rous Speaker.

Upon the reading thereof in Court, this Rule following was ordered to be entered.

Wednesday next after eight Days of St. Martin, 1653. The Gate-Houle, Westminster.

THE Defendant was this day brought into this Court, by virtue of a Writ of *Habeas Corpus*, to undergo, &c. under the Custody of the Keeper of the Prison of the Gate-House. And it is ordered by the Court, that the *Habeas Corpus* and the Return thereof be filed, and that the said *Streater* have Copies of the said Writ and Return, and that the said *Streater* be committed to the Custody of the Marshal of this Court, and that he have the Body of the said *Streater* in Court upon Friday next, upon the Motion of *Mr. Freeman*.

By the Court.

The second Appearance of Captain *Streater*, on Friday the 23d of November 1653, by virtue of an *Habeas Corpus*, and the Rule aforesaid of the Court of Upper Bench of the 21st present.

Captain *Streater* being at the Bar, the Clerk read the Return, which was only the Keeper's Answer to the *Habeas Corpus*, which requireth him to shew cause why the Prisoner is detained in Prison. He in the Return citeth the Warrant, Order, or Mittimus for Commitment, and certifieth that is the Cause contained in them, and none other.

The Return being read, the Judge asked Captain *Streater* what he had to say to the Return, and who was his Counsel.

Capt. Streater. *Mr. Norbury*, *Mr. Freeman*, and *Mr. Twisden*, are Counsel with me.

Judge. What say you?

Mr. Twisden. I was a Counsel for the first part, but not for the second, for publishing scandalous Pamphlets. If there be no more in it, he may be bailed.

Judge. No, there is no more in it. What say you, Mr. Freeman?

Mr. Freeman. My Lord, as to the second part of the Return, it is in these words: *These are to will and require you to take into your Custody the Body of John Streater, and him safely keep, till he shall be delivered by Order of Parliament.* My Lord, every Return ought to have these two things in it; the Cause, and how long he shall be a Prisoner: and so you have it in *Magna Charta*, p. 54. My Lord, all Acts of Parliament against the Laws of the Land, are in themselves void. The Law is above the Parliament.

Judge. Good Sir, do not stand to repeat these things before us.

Mr. Freeman. My Lord, I do know it; they may pass their Acts according to Law, but not against Law. The Lord Dyer hath it so in his Reports.

Judge. When we are in examination of a Prisoner, will you come and overthrow the Acts of Parliament?

Mr. Freeman. My Lord, I refer it to your Lordship's Judgment, whether this Gentleman ought to be kept in Prison without Cause shewn.

Judge. What say you, Mr. Norbury?

Mr. Norbury. My Lord, we must look to see if the Return be true: if it be not, we have an Action of the Case against them that made it false. And tho we will not say that is false, yet here is no Offence recited at all. And, my Lord, all the Acts are the Acts of this present Parliament; and we look on them to be, or ought to be, for the Liberty of the People.

Judge. What have you to say to the second part of the Return?

As to the first part of the Return, Mr. *Prideaux* said he should say nothing unto it; therefore the Judges advise Captain *Streater* to speak to the second part of the Return.

[Now for that the Argument that Captain *Streater* had prepared to shew the Insufficiency of the first part of the Return, may be of great use, and fit for publick View, it is thought fit to be inserted here; and after it, his Argument upon the second part of the Return, the which he delivered with an audible Voice at the Bar: With the Attorney-General's Plea thereto, and the Judges Judgment thereupon.]

Captain Streater's Argument to the first Part of the Return.

MY Lord, I being brought to this Bar by vertue of a *Habeas Corpus*, which requirerh (by vertue of the Law, which is the Supreme Authority of England, and only Authority of Parliaments, and all Courts of Judicature) the Cause ought to be shewn why I am detained a Prisoner upon the Return. The first Part mentioneth a Cause, tho not a lawful Cause: the second Part sheweth no Cause.

My Lord, the Intent in Law of an *Habeas Corpus*, is to relieve Prisoners, notwithstanding special Commands for Imprisonment; as appeareth by the Act of Parliament the 17th of the late King, intituled, *An Act for the abolishing the Star-Chamber, and regulating the Council-Table*: which ordaineth, that notwithstanding special Commands for Imprisonment, the Party so imprisoned shall by an *Habeas Corpus* be brought before the

Judges of one Bench or other. And if the Cause of his Commitment be legal, he shall be remanded to the Prison from whence he came; if no Cause (that is to say, no lawful Cause) appear, then the Prisoner is to be set at liberty; if it be doubtful, then the Prisoner is to be bailed.

My Lord, with these agree the learned Arguments of Sir *Edward Coke*, Sir *Edward Littleton*, and Mr. *Selden*; together with the Resolves of the Commons in Parliament (1628) thereupon.

And the second Part of *Institutes*, fol. 52. *The Warrant or Mittimus ought to contain a lawful Cause.*

The Writ of *Habeas Corpus* is the Water of Life, to revive from the Death of Imprisonment.

Sir *Edward Coke* in his third general Reason why a *Habeas Corpus* is to remove the Body, notwithstanding of special Commands, saith, That *Imprisonment is accounted in Law a Civil Death, where a Man is deprived of Society, of Wife, House, Country, Friends; and liveth with wicked and wretched Men.*

The Writ of *Habeas Corpus*, and the Benefit thereof by Law, (which is the undeniable Right of every *Englishman*) is called *The High Point, the only Point*. Nay the Commons of Parliament of the 4th of the late King, in the Conference with the Lords, say that they had redeemed the Body of Liberty, by clearing this Point: that is to say, That in case one be committed by vertue of special Command, he shall have the Benefit of the Writ of *Habeas Corpus* to bring his Body, with the Cause, before the Judges of either Bench; where if it be found a lawful Cause, he shall be remanded; if no Cause, delivered; if it be doubtful, then to be bailed.

My Lord, I shall make it evidently appear, when I come to make my Exceptions, that there is no lawful Cause shewn in the Return to the *Habeas Corpus* why I should be a Prisoner.

With your Lordship's Favour, I shall speak one Word or two of the Law of England; I shall make use of it anon. It may not improperly be said, it is written by the Finger of God: it is not unlike (in that where indeed the Perfection of it lieth) unto the Laws of the Eternal Law-giver; which is, it is as well binding to the Law-giver, as to those that are to give obedience unto it.

Anno 42 Edw. 3. chap. 3. No Man shall be proceeded against, but according to the old Law of the Land: There shall be nothing done to the contrary, if it be, it shall be void.

If this serve not my turn, I am sure there be enough that speak the Language I would have them, that say, Be it so and so enacted, and not otherwise.

First, I observe here they command Law.

Secondly, That they command, that none shall command otherwise but by Law.

God himself bindeth himself by his Laws: he is as well bound, as he bindeth those several Beings he gives Laws unto, let them be Eternal, Moral or Natural. If he maketh a Promise, he performeth it: he must not, he doth not but perform it. If he create a World, and willet it to continue, he must support it in its Beauty and Strength, and by his Providence support the several Beings in it.

My

My Lord, Law is Supreme; none ought to command contrary to Law. It is not, that he or they are superiour that command, that therefore they should be obeyed; no, it ought to be diligently enquired by the Inferiours, whether Superiours command Law, or not; if not, they are not to be obeyed. For that this is not a Rule amongst Men, is the Reason so much of Absoluteness and Tyranny is so much on foot in the World.

Camerarius mentioneth a Story of *Henry II.* of *France*, his committing to Prison an *Italian Lackey*, and shewing no Cause of his Commitment. The Judges visiting the Prisoner, commanded that he should be delivered. The King again committed him, and commanded that he should be executed. The Judges notwithstanding the second time opened the Prison-Doors for him, for that the Law warranted them for so doing.

Henry III. of *England*, commanded *Ralph Nevil* (Lord Keeper or Lord Chancellor) to deliver the Great Seal. He refused it, because it was to be disposed of by the Common-Council, or Parliament of the Kingdom. This is attested by *Matthew Paris*, and *Matthew of Westminster*.

Thomas late Lord *Stafford's* Plea, That what he did, was in Obedience to his Superiour, the King his Master, could not protect him from condign Punishment, for that he had transgressed the Law.

Plutarch saith, the *Spartans* were happy in their King *Agessilaus*, who had such a reverend Esteem of Law, that he gave obedience to a small Scroll of Parchment, which was the Summons of his Country for his Appearance.

That which will make us happy, must be our Laws; not Men, Councils, or Courts. *Aristotle* saith, That it is better to govern by good Laws than good Men.

My Lord, our Laws are good; they are (as to the intent) the only preserving Laws in the World: they are the Strong-holds, the Bulwarks to the weakest.

Edw. 6. fol. 36. The Law is called, *The Inheritance of every Subject*. It is the Inheritance of Inheritances; and without which Inheritance, we have no Inheritance: we should be but as Tenants at Will, to be turned out of Life, Liberty and Estate, at pleasure.

My Lord, withal, the Law signifieth nothing at all, if there be not a way to obtain the Benefit thereof; the which should be as certain and unalterable as the Law it self. And therefore I think that the Statute of *42 Edw. 3. chap. 3.* is meant a Proceeding by Record, when it saith, That no Man shall be proceeded against, taken or imprisoned, but according to the old Law of the Land. The same Opinion may pass of the 29th chap. of *Magna Charta*, which is but an Exposition of the good old Law of the Land.

Mr. Selden, in his Argument at the Conference of the Lords and Commons, 1628, saith, *The Law is of no Benefit, if that the way be not open to obtain the Benefit of the Law.*

In all which, Proceedings by Discretion are justly reprov'd; for they are of evil Consequence, as witness *Empson* and *Dudley* in *Henry the Seventh's* Days, by whom the Subjects were grieved, my Author saith.

My Lord, just Proceedings are as necessary as just Judgments.

It is Justice that saveth and defendeth a Nation, that maketh it happy, fruitful and prosperous.

The Frontiers of a Nation may be guarded with Men at Arms, but it will not be preserved thereby: it must be Justice in the midst of it: *If there be but a Man that executeth Justice and true Judgment*, he shall save the City.

There may be good Reasons given for it. Injustice discontents a People; and usually the Foundations of Changes are laid upon the Discontent of the People.

My Lord, I speak not this as reflecting on this Court, or out of fear of Injustice at this Time or Place; no, but only as laying a sure Foundation for my Exceptions.

If the Law be Supreme, and not to be varied from in the least Tittle, then it is a sufficient Sanctuary. Unless this be granted, all my Exceptions will profit me nothing.

I ought not to be remanded, because it cannot but appear I have been proceeded against not according to the Law of the Land, which is my Right; and if my Right, every Man's Right; and if not my Right, it is no Man's Right.

42 Edw. 3. chap. 3. None shall be proceeded against, but by Presentment, or things of Record, according to the old Law of the Land.

It is not the Law of our Kings, but the Consent of our Forefathers: These are our Privileges, and the present Power hath declared they will be tender of them.

The Writ is by Authority of Parliament.

This Privilege of an *Habeas Corpus* putteth the Difference between the Villain and the Freeman.

My Lord, I shall now make my Exceptions to the Return.

First, The Return is too general, and sheweth not lawful Cause why I should be imprisoned.

I doubt not but to make it appear; and if so, I ought to be set at liberty without Bail.

The Act of the 17th of the late King provideth, That if no Cause be shewn (that is to be understood, a lawful Cause) then the Prisoner shall be discharged.

A Prisoner is not discharged, if he be bailed, for that he is a Prisoner to his Bail; and if bailed, then it is to be supposed a Cause, though such upon which he may be bailed.

The Cause of Imprisonment shewn in the first part of the Return, is for a *Seditious Pamphlet against the State*: It doth not name wherein it is seditious; it doth not name what Books or Pamphlets.

2 Part Instit. fol. 591. on the Statute of *1 Edw. 2.* *Sir Edward Coke* saith, That the *Mittimus* or *Warrant* must contain the Cause, though not so certainly as the *Indictment* ought; yet with so much convenient Certainty, as that it may appear judicially what the Offence is; as for stealing a Horse, or the like. And this is according to Reason, which is the Mother of Law; which hath had good Authority at this Bar, and now hath, and I hope shall have.

As by Variety of Natures, and Forms, and Names, several Beasts are distinguished; so Variety of Titles do distinguish Books or Pamphlets. And for that there is or hath been as many several sorts of Books or Pamphlets distinguishable by their Title or Name, and Matter or Subject, wherein they are seditious, as there

there are several sorts of Beasts distinguishable either by their Nature, Name or Form: therefore if it be needful, if a Man steal a Horse, that the Warrant or *Mittimus* shall say, the Imprisonment is for stealing a Horse, and not for stealing of a Cow, the same will hold good for a Cow, Ox, or any other Creature or Thing.

If so, it had been as needful for the Return to express what Pamphlets or Books, either by Title or Name, Matter or Subject; for that there are, or have been as many several sorts of seditious Pamphlets (so accounted) within these few Years, of several Titles, as there are several sorts of Beasts in the World. And therefore seeing the Return doth not shew for which of them I am imprisoned, it must be presumed, there is not Cause for my Imprisonment. Generals are nothing in Law.

Again, my Lord: Sir Edward Coke, 4 Part *Instit.* fol. 39. chap. 1. *High Court of Parliament*, there in these words, saith, That by order of Law, a Man cannot be attainted of High Treason, unless the Offence be in Law High Treason. He ought not to be attainted by general Words of High Treason by Authority of Parliament, (as sometime hath been) but the High Treason ought to be specially express'd.

This is so plain, it need not be pressed further.

Likewise the Resolution of the Commons in Parliament, the 4th of the late King, resolveth, That notwithstanding special Commands for Imprisonment, if there be not lawful Cause of Imprisonment shewed upon the Return of a *Habeas Corpus*, that then the Prisoner shall be acquitted.

I have plainly made it appear, that there is no lawful Cause; yet notwithstanding I shall back it with Reasons that shall carry sufficient Authority with them, to prove my Assertion, That there is not lawful Cause; and to prove that my Imprisonment hath not been according to the Law of the Land, as is provided in the Act of the 17th of the late King, 42 *Edw.* 3. cap. 3. 25 *Edw.* 3. chap. 4. and *Magna Charta*, chap. 29. All which command but the Law, or are rather but Expositions of the Law.

And seeing the Parliament hath left this Court open for any to be relieved, I pray to be relieved.

My Lord, I ought to be proceeded against by due Course of Law.

The Act of the 20th of September, 1640, provideth, if it be for treasonable and seditious Pamphlets, the Party shall suffer such Penalties as are by the Law of the Land provided. By which it appeareth, that they intended no otherwise a Man should be proceeded against in this case, but by due Course of Law; which is to be by Presentment before Justice, or Thing of Record; as 42 *Edw.* 3. chap. 3. at which time it is usual that the Accusers and the Accused are face to face, and there they the Accusers do aver, that that is the Man that hath so and so offended; else how shall it be known that this or that is the Man meant by the Accusers?

Besides, my Lord, Anno 10 *Eliz.* chap. 6. it is provided, That two Witnesses be as well at the Indictment as the Arraignment.

Indictment is an Accusation against a Man; and it is upon Accusation the *Mittimus* is made for Commitment. It is fit a Man at his Commitment do know his Accusation and Accuser;

if he do not, he cannot make his Defence. It is not fit he should be deprived of any Advantage of that kind.

Festus (Acts xxv. 27.) saith, *It seemeth not reasonable that he should send Paul to Augustus Cæsar, without shewing Cause of his Imprisonment.* There was Cause, but not a lawful Cause; for he saith, *He might have been acquitted, if he had not appealed to Cæsar.*

If it should be objected, That a Privy-Council may, for several secret Reasons of State (if they please) commit Men, and shew no Cause, or at least not so particular as the Law requireth; Sir Edward Coke, 2 Part *Instit.* fol. 199. sufficiently answereth that, and saith, *That the Law admitteth not of Matters of Pleasure.*

My Lord, that good Maxim, *That the Safety of the People is the supreme Law*, hath been misinterpreted by some that would have it thus: That if any by their Endeavours do threaten Disturbance to a Government, and that they conceive it safe to take away those Disturbers Lives, or their Liberties, in order to prevent those Mischiefs they apprehend they may be instrumental in: if they cannot do it by Law, then they may repair to extraordinary Courses.

Mr. Sadler, in his Book, intitled, *The Rights of the Kingdom, and Customs of our Ancestors*, reporteth, That the old Saxons had a Maxim, *That high or extraordinary Justice is Injustice.*

My Lord, and Injustice doth a Nation or State more Mischief and Hurt than all its private and open Enemies can do.

Now having proved that there is no lawful Cause shewn in the Return why I am detained a Prisoner, I shall present your Lordship with my second Exception, which is, That there is not alledged the Time nor Place where the Crime was committed, that is the pretended Cause of my Commitment.

My Lord, I shall not insist upon Matter of Fact to any other end, than to shew the Insufficiency of the Return.

And that the Law intendeth that Cause, nay, lawful Cause should be shewn of Commitment, in the Warrant or *Mittimus*, upon his first committing, the Cause of Commitment, may the better prepare his Defence; the which the Law intendeth not to deprive a Person of: the which he should be deprived of by such Returns.

I shall shew your Lordship wherein first it may be alledged, that I did commit a Crime at London such a time, when I was at York.

Mirroure, Chap. 3. Sect. 23. *One that is appealed of Maim, may plead that he was sick at that time.*

My Lord, many times such Circumstances are the Standards to measure the Truth or Falshood of an Accusation.

I shall first offer something to prove, that the Place where the Cause of Commitment was committed, ought to have been shewn in the Return.

Page 621. *Fitz-Herbert, Natura Brevium*, of a Writ of Mainprise, it is in the Beginning of the Writ thus; *The King, to the Sheriffs, &c. of the part of A. taken and detained in our Goal at G. for certain Larcenary of a Horse at S.*

Now, my Lord, here is the Place alledged.

Sir Edward Coke, 2 Part *Instit.* fol. 37. saith, That Appeals ought to contain, 1st, *The Fact*: 2dly, *The Year*: 3dly, *the Day*: 4thly, *The Hour* of

of the Day: 5thly, The Place where the Fact was done.

Here are many Certainties, but the Certainty of Time and Place are not to be omitted; they are two Essentials.

So that if Time and Place be not shewn, when and where the Crime was done, that is alledged to be the Cause of Imprisonment, it may be concluded that there is no Cause, if it was done at no Time, nor no Place.

Another Reason why the Time when the Crime was committed, that is the Cause of Commitment, ought to be shewn in the Return, is this: If it were granted that it was so, that I did publish seditious Pamphlets or Books; it may be done seven Years since, for ought that appeareth in the Return.

That the Time when the Fact was done, ought to be shewn, appeareth evidently by the Provision that is made in the Act of the 20th of Septemb. 1649. intitled, *An Act for preventing of scandalous and seditious Books and Pamphlets. Provided always, and be it enacted, That no Person or Persons shall be molested and impeached for any of the Offences mentioned in this Act, unless he or they be thereof accused within six Months after his or their Offence so committed or done.*

Then 13 Eliz. chap. 1. it is provided, *That none shall be sued, troubled or molested for any of the Offences contained in that Act, unless they were accused thereof within six Months, if the Party or Parties were not out of the Realm.*

Now for ought there appeareth in the Return the pretended Cause of Imprisonment was committed seven Years since; and it may be as legally presumed to be six or seven Years since, as four Months since. And if so, then I am clear by vertue of those Acts I mentioned: they concern seditious and treasonable Books or Pamphlets. In a doubtful Cause, it is better to acquit the Guilty, than to condemn the Innocent.

My third Exception is, That the Conclusion of the Return ought to be according to Law, and have these Words; *To be delivered by due Course of Law.*

By which is to be understood *speedily*, at the next Goal-delivery. It is not by the Return said by what I shall be delivered, nor when, whether ever or never delivered; it seemeth to intend a perpetual Imprisonment, the which is utterly against the Law of the Land.

2 Part. Instit. fol. 315. chap. 9. on the Stat. Gloucest. Expedition ought to be used, to prevent long Imprisonment. *Imprisonment should be but till the next coming of the Justice. And (saith he) it is the Mercifulness of the Law of England, that it willeth that none be ruined by long Imprisonment.*

And therefore the afore-mentioned Writ of Mainprise (cited in Fitz-Herbert's *Natura Brevis*) seemeth to take up a Complaint, That the People are not only grieved with wrong Imprisonment, but more especially with long Imprisonment, in these Words; *And him by such Mainprise from the Goal aforesaid hast delayed to deliver, to the no small Loss and Grievance of him the said R. and manifest Peril of his Life.*

Brook's 9 Report in Powler's Case, and in the end of the Writ, hath these Words; *That the Subject be not detained so long in Prison, as till the Justice shall come in Eyre.*

By all which it appeareth, that the Law relieveth against long or perpetual Imprisonment,

as also against Imprisonment without lawful Cause, notwithstanding that it be by special Command.

My Lord, my Life nor Liberty cannot be taken away, but by Law; nor given unto me, but by Law. It is a good Maxim, *If we keep the Law, the Law will keep us.*

It would be sad if a Man should be necessitated to plead his Cause by the making of Friends, when the Law shall not be sufficient to plead in his defence, and when Life and Liberty shall be disposed of at pleasure.

It is provided against in 2 Edw. 3. chap. 2. of *Charters of Pardon*; where it is ordained and enacted, *That such Charters shall not be granted, but only where the King may do it by his Oath*; that is to say, where a Man slayeth another in his own Defence, or by Misfortune: This the Law warranteth to be done.

Now having proved, that there is no lawful Cause shewn in the Return why I should be a Prisoner, together with the Insufficiency of the Return: if so, it is my Privilege by Law to be discharged and acquitted.

And the present Power hath declared to be tender of our Rights and Privileges: We have no Rights, Privileges or Properties, but what we are intated in by the Law: if so, then it is my Right not to be deprived of what the Law doth allow me. Your Lordship is a Judge of the Law.

Captain John Streater's Argument to the second Part of the Return.

My Lord,

AS to the second Part of the Return, that mentioneth an Order of Parliament, I make this Exception, *That it doth not mention any Cause at all of my Imprisonment.* And seeing it doth not shew Cause, it is of less Strength than the former Part of the Return, wherein is Cause shewn, though not a lawful Cause.

And therefore there may be no more, but only the bare reading of it to shew the Insufficiency of that part of the Return.

But here, if it should be objected, That it is grounded upon an Order of Parliament, and that the Parliament are not bound to shew a cause:

Truly, I am of Opinion that the Parliament would not own any one that should so argue, it being so perfectly repugnant to their Honour, it being condemned in Parliament within our Memory, as unjust, illegal, unreasonable, and perfectly contrary to Law; and Law is the only Scepter of Senates, Parliaments, Councils, Empires, Kings, Princes, Governours and Magistrates.

The late Parliament in their Declaration upon declaring England a Free-State, (March 17. 1648.) say, *That their only Authority is by the Law.*

Again, they say that they are sensible of the Excellency and the Equality of the Law of England: Also, That they should uphold the true approved Rules of the Law of England; and that the good old Laws and Courts of Justice, and the Custom of England, are the Badges of our Freedom, Rights and Privileges.

And this Parliament hath declared, That they will be tender of our Rights and Privileges; the which we enjoy by our Laws.

29 Chap. Magna Charta; *None shall be taken or imprisoned, but by a legal Proceeding, according to the old Law of the Land.*

The words, *None shall be taken*, imply, That none shall take or imprison any contrary to Law.

And it cannot be denied, but the Law intendeth the Protection of innocent Persons in Freedom: And there being no Cause shewn in the Return, let the Command come from whence it will, the Law will warrant a Discharge.

If it be by Order of Parliament, if the Order shew not Cause of Imprisonment, not a Cause only, but a lawful Cause.

Parliaments ever made Laws, but the Judges of the Law judged by those Laws.

Who will question but that the Warrant of a Justice of Peace, shewing lawful Cause of Imprisonment, is of greater Force in Law, than an Order of Parliament shewing no Cause of Imprisonment?

But, my Lord, the Parliament is here; it is their Authority that I apply my self unto; there is nothing can be done here but by their Authority; that is to say, the Law.

And therefore the Law, and several Acts of Parliament, as that of the 17th of the late King, and divers others say, That I shall be discharged.

Shall an Order of Parliament over-rule Laws, Statutes, Customs, Usages and Reason?

No, my Lord, doubtless the Parliament's Intention in ordering that I shall not be delivered but by Order of Parliament, is, That I should be delivered by Order of Law, as I here expect now, and do not question in the least.

Order of Law may be reckoned as the comeliest of all the Parliament's Orders.

Surely none will alledge, that the Parliament intendeth to stop the Proceedings of Law that may relieve me; or that this Order of Parliament is superior to Authority of Parliament that is judicially in this Court.

My Lord, the Inferior must give way to the Superior. The same Reason that the Commons in Parliament, of the 4th of the late King, judged of the Invalidity of the Record in *James Damestris* and *Cæsar's Case*; for that it was not argued or debated it was not of weight to be a sufficient Record: The same Reason, I say, may be given for an Order of Parliament not to be in force against an Act of Parliament.

An Order of Parliament hath but the same Proportion with an Act of Parliament, that a verbal Command hath with a Command by Record; for that there are not the Debates, Deliberations, and three Times of reading of an Order of Parliament, as is at the establishing an Act of Parliament.

My Lord, besides, any rational Man will think that the Wisdom and Prudence of the Parliament is such, that they will not lay up such a Portion for their Successors and Children, as a Record that shall be a Law or Precedent to After-Ages, that shall be in effect, That J. S. was remanded to Prison by the virtue of an Order of Parliament, when no Cause is shewn in the one part of the Return, nor lawful Cause in the other.

When the supreme Authority of Parliament, the Law, and Acts of Parliament that contain Law, say expressly, That if no Cause (or lawful Cause) be shewn in the Return for Imprisonment, that then the Prisoner shall be set at liberty.

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And Anno 20 Edw. 3. cap. 1. That if Commands come to the contrary, Judges shall not cease to do even Law and Right.

Besides, Sir Edward Coke, in the 4th Part of his *Institutes*, cap. 10. *High Court of Parliament*, intimateth that an Act of Parliament is not pleadable in a Court of Record, but by Record, or under the Seal. And Mr. Sadler, in his Book, entitled, *The Rights of the Kingdom, and Customs of our Ancestors*, saith as much. Then much less an Order of Parliament, that is not recorded upon the Parliament-Rolls it self.

My Lord, it is not to be imagined, neither do I think, that the Parliament expected that their Order (the inferior part of their Power) shall take place of the superior part of their Power, the Law, and Acts of Parliament that command Law, which is judicially here, as I said before.

My Lord, all Acts of Parliament, that are unrepealed, are their own: They are not theirs, when they disown them by repealing. Until then they are with *not otherwise* in force, and are Law.

My Lord, a Parliament, as they command Law, may be called the Wisdom and Reason of the Nation.

Anno 4 Hen. 7. cap. 12. The Law is called the *Policy of the Nation*. Indeed it is so: Justice is the best Policy, as I said before.

None can demonstrate what Justice is, without the Law be as the golden Mere-Wand, that Sir Edward Coke cautions Parliaments to leave all Causes to be measured by, 4 Part, *Instit.* fol. 41.

Upon the Question of Henry VIII. to the Judges, *Whether a Man might be attainted of High Treason in Parliament, and not to call him to his Answer?* The Judges Answer was, *That an inferior Court could not in Law or Justice do so.* And their Opinion was, *That the higher the Court is, the more just they ought to be.*

It is not to be supposed that a Parliament will act contrary to their Wisdom and Policy, which is the Law: or that they would have their inferior Power take place of their superior Power.

Neither will the Parliament plead against me with their Power, no surely, but by Law, legally; else they would have nailed up my Prison-Doors with armed Men, and never have suffered me to come to this Bar. And if that they had not intended that I should have been acquitted, they doubtless would have shewn Cause. I know there can be no lawful Cause of Imprisonment shewn against me.

My Lord, Job's Friends, they tell Job that because he was guilty, in their Opinion, in the sight of God of Sin, Job 22. 4. *Will he (meaning God) reprove thee for fear of thee? Will he enter with thee into Judgment?* As much as to say, That God would cut him off from amongst Men because he was sinful, and God powerful. But saith Job, (Chap. 23. 3.) *O that I knew where I might find him, that I might come to his Seat! I would order my Cause before him, and fill my Mouth with Arguments. I would know the Words which he would answer me, and understand what he would say unto me. WILL HE PLEAD AGAINST ME WITH HIS GREAT POWER? NO; but he would put Strength in me. There the Righteous might dispute with him, &c.* And chap. 38. ver. 32. God saith, *Gird up thy Loins like a Man;*

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for I will demand of thee, &c. And here God declareth his Power and Wisdom visibly in the Creation of Creatures great in Magnitude, as the *Leviathan*; sweet in Influence, as the *Pleiades*; Swiftneſs and Courage of the Horſe in the Day of Battel; and ſo of the whole Creation. That this great and glorious Eternal God, that gave a Being to all Beings by one only Conception of his Mind; he willed them to be, and they were: This God, you ſhall find, pleaded with *Job* by and by, in *Chap. 42. ver. 4. Hear, I beſeech thee, and I will ſpeak; I will demand of thee, and declare thou unto me.*

My Lord, will the Parliament plead againſt me with their Power, that is to ſay, what they may do? Surely they will not; but rather ſtrengthen me, by affording me the Benefit of the Law at this Time and Place; which is the utmoſt of what I do expect, and the which they ought to do. By the which I ſhall arrive at my Liberty, which is my Right by Law, in regard there appeareth no Cauſe in the one part of the Return, nor lawful Cauſe in the other.

My Lord, I have ſeen the Copy of an Order of Parliament, bearing Date the 21ſt of *November* preſent, that ſaith, *That John Streater be and do ſtand committed to the Priſon of the Gate-Houſe, Weſtminſter, in order to a Trial; and that Mr. Speaker do iſſue a Warrant accordingly.*

Without doubt this is the Trial intended by the Parliament, here at this Place, to try whether there be cauſe of Imprisonment, or not.

The Innocent need no other Trial.

The Cauſe that is already ſhewn in the firſt part of the Return, is to be ſuppoſed true, and all the Cauſe that was to be ſhewn, and none other; for that the ſecond part mentioneth no Cauſe at all. And if there had been lawful Cauſe ſhewn, it is not to be denied but it had been of force.

By all which it appeareth, that they intended me the Benefit of the Law; which ſpeaketh this Language, *That the Innocent ſhall be acquitted.*

My Lord, an Order of Parliament is but as the firſt Thoughts of a Man, by which he intendeth this or that.

An Act of Parliament, and the Law, is like the ſecond, third, and fourth Thoughts of a Man, wherein he altereth his firſt Reſolutions, formed by his firſt Thoughts, unto more ſafe and better Reſolutions.

And it is not contradictory to himſelf at all, nor never a whit below him.

My Lord, here are the Parliament's ſecond, third, and fourth Thoughts judicially in this Court: It is Law digeſted by Councils, Debates, Time and Practice, into Safety and Convenience. The which is for their Honour to act by: The Benefit thereof I pray.

My Lord, the Return ſaith *I ſhall not be delivered but by Order of Parliament.* The Order of Parliament ſaith not ſuch a Word, but to be committed in order to a Trial; at which I am.

My Lord, the Return ſaith *I ſhall be committed Priſoner to the Gate-Houſe by Order of Parliament.*

The Authority of Parliament, the Law judicially in this Court, hath committed me Priſoner to the Maſter of this Court; ſhall this be called a Contradiction to the Order of Parliament?

No, ſurely it will not ſtand ſo in the Opinion of this Court.

Neither can it be called a Contradiction to the Order of Parliament, if I ſhould be diſcharged of my Imprisonment; becauſe the Authority of Parliament, the Law, ſaith, *If there be no Cauſe of Imprisonment, I ſhall be diſcharged.*

The Law intendeth but three Things only to defend, in which all elſe is comprehended: They are Life, Liberty, and Eſtate.

Liberty is the chief: Not a Liberty to do what one liſts, either in obeying, or in commanding; but a juſt preſerving Liberty, that ſhall be for the Good of Society.

It was this that our Forefathers and we have contended for by Arms: And being victorious, will the Parliament deprive us of the Benefit of the Law, which is the Ornament of our Triumph?

No, my Lord, they have declared to the contrary that they will not.

Something of the like nature may be concluded from the Answer of the Council of State to my Keeper: The Keeper of the *Gate-Houſe*, when he deſired of them to know their Pleaſure, whether he ſhould allow the Writ of *Habeas Corpus*, or not, in regard I was a Priſoner by their Command; their Answer was, They would leave it unto him. As much as to ſay, They intended not to deprive me of the Benefit of the Law.

My Lord Chief Juſtice *Hyde* is not now on this Bench, who once was, and to his Shame did deliver in effect this Judgment, That for ſeveral Reaſons of State, the King may do or act contrary to Law.

My Lord, I have power to kill this Gentleman next me, but not by Law.

It did better become Mr. Attorney-General *Heath*, in his pleading for a corrupt Intereſt (in the Cauſe of Sir *John Heningham*, and others) at this Bar, to alledge, That the King may act above and contrary to the Law; than Mr. Attorney-General *Prideaux*, that is to plead in behalf of a State, that ſome ſuppoſe are laying a Foundation of the Kingdom of Chriſt. If he ſhould, it would be the grandest Inconſiſtency that poſſibly could be, to what they have declared, namely, Tenderneſs of our juſt Rights and Privileges.

The which Declaration hath invited a national Expectation thereof: The which ſhould be a ſufficient Law to them to do nothing that might deprive any Individual, though the moſt inferior and inconfiderable Part or Perſon of the Whole; becauſe they were comprehended in the Whole, unto which the Promiſes were made.

My Lord, upon the Agreement of ſharing the *Roman Empire* made between *Octavius*, *Antonius* and *Pompeius Sextus*, it fell out that they agreed to feaſt aboard of *Pompeius's* Admiral-Galley, lying at an Anchor off the Head of Mount *Misena*: And when they were all aboard, and merry, *Menas* the Pirate came and whiſpered *Pompeius* in the Ear; *Come*, ſaith he, *ſhall I cut Cable, weigh Anchor, and ſet Sail, and not only make thee Lord of Sicily and Sardinia, but of the whole Empire alſo?* No, ſaith noble *Pompeius*, *I have not learned to break Faith, although it were to the gaining of an Empire.* When he had invited them to a Banquet, they ſhould not be deprived of what they expected by Imprisonment,

ment, or Loss of their Shares of the Empire: Such Advice, and such Practices do better become Pirates and Thieves, than Persons of Virtue and Honour; the which was in his power to have done.

My Lord, seeing, as I say, that the Parliament did at the first declare that they would be tender of our Rights and Privileges; and seeing it is our Privilege to have the Benefit of the Law; and seeing the Law saith, *That if there be no Cause, there shall be no Imprisonment*; and in regard there is no Cause shewn, why I should be a Prisoner: I do aver that the Parliament cannot have greater Dishonour put upon them, than for any one to alledge that they intended Imprisonment to me, if there should no Cause in Law appear.

My Lord, if there be any Thing else alledged to be against me than what appeareth upon the Return and the Record, the Law requireth you not to take notice of it.

And seeing there is no Cause, there ought to be no Imprisonment: If it should, it would be Injustice.

Justice is one of the Attributes of God, that by his Dispensations he would have administer'd to Men.

The Administration of Injustice is a perfect Fighting against God.

I believe the Parliament would not be found Fighters against God.

My Lord, the Philosopher saith, *Where just Law ruleth, there God may be said to rule.*

If you judge justly, you have no Cause to fear.

I expect it, as you will answer the contrary at the dreadful Day of Judgment.

Judge. What have you to say, Mr. Attorney-General?

Prideaux. That which I have to say is not to argue, but to acquaint the Court he is committed by an Order of Parliament, which is not to give an account to the Court. It is their Pleasure to commit him till he be cleared by an Order of the same Power. And I hope, my Lord, you will not dispute it: For I know it is fresh in your Memory, where Orders of the like nature have been made by the Parliament. He is to remain Prisoner by the Authority that put him there.

Judge. Yea, as in the Case of *Lilburne, Chetwin*, and others, which after made their Address to the Parliament; which if this Gentleman do, I make no question but they will do according to Law and Justice by him, and no otherwise, since he is committed by them; and they only know the Cause of his Commitment.

Sir Thomas Witherington, Serjeant at Law for the Commonwealth.

There has been two Counsels have spoke something in behalf of the Gentleman at the Bar: one of them pleaded this, That there was an Order of Parliament, but not an Act of Parliament. My Lord, an Order hath force as well as an Act. As for Mr. *Norbury*, he said, Part of the Return was true, and Part was not true. If it be not true, he has an Action of the Case against the Keeper. Again, whereas he says, That all Acts of Parliament were made for the Liberty of

the People: truly so they are; but not to give leave to Licentiousness.

Judge. Mr. *Streater*, one must be above another, and the Inferior must submit to the Superior; and in all Justice, an inferior Court cannot controul what the Parliament does. If the Parliament should do one thing, and we do the contrary here, things would run round. We must submit to the Legislative Power: for if we should free you, and they commit you again; why, here would be no end: and there must be an end in all things.

Where you say, we are not to imprison you without Cause shewn: It is true, we are not: but if there be any that do disturb the Peace of the Nation, we are to settle things in Peace and Quietness; for the Cause of the Law is to quiet the Nation.

The second thing that hath been objected against the Return, was by Mr. *Freeman*: He says, The Parliament hath not Power to alter the Laws. Why, they have the Legislative Power, and may alter and order in such sort as they please; they may daily. If they find any thing that is fit to be reformed, they may alter and reform them, and make Laws new. It is strange a Counsellor should say this.

Another Objection was, That there was no Cause express'd. It's true, here there is not. We are Judges of the Law, and we may call inferior Courts to an account why they do imprison this or that Man against the known Laws of the Land; and they must shew Cause to any Man. In this Case, if the Cause should come before us, we cannot examine it, whether it be true or unjust; they have the Legislative Power.

Now whereas you say, It is but an Order of Parliament, and has not been three times read in the House: How can you tell but that it has been three times read? Indeed they used to read it thrice when the King and House of Lords and Commons sat; and so it may be now, for ought we know. But if it were but once read, we cannot call it into question, but must conceive it was on just grounds: and it may be they thought it not fitting to express a Case in Matter of State; for if they should express the Cause, and we not able to judge of it, there would be nothing done in it. Therefore, Gentlemen, we can do no more in it, and yet I hope we shall do according to Justice, that the People may not be oppress'd. If it had been a Cause we could have meddled in, something might have been done; but now we see no Cause it should be repleaded.

Justice Garmond. God made Man, and gave him a Law to live by; and the Laws of *England* are grounded on the Laws of God: and in the Laws of *England* every Man is concerned. And now the Parliament of *England* is grounded on the whole Body of the Nation. Now if one Power were not above another, things would go in a Circle to and fro, and have no end: Now this will bring them to an end, since the whole Law of the Nation is grounded on the Parliament Laws.

Judge Nichols. I am of the same Opinion, every thing must be done in Order: And *God is the God of Order*; and therefore every thing ought to be done in Order, and not in Confusion. Now what the Parliament does, we cannot dispute or

Judge of: Their Laws are to bind all People; and we are to believe they had Cause for what they did. And for that you say an Order should be read three Times; when I was a Parliament-Man, divers Acts past with one time reading. In the next place, you did distinguish between an Order and an Act of Parliament. Why, their Power is a Law, and we cannot dispute any such thing. And whereas you affirm it was once pleaded here, *That the King was above the Law, and might do what he pleased against the Law*; that it was so here, I do not remember: but the Parliament does not so.

Prid. I humbly pray he may be remanded to the Gate-House again.

Judge *Nichols.* There is a *Primum Mobile*, or things would come into confusion. The Parliament has the greatest Power.

Capt. Streater. I desire I might be bailed; I shall be a Prisoner nevertheless: the Law accounteth one a Prisoner, tho he be bailed; and if not bailed, I may be a Prisoner a hundred Years.

Prid. My Lord, pray let him be sent to the Gate-House.

Capt. Streater. I desire then I may be a Prisoner to this Court. I am a wounded Man, and have done Service for my Country, and deserve not to be shut up in a close Hole. Besides, I have been a Prisoner three Days contrary to the Order of Parliament, by Order of Law, to the Marshal of this Court; when the Order of Parliament saith, *I shall be a Prisoner to the Gate-House*: and if the Law can warrant the Court for the doing of the one, doubtless it will for the doing of the other. I am sure it is my Right by Law.

Judge. No, no; no such matter.

Prid. My Lord, I heard this Man say he has been wounded, and that he was for the Parliament; but I am informed he was cashiered. He cited the Order of Parliament, and that they did not publish the Cause wherefore: But I will speak it publickly, it is in order to his Trial.

Capt. Streater. My Lord, he speaks falsely; I laid down my Commission my self.

Judge. We are to judge honourably of the Supreme Power.

Capt. Streater. You said but now, my Lord, you could judge of nothing but what was before you upon Record.

Judge. Let him be sent again to the Gate-House; he was committed there. And, Gentleman, you should do well to apply yourself to the Parliament in the mean time: for while we are possessed otherwise, it must be our Office that you must be sent back according to the Order of Parliament.

Capt. Streater. I never petitioned in my life; I shall not now begin.

Prid. When the Cause is done, you may leave him as you found him.

Judge. You had your *Habeas Corpus*.

Capt. Streater. I could wish I had the Benefit of it, as is my Right by Law. I desire that notice may be taken, that the same Judgment and the same Plea were adjudged illegal, arbitrary, and perfectly repugnant to Law, the just Rights and Liberty of the People in Parliament, the 4th of the late King, 1628, as in the Case of Sir John Heningham, Sir Humphrey Hampden, and others, at this Bar.

Judge. The King was Plaintiff against them, and he was but a Feoffee in Trust: the Parliament is Plaintiff against you, and they are a Legislative Power.

The Prisoner was carried back to the Gate-House.

The Proceedings upon the Habeas Corpus in Hilary-Term.

IN the Vacation between Michaelmas and Hilary-Term, the Parliament dissolving, Mr. Streater resolved to apply himself again to the Law; he conceiving that the Order of Parliament was void, inasmuch as the Parliament was dissolved. And accordingly, on Monday 23 January 1653, being the first sitting of the Judges in Hilary-Term, he had Mr. Dormer of Counsel, who moved the Court for an *Habeas Corpus*. It was granted, and made returnable on Thursday the 26th next following. At which time, the Keeper sent the Body of Mr. Streater, with a Return of the *Habeas Corpus* not signed: which being in Court, was refused to be received.

Mr. Streater. My Lord, I am here brought to this Bar, by vertue of an *Habeas Corpus*: I desire that the Writ with the Return may be read.

Ld Ch. Just. Let it be read.

Mr. Broughton. My Lord, the Return is not signed.

Ld Ch. Just. If the Return be not signed, we cannot take notice of it.

Mr. Streater. My Lord, I desire that another Day may be appointed by Rule of the Court.

Ld Ch. Just. We cannot do so; we cannot take notice of you, whether you are the Person or not, if the Return be not under your Keeper's Hand.

Mr. Streater. My Lord, I desire I may have an *Alias Habeas Corpus*.

Ld Ch. Just. We cannot deny you that.

[The *Alias Habeas Corpus* was made returnable on Monday the 31st of January 1653.]

Mr. Streater. My Lord, I desire that I may by Rule of Court have assigned of Counsel (with me) Mr. Twisden, Mr. Freeman, Mr. Wilde, Mr. Norbury, and Mr. Dormer.

Ld Ch. Just. Let them be assigned.

Monday the 31st of January 1653, Mr. Streater was again brought before the Court of Upper Bench, by vertue of his *Habeas Corpus*.

Mr. Streater. My Lord, I am brought hither by vertue of an *Alias Habeas Corpus*. I desire that the Writ, with the Return, may be read.

The Clerk reads the Return.

OLIVER, Lord Protector of the Commonwealth of England, Scotland, and Ireland, &c. To the Keeper of the Prison of the Gate-House, Westminster, in the County of Middlesex, or his Deputys there, Greeting. We command you, as formerly we have commanded you, that the Body of John Streater Gent. in Prison under your Custody detained, together with the Day and Cause of his taking and detaining, by whatsoever Name the said John

John is called therein, you have before us at the Upper Bench in Westminster, upon Monday next after the Fifteen Days of St. Hilary next to come; to undergo and receive those things which our Court of Upper Bench aforesaid of him shall consider of in this behalf. And this you must not omit in any wise, and upon peril that will follow thereupon. Witness Henry Rolle, at Westminster, the 26th Day of January, 1653.

And the Return of this Writ appears in a certain Schedule hereunto annexed, and the Answer of *Aquila Wykes*, Keeper of the Gate-House Prison in Westminster.

TO his Highness the Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the Dominions thereof, in the Upper Bench at Westminster, at the Day and Place in the Writ to this Schedule annexed named; do certify, that before the coming of the said Writ to me directed, that is to say, the 12th Day of September 1653, John Streater in the Writ named was committed to my Custody, and there detained by virtue of a Warrant from the later Council of State, the Tenour of which Warrant followeth in these Words:

THESE are to will and require you to receive into your Custody the Body of *John Streater*, and him you shall safely keep Prisoner in the Prison of the Gate-House, he being committed for publishing seditious Pamphlets against the State. Of which you are not to fail: and for so doing, this shall be your sufficient Warrant. Given at the Council of State at *Whitehall*, this 12th Day of September 1653.

To the Keeper of
the Gate-House.

Rob. Tichburn Presid.
H. Lawrence.
Sa. Moyer.
J. Hewson.
Ch. Howard.

And the said John Streater is also detained by virtue of a Warrant under the Hand of the Speaker of the Parliament; the Tenour of which Warrant follows in these words.

BY virtue of an Order of Parliament, bearing Date this present 21st Day of November, These are to will and require you to receive and take into your Custody the Body of *John Streater*, and him to keep and retain in safe Custody, until he shall be delivered by Order of Parliament. Whereof you are not to fail, as you will answer the contrary at your peril. Given under my Hand this 21st Day of November 1653.

Francis Rous Speaker.

And the said John Streater is also detained by Rule of the Upper-Bench Court; the Tenour of which Rule follows in these words.

THE Keepers, &c. against *John Streater*. Friday in fifteen Days of St. Martin 1653. The Defendant was this Day brought in Court by virtue of a Rule of this Court, under the Custody of the Marshal of this Court: And it is ordered, That the said Marshal do deliver the Body of the said Streater to the Keeper of

the Prison of the Gate-House in Westminster, to remain under his Custody according to the Order of Parliament, upon the Motion of Mr. Attorney-General.

By the Court.

And these are the Causes of the detaining the said John Streater, whose Body before the Protector aforesaid I have ready accordingly, at the Day and Place in the said Writ contained, as I am within commanded.

Aquila Wykes, Keeper of the Gate-House.

Ld Ch. Just. Mr. Attorney, what say you to it? The Prisoner hath been here many times.

Attorn. Gen. My Lord, I heard not of it.

Mr. Streater. My Lord, I sent him notice the same Day the Writ was granted.

Attorn. Gen. My Lord, he sent me a Man that said he lived in *Fleet-street*, I do not know where.

Ld Ch. Just. How cometh it that you did not send him other notice?

Mr. Streater. My Lord, I beseech your Lordship that I may not be intercepted by such Pretences, and that I may not suffer any Delay for want of such Formalities. My Lord, Mr. Attorney-General hath appeared often enough in this Case; he cannot with Credit pretend he is unprovided to speak to it.

Ld Ch. Just. Let the Prisoner be here again on Friday.

[*Mr. Streater* was again sent back to the Gate-House, and was, on Friday the 3d of February 1653, brought by Rule upon the *Alias Habeas Corpus*.]

Mr. Twisden. My Lord, I desire that the Prisoner may be bailed.

Mr. Wylde. I desire that the Writ and Return may be filed.

Ld Ch. Just. Mr. *Atkin*, what have you to say why it may not be filed?

Mr. Atkin. Nothing, my Lord.

Ld Ch. Just. Let it be filed, and let the Prisoner be here again on Thursday next.

Mr. Streater. My Lord, I desire that I may have assigned of Counsel with me, *Mr. Latch* and *Mr. Windham*.

Ld Ch. Just. Let it be so.

[The Prisoner was carried by the Marshal of the Upper Bench unto the Upper-Bench Prison, *Southwark*; and on Tuesday the 7th of February 1653, was again brought into Court, under the Custody of the Marshal of the Court.]

Mr. Twisden. I desire that the Prisoner may be bailed. He is committed by two Orders; the one from the Council of State, the other from the Speaker of Parliament, by virtue of an Order of Parliament. The Order of Parliament is out of Doors, the Parliament being dissolved.

Mr. Attorney-General began thus:

My Lord, this Gentleman the Prisoner stands committed by Order of Parliament: And whereas in his behalf the Counsel assigned for him have

have alledg'd, That the Order of Parliament is void, by reason (as they say) the Parliament is dissolved:

My Lord, Parliaments cannot be dissolved; the Parliament are the same Power is in being now.

And Parliaments were to be once a Year, as by the Statute of the 4th of *Edward 3.* at which time he may be relieved. In the North Parts, the Assizes can be held but once a Year.

But grant that the Meaning of the Parliament was to deliver him themselves, and not that they meant the Parliament to be on the 3d of *September 1654*; yet for that they ordered that he should not be delivered but by Order of Parliament, I conceive he can be delivered no otherwise than by an Order of Parliament, nor by any other but a Parliament.

Possibly when that the Parliament consisted of King, Lords, and Commons, an Order of one or two Houses, without a threefold Consent, had not been binding: but now the Power that was in the Lords and King is joined in the Commons, and therefore is of greater force.

And it is not material whether they shew Cause or not; there may be good Cause: And it cannot be presumed that the Parliament would commit a Man, and have no Cause at all for so doing.

But without question, a Parliament may commit Men, and shew no Cause.

But suppose his Commitment be in order to a Trial in Parliament, will this Court take upon them to judge in the Cause? Or can they by *Habeas Corpus* bring the Body of the Prisoner and the Cause before them, out of Parliament?

The Lord of *Strafford* was tried in Parliament: I believe this Court would not in such a Case remove the Trial before them, nor indeed can they. Upon the Return it appeareth, he is committed by Order of Parliament, and to be delivered by Order of Parliament: if they had intended he should have been delivered otherwise, they would have either said nothing, or have ordered he should be delivered according to Law.

When Kings die, it is true, that Commissions do cease; but when Parliaments do dissolve, their Acts do not cease. Besides, a Parliament is the Supreme Court, and they do constitute other Courts; and therefore it is not for other Courts to question the Proceedings of a Parliament.

It will not be expected of me to shew that the Parliament had sufficient Matter or Cause of Imprisonment.

To this the Judges answered, No, no: if he had any thing more to speak to the Order of Parliament, that was it that was to be spoken unto.

Mr. Attorney. My Lord, this Gentleman might make his Application for his Liberty to the present Authority elsewhere; and I doubt not but it would be granted him: for now Parliamentary Authority is in one Person.

My Lord, I doubt not but the Court will be cautious in meddling in this Case, but will rather remand him to Prison: First, for that it may be that the Proceedings against him are not yet ripe; it may be yet under examination. Secondly, for that this is the first Precedent of the

like nature, and it being of so great and high Concernment.

Mr. Twissden. My Lord, a Parliament may determine, and Parliaments do determine; and when they do, their Orders also determine with them. It is true, that Acts of Parliament do continue; but this is but an Order of Parliament, and not an Act of Parliament.

My Lord, we must come hither to be relieved; this is the Place, this is the Court appointed for Relief in this Case: we expect it, and, my Lord, desire that the Prisoner may be bailed.

Besides, my Lord, this is not an Order of Parliament upon Return, but a Warrant of the Speaker.

Mr. Windham, of Counsel with the Prisoner.

My Lord, it is true, we find Writs of Error returnable in Parliament, as in *Flowerdew's Case*, and in *Basset's Case* of Error given in this Court of *King's-Bench* against *Basset*, in a Judgment for the King: *Rot. Parl. 25 R. 2. num. 24.* This is after Trial of Law, and not before.

As to the Case of the Lord *Strafford*, we know not but that by Law he ought to have been appeach'd here.

As to the Order, it is determined by Law.

Mr. Wylde, of Counsel with the Prisoner.

My Lord, the Order cannot be a Bar but that the Prisoner may be bailed.

Besides, the Order is void, for that the Parliament discontinueth; and it is ordained, That *he or they that shall say the Parliament continueth, shall be guilty of an high Offence.*

An Act or Order of Parliament is not a Judgment of Parliament.

We are here *coram Protectore.*

Capt. Streater. My Lord, I should not at all undertake at this time, having so many learned Counsel assigned, who attend my Cause, and who have sufficiently urged enough Law to warrant the Court for my Discharge, but that the Attorney-General hath both last Term and this Term endeavoured to asperse me, to discourage the Court, so as to delay or deny me Justice: As the last Term, by suggesting to the Court that I was a dangerous Person, and stood accused in Parliament for high Misdemeanours; and said that they were such, and so dangerous, that they for many secret Reasons of State thought it convenient not to discover them. And this Term, by saying, the last Day of hearing, that I was a stubborn refractory Person, and would not make my Application to the present Authority, where he assured me that I might have my Liberty for asking for it; and that my Endeavours were to strike at the very Power of Parliament.

My Lord, as to what great and high Matters or Things that were by him suggested to this Court to be in Parliament, certainly it would have appeared upon the Return: they have not been intercepted, as to Time, in the making of their Return to the *Habeas Corpus*; they have also had time to make several Returns; and lastly, to amend the Returns by Rule of Court. Without question, my Lord, if they had had other Cause, they would have made it appear. However, your Lordship can take no notice of any thing but what appeareth upon Record.

My

My Lord, as to the other that Mr. Attorney urgeth, That I am a stubborn Person, and refuse to make my Application to the present Authority; I deny it: my Actions give another Testimony of me, in this applying myself to the present Authority in this manner, and at this place, by Law; this is the proper and only superiour Court for Relief, in case of false or long Imprisonment: it ever was in this Court settled by Law, the Supreme Authority of this Nation, and the only Authority of those that will take upon them Supreme Power. The Lord Protector hath sworn to govern this Nation according to its Laws, Statutes and Customs: and here I make my Application to the present Authority judicially in this Court. The Writ of *Habeas Corpus* is in the name of the Lord Protector: by which it appeareth, that those Suggestions are false, and that I own the present Authority in its proper Channel, and own its true Basis, by applying myself to the present Authority here in this Court.

My Lord, I should have insisted upon the whole Matter now before you; but I see that there hath been enough urged by my Counsel, to shew the Invalidity of the Order of Parliament, the only Business where all sticketh.

My Lord, I shall not spend time to answer Mr. Attorney-General, for that the Substance of his Argument is but of little weight, and not worthy of any Answer.

Here followeth the Argument that Mr. Streater had prepared to have insisted upon in this place: but for that he perceived the Opinion of the Court was, that the Order of Parliament was not in force now, he omitted to urge it further. But for general Satisfaction, it is here presented the Reader word for word, according to his Copy.

I AM brought here by vertue of an *Habeas Corpus*, which doth require that Cause be shewn why I am detained a Prisoner; not who committed me to Prison.

Upon the Return, there is in the first part a Cause, but not a lawful Cause: in the second part of the Return, no Cause at all.

My Lord, the Intent in Law of an *Habeas Corpus* is to relieve Prisoners, notwithstanding of special Commands for Imprisonment: as appeareth by the Act of Parliament of the 17th of the late King, intituled *An Act for the abolishing of the Star-Chamber, and for regulating the Council-Table*; which ordaineth, 'That notwithstanding of special Commands for Imprisonment, the Party so imprisoned shall by an *Habeas Corpus* be brought before the Judges of one Bench or other: and if the Cause of his Commitment be legal, he shall be remanded; if no Cause, (that is to say, no lawful Cause) he shall be set at liberty: and if it be doubtful, then the Prisoner shall be bailed.'

This Act reciteth several Acts, as that of 17 R. 2. chap. 31. 42 Edw. 3. chap. 3. 28 Edw. 3. chap. 9. *Magna Charta*, chap. 29. and the *Petition of Right*. These Acts declare, that this is the Intent and Meaning of the aforementioned.

My Lord, with these agree the learned Arguments of Sir Edward Coke, Sir Edward Littleton, and Mr. Selden; together with the Resolution of the Commons in Parliament 1628 thereupon, in these words.

Die Jovis, 3 Aprilis, 4 Caroli Regis.

'Resolved upon the Question, That no Freeman ought to be detained or kept in Prison, or otherwise restrained, by the Command of the King, or the Privy-Council, or any other, unless some Cause of the Commitment, Detainer, or Restraint, be expressed, for which by Law he ought to be committed, detained, or restrained.'

'That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every Man that is committed or detained in Prison, or otherwise restrained, tho it be by a Command of the King, the Privy-Council, or any other, he praying the same.'

'That if a Freeman be committed or detained in Prison, or otherwise restrained, by the Command of the King, the Privy-Council, or any other, no Cause of such Commitment, Detainer, or Restraint, being express'd, for which by Law he ought to be committed, detained, or restrained, and the same be returned upon an *Habeas Corpus* granted for the said Party; then he ought to be delivered or bailed.'

2 Part Instit. fol. 52. *The Warrant or Mittimus ought to contain lawful Cause.*

Sir Edward Coke in his first general Reason why a *Habeas Corpus* is to remove the Body notwithstanding of special Commands, saith, 'That Imprisonment in Law is counted a Civil Death, when Men are taken from their House, Wife, Children, Country, Friends, and familiar Acquaintance, to live with wicked and wretched Men.'

Mirroure, Chap. 2. Sect. 9. saith of Prisoners and Prisons thus: 'A Goal is nothing else but a common Prison: and as a Leper, or a Man who hath a diseased Body, is not to be suffered to dwell or remain amongst Men who are sound, &c. therefore mortal Offenders ought to be separated from the Society of People, to the end the Innocent be not infected with their Offences.'

Now, my Lord, if it be so, it was of absolute necessity for the Law to provide against long Imprisonment as well as wrong Imprisonment, notwithstanding any special Commands.

The Writ of *Habeas Corpus*, and the Benefit by Law, is the undeniable Right of every Englishman; it is called *the high Point, the only Point*. Nay, the Commons in Parliament, of the 4th of the late King, in their Conference with the Lords, say, That they had recovered the Body of Liberty, by clearing of this Point. In this is the only difference between Slaves and Freeman, Villains and Freeman.

My Lord, the Law of England doth settle a Freedom in the People of England, in their Life, Liberty, and Estate: it doth relieve against any thing that shall by any be done to their detriment, either in one or other.

Mirroure, Chap. 2. Sect. 18. of Appeals of Imprisonment thus: *Darling* here appealeth *Weloc*, for that whereas the said *Darling*, &c. the said *Weloc* came and arrested the said *Darling*, brought him to such a place on such a day, and put him into the Stocks or in Irons, or in other Pain or Inclosure: Such a day, *this Felony he did feloniously*.

My Lord, here we see the Law ever did allow of a Remedy to be had against false Imprisonment.

Here

Here is no Cause of Imprisonment at all shewn, in either one part of the Return or other; therefore I ought to be set at liberty without Bail, as is expressly provided in the Act of the 17th of the late King, in these words: 'If there appear no Cause of Imprisonment upon the Return, then the Prisoner shall be set at liberty, and not bailed.'

My Lord, he that is bailed, is still a Prisoner; for he is a Prisoner unto his Bail. If bailed, it is to be presumed a Cause, tho such upon which he may be bailed.

The following Clauses of this Act explain the Meaning to be so, in these words; 'If the Cause be doubtful, then the Prisoner shall be bailed.'

My Lord, if it should be objected, That the greatest and only Cause of my Imprisonment is an Order of Parliament, or a Warrant grounded upon an Order of Parliament, that saith I shall not be delivered but by Order of Parliament: I have seen a Copy of the Order of Parliament, wherein there is not any such word mentioned; but it only saith this, *That Mr. Speaker do issue forth a Warrant* (according to the Order) *for my Imprisonment, &c.*

But for that your Lordship is not to take notice of any thing but what appeareth before you upon Record, I shall make no use of that; I shall not need.

First, for that the Order itself is out of doors, the Parliament being dissolved.

Sir Edward Coke, 4 Part Instit. fol. 23. Chap. High Court of Parliament, saith, That an Ordinance of Parliament bindeth not in Succession: then much less an Order of Parliament.

Besides, if Orders of Parliament were binding in Succession, there would be no need of Acts of Parliament.

And more especially such Orders are not binding, that there is no Reason or Law in them, but are opposite to Reason and Law.

Nay, but an Act of Parliament could not make such a Return to be good or allowable, as this, that shall mention no Cause for which a Prisoner is committed: it is against Reason a Man should be committed for nothing; and if there appear no Cause upon the Return, this Court is to presume there is no Cause, and therefore ought to deliver the Prisoner, and cannot but look upon such Returns as unreasonable, and against Law.

The Doctor and Student, pag. 4. Chap. 2. saith, That such Statutes, Ordinances and Prescriptions, as are not according to Reason, or are against Reason, they are not Statutes, Ordinances, or Prescriptions, but are things void in Law.

Again, my Lord, a Parliament cannot over-rule just Proceedings in or by this Court, that are according to Law and Justice: but a Parliament may over-rule Proceedings in this Court that have Error, or are not according to Law and Justice.

My Lord, we understand Parliaments to be Legislative Powers, and therefore not to be the Executive: it is not for Law-makers to be Justices of the Peace; a Sheriff cannot be a Justice where he is Sheriff. There is a Maxim, *That Law-makers must suppose all Men to be evil, and therefore they make Laws against such Offences in all Persons: But Judges of the Law must suppose all Men good, until Conviction.*

If so, my Lord, a Parliament are not competent Judges who and who not shall be Prisoners. But here are the Judges, before whom I am;

here is the Place where I am, that a Cause of that nature should be determined.

My Lord, I dare confidently aver, That if ever it had entred into the Consideration of our former preceding Parliaments, that a succeeding Parliament would ever do such a thing as commit a Man for no Cause at all, they would have provided against it by an Act of Parliament, in Testimony of their abhorring of so great an Absurdity as it is.

Anno 1 H. 4. Chap. 14. It is provided, That Appeals are not in any wise to be pursued in Parliament. No Man can imagine it to be lawful in any inferior Power to a Parliament.

If so, it cannot be lawful in a superior Power.

Upon the Question to the Judges by Henry VIII. 'Whether a Man that was forth-coming, might be attainted of High-Treason by Parliament?' Their Answer was, 'That an inferior Court could not do so;' they thought a Parliament would not: Their Opinion was, 'That the higher a Court is, the more just they ought to be, to give example to inferior Courts.'

4 Part Instit. fol. 37. Chap. High Court of Parliament: *If it be necessary for inferior Powers to shew cause of Commitment, it is as absolutely necessary that a superior Court should.*

From whence it may be concluded, That were the Parliament in being, yet I might by Law be relieved by this Court.

1. For that the Law doth warrant my Discharge, in case no Cause of Imprisonment appear in the Return; as by the 17th of the late King, who had then the Executive Power in his Hands, as supreme Magistrate: And the same Reason why that it should be limited and bounded when it was distinct from the Legislative and Judicial, may be given, why it should be limited when they are all joined in one; which is, That it may not extend to grieve any contrary to Reason and Law.

2. That none ought to be taken or arrested, but by such against whom a Remedy may be had in case of false Imprisonment.

It was Sir John Markham's Opinion, That the King could not arrest, because a Remedy could not be had against him in case of false Imprisonment. Much less a Remedy be had against a Parliament that may possibly arrest or commit Men upon false Suggestions.

Again, my Lord, if it had been an Act of Parliament that had provided I should be a Prisoner in general words, and had provided I should not have had the Benefit of an Habeas Corpus, I conceive I might have been relieved by an Habeas Corpus. This I suppose, if in case an Act could be made against Law and Reason, as such an Act as should deprive me of a common Benefit that is due unto all, and to every Individual, throughout the whole Nation.

Parliaments ever made it their Work, (as in duty they ought) to keep parallel to Law and Reason: they ever did make Laws agreeable to both. But the Judges of the Law, in open Courts of Judicature, did judge by those Laws: Nay, Parliaments ever did advise with the Judges of the Law. The Judges of the Law were as the Watchmen or Sentinels to the just Liberty of the People; and our Laws the Bulwarks of Defence.

Mr. Waller, in a Speech in Parliament at a Conference of both Houses, the 6th of July, 1641, saith, *That out of Parliaments all our Courts*
of

of Justice are governed and directed by the Judges of the Law; and in Parliaments, the Lords and Commons were assisted by them: otherwise (saith he) it might be styled *Parliamentum indoctorum*.

And further he saith, *That Judges that delay Justice, or give false Judgment, or Opinions that are contrary to Law, that they are no other than Conspirators against the Commonwealth.*

My Lord, Mr. Attorney-General hath not omitted to possess this Court with strange Apprehensions of the Dangerousness of me, both in what he urged in this Court the last Term, of Dangerousness, and this Term, of Stubbornness: so that as much as in him lay, by his false Suggestions, to prevent me of my Right by Law; as in his words to your Lordship, desiring that I might be remanded till my Stomach came down.

My Lord, you sit here to raise the Spirits, Minds, and Stomachs of Men, by doing of them Right by Law, to encourage them to Improvements and Indultry, by defending them in Life, Liberty and Estate, as the Law requireth and intendeth.

My Lord, Articles were exhibited against Sir Robert Berkley, one of the Justices of the Kings-Bench, and others. The Substance of the first Article against Sir Robert Berkley, was, *That he did traitorously and wickedly endeavour to subvert the Fundamental Laws and Established Government of England, by traitorous Words, Opinions and Judgments.*

The tenth Article: *That the said Sir Robert Berkley being one of the Justices of the Court of Kings-Bench, and duly sworn as aforesaid, in Trinity-Term 1637, deferred to discharge or bail Alexander Jennings, Prisoner in the Fleet, brought by an Habeas Corpus to the Bar of the said Court; the Return of his Commitment being, That he was committed by two several Warrants of the Lords of the Council, dated the 5th of November 1636, the first being only read in Court, expressing no Cause; the other, for not paying Messengers Fees: he was remanded in Michaelmas-Term. After, the said Jennings being brought by another Habeas Corpus before him, and the same Return, yet the said Sir Robert Berkley refused to discharge him, &c.*

My Lord, I hope this Court, nay, I doubt not but that you will eye the future, and judge according to Law and Reason, not by Discretion.

My Lord, such Advice followed, as Mr. Attorney gave, is the ordinary Cause of Changes in States and Commonwealths.

1. Injustice brings the Judgments of God upon a Nation.

2. Injustice discontents a People, and Discontents are the ordinary Foundations that Changes are laid upon.

It was but the other day the Lord Protector took an Oath to govern according to the Laws, Statutes and Customs of this Nation: and now his Attorney-General would have Matters ruled by Discretion in this Court, contrary to Law and Reason, to pull Mens Stomachs down.

My Lord, I make my Application to the present Authority in its proper Channel, where of right I ought to be relieved here in this Case of mine by an *Habeas Corpus*.

My Lord, I do aver, that my Life, Liberty, or Estate, cannot be taken away, or given unto me, but where the Law doth it.

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My Lord, God himself ruleth by Law, Eternal, Moral and Natural; and they have Certainty in them; and he ruleth not otherwise, or contrary to them. And can it be imagined, that there is a Mortal living, that will think it a Diminution to his Honour, if Men chuse the Law for their Sanctuary, rather than their changeable Affections, and mutable Will and Pleasure?

There is a Maxim, 'That the Law delighteth in Certainty, and it doth abandon Incertainty, as the Mother of all Debate and Confusion, than which there is nothing more odious in Law.'

My Lord, another Reason why I make my Application to the present Authority this way rather than any other, is, that the Record in this Case will be of singular Use and Benefit, not only to the present, but to future Ages; the which I do in duty, in regard a Man ought to prefer the Good of his Country before a private Good.

The contrary will tend to the subverting of our *English Liberties*. Our Forefathers left us a Law, by which we might demand Justice, and not be necessitated to make use of Friends to beg Justice.

Mirroure, Chap. 3. Sect. 6. *Of Exceptions to the Power of a Judge*, thus it is; *Sir, I demand the Hearing and Sight of your Commission, by which you claim Jurisdiction over me.*

Anno 13 Edw. 1. Chap. 3. *When any is impleaded before any Justices, and doth alledge an Exception, praying that the Justices will allow it; which if they will not allow, &c. he shall require the Justices to put to their Seal, &c.*

My Lord, this Law of England is a Law of Freedom, and a Law for Freemen, and not for Slaves: it is a Law that setteth a Right in its Subjects.

Now, my Lord, having presented your Lordship with what the Law accounteth of Imprisonment, as in the Writ of Mainprise:

Whereas thou A. hast delayed to deliver B. to the no small Grievance of him the said B. and manifest Peril of his Life.

And, pag. 162. *Fitz-Herbert's Natura Brevium*; of the Writ *de Homine replegiando*. The King. *Whereas A. hath complained to us, &c. We command you that he be replevy'd, &c. that we may hear no more a Clamour for want of Justice.*

Seeing the Law relieveth as well against long Imprisonment as wrong Imprisonment; and seeing that there is no lawful Cause of Imprisonment shown in the first part of the Return, nor Cause at all in the second; although it be grounded upon an Order of Parliament, it is void in a two-fold Consideration. First, For that the Parliament is dissolved. Secondly, For that it is against Law and Reason: And also considering that this Court is the highest Court of Judicature that can relieve in this Case; and it being contrary to Reason, that a Legislative Power should be an Executive Power, for they will be Parties to judge by their own Law, they will vindicate their own Commands, and will take upon themselves to give their Sense, possibly different from the Letter of their own Commands.

And therefore it is safer for the Judges of the Law to judge by the Letter of the Law, and not otherwise.

E c

Mr.

Mr. *Robert Brook*, Serjeant at Law, in his reading upon the 16th Chapter of *Magna Charta*, saith, *If a Man hath Judgment to be hanged, and if the Sheriff do behead him, it is Murder.*

The Letter of the Law is duly to be observed, and not to be varied from, for any Pretences of Matters of State whatsoever.

All which considered, I pray to be discharged, as the Law hath provided: Your Lordship is Judge of the Law.

Mr. *Attorney*. My Lord, for ought we know, this is a Judgment in Parliament.

If it be not, yet it hath the same Stamp that an Act hath; that is to say, Parliamentary Authority.

If this Order be not good, the Prisoner hath an Action of false Imprisonment against the Jaylor. If the Order die by the Dissolution of the Parliament, the Jaylor ought to have set the Prison-doors open unto the Prisoner at the time of the Dissolution of the Parliament.

Mr. *Twisden*. My Lord, they have not returned an Order of Parliament, but a Warrant from the Speaker of Parliament.

Chief Justice *Rolle*. Mr. Attorney, what if the Parliament by Order do appoint a Committee, the Parliament dissolved; doth the Committee continue by vertue of that Order, or not?

Mr. *Attorney*. I think the Persons are dissolved: But although it be said, by Order of Parliament, I think that is not much material whether the word Act, Order or Ordinance be used. My Lord, it is by Parliament.

Lord Chief Justice *Rolle*. By your favour, Mr. Attorney, it is the word Order, Act or Ordinance, we must take notice of. How shall we know how to judge, but by the Word or Letter to direct us?

Judge *Aske*. Mr. Attorney, if an Order of Parliament shall be in force after the Dissolution of a Parliament, and there be an Order made for the Commitment of one or more, as in the Case now under Consideration; I pray which way shall the Subjects be relieved, if not this way, in case we should live to see a Parliament but once in one Age, as in the latter end of the Reign of King *James*, and as in the Reign of the late King?

Lord Chief Justice *Rolle*. This Court is the proper Court to relieve in this Case; this Court is a standing Court, and the Law doth adjourn it from time to time; but a Parliament is a new Court, they appear, and are always summoned by new Writs.

Mr. *Attorney*. The Prisoner knoweth he might have his Liberty for asking for.

Ld Ch. Just. *Rolle*. A Man is not bound to do that. Well, let the Prisoner be remanded until Saturday; and then we shall deliver our Opinions: It is a weighty Business. And, Gentleman, in the mean time you may make your Application otherways for your Liberty.

Mr. *Streater*. My Lord, the Law hath provided no other way; and I am bound to take notice of the way the Law hath appointed.

Our Forefathers knew no other way.

My Lord, I desire that I may have the Liberty to go to my Counsel with my Keeper: Both the last Term, and this, I have not at all advised with my Counsel.

Ld Ch. Just. *Rolle*. That will not be denied you.

Mr. *Wylde*. My Lord, it was moved this Term, and it was denied, being opposed by the other side; but it was before the Writ was filed. And I suppose that the Court may grant that Liberty to the Prisoner under the Custody of their own Marshal.

Saturday, February 11.

THE Prisoner was brought again to the Bar, under the Custody of the Marshal of the Court.

Ld Ch. Just. *Rolle*. Sir, have you your Counsel here?

Mr. *Streater*. Yea, my Lord.

Ld Ch. Just. *Rolle*. Where are they?

Mr. *Windham*. I am of Counsel for the Prisoner.

Mr. *Streater*. My Lord, here is also Mr. *Wylde*, Mr. *Freeman*, Mr. *Norbury*.

Ld Ch. Just. *Rolle*. Deputy-Marshal, go into the Chancery, and acquaint Mr. Attorney-General that we are going to deliver our Opinions in *Streater's Case*: And if he please to be present, he may; or if he hath any thing more to urge.

Mr. *Pain*, Deputy-Marshal. My Lord, I have been with Mr. Attorney-General; and he saith he will be here immediately.

[After a little space of Time, Mr. Attorney cometh into the Court.]

Ld Ch. Just. *Rolle*. Mr. Attorney, here is Mr. *Streater* again by Rule of Court. He hath been a long time in Prison; and I see here is nothing come against him that is material.

Mr. *Serjeant Twisden*, of Counsel for the Prisoner. My Lord, we desire that he may be bailed.

Ld Ch. Just. *Rolle*. What, have you any thing more to say, Mr. Attorney?

Mr. *Attorney*. My Lord, I thought I should have heard of him; but I did not. The Court must do Justice: He is committed by Order of Parliament.

My Lord, if you will undo an Order of Parliament, he is to be delivered: But I hope the Court will not.

Mr. *Windham*. The Order of Parliament is undone by the Parliament's being dissolved.

Mr. *Attorney*. Commissions of Sewers are granted by Parliament, and they do continue after the Parliament is dissolved. Goal-Delivery is but once a Year in the North-Parts: And I suppose the next Parliament will be sitting before he hath been a Year in Prison; at which time he may be tried, or delivered: And although this be called an Order of Parliament, yet it was acted by Parliament.

Ld Ch. Just. *Rolle*. But all that the Parliament acteth are not Acts of Parliament.

The first part of the Return is too general: It mentioneth not what Books, nor whose Books, or where they were, or when published.

The second part of the Return is grounded upon an Order of Parliament: We are to take notice when a Parliament sitteth, and also when it is dissolved; or when it endeth or determineth. Discontinuance is a Determination.

A Writ of Error many times is made returnable in the next Parliament; but that lieth after Trial at Law. The Word *Order* is a proper Phrase to that which is not an Act.

An

An Order of Parliament is not binding in Succession: How shall the next Parliament take notice of a former Parliament's Order?

Committees that are appointed by Order of Parliament do cease upon the dissolving of the Parliament. I have been of the Parliament: I ever found Parliaments of the same Opinion.

We must look to the first Imprisonment, and no farther: If you had returned other Cause, we should have taken notice of it.

We do not reverse the Order of Parliament; that is reversed by the Parliament's being dissolved: And it being dissolved, there is no visible way how the Prisoner shall be relieved, though there may be a probable way.

Judge Ask. I am of the same Opinion; and that it could not be, that the Order of Parliament, by saying he should not be delivered but by Order of Parliament, but that they meant by the same Parliament, and not by a successive Parliament. If it should be taken to be by Order of the next Parliament, where shall be the Liberty of the Subjects? Or how shall they be relieved in long Interval of Parliament? As in the Reign of King James, and the Reign of King Charles, we had not Parliaments in many Years together; and although it be so, that the Parliament, by the Statute of the 4th of Edw. 3. should be once a Year, or oftner, if need be. Besides, here is no Succession of Parliament, but a Dissolution. Another Parliament, must be another Session; and therefore an Order cannot be in force until another Session. If they had made an Act of Parliament, or passed a Judgment of Parliament, it had been another Case.

Upon the Consideration of the whole Matter, the Judges Opinion was, That the Prisoner ought to be discharged, and this Rule enter'd.

Saturday next after eight Days of the Purification, 1653.

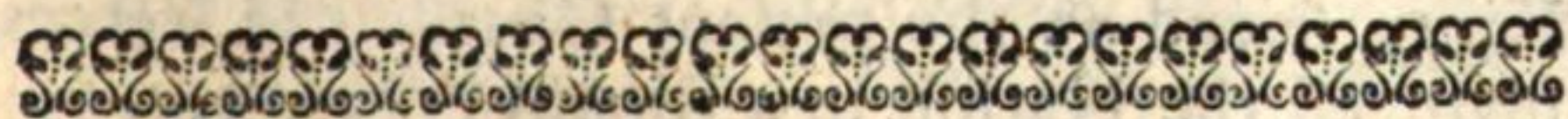
The Lord Protector against John Streater Gent.

THE Defendant was brought into Court by the Marshal, upon Habeas Corpus; and by the Court discharged of his Imprisonment, by the Motion of Mr. Serjeant Twisden.

By the Court.

Ld Ch. Just. Rolle. Sir, you will do well to carry your self conformably to the present Power, and walk inoffensively.

Mr. Streater. My Lord, I ever have been, and, I hope, shall be, a Subject to Government, so as the Law requireth me to be: It is not my Duty to be otherwise subject.



POSTSCRIPT.

IF you observe the Tenor of the Writ of Habeas Corpus, as it is observed by Mr. Streater in his last Argument, that the Writ doth only require that Cause be shewn why the Party is imprisoned, not who did commit the Party to Prison: If any Cause lawful was returned, then the Party is to continue still in Prison; but without Cause no Commitment, from what Power soever, can or ought, in Law or Reason, to be binding. That it is the Cause only for

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which a Prisoner is committed, that cutteth the Prisoner off from the Benefit of a Habeas Corpus, and not the Will, Pleasure, or Power of those in Power. Here take Sir Edward Coke's Nine General Reasons, why a Habeas Corpus is to relieve against illegal or long Imprisonment.

The First General Reason.

The First General Reason is drawn *à re ipsa*, from Imprisonment, *ex visceribus causæ*, be it those or other Imprisonments, which are divided into three Parts.

1. No Man can be imprisoned at the Will and Pleasure of any, but he that is bound, and a Villain; for that Imprisonment at Will is *Tailles luy haut & basse*, are *propria quarto modo* to Villains.

2. But if Freemen of England might be imprisoned at the Will and Pleasure of the King, or any other's Command, then were they in worse Case than Bondmen and Villains: for the Lord of a Villain cannot command another to imprison his Villain without Cause, as of Disobedience, or refusing to serve; as it is agreed in our Books.

3. Imprisonment is accounted in Law a Civil Death; *Perdit Domum, Familiam, Vicinos, Patriam*; his House, his Family, his Wife, his Children, his Neighbours, his Country, and to live among wretched wicked Men.

If a Man be threatned to be killed, he may avoid a Feoffment of Lands, Gifts of Goods, &c. So it is, if he be threaten'd to be imprisoned, he shall do the like; for that is a Civil Death.

The Second General Reason.

The Second General Reason is, *A minore ad majus*; *pœna corporalis est majus qualibet pecuniaria*: but the King himself cannot impose a Fine upon any Man.

But it must be done judicially by his Judges, *per Justiciar' in Cur', non per Regem in Camera*. And so it hath been resolved by all the Judges of England.

The Third General Reason.

The Third General Reason is drawn from the Number and Diversity of Remedies, which the Law giveth against Imprisonment, *viz. Brevia de homine replegiando, de Odio & Atia, de Habeas Corpus, & Brev' de Manuceptione*.

The former of these are antiquated; but the Writ *de Odio & Atia* is revived, for that was given by the Statute of *Magna Charta*, cap. 26. And therefore though it were repealed by the Statute of 28 Edw. 3. cap. 9. yet it is revived by the Statute of 43 Edw. 3. cap. 1. by which it is provided, That all Statutes made against *Magna Charta* are void. Now the Law would never have given so many Remedies, if the Freemen of England might have been imprisoned at Freewill and Pleasure.

The Fourth General Reason.

The Fourth General Reason is drawn from the Extent and Universality of the pretended Power to imprison; for it should not extend only to the Commons of the Realm, and their Posterity, but to the Nobility, and the Realm, and their Successors; to all Persons, of what Condition, or Sex, or Age soever; to all Judges,

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Officers,

212 48. *The Trial of John Gerhard, Peter Vowell, 6 Car. II.*

Officers, &c. whose Attendance are necessary, without Exception of any Person.

The Fifth General Reason.

The Fifth General Reason is drawn from the Indefiniteness of Time: The pretended Power being limited to no Time, it may be perpetual during Life.

The Sixth General Reason.

The Sixth General Reason is drawn *a Dedecore*, from the Loss and Dishonour of the *English* Nation, in two Respects: 1. For their Valour and Power, so famous through the whole World. 2. For their Industry: For who will endeavour to imploy himself in any Profession, either of War, Liberal Science, or Merchandize, if he be but Tenant at Will of his Liberty? And no Tenant at Will will support or improve any Thing, because he hath no certain Estate. And thus it should be both *Dedecus* & *Damnum* to the *English* Nation: And it should be no Honour to the King, to be a King of Slaves.

The Seventh General Reason.

The Seventh General Reason is drawn *ab Utili & Inutili*: For that appeareth by the Statute of 36 *Edw* 3. that the Execution of the Statute of *Magna Charta*, 5 *Edw* 3. 25 *Edw* 3. and 28 *Edw* 3. are adjudged in Parliament to be for the common Profit of the King, and of his People: And therefore the pretended Power being against the Profit of the King, and of his People, can be no part of his Prerogative.

The Eighth General Reason.

The Eighth General Reason is drawn *a Tuto*: For it is safe for the King to express the Cause of the Commitment, and dangerous for him to omit it. For if any be committed without expressing the Cause, though he escape, albeit the Truth be it were for Treason or Felony; but if the Cause be expressed to be for Suspicion of Treason or Felony, then if he escape, albeit the Truth be it were Treason or Felony, yet the Escape is neither Felony nor Treason: But if the Cause be expressed to be for Suspicion of Treason or Felony, then if he escape, albeit he be innocent, it is Treason or Felony.

The Last General Reason.

The Last General Reason is drawn from Authorities. 16 *H*. 6. *Means de Fait*, 182. by the whole Court: The King in his Presence cannot command one to be arrested, but an Action of false Imprisonment lies against him that arresteth. 22 *H*. 7. 4. *Newton*. 1 *H*. 7. 4. The Opinion of *Markham*, Chief Justice to *Edward* the Fourth; and the Reason, because the Party hath no Remedy.

Fortescue, cap. 8. *Proprio ore nullus regum usus est*, &c. to commit any Man.

4 *El. Plo. Com.* 236. The common Law hath so admeasured the King's Prerogative, as he cannot prejudice any Man in his Inheritance: And the greatest Inheritance a Man hath, is the Liberty of his Person; all other are accessory to it.

XLIX. *The Trial of JOHN GERHARD, PETER VOWELL, and SOMERSET FOX before the High Court of Justice for High Treason, in conspiring to Murder the Lord Protector, the 30th of June, 1654. 6 Car. II.*

Friday, 30 June, 1654.



HE High Court of Justice met this day in the Painted Chamber.

Mr. *Bond* prayed with them about half an hour.

The Court then sat, and presently adjourned to the Court of Chancery prepared for their sitting; The Lord Commissioner *Lisle* was President, Mr. *Phelps* Clerk, Serjeant *Glyn*, Mr. *Prideaux*, and Mr. *Ellis* Council for the Commonwealth.

The Court was called (each Member by name) and the Ordinance empowering them read. The Prisoners to be tried were,

Mr. *John Gerhard* Gentleman.

Mr. *Peter Vowell*, Schoolmaster of *Islington*.

And *Somerset Fox*.

Somerset Fox was first called to the Bar, and

an Indictment of High Treason read against him, for joyning in a traitorous Design to have murdered his Highness the Lord Protector and divers of his Council, Proclaimed *Charles Stuart* King, seized on the present Guards and Forces, involved the Nation in a Bloody War, &c.

Somerset Fox did ingenuously confess the Charge against him upon the main, to be true, and that he is guilty.

Then Mr. *John Gerhard* and Mr. *Peter Vowell* were brought to the Bar, and an Indictment to the same purpose as that against *Somerset Fox*, read against them.

They pleaded Not guilty, and denied every thing.

Vowell said that he required a Jury of Twelve of his Equals, it being a Law confirmed by *Magna Charta*; and according to the sixth Article of the Government by the Lord Protector
allo,

also, that Law being not repealed, and therefore that he might be tried by his Peers.

The Lord President told him, That the Members of the Court were his Peers, not his Superiors but his Equals, and that they were present near twice twelve, as he saw; And that they are to proceed by the power of an Ordinance before them.

It was also told him by Serjeant Glyn that he had owned the Jurisdiction of the Court, in pleading *not Guilty*.

Vowell said, he was a Man ignorant in the Law, and desired advantage might not be taken of his weakness.

The Attorney General *Prideaux* said none desired to take any advantage of any thing, wished they had not brought themselves into these troubles; that they were there in the name of the Lord Protector and the Commonwealth of *England* to accuse the Prisoners at the Bar, and to bring in their proof, and the Prisoners were to defend themselves as well as they could, and when both sides were heard, it was to be left to the Court to determine, and to judge between them.

And it was declared that the Plot was to this effect.

That the Plot was to seize on the Lord Protector and murder him, and some of the Council and others, and Proclaim and bring in *Charles Stuart*, Son of the late King, to be King, which Bloody Design was to be effected thus.

That the first hatching of the Plot was in *England* by Mr. *Hinsbaw*, who was one of the chief Plotters, and others; Mr. *Hinsbaw* went over from *England* to *France*, to acquaint *Charles Stuart* (whom they called their King) with the Design, and Mr. *John Gerbard* about that time went over to *France* also, who had told Mr. *Hinsbaw* that he would do nothing in it until he had first had approbation from *Charles Stuart*. Mr. *Wiseman* was also then in *France* with them.

Address was made to Prince *Rupert*, and the Design made known to him, desiring him to communicate it to (him they called) the King, who accordingly did, and brought Mr. *Hinsbaw* to him, but *Charles Stuart* at the first delivered his Judgment in the thing, that he was at present unsatisfied at that time to go on in that design for three reasons.

1. Because it would be dishonourable to him in the esteem of other Princes, in case such a thing should be known, and should not be effected, to come in in such a way.

2. Because it did not seem to him to be feasible, but unlikely to be effected.

3. Because it was not at that time seasonable.

But Prince *Rupert* afterwards did much encourage and perswade, That the design might be carried on, and promised all assistance.

Mr. *Hinsbaw* and Mr. *Wiseman* returned into *England*, Mr. *Gerbard* stayed there a while longer, but some Weeks after came back also; Mr. *Hinsbaw* declared to his Confederates here in *England* what Overtures had been with *Charles Stuart*, and that Prince *Rupert* had engaged to send ten thousand *Scots*, *English*, and *French*, and the Duke of *York* to come with them to land in *Sussex*, and other places, and that there would be Forces enough ready to assist and joyn with them.

Mr. *Hudson* the Minister was thought on, to

have Letters of Credence from *Charles Stuart*, who sent a Letter to him, and that which he desired in case the Plot had taken, was to be made the Master of *Sutton's Hospital*, which Mr. *Hinsbaw* promised him.

One Master *Phillips* also, and others were treated with about it, and Master *Gerbard* returning from *France*, the Plot was resolved to be carried on, which was to be effected thus.

1. They were to seize on the Lord Protector, and Murder him; and to do this Work, they should take the opportunity of his going to *Hampton Court*, which he used to do every Saturday, with a small number slenderly armed; and those that were to do this were Master *Hinsbaw* and Mr. *John Gerbard*, with thirty Horse. Mr. *John Gerbard* to bring twenty five Horse, and Mr. *Hinsbaw* five, which each of them was to engage. Mr. *Gerbard* was something cautious, not to discover who they were he engaged, before an Oath of Secrecy was given, but twenty five he had undertaken for.

Mr. *Hinsbaw's* five were himself, Mr. *Tuedore* the Apothecary, Mr. *Wiseman*, Col. *Aldridge*, and another, and then to seize on the Tower of *London*, and to go on with their work.

2. If that failed, to seize on all the Guards about *Westminster*, which they thought two thousand five hundred sufficient to do, and carry on their work here about *London*; and for that purpose Mr. *Hinsbaw*, Mr. *Gerbard* and others viewed the *Mews*, and the rest, and was heard to say, What a pity it was that so slender Guards should not be seized on, and that when the Soldiers were at Nine-pins in the *Mews*, it was but shooting off a Pistol, and presently to fall on.

3. The last way to have it effected to be thus, That when the Foot Regiments that are for the Guards about *London* were Mustering in *Tuttle-Fields*, as they use several times to do, to come into *Tuttle-Fields* and meet them there as of their own Party, and when they have laid down their Arms to seize upon them, and have others to be ready at the same time every where to perfect the work. And for this purpose, if they acted this way,

Col. *Finch* with a party of two hundred was to fall into *London*, and do the work in the City.

Major *John Gerbard* to fall on *White-Hall*,

Col. *Hinsbaw* to fall on the *Mews*.

Col. *Daniel* with two hundred to fall on Sr. *James's*.

Another to fall into *Southwark*.

And one *Billingly*, a Butcher at *Smithfield* Bars, with a Party to fall upon *Islington*; and it was pressed that the opportunity might not be neglected.

And that the Work might be the more feasible, they considered how as many of the Soldiery as might be, might be engaged in the Business. And the Papists (who had a great hand in the Design) gave information of two Soldiers of the Army, that used sometimes to come and hear Mass, and these two they sent a Papist Woman to, who engaged them, and their direction was, to give intelligence at Mr. *Hudson's* House, where Mr. *Hinsbaw* and others of them frequented.

Master *Vowell* was cautious being a solid Man, for his Work was not to bear Arms, but as a Privy-Counsellor to them, and he was to engage

engage Mr. *Billingly* the Butcher with a Party to seize the Lord Protector's Horse at *Islington*, and him Mr. *Vowell* recommended to be a very fit Man for that Work.

And they had this Art, to endeavour to make the Lord Protector odious to the People, in turning the Design upon him by a Libel, which was scattered up and down *London*, that his Highness and the Army had a Design to Massacre all but their Friends in all Parts of *England*; and this Libel was written by Mr. *Fenshaw*, which was got printed by one in *Newgate-Market*, and Mr. *Vowell* had one of them.

When the Design was discovered, and Mr. *Gerhard* and some others apprehended, Mr. *Vowell* being at Mr. *Hudson's* House, it was said by him, That the Design might still go on, though some were discovered; Mr. *Hinsbaw* and Mr. *Wiseman* came to him to *Islington* to his House, from whence they went to drink their Morning's Draught. Mr. *Vowell* said, There were enough to do the Work still; Mr. *Wiseman* said, There were many Horse to fall on; Mr. *Vowell* said, It might be easily done.

One *Wharton* in *Black-Fryars* was to proclaim *Charles Stuart* King, and Col. *Finch* was to seize on the Lord Mayor, and make him to proclaim him; *Somerset Fox* and others were to raise Apprentices to join in the Design; but the Lord Protector going by Water disappointed them.

Mr. *Vowell* then said to the Court, That they were not his Peers because they were his Judges, and therefore desired a Jury of Twelve of his Equals.

Mr. *Prideaux* answered, that so a Jury are the Judges, though they be the Prisoners Peers.

The Witnesses against the Prisoners at the Bar were called for.

John Wiseman was sworn, and being required to give Evidence what he had to say touching the Prisoners at the Bar, avouched the Charge against them, and said,

That he was with Mr. *Hinsbaw* in *France*, who did communicate by Prince *Rupert* to *Charles Stuart* the Design, as is before exprest.

That he saw Mr. *John Gerhard* oftentimes with Mr. *Hinsbaw* while he was in *France*, and that he told him in *England*, That there was a Plot to fall on the Lord Protector, and to bring in *Charles Stuart* to be King, and to the rest of that Design as is before exprest. And about three Weeks after he met Mr. *Hinsbaw*, and Mr. *John Gerhard*, and they went to *James's*, and the *Mews*, *White-Hall*, and other Places.

That Mr. *John Gerhard* told one Mr. *Minnors* of the Business, and how they were to fall on my Lord Protector, and so as before is exprest.

Then Mr. *Gerhard* interrupted him, saying, How should this be done with a Company of Geese?

To whom Mr. *Prideaux* answered, That he knew best how it should be done, and wish'd he had ne'er known it, nor gone about it.

Mr. *Wiseman* went on in his Evidence, and said, That Mr. *John Gerhard* being at Mr. *Hudson's* House, did there speak about the Plot to fall on the Lord Protector, &c.

That he had a Dispute with Mr. *Hinsbaw* (whom the said *Wiseman* calleth Brother by some Relation) That such a time, and so, and so,

would be seasonable (mentioning some Particulars.)

That another Day he heard Mr. *John Gerhard* say, That he was to command the Party, and had a Pistol that would discharge three several times, Mr. *Hinsbaw*, and several other Persons being then by; and that he doubted not but it would be seasonable. That there were to be about Thirty Persons to fall on the Lord Protector; that his Brother *Hinsbaw* said he was to bring Five, and Mr. *Gerhard* Twenty Five to do the Work, and named the Five afore said that his Brother *Hinsbaw* was to bring, and that his Brother *Hinsbaw* told him that Mr. *John Gerhard* was to surprize the Lord Protector's Person.

And when the Plot was discovered, he heard his Brother *Hinsbaw* say, that they that were taken were all of *Gerhard's* Party, and none of his, and that there was a Libel printed to turn the Plot on the Lord Protector, as is before exprest; and that his Brother *Hinsbaw* and Mr. *Vowell* had some of the Papers.

That on Wednesday after it was discovered he was at Mr. *Vowell's* House at *Islington*, and his Brother *Hinsbaw* was there, and they went to the *King's-Head* to drink, and there his Brother *Hinsbaw* said, that the Business might go on for all it was discovered, many Regiments in several Parts being ready to rise, enough to carry on the Work.

Mr. *John Gerhard*, and Mr. *Peter Vowell*, the Prisoners at the Bar, still denied all, and said it was not true what he said.

Then Mr. *Edward Hudson* a Minister, that was blind, was sworn, who said that Mr. *Hinsbaw* desired him to write two or three Words to the *Scots* King, and that Mr. *Hinsbaw* related all the Business to him of the Design, and the three Objections by *Charles Stuart*, and P. *Rupert's* Answer afterwards, and the three ways to effect it; very much agreeing with the Particulars aforementioned.

When he came to Particulars touching the Prisoners at the Bar, he said that Mr. *Vowell* was his intimate Friend, one that he had been much beholden to, and might have perished had not he relieved him. That Mr. *Hinsbaw* sought to engage Mr. *Vowell*, but he answered that he thought himself to be unfit; That he said he did not relish it: What Mr. *Hinsbaw* and he did agree, he knows not. What he heard was from Mr. *Hinsbaw*, That he did meet accidentally, That he did suspect Mr. *Vowell* to act, but was not sure of it, That he did suppose they had concluded, but was not sure of any thing. That Mr. *Vowell* said he was himself unfit to engage, but he would engage a Friend if he could; That Mr. *Vowell* said there were a great many Horses at *Islington* which might be surprized, that he would try what he could do, but whether he did any thing or not, he knows not.

Mr. *Hudson* denied some things he confessed upon Oath before Col. *Goff*, Justice of the Peace.

Col. *Goff* was sworn, He testified that the Examination (which was produced in the Court) was all written from Mr. *Hudson's* own Mouth, and after it was written, it was read to him, to the end that if there had been any Mistake it might be altered, and was all by him owned upon his Oath, that it was freely testified, and nothing in it extorted from him.

Mr. Hudson said that he was pressed, and that he then said these Words, Do not thus afflict an old distressed Man, that hath nothing but Afflictions upon him.

To which Col. Goff answered, That at first Mr. Hudson denied all, and would confess nothing until he heard the whole Business confessed by another, and that all that was pressed to him was to discharge his Conscience in speaking the Truth, and that when he heard another to confess the Plot so fully, he desired to be heard again, and then did freely confess according to the Examination.

In the said Examination Mr. Hudson declareth the whole Plot, and the Proceedings in France, Charles Stuart's Objections, P. Rupert's Encouragement, the three ways to effect it, and all the Particulars of the Design as aforesaid, &c.

And how Mr. Vowell spake with Mr. Hinshaw, Mr. Wiseman and the two Soldiers; that Mr. Hinshaw said there were many Cavaliers in Town in the Plot, but would never speak to two together; that some relished it well, others doubted. And some agreed to seize on the Lord Protector and the Guards, go with Drums and Colours to White-Hall, and the rest of the Particulars, for bringing in Charles Stuart, &c.

In the said Examination he also said, that Mr. Hinshaw said that they would set up Major Gen. Brown to be at the head of them, by a Letter which they hoped to get from Charles Stuart, and believed that he would accept of it, he being a Friend to the King, as they called him.

That it was propounded to Mr. Vowell, who did consent to do something in it, and did afterwards meet some six times at Mr. Hudson's House.

That Mr. Vowell engaged Billingsly the Butcher aforesaid to be a considerable Man, discoursed with him of the Number of Horse, and Billingsly said to him that the Horses at Grass might be easily seized.

That Hinshaw told him and Vowell, after Gerhard was taken, that none of his Party was taken, and that the Plot might go on, that the French, English, and Irish from P. Rupert were to land at Rye and other Places in Sussex.

The Lord President asked Mr. Hudson whether he did own it; to whom he answered, that they were together, and such and such Things were spoken, but how far Mr. Vowell consented, he knows not.

Then Mr. Robert Dale was sworn, who declared against Mr. Vowell the Prisoner at the Bar, that Mr. Vowell came to his House, and asked him what Arms he had, he told him two Pistols, he said he would buy them of him, he asked for what Use, he said, that he would tell him hereafter.

That he came with Mr. Hinshaw and Mr. Wiseman several times to his House, who did declare that they had a Design to fall on the Lord Protector (and so in all the Particulars agreeing with the rest touching the whole Business of the Design how it should have been done, as hath been before expressed.)

And that Sir Gilbert Pickering, Mr. Strickland, and two or three more of the Council were named that should be cut off.

That they invited him to assist them, and would have engaged him to fall on in the seizing of them at Islington, and they said there was one to head them, which they should know afterwards, and he said that Mr. Vowell heard these things,

And that at another time Mr. Hinshaw, Mr. Wiseman, and Mr. Plunket met with Mr. Vowell.

And his Examination was read.

That Mr. Vowell asked him whether he had any Arms to accommodate Friends, he said two Pistols (and the rest of the Discourse as now he had spoken before the Court;) only the Examination mentioned a third Person of the Council, viz. Maj. Gen. Lambert also to be cut off. That they were provided of an Head, and bad him therefore be sure to rise when he had notice. Then Mr. Hinshaw seeing two Men passing along by where he was, supposing them to be Soldiers, said they should be killed, and he said that Plunket would give notice when they should be ready upon the Design to fall on; and that he was engaged to get as many as he could to assist in the Work: That Vowell brought Hinshaw to his House.

John Hipwel, one of the two Soldiers in the Plot, being sworn, said, That a Papist Woman brought him to Mr. Hudson's House, where he met with them, and one told him, That he had something to discover to him, if he could join in it.

That he was examined how strong the Guards were, and that Regiment of which he was, and said, the Regiment were 1200; He was asked what Ammunition, and other such like Questions, to all which he gave answer.

After some Discourse he told him, That it was to fall on the Lord Protector, and on the Guards, &c. and so told him the whole Design, (which he related to the same purpose as those before.)

That he was bid to enquire what Cavaliers were in the Regiment, and among the Soldiery, and drink with them, and do what he could to divide the Soldiery, and to make what Party he could for this Work, and that when the time should be for Action, the Word should be, FALL ON.

The next Morning hearing some were taken Prisoners, there was much Sorrow.

Then Col. Aldridge was sworn, who said, That Mr. Hinshaw revealed there was a Design to have fallen on the Lord Protector, and brought in Charles Stuart to be King, and related the Particulars much to the purpose as is before expressed, and that Hinshaw asked him if he would be one; That he made some Queries about it, but Mr. Hinshaw told him, They had great hopes of accomplishing it, and that there was an Officer of their own in the Tower that should free the Prisoners, and put Swords in their Hands, and that all should be done upon an instant, and that then they should have Money enough.

Then Mr. John Gerhard was caused to withdraw awhile.

Mr. Charles Gerhard was next called for, to see what he could say touching the Plot, who declared, That Mr. Hinshaw had been in France with Charles Stuart, and his Brother John also, and Mr. Wiseman had been there; and made a Narrative of all the Proceedings there, agreeing with the rest before; and spake also of several Meetings at Ludgate-Hill, and Covent-Garden; how he met Col. Finch at the Piazza, who told him of the Design to kill the Lord Protector, seize on the Guards, the Lord Mayor, &c. proclaim Charles Stuart King; and the rest of that Story of their Design, in which he agreed with the former. And that he declared to him, That they were Lifting apace, and they had many joyned

joyned hereabouts. That Col. *Deane* had listed all that Day: That he himself had listed some; That Col. *Finch* had a Party to joyn with him in the City. That another time he had further Discourse again with him about it; that they were to meet the next Day, and then it was also said, That *Finch* was to command a Party, and that his Brother *John Gerhard* also was to command a Party, and that his Brother *John* was then by, and heard this Discourse; and that it was said there was ready about *London* to seize on several Parts, in all, about two or three thousand: That Col. *Finch* was to seize on the Lord-Mayor, Col. *Dean* on *James's*, Col. *Haines* on Col. *Ingolsbie* in *Southwark* (and so named other Particulars like what is mentioned before) Told him also the Management of the Design in *France* (agreeing with what is mentioned before) and said, He had a Commission from the King (as he called him.) And he spake also of their meeting at *Bell-Savage* at *Ludgate-Hill*, where mention was made of his Brother *John Gerhard*; and that *Somerfet Fox* was there, and engaged in the Design, and his was to get in all the Apprentices he could to join in it. That at another time *Hinsshaw* said, they had listed two or three thousand.

Then Mr. *John Gerhard* was called to the Bar again, where he appeared with the other two. Mr. *Charles Gerhard* was then sworn, and upon his Oath gave in Evidence, after his Brother was brought to the Bar, That the Design was to fall on the Lord Protector, &c. (he gave a short Narrative as before) and further said that his Brother *John Gerhard* had been in *France*. *John Gerhard* Prisoner at the Bar said he confest it, that he was in *France*, when they were there, and was sometimes in their Company, but denied that he knew any thing of any Plot.

Mr. *Charles Gerhard* being desired to go on further, said, That Mr. *Hinsshaw* was several times at his Lodgings, near *Essex House*, and his Brother with him, and talked with him of the Design, which his Brother scrupled, but he told him that if it could be accomplished the King (as he called him) would like well of it. That his Brother met Mr. *Hinsshaw* at *Covent-Garden*, at Mr. *Jones's* House in *Rose-Street*, who had Pen and Ink before him, and talked of the Numbers and other Particulars, his Brother *John* then in the Room (and he named the Particulars as before) But his Brother did not relish it, and was pressed by them, nor did he know that he consented to act.

Mr. *Prideaux* told Mr. *Charles Gerhard* that he did well to be as sparing as he could against a Brother, only be careful to speak the Truth, though with the fairest Interpretation, because Conscience is nearer than a Brother. The Lord President also said, that he was not to look upon either the greatness of Men, or the relation of a Brother in this thing, but to look upon his Conscience, and to look up to his God.

John Man was sworn, who declared the Design in general, (as the rest all agreeing) and that Mr. *John Gerhard* and others had consulted about it.

That being asked if he would engage in it, he answered Yes: That afterwards he went to *Bell-Savage*, but when he came there, there were *Somerfet Fox* and others, and they said he could not have Admission, for several were apprehended about it, and they knew not what to do.

William Dod was sworn, who gave in Evidence, that on Thursday Morning in *Whitson Week*, *Somerfet Fox* told him, that there was a Design (as aforesaid, giving him an account of the whole) But he told him that it was to be kept secret. And that they were to meet about Two a Clock in the Morning about it. That at *Bell-Savage* he met with *Somerfet Fox*, and his Cousin *Fox* the next Day again, and had the like Discourse.

Francis Fox being sworn, gave in the like Evidence against his Cousin *Somerfet Fox*, and that he was invited to join with them, but could not tell what to do.

John Wharton was sworn, who said, he keeps a Victualling-House in *Black-Fryers*, and that a Gentleman, a Stranger, came to him, and asked him if he would serve the King, and fell in Discourse about his Calling; that he told him he had marry'd a poor Widow: And that the Gentleman told him that if the Design went on, he might have Money enough, and said that he would find him better Employment. The Gentleman's Name, he said, was *Hinsshaw*, as he heard afterward. And that he told him he would not be long before he came again. He said that he did believe they had designed to seize on the Lord Protector, and all the Horse Guards. But for his Part, he was, when they should give him notice of it, only to proclaim the King, that was all that he was to do.

Mr. *Barnes* was sworn, who spake of the Design in general, much after the same manner as those before.

Mr. *Minors* was the last Witness sworn, who gave evidence, that Major *Hinsshaw* told him of the Design near *Covent-Garden*, and one Mr. *Harrison*, *Tuedor*, and others, were mentioned. That he asked him if he would join in it. That afterward he met with *Hinsshaw* in the Palace-Yard at *Westminster*, who told him of the Design as before. And that Major *John Gerhard* would command a Party, and that the Business was then in good Forwardness, but Major *John Gerhard* thought it could not yet be accomplished.

And that when Mr. *Hinsshaw* heard that Mr. *John Gerhard* was taken, he said that he might thank himself, for had not he delayed it, the Business might have been done two Days before.

The Prisoners at the Bar were then asked what they had to say for themselves.

Mr. *John Gerhard* said he was falsely accused, and that the Witnesses did not speak Truth, and denied that he had any thing to do in the Plot, or knew of it.

Mr. *Vowell* did require of the Court to be allowed Pen, Ink and Paper, the Copy of his Charge, and Council to advise him what Defence to make for himself. And pleaded *Magna Charta* again, as before, and the sixth Article of the Government of the Lord Protector.

Serjeant *Glyn* declared, than an Ordinance being declared Law until the Parliament shall repeal it, is to give the same Authority to it, which is to an Act of Parliament, every Act being a Law no longer. That the Laws of old of Treason against the King are of force (were this new Ordinance not in being) For it means the Supream Governour; though it names only a King, it hath been made use of for Treason against a Queen,

Queen, and so is to be touching a Lord Protector, or any other Supream Governour.

Mr. Ellis, Council of the Commonwealth, produced in Court the Government of the Lord Protector, in which that very Article in the Conclusion of it, hath a Proviso to the 30th Article.

The Attorney-General *Prideaux* declared, that the Charge having been so fully proved against them, yet they could not but take notice of the ingenuous Confession of *Somerset Fox*; but were sorry to see such Obstinacy in the other two, after such a barbarous and bloody Design; that they should shew no Signs of Repentance: And therefore in behalf of the Commonwealth prayed for Justice from the Court against them.

The Court adjourned into the Painted Chamber, and Ordered that they should have Pen, Ink and Paper, and any Friend to come to them that they should desire in the Presence of the Lieutenant of the Tower.

The Court adjourned until Thursday next in the Afternoon.

When Mr. *Gerhard*, *Vowell*, and *Fox* were again brought before the Court, and were demanded what they had more to say for themselves, *Gerhard* and *Vowell* denied the Fact, notwithstanding what had been proved against them; after which the Lord President *Lisle* made a short Speech to convince them of the desperate Wickedness of their Design, and how fully the Charge had been proved, and what Punishments the Law had provided in such Cases; after which the Sentence of the Court was read severally to all three to this effect, *That upon mature Consideration of the Treasons and Murders plotted*

and contrived by them against his Highness the Lord Protector, and the Commonwealth, and raising a bloody War in the same, the Court did adjudge them to be hanged by the Neck, until they be dead.

Mr. *Gerhard* desired the Execution might be alter'd, and that he might be Beheaded, or Shot to Death; and presented a Petition to the Lord Protector for that Purpose.

The Protector was pleased to Reprieve *Somerset Fox*, because of his ingenuous Confession, but the other two were Executed the Monday following, July 10. *Vowell* was executed in the Morning upon a Gallows erected at *Charing-Cross*; he spake little of the Crime for which he suffer'd, but his main Discourse was to proclaim his Zeal for the Old Way of Religion, and to the Cause of the late King and his Family; after half an Hour's hanging he was cut down, and conveyed away in a Coach.

About Four in the Afternoon of the same Day, Mr. *John Gerhard* was brought to the Scaffold on *Tower-Hill*; his Behaviour was sprightly, the Substance of his Discourse Cavalier-like, boasting himself of the Profession of Religion which was established by Queen *Elizabeth*, King *James*, and King *Charles*, to which Family he declared his Affection. He acknowledged himself guilty of former Sins, for which he had deserved Death heretofore, but as touching the Crime, for which he was to die, he spent not many Words, only he confess'd, that he knew of the Plot. At length he submitted his Neck to the Executioner, who at one Blow sever'd his Head from his Body.



L. *The Proceedings of the Commissioners of Berks, for ejecting Scandalous and Insufficient Ministers, against JOHN PORDAGE of Bradfield, in the same County, begun the 18th of September 1654. 6 Car. II. Wrote by Himself.*



Was first warned by this subsequent Summons, to appear before the Commissioners.

Monday, the 18th of September, 1654.

Berks, fl. *By the Commissioners appointed by an Ordinance of his Highness the Lord Protector and his Council, for the ejecting of Scandalous Ministers.*

Whereas several scandalous Articles have been exhibited against Dr. *John Pordage* of *Bradfield*, in the said County of *Berks*; which

said Articles lying now before the said Commissioners, it is thereupon ordered by the said Commissioners, that the said Dr. *Pordage* do make his Personal Appearance before the said Commissioners, on Thursday the 5th Day of October next, at the *Bear* in *Speenhamland*; by *Newbury*, at Nine of the Clock in the Morning, to answer the said Articles exhibited against him: Whereof he is not to fail. Given under our Hands and Seals in *Reading*, the Day and Year abovesaid.

Chr. Whichcot.

Sam. Wightwick.

Ri. Fincher.

William Strowde.

William Natkine.

Will. Cooke.

Accordingly at the Time prefixed I appeared, about Nine of the Clock in the Morning, in the Place above expressed; where I waited till betwixt Three and Four of the Clock before I was called in. Then came the Door-Keeper to tell me that the Commissioners called for me.

I presently obeyed, and followed their Servant, with two Friends that accompanied me. Then the Door-Keeper commanded my two Friends to go forth of the Room. I told him they were to be there. He replied, That he was ordered by the Commissioners to let none in but my self; and therefore they should be put out: And so began in an uncivil manner, by Violence, to thrust them forth. Whereupon I applied my self to the Commissioners, telling them these two were my Friends; and that I brought them as Eye-Witnesses of the Proceedings; and that it was no reason that I should be alone. To which it was answered, They must depart, it being resolved upon by them to have none but my self there present. Then the Door-Keeper began with Violence to pull them forth, crying out, Do you not hear the Sense of the Commissioners? I turning towards them again, said, I desire none present but these my two Friends. It was replied, it should not be so. Upon this I was necessitated to ask them, against my Will, what they were, whether a publick Court of Justice, yea or no? For if they were, I demanded the Liberty of a Subject, that their Doors might be opened, for all to come in that would; that so their Proceedings might be open. Moreover, I shewed how this was the Custom of all Committees above, and of all such Courts of Judicature. Whereupon the Doors were opened, and the People came in; Mr. *Wightwick* openly averring that I should fare the worse for it. Thus was I necessitated to contend for this just and reasonable Privilege; for which my Cause was unjustly threaten'd.

The Commissioners then sitting were these, with one or two more; Mr. *Fettiplace* Chairman, Mr. *Samuel Wightwick*, Mr. *Samuel Dunch*, Major *Fincher*, Major *Allin*, Mr. *Cox*, Mr. *Strowde*, Mr. *Angell Bell*. The Ministers were these, with some other, Mr. *Hewes*, Mr. *Tickle*.

But to proceed: As I stood silent before them, Mr. *Dunch* turned to me, and with much seeming Bitterness and Passion spake thus; Dare you deny Christ to be God? And again, How dare you deny the Godhead of Christ? To whom I replied, I came to know my Charge which was exhibited against me; and that I hoped he had not judged my Cause before it was heard.

Hereupon the Chairman commanded *Langly* the Clerk to read these following Articles in open Court.

Articles against Dr. Pordage of Bradfield.

1. **T**HAT the Fiery Deity of Christ mingles and mixes it self with our Flesh.
2. That the Imputative Righteousness of Christ is a Sapeless Righteousness.
3. That the Discoveries of the Sinfulness of Sin, the Terrors of the Law, the Death of Christ, the Free-Grace of God, are fleshly and flashy Discoveries.

4. That the Libery and Freedom spoken of, purchased by the Blood of Christ, and applied by the clinging and cleaving of the Soul to, is not a Liberty or Freedom from the Guilt of Sin, the Curse of the Law, the Wrath of God; but the Fiery Deity of Christ in the Centre of our Souls.

5. That by Male and Female, *Gen. i.* we are to understand by Male the Deity, by the Female the Humanity; and that these two became one Flesh. These Things were delivered without any Limitation whatsoever.

6. That Gifts and Graces of the Spirit are but Flesh.

7. That Christ is a Type, and but a Type.

8. That Christ is not God.

9. That Christ is not *Jehovah*.

Tickle witnesseth.

After these Articles were read, the Chairman demanded my Answer. To whom I replied, That I had been acquitted from all these, four Years since, by the Committee of Plundered Ministers, and that after a full Hearing and Debate; therefore I desired that (according to Law) they would pass by these old ones. But if they had any that were new, I told them I was ready and willing to receive and answer them. I further replied, I hoped they would give me the Liberty of a Felon, who, after Trial and Acquittal, cannot be questioned for the same thing again. To which Mr. *Dunch* replied, with much seeming Fierceness, You are worse than a Felon, for ought I know. Which Language coming from a Judge to the Defendant before Trial, let all sober Persons judge of, who are acquainted with the Rules of Civility, Morality, or Christianity.

Here Mr. *Hewes* the Minister interposed, affirming, That a Felon might be acquitted at one Assizes, and hang for the same thing at the next: Of which he gave an Instance in a Story not worth the relating. To which I replied only this, That it could not be for the same he was acquitted of before. But I seeing that he had gone *ultra crepidam*, beyond his Office, and beyond Reason, said no more to him; though he was very bitter and pragmatikal, speaking oft as Judge, although he was but an Assistant, and that only in reference to Ignorance and Insufficiency.

But afterward, applying my self to the Chairman, I further urged, That these Articles were not within the Cognizance of the Commissioners, in that I had been discharged from them, by those who had full Power and Authority to do it.

After this, all were commanded to withdraw; and about an Hour after I was called in again, and asked for my Discharge. I answered, I came now only to know my Charge; and that I had not my Discharge there, but would bring it when they would appoint me.

Then they declared, That notwithstanding my Discharge in another Court, yet it was the Judgment of the Commissioners, that they had Power to take Cognizance of the Articles exhibited: Whence they made this Order, *viz.*

Berks,

Berks, ff. *By the Commissioners for ejecting of Scandalous Ministers, &c. October 5, 1654, at the Bear in Speenhamland.*

DR. John Pordage, Rector of Bradfield, in this County, hath in Obedience to our Warrant, dated the 18th of September last, to him directed, this Day attended, and pleadeth that he hath been already discharged from the Articles that are exhibited to us against him, by the Parliament and the late Committee of this County, and therefore not again to be questioned or proceeded against for the same by these Commissioners. But the said Doctor hath produced no such Discharge.

Resolved, upon the Question, That by vertue of the Ordinance of his Highness the Lord Protector and his Council, for ejecting of scandalous, ignorant, and insufficient Ministers and School-Masters, the said Commissioners have power to question the said Doctor upon the said Articles; and that notwithstanding his Plea, as aforesaid, of a former Discharge.

And it is thereupon ordered, That the said Doctor do give his positive Answer to the said Articles unto us on this Day fortnight, being the 19th instant, at this Place: Whereof he is not to fail.

Now this was the Substance of the Things which were transacted the first Day of my Appearance; which I have here presented in Truth and Righteousness to the impartial Reader.

My second Appearance before them was the 19th of October, at the same Place.

The Commissioners then sitting were these; Mr. Wightwick Chairman, Mr. Dunch, Mr. Evelyn, Mr. Bell, Mr. Mills. The Ministers, Mr. Woodbridge, Mr. Fowler, Mr. Hewes, with some others.

The first Thing they demanded, was my Answer to the Articles exhibited against me. But I desired them to receive my Discharge, which I hoped would be instead of a full and satisfactory Answer. So I produced it; and it was received by them, and delivered to the Clerk; who, after it was read, took a Copy of it, and then returned it to me again.

The Tenor of it was as followeth:

*At the Committee for Plundered Ministers,
March 27, 1651.*

UPON hearing the Cause, in presence of Parties and Counsel on both sides, concerning Dr. Pordage, Minister of Bradfield, in the County of Berks; and upon reading the Papers and Examinations depending against him before this Committee, and full hearing what could be said by both Parties; this Committee hath taken the said Cause into serious Consideration and Debate: And do thereupon order that the said Cause be dismissed. And the same is hereby dismissed.

Gilb. Millington.

Afterward they asked me how they should
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know that this was a true Copy. I returned answer, I received it from their Clerk there present, who knew it to be true: And besides, I had a Friend by, who being with me when I received it, could attest the Truth of it by Oath. Then they waved my Discharge, and called for my particular Answer to the Articles; alledging, That notwithstanding the Discharge, the Commissioners had judged the Articles under their Cognizance. So that after I had pressed my Discharge with as much Earnestness, as in Modesty I could, they still hastily calling for my further Answer, I was necessitated to give in this which followeth:

My Answer to the Articles exhibited against me, consists in these Particulars.

Partic. 1. I Humbly conceive that none of the Articles exhibited against me are comprehended in the Act, entitled, *An Act against several Atheistical, Blasphemous, and Execrable Opinions, derogatory to the Honour of God, and destructive to human Society*; without the Sense and Meaning of the Words expressed in the Act be stretched and wrested beyond the literal Scope and Drift of the Act. And this is not my Judgment only, but the Judgment of some pious and judicious Lawyers of this Land. Which Thing, in all Humility, I leave to your serious Considerations.

Partic. 2. I humbly conceive that the forementioned Act cannot take into Cognizance those Articles exhibited against me; because they are acknowledged by the Accusers to have been uttered a Year before this Act had a Birth in the World. Now can any Guilt be legally imputed from any Law, before the original Being of it? This seemeth contrary to Reason. Now those Articles were charged upon me Aug. 16, 1649, and this Act made and published Aug. 9, 1650.

Moreover, these Articles are not punishable by that Act; because, according to the Conclusion of the said Act, no Person is to be impeached, molested, troubled, or punished, for any Offence mentioned in that Act, unless he be for the same Offence accused, presented, indicted, or convicted within six Months after such Offence committed. Now it is six Years since some, and four since any of these Expressions were pretended to be uttered by me.

Partic. 3. I humbly conceive that the forementioned Act cannot take into Cognizance the Articles exhibited against me; because upon Examination of Witnesses on both sides, I was cleared by the Vote of the honourable Committee of Berks, who had full Power, by an Act of Parliament, to put out, and to put in Ministers in this County.

Partic. 4. I humbly conceive that the forementioned Act cannot take into Cognizance the Articles exhibited against me; because, after Examination of Witnesses, and after a full Hearing, I have been dismissed and acquitted from all Guilt and Offence charged upon me from them, by the honourable Committee of Plundered Ministers, who had full Power to put out, and to keep and put in Ministers. Now the judicious Lawyer saith, That these Articles having had their original Dependence before two Committees of Parliament, who had an absolute Power,

Power, by Act and Ordinance of Parliament, to put out and put in Ministers, and they having cleared and acquitted me from the pretended Guilt of such Articles, it is not according to the Liberty of the Subject, or Tenor of the Law, that it should be within the Cognizance of this Act, or of this Committee; it being against that fundamental Maxim of *Magna Charta*, *Nemo bis punietur pro uno delicto*.

Moreover, it seemeth contrary to the sixth Article in the *Instrument of Government*, published by his Highness the Lord Protector's special Command; in which it is expressed, *That the Laws shall not be altered, suspended, abrogated, or repealed, but by Consent of Parliament, save as it is expressed in the thirtieth Article*. Therefore my former legal Discharge, according to the former Acts and Ordinances of Parliament, is still in force, and holds good, not being abrogated by the Government, or by any thing expressed or included in the said thirtieth Article of Parliament.

I shall now proceed to answer each Article in particular.

Art. 1. *That Christ is not God: That Christ is not Jehovah.*

1 Part. *Answ.* I do acknowledge that such Expressions were uttered by me: But I hope the bare Expressions of such Negations doth not make me come within the Guilt of the Act; for it must be known what Words preceded such Expressions, and what followed. To say in Preaching, *There is no God*, doth not make the Preacher guilty of Atheism, if the Words going before be but annexed, *The Fool hath said in his Heart, there is no God*. So do but annex the subsequent Words to the former Expressions, That Christ is not God, *viz.* the Father; That Christ is not *Jehovah*; *Jehovah* taken strictly for the Person of the Father, the first Person of the glorious Trinity: I say, add but these Words, and there is nothing blasphemous or culpable in such Expressions.

2 Part. *Answ.* Though I do acknowledge that such Expressions fell from me, yet I never avowedly uttered or maintained such Propositions; for they were only uttered by way of Dispute, and that upon this occasion: Mr. Daniel Blagrove, then being Chairman of the Committee, demanded of Mr. Tickle what Blasphemy was. He answered, Evil-speaking against God the Father. I replied, A lame Definition of Blasphemy. Had Mr. Tickle said Evil-speaking against God, which is a Word implying the Trinity in Unity, then there had been no occasion given of Contest; for the ground of these Expressions arose from the Weakness of his Definition of Blasphemy, in that he said Blasphemy was Evil-speaking against God the Father. To which I replied, His Definition of Blasphemy doth not reach that of which he accused me; for that which he chargeth me with, is not Blasphemy against God the Father, but against Christ, God the Son. And I have uttered no Evil-speakings against God the Son, but seemingly to my Accuser, in saying, That his Imputative Righteousness would prove a Sapless Righteousness to all those that had not the Fiery Deity of Christ in the Centre of their Souls, burning up their Lusts and Corruptions. Mr. Tickle then replied to the Committee, Pray take notice that the Doctor denieth that Christ is God, which I

prove out of *John* i. 1. To which I replied, Christ was not God the Father, but God the Son. Christ is *Jehovah*, and so called the Lord our Righteousness, said Mr. Tickle. To which I replied, Christ is not *Jehovah*, if you take *Jehovah* for the Person of the Father. And this is the Truth, as the whole Committee of *Berks* then present can testify; by whose Vote I was then cleared of all these unworthy Aspersions, and dismissed; and since, upon Proof of Witnesses, acquitted and dismissed; and that after a full Hearing by the Committee of Plundered Ministers.

3 Part. *Answ.* I do humbly conceive, that although the former Act did expressly adjudge and condemn Evil-speakings, or Blasphemy against Christ, yet my delivering such Expressions in an extemporary Dispute, *viz.* That Christ was not God, or *Jehovah*, did not make me obnoxious to the Guilt and Penalty of that Act; because p. 980, & 981, they only are condemned as guilty, who shall avowedly profess, maintain, or publish in word or writing, such or such execrable Opinions: which I never did. Nay, I profess avowedly the contrary, and do declare in the Sincerity of my Heart, that the Thought never entred into my Heart, to deny the Godhead or Deity of Christ; but I have avowedly in Words maintained, and published by Preaching, That Christ is God, out of that Text, *John* i. 12. *The Word was made Flesh*, &c. From whence I did maintain and publish, That Christ was God, coequal, coeternal, and coessential with the Father, contrary to all those blasphemous and execrable Opinions, that deny Christ to be God. So that now I hope the mere uttering such Expressions, by way of dispute before a judicious and understanding Committee, doth not make me a Transgressor, according to the true Sense and Meaning of this Act.

Artic. 2. *That the imputative Righteousness of Christ is a sapless Righteousness.*

Answ. I thus deliver the Truth: As I was paraphrasing on that Portion of Scripture mentioned in *Dan.* ix. 24. of everlasting Righteousness, I did say words to this effect; *That the imputative Righteousness of another, was a sapless Righteousness to all those that had no Right or Interest in it*. I shall desire a little to explain myself on this Proposition, that the imputative Righteousness of Christ in this sense will prove a sapless Righteousness: For he that hath not the Spirit of Christ dwelling in his Heart by Faith, notwithstanding all this Application of Christ and his Merits, yet to him it is but a sapless Righteousness: so saith the Scripture, *He that hath not the Spirit of Christ, is none of his*, notwithstanding his Application of the imputative Righteousness of Christ to himself: But here I do not deny the imputative Righteousness of Christ, nor his active and passive Obedience to be the material Cause of his Justification; yea, I own and acknowledge Christ's Righteousness to be the Soul's Righteousness in point of Justification, when it is apply'd upon a true ground, according to the true Sense of the Spirit in the Scriptures.

Artic. 3. *That they should look to the fiery Nature of Christ's Deity in the Centre of their Souls, burning up the Dross and Chaff of their Lusts and Corruptions.*

Answ. For the Explanation of this Article, we must consider these are Scripture-Metaphors, and Christ

Christ is often clothed with a Garment of Fire, according to that of *Paul*, Heb. xii. 29. *Our God is a consuming Fire*; and in another place, *Christ shall come in flaming Fire*. None, or few understand these Scriptures, or the like, of elemental material Fire; but either of the Fire of his divine Love to burn up our Lusts and Corruptions, or the Fire of his divine Justice or Wrath in destroying Sin and Sinners.

Artic. 4. *That the fiery Deity of Christ mingles and mixeth itself with our Flesh.*

Ans. I was then speaking of the mystical Union betwixt Christ and his Church: And in the Illustration of this Union, I apply'd that Expression out of the 5th of the *Canticles*, *He mingleth his Wine and his Milk together*: so in this Union, Christ's divine Nature mingleth itself with our Humanity, his Spirit with our Flesh. This Expression Mr. *Tickle* was pleased to charge with Blasphemy; asking me what I meant by Flesh. I answered in Conference, By Flesh I understand not the sinful and fleshly part of the Soul, that lusteth against the Spirit; for with this there can be no Union. 2. By Flesh I mean not the outward elementary Flesh of the Body; but by Flesh I understand our pure Humanity, the pure regenerated part of the Soul, the converted part of our Spirit: And thus the Spirit of Christ and regenerated Part are really in Union one with the other, according to the Apostle's Phrase, *We are made Partakers of the Divine Nature*. And against this Answer he had nothing to reply.

Artic. 5. *That Christ was a Type, and but a Type.*

This was in Conference: He asked me whether Christ was a Type or no. I answered, Christ was a Type, so expressed 1 *Tim.* ii. 21. How was Christ a Type, reply'd Mr. *Pendarvis*? I answered, His Life and Conversation was a Type, that is, a Pattern and Example for us Christians, to square our Lives and Conversations by. Who denies this? said he. Why, I affirm no more, said I, than that Christ is a Type. Is he but a Type, reply'd Mr. *Pendarvis*? I answered, Why lye you thus on the catch? I say Christ is a Type; but I will not affirm Christ is but a Type. And this they both confess in their Answers.

Artic. 6. *That the Gifts and Graces of the Spirit are but Flesh.*

I confess I said the common Gifts and Graces of the Spirit were but Flesh; but this I opened after this manner, That they were but fleshly, weak, and carnal in point of Justification, in point of Trust and Confidence in regard of Salvation and Life eternal; and no otherwise, as their own Witnesses on Examination confessed before the honourable Committee of *Berks*.

To conclude: As for these Articles, especially all the latter, I look not upon them as under the Cognizance of the Act; yet for your Satisfaction I have transcribed my former Answers, and do here present them again to your Consideration, by which you may clearly see my Innocency in reference to the horrid Opinions for which I am accused.

John Pordage.

This being read by the Clerk, we were all commanded to withdraw. About an hour or two after, I was called in again; and they told

me, if I would, I should have an Order to fetch in my Witnesses to prove what they could on my behalf, in reference to that Charge. I reply'd, That I hoped my Discharge and Answer were sufficient, and that they would not put me to the trouble and charge of traversing this Business (*viva voce*) by my Witnesses again; in that (besides my Discharge) I had brought all their Depositions delivered by Oath to the Committee of Plundered Ministers; which I desired might be then read before them, because the Witnesses could but say, *viva voce*, what was there wrote down.

Hereupon I delivered them to be read; and so being handed to the Clerk, the Commissioners asked me how they should know them to be true. I reply'd, The Clerk delivered them as a true Copy, and I would affirm on my Oath, that they had not been altered since I had them. But notwithstanding this, they rejected them, alledging that they would not take notice of any written Depositions taken out of another Court; but that I must again bring in the former Witnesses, to testify what they could by Word of Mouth: so that all the Reasons and Arguments I could use, could not prevail with them to free me from the Charge and Trouble of bringing in my Witnesses again; for which the Clerk was then commanded to draw me up an Order.

Berks. By the Commissioners for ejecting of Scandalous Ministers, Octob. 19, 1654. At the Bear in Speenhamland.

DR. *Pordage* of *Bradfield* hath this day again attended, and hath exhibited an Answer in writing to the Articles exhibited against him. Ordered, That the said Doctor do attend again before us on this day fortnight at this place; at which time he is to give Answer to the additional Articles now exhibited against him, and to produce his Witnesses, if he have any, for Proof of his Defence; and Summons are to issue out for that purpose, if he desire the same.

Then they told me they had a new Charge of Articles against me; which were these that follow, then openly read by the Clerk.

Articles against Dr. Pordage, Parson of Bradfield, to prove his Ignorance and Insufficiency for the Ministry.

1. **I** *Mprimis*, One Mistress *Lewyn* being with child, and near the time of Travail, sent for Dr. *Pordage's* Mother to be her Midwife; but he would not suffer her to go, saying, they would not be guilty of such a beast-like Life, meaning Mistress *Lewyn's* being with child by her Husband.

2. The said Dr. *Pordage* coming to the House of Mistress *Lewyn*, in his Discourse with Mrs. *Lewyn*, blamed her for having Children by her Husband, and argued with her the Unlawfulness of having Children by her Husband.

3. In his Discourses to Mrs. *Lewyn* concerning the same Subject, endeavoured to maintain the Unlawfulness of their having Children; and said that *Adam* was made Male and Female in himself, and had he not fallen, he had brought forth Children

dren himself; and seemed to maintain and prove the same by Scripture, and otherwise.

4. In his Discourses with Mrs. Lewyn, which was about the time that one Everard was with him in his House at Bradfield, who was generally reputed to be a Conjuror, he asked Mr. Lewyn whether he would not be afraid if he should see his own Picture, or Shape; intimating that he himself had used to see his.

5. The said Dr. Pordage hath had for some Weeks together in his House the said Everard, and one Tawny who stiled himself King of the Jews, who had been questioned (as it is generally reported) for holding dangerous and unsound Opinions; as, That there is no Hell, and the like.

A True Copy,
Mat. Langley Regist.

Joseph Cook.

After these were read, I desired the Court in the first place to finish the first Paper of Articles; urging, that if they were sufficient, they might save both them and me much trouble. But this they denied, tho I much urged it: Whereupon they commanded this subsequent Order to be drawn up, viz.

Berks, ff. *By the Committee for ejecting of Scandalous, Ignorant, and Insufficient Ministers and School-Masters in this County, Octob. 19, 1654.*

ORdered, That Mr. John Tickle, Mr. John Pendarvis, Mr. Francis Pordage, John Higgs, Gifford Luinton, Richard Luinton, Mary Pocock, and Roger Stevens, do make their personal Appearance before the said Commissioners on Thursday the second Day of November next, by Eight of the clock in the Morning, at the Bear in Speenhamland by Newbury, to testify their Knowledge of all such Matters as shall be propounded unto them concerning Dr. John Pordage of Bradfield in this County; whereof they are not to fail. Given under our Hands and Seals, the Day and Year above-mention'd.

Samuel Wightwick.
Ar. Evelyn.
Ed. Mills.

Samuel Dunch.
Angell. Bell.

But this I must speak on the behalf of Mr. Wightwick and Mr. Evelyn, that by their Presence things were transacted that day with much more seeming Modesty and Calmness than at other times; the Ministers then containing themselves within the limits of due Silence, which gave me some hopes that the latter part of my Trial might be transacted in some Moderation, Equity, and Civility. But these two sitting no more after that day, there broke forth much Confusion, Rashness, and Incivility in their Carriage; some Ministers (who were bitter Enemies against me) acting the part of Commissioners, and seeming to have great Influence upon all their Proceedings, being suffered to break forth into uncivil Scoffs, and Railings against me in the open Court, as it will afterward appear.

But thus much for my second Day's Appearance, here represented according to the Line of Truth and Equity.

On the second of November I appeared before them again at the same Place, according to their last Order, at which Time Major Fincher was Chairman; besides whom, there were present, Mr. Dunch, Mr. Stroud, Mr. Cook, Mr. Bell, with two or three more Commissioners: the Ministers were Mr. Fowler, Mr. Woodbridge, Mr. Hughes, Mr. Tickle, &c.

The first thing they demanded of me, was to give in my Answer to the second Charge of Articles exhibited the last Day against me. I reply'd, that my Answer was ready; but I desired that they would keep to their own Order, and first hear my Witnesses, and so finish my first Charge, that we might not run into confusion. But they would not hearken to this rational Request, importuning me for my Answer, resolving to hear nothing till I had given it in: so being necessitated to yield to their Command, I gave in this subsequent Answer.

My Answer to the second Articles exhibited against me, is as followeth.

IN the first place, I shall take liberty to reply to the Title of the Articles; which is, to prove my Ignorance and Insufficiency for the Ministry, by the Articles produced.

1 *Part. Ans.* I do here humbly desire, that Ignorance and Insufficiency for the Ministry may be preserved as distinct Heads from Scandal and Heresy, according as it is intended by the Authors of the Ordinance: for certainly it is against the Judgment of the Lord Protector, and the Intendment of his Council, who made the Ordinance, to confound that which may be called Scandal, or Heresy, and Insufficiency together. We see it is usual this day among us, for knowing and learned Ministers to differ in their Judgments, both in Doctrine, Worship, and Things indifferent; who yet thereupon are not accounted ignorant and insufficient for the Ministry. So that altho these Articles could be proved true, they are to be referred either to Scandal or Heresy, and not to Ignorance and Insufficiency.

2 *Part. Ans.* If Ignorance and Insufficiency for the Ministry be taken for the want of an inward special Gift, as it is qualified with human Arts and Sciences, attained by much Pains and Industry, in relation to Academical Learning: Or if Ignorance and Insufficiency for the Ministry are taken for the want of inward Abilities, qualified with spiritual Gifts, as with those of Prayer, Utterance and Preaching: Or if Ignorance and Insufficiency be taken for the want of a saving Principle of Grace, manifesting itself in Convictions of Sin, Legal Terrors, or Evangelical Illuminations into the Free Grace and Love of the Father, or into the meritorious Death of Christ for the Redemption of lost Sinners: Or if it be taken for those Effects flowing from such a saving Principle of Life, as that of saving Faith, true Repentance, Pardon of Sin, Peace of Conscience, a holy Life in all universal Obedience to the holy Will and righteous Commands of God: Then I humbly conceive, that mere Ignorance and Insufficiency, without the Pretensions of Heresy and Scandal, will be found a Bed too short, and a Covering too narrow for my Ejection out of the Work of the Ministry, according to the true Intent of the Ordinance.

3 Part. *Ans.* Hence my humble Desire to you for time to come, is, that you would not make your Ephah of Ignorance and Insufficiency so small, that Heresy and Scandal may not stand distinct in it; and that you would not make your Shekel of Ignorance and Insufficiency so great, as to swallow up Heresy and Scandal into the boundless and endless Extent of it: For what is this but to falsify the Ballances of Justice and Equity by a deceitful Weight, in not preserving Insufficiency as a distinct Head from Scandal and Heresy; which in time may prove very prejudicial to that Liberty of Conscience, which of late years hath been, and is still preserved and asserted by the Rulers of this Nation?

In the second place, to the Articles themselves I thus reply.

Ans. 1. As to the four first, I know not how or what positively and directly to answer to them, till I see them first proved by Oath, and that by such Persons who are without just Exceptions; and then I shall be capable of returning a more full and compleat Answer.

Ans. 2. Neither do I see, that seemingly to maintain and argue, by way of dispute only, the Unlawfulness of Mrs. Lewyn's having Children by her Husband, for the sifting forth of Truth from Error, could it be proved that I did so, could argue or evince my Ignorance and Insufficiency for the Ministry: For this, tho it were evinced to be my Crime, cannot in Justice and Equity be referred to that Head of Insufficiency, but to Scandal; except Ignorance and Insufficiency be resolved into the boundless Liberty of the Wills of the Judges, that what they deem ignorant and insufficient, must be ignorant and insufficient, whether Ignorance and Insufficiency be real in such a Subject or not.

As to the fifth Article, which concerns my giving Entertainment in my House to one *Everard*, reputed a Conjuror, and to one *Tawny*, reported to hold unsound Opinions, I thus answer:

As to the first part of it, I confess that one *Everard*, about four Years since, was received into my House at *Bradfield*, for the space of almost three Weeks, and no longer; and that after this manner: He came in Harvest-time with a new Pair of Harvest-Gloves on his hands, to shew his Willingness and Readiness to work; and asking to speak with me, told me, That if I pleased to employ him in Harvest-Work, he came to offer his Service. Hereupon I entertained him as a Workman. And thus you see both the Manner of his Coming, and the Cause of his Entertainment.

Whereas it is said he was generally reputed a Conjuror:

Ans. 1. I answer, I never heard any the least Intimation from any, that he was ever suspected to be a Conjuror, till after his departure from my Family: if he was a Conjuror before he came, it was more than I knew, or had heard of; but after his departure, I confess there arose a general Report up and down the Country, that he was a Conjuror. But from that time to this, I have never seen him, nor known what is become of him.

Ans. 2. After his absence, I do further affirm, That I was strongly inclined to believe, accord-

ing to the general Rumour, that he was a Conjuror. Hereupon I was in a great strait in my own Spirit, whether I should prosecute him or not; my Zeal for God's Glory, and my Obedience to the Command of God, that saith, *Suffer not a Witch to live*, giving me some Impulsions to do it. But after serious Debate and Consideration within myself, I resolved this Case or Scruple of Conscience thus; That my own Persuasions and Jealousies, tho they had some ground of Probability, yet not being certain, afforded me not a sufficient ground of prosecuting him as a Conjuror, or of swearing positively he was such. Now I leave it to your serious Considerations, whether this Tenderness of Conscience keeping me from prosecuting of him, or swearing against him, for fear of that heinous Sin of Perjury, makes me either ignorant or insufficient for the Ministry.

As to the second part of the fifth Article, which concerns my Entertainment of one *Tawny*, reputed (as it is there expressed) to be one that holds unsound Opinions:

Ans. I answer, It is well known, as I invite none, so I turn away none that come to visit me, tho their Principles in Matter of Doctrine, Worship, and Discipline, be different from mine. I will here shew you briefly my Grounds and Ends: My Grounds are these; I look upon it as my Duty, according to the Gospel of Christ, to entertain all Strangers that be in want and necessity, professing the Name of Christ. If Enemies hunger, we are to feed them; if they are naked, we must clothe them; and as for Strangers, we are to lodge and entertain them, *Heb. xiii. 2.* And as in the Practice of this I break no Law of God, so no Law of Man. And you may remember, that in the 37th Article of Government it is expressed, That all such as profess Faith in God by Jesus Christ, tho differing in Judgment from the Doctrine, Worship, or Discipline publicly professed, so as they abuse not this Liberty to the Civil Injury of others, nor to the actual Disturbance of the publick Peace, shall be protected; and then surely their hungry Bellies may be fed, their Backs clothed, their Wants supply'd, and their Persons lodged and entertained.

And further, my Ends are these, which are Pure and Evangelical, That I may prove all things, and hold fast that which is good: that I may try the Spirits, for many false Spirits are gone forth into the World. Now how are they to be proved and try'd? Not by carnal Weapons, as by Penalties, Mulcts, Imprisonments, and other external Punishments; but by convincing of them with sound Doctrine, Christian Discourse, spiritual Arguments, and by the Example of a good Conversation. And thus God's Glory, and the Good of others are my only Ends, in giving Entertainment to all Strangers that come in Civility to visit me.

Now the Cause of many Strangers coming to me as Guests from all Quarters of this Land, ariseth from these lying printed Pamphlets, which have hardly a word of Truth in them; these draw all seeking inquiring Minds to visit me, for divers Ends best known to themselves: Let it but be proved that ever I gave Entertainment to any common Swearer, or to any open Drunkard, Sabbath-breaker, or to any known profane Person, and I shall judge myself obnoxious to your Censure; but all that I give
free

free Entertainment to, appear clothed under some Shew of Godliness or other; but if they have not the Power, it will be their own Misery.

In a word, the Strength of this Article doth but amount to thus much, That as Christ was supposed to be a Friend of Publicans and Sinners, so am I supposed to be a Friend to all People that profess Religion, and walk orderly, be their Opinion in Matter of Doctrine or Discipline never so much differing from mine own, or from those commonly received: yet this doth not argue my Ignorance or Insufficiency for the Ministry; but if in it any thing be culpable, it is to be referred to the Head of Scandal. But here being no Law of Prohibition, I cannot see any Transgression in it, either against the Law of God or Man.

To conclude, I cannot give a more direct Answer to these Articles, being Matter of Fact, till I see them proved, and each Article referred to its proper place, either of Scandal or Heresy, or Ignorance and Insufficiency.

John Pordage.

This being read, we proceeded to the Proof of the first Charge of Articles attested by Mr. Tickle, one of the Assistants, whom I desired to see sworn in the open Court; alledging that I was altogether ignorant whether he had sworn or not; but the Clerk affirmed that he had done it already: but after much dispute, it was granted that I should hear him sworn in the open Court. Then I craved liberty to cross-examine him openly, and began to put my Interrogatories to him; but this just Privilege they peremptorily denied me, tho I used many Reasons and Arguments to shew the Equity and Reasonableness of it. Then they commanded me to write down my Interrogatories, which should be proposed and answered in private, without my presence, according to their fixed Resolution. Then all being commanded to withdraw, I wrote down my Interrogatories; and when I gave them in, I desired they might be asked in the open Court: but it was deny'd. Then I requested that I myself might be present at the Cross-Examination, tho all the rest withdrew; urging, that altho I had given in my Interrogatories, yet there might be many necessary Circumstances and Questions emergent in the Examination, which I could not then give in in writing, nor make use of without I was present, which yet might serve very much to clear the Truth: but notwithstanding this, and more which was then said, I could not prevail, but was commanded to withdraw.

After this I was called in again, and as I thought to receive Mr. Tickle's Answers to my Interrogatories; which tho I pressed it with much earnestness, was deny'd, they resolving, as it seemed to me by their Answer, to keep them private till Publication: which appeared to me very partial dealing, in regard I could not know how the Questions were answered, against the time of making my Defence by negative Witnesses.

But afterward importuning the Court to examine my Witnesses according to their own Order, I was interrupted by their commanding of the Clerk to read a third Charge of Articles exhibited against me by Mr. Fowler, an Assistant Minister to the Commissioners; whose Zeal

moving swifter than the Clerk's slow reading of the Articles, caused him to take them out of his hands, and to read them himself, with much Courage and Resolution. The Articles were these that follow.

Further Additional Articles exhibited against Dr. Pordage, by Mr. Fowler, Minister of St. Mary's in Reading.

1. **T**HAT the Righteousness of Jesus Christ was a poor, vain, sapless Righteousness.
2. That Jesus Christ was not perfect, alledging that Text to confirm it, because he cry'd out, *My God, my God, why, &c.*
3. That the Blood of Christ was not meritorious of any Man's Salvation.
4. That it was a poor thing to live upon the Blood of Christ; and fetching it over again, in a contemptuous kind of speaking, *Pish*, said he, *thou art a Babe, thou knowest nothing; to live upon the Blood of Christ, is a poor thing.*
5. That one speaking to him of the glorious Persons in Trinity, he reply'd, *Persons in Trinity! Pish, there is no such thing.* And again, *There is no such thing as Persons in Trinity.*
6. That it was a Weakness to be troubled for Sin.
7. That he might say any thing to the Men of the World.
8. That he asserted he knew nothing to the contrary, but that a Man might company with more than one Woman; being taxed with keeping carnal Company with a Woman in *London*.
9. That he hath very frequent and familiar Converse with Angels.
10. That a great Dragon came into his Chamber with a Tail of eight Yards long, four great Teeth, and did spit Fire at him: and that he contended with the Dragon.
11. That his own Angel came and stood by him while he was expostulating with the Dragon; and the Angel came in his own Shape and Fashion, the same Clothes, Bands and Cuffs, the same Bandstrings, and that his Angel stood by him and upheld him.
12. That Mrs. Pordage and Mrs. Flavel had their Angels standing by them also, Mrs. Pordage singing sweetly, and keeping time upon her Breast; and that his Children saw the Spirits coming into the House, and said, Look there, Father: And that the Spirits did often come into the Chamber, and drew the Curtains when they were in Bed.
13. That the said Mr. Pordage confessed, that a strong Enchantment was upon him, and that the Devil did appear to him in the Shape of *Eve-rard*, and in the Shape of a fiery Dragon; and the whole Roof of the House was full of Spirits.
14. That Mrs. Margaret Pendar acquainted with this Doctrine of Spirits, and pretended to be converted by Visions of Angels, doth think that she was bewitched by them of *Bradfield*.

Her Confession.

SHE was taken ill upon Wednesday in the Afternoon, in July 1653. About Nine of the clock the same Night, there appeared the Vision of a Man standing at her Bed's-foot: on Thursday the next day he had a Book in his Hand,

Hand, and stood by her all that Day and said nothing. On Friday it spake audibly unto her, saying, Why art thou so discomforted? I answered, *A wounded Conscience who can bear?* He replied, He that hath wounded thee, will make thee whole. I spake much of my own Unworthiness; he answered, There was worth in Christ, and he had paid a Ransom for me. Then he told me, that that Book in his Hand, was the Book of the Lamb, and that my Name was written in it. I saw the Book, a broad Book with a Parchment-Cover; and I saw Writing in it, and then was I lifted up with a great deal of Joy. About Four of the clock the same Friday, the dark Angel came and stood by the other Vision, with a Knife in his Hand, and said, Thou hast had a great deal of Joy; and offering her the Knife, bid her dispatch her self, and she should enter into that eternal Rest her Soul so much thirsted after. Upon this she trembled, the Bed shook, and my Mistress held me.

The same Friday I had Visions presented upon the Wall; I saw the World, and the Resurrection of the Dead, and the Son of Man appearing in the Clouds of Heaven.

She saw clearly the Vision of a Friend of hers in London, in her Chamber at Southcot; her Friend was much inclined this way: she much wondred at it, and told Mrs. Pordage of it; who answered, Alas! so do we see abundance of those we never knew before, when once they come into our way.

On Saturday Dr. Pordage came to her, being sent for, and prayed in a very strange Language, she did not understand well what he said; she heard him say, Lord; but nothing of Jesus Christ, but the Abyss and bottomless Eternity.

She heard a great Noise of Drums and Trumpets. She asked the Doctor what the rattling of Drums and Trumpets meant? He answered, It was an Alarm to the spiritual War.

One of the Nights she saw the Vision of young Mr. Daniel Blagrove, which came to her Bedside; she took him by the Hand, and it felt cold. She asked the Doctor what it meant? He answered, The Coldness of the Hand did signify his beginning to be cold to Vanity.

She asked Dr. Pordage what the Visions meant? He answered, They durst not reveal one another's Visions; he did not question but God would discover himself, and reveal wonderful things to me.

She was from Wednesday Noon till Monday Noon, and did not eat one piece of Bread, but sometimes a little Water and Sugar; and she saith she was not sick at all, after the first two Hours: and when she was about to eat, she heard a Voice come to her; *We are not to live upon Bread, but upon every Word of God:* And upon that Voice she did not eat.

She saith, that she hath oftentimes seen at London Flashes of Light in her Chamber, and at last heard a Voice which put her into a very great Fear and Sweat, saying, Thou hast married a Lump of Clay; but thou must return to thy first Husband, who is thy Saviour, and thou must go to Joppa.

And upon this she was convinced that these Visions were of the Devil, because the Voice was clean contrary to the Scriptures. She saith, that she hath heard it reported at Southcot, That e'er long Dr. Pordage should have Power from

him to bestow saving Graces on whom he pleased: as also, that Marriage was the way of Beasts.

Francis Knight of Wallingford saith,

That discoursing with some of *Blewberry*, that use to go to Dr. Pordage's, they spake very much against the Lawfulness of Marriage; he wondred at it, and ask'd them whence they now came? They answered, We came just now from the Doctor's from Bradfield.

16. Doctor Pordage's Chamber at Bradfield hath sometimes been almost filled with Spirits.

17. That Doctor Pordage preached, That Water-Baptism was not the Ordinance of Jesus Christ.

18. That about Michaelmas, in the Year 1653, he was commanded by his Angel, or from Heaven, to give off preaching, and take no more Tythes; but since he conceives he hath had a Dispensation.

19. That in July last, 1654, he was to be taken up into Heaven; and it is said by some, he hath been there, and dismissed again about his Business.

20. That in the midst of these Visions he is scandalously covetous.

21. That he cursed the People at Bradfield in his Pulpit, and their Posterity for ever in this World, and in the World to come.

22. That he preached at Bradfield, and afterward did labour to defend it pertinaciously, That the little Horn in Dan. vii. 8. was Christ; and being told that the little Horn made War with the Saints, yet he persisted to say it was Christ; and endeavoured to make his Hearers believe that he was falsely charged.

23. That he saith Goodwife Pocock singeth the highest Hymns very sweetly; that she knoweth not a word when she begins, but is taken with a burning about her Heart; and when she hath done, she cannot repeat a word of it, if it were to gain the World.

24. That Goodwife Pocock lately came to Colonel Evelyn, and told him, she had a Word to him from God, viz. Have nothing to do with that just Man.

25. And that on or about the tenth of this Month Dr. Pordage sent to invite Mr. Snelling, and his Wife and Children, to come to the Doctor that Day; and the same Day Mr. Snelling and his Wife did go to the Doctor's House; and when he came, Mr. Snelling desired to know wherefore he sent for him? Dr. Pordage told him, to go with him and meet his Bridegroom. And then Mr. Snelling told the Doctor he knew not what he meant, and so departed. And the next Morning Mr. Francis Pordage met with Mr. Snelling, and told him he had lost his Part in Heaven, being he did not wait upon the Doctor at that time.

26. That Dr. Pordage sent his Man Bolt, in a very rude and uncivil manner to fetch Mrs. Forster to his House; that she being frightened at the Message, and enquiring to what end she was sent for, the said Bolt answered, She should there see the Heavens opened, and the Colours flying in the Air, and hear the Drums beat, and the Trumpets sound.

27. That Mr. Forster going to the Doctor's House, he told him at his first coming in, that he should see such things, as if he were Empe-

ror of a thousand Worlds, he would give them all to see it. After asking him for his Wife, and he answering, She was not well, and could not come, the Doctor called to them to send forth a winged Messenger to fetch her, for she must come.

28. That two days after, one Goodwife *Pocock* coming from thence to Mr. *Forster's* House, and they enquiring of her, what was the cause of those Behaviours in the Doctor's Family? She answered, They had a foul Spirit sent amongst them, and the Doctor had fought many Hours with the black Power, and had overcome it; for which she should ever think him a bright Man: That all his Family had been strangely acted, the Power taking them, some in their Legs, and others in their Arms, and that then they spake very glorious things.

29. That Mrs. *Flavel* was in a Trance, and when she came out of it, spake many precious things which she had seen in that Trance; what was the Philosopher's Stone, that so many Learned Men had sought after, which she knew to be the Divinity in the Humanity: and many other things to the same effect.

Further Articles preferred against Dr. John Pordage, Minister of Bradfield-Parish, by some of the Inhabitants of the same Parish.

1. **T**HAT Dr. *Pordage*, about eight Years past, did carry Mrs. *Flavel* behind him on horseback on the Road to *London*, and about *Hounslow* did enquire for a private House, and was directed to one Goodman *Loader's* a Smith, who lives in *Hessen-Parish*, half a Mile out of the Road, between *Hounslow* and *Brentford*; and when he came, asked if his Friend behind, being sick, might have Entertainment? 'Twas answered, Yes. Then the Doctor left her there, but never owned she was with Child, till she was in travail.

2. Mrs. *Flavel* in a short time fell in travail, and then desired no Company might be called in; yet the Woman of the House, Goodman *Loader's* Wife, called in three or four.

And Mrs. *Flavel* was then brought to bed of a Daughter, having then no Husband that the World knew of, Mr. *Flavel* being dead.

3. That Dr. *Pordage* came to that House, and christned that Child, and named it *Hannah*; and the Doctor came often to visit her there, and always alone by himself.

4. That the Child being put to nurse in the same Parish, the Doctor moved Mrs. *Flavel* to *Kensington*, and paid the Smith for her being at his House: That a little while after the Nurse went to *Kensington* to enquire for Mrs. *Flavel* to pay her some Money; but she was removed: and the Nurse saying, she left a Child with her, the Company smiled, and said, They thought she was such a Woman.

After this, the Nurse's Husband wrote a Letter to the Doctor to *Bradfield*, that he was twenty Weeks Pay behind, and could not forbear; whereupon he was paid: and shortly after sent for the Child away from the Nurse's.

5. That a little while after, this Mrs. *Flavel* came again to the Doctor's Family, and a little Child called *Hannah*, it was also brought thi-

ther; and Mrs. *Flavel* took the care of it ever since. And Mrs. *Flavel* being by Neighbours asked whose Child it was? said, a dear Friend of hers: but none could ever hear in the House whose Child it was. And some telling Mrs. *Flavel*, that the Child was so like her, that they should take it to be hers, had she not said the contrary; she answered as before, 'Twas a dear Friend of hers, but never named whose.

6. That this Child, who was called *Hannah*, this last Summer they changed her Name, and called her *Ruth*; they have also changed all their Names: The Doctor is called Father *Abraham*, his Wife is also called *Deborah*, and old Goodwife *Pocock* is called *Rahab*, and so the rest.

7. That Goodman *Loader's* Son being a Soldier, saw Mrs. *Flavel* in *Bradfield* Street, and spake to her, but she took no notice of it. Afterward Mrs. *Flavel* coming to his Father's House, his Mother in Discourse asked, Whether she lived at *Bradfield*? Mrs. *Flavel* answered, She knew no such Place. I will call my Son in, who saw you there. Mrs. *Flavel* said, People be given to lying, and would not have him called; and presently called for her Horse, and went away, though before she had resolved to stay all night: and never since was there, except since the Doctor hath been questioned.

31. That Dr. *Pordage* is extreme covetous, and hath exacted five Shillings at a time to marry one Man, or else told him he would not marry him. The Man told him, He could not justly demand so much: The Doctor answered, Without five Shillings he would not marry them; and took five Shillings.

32. That his Preaching doth not tend to Edification.

33. That he is a very ignorant and insufficient Man for the Work of the Ministry.

September 9. 1650.

34. I came into *Bradfield* Parsonage in the Evening, and there I heard a very mournful Cry, as if it had been one in extreme Pains; but what it was I know not; for it continued all the time I was at the Door, which was well near a quarter of an Hour; and so it continued when I went away. And then the 10th Day in the Morning I came unto Mr. *Francis Pordage* at the Parsonage of *Stanford-Dingley*; and he enquired of me what I did think of the Noise that I heard? I told him I could not tell. Then he related to me, that the Lord was about a great Work in this Kingdom, and to this Nation; and the Cause of this Cry was one in travail: and the Pain was so extreme, that had I staid there a little longer, I might have heard it as far as the Town; but now she was delivered of a Man-child, and the Travail was at an end, and that he and others were Eye-Witnesses to it.

The Testimony of Richard Seward.

35. That in Dr. *Pordage's* House in *Bradfield*, lately the New *Jerusalem* hath been seen to come down from Heaven, all of precious Stones; and in the New *Jerusalem* was a Globe, which Globe was Eternity; and in that Eternity were all the Saints.

36. That at the Doctor's House the Face of God hath been seen; not as *Moses* saw him, but the very Face, as one Man may see another's.

37. That

37. That one being in the said Doctor's House in a Trance, the said Doctor's Daughter being by her, said, That she saw two Angels all in white, with Crowns over her Head.

The Examination of Goodman Seward concerning Mr. Pordage.

THis Deponent saith, That Mr. Pordage did affirm Marriage to be a very wicked thing, contrary to the Word of God. Goodman Seward telling the aforesaid Mr. Pordage, that a Friend of his had buried his Wife, and intended to marry again; Mr. Pordage replied, That it was a very wicked Act, and wondered at it. The Deponent replied, That he took Marriage to be an Ordinance of God. Then demanding if his Wife should have died, what he should have done? He replied, Would you be so wicked as to marry? This the above-mentioned Deponent will aver with his Oath.

A true Copy, examined by

Math. Langley Regist.

After he had done, it seemed not enough to him to have read such a horrid, scandalous, confused Charge to the People against me; but he proceeded to speak to them, desiring them to take notice what a strange Person I was, representing me to be guilty of Blasphemy, Devilism, and of Looseness in my Conversation; promising to prove that Charge of Articles, or to be counted a Slanderer. After which prevaricating Speech, he suddenly departed.

After I further urged the Commissioners to hear the Testimony of my Witnesses, in reference to the first Charge of Articles, that so it might be dispatched, that so I might be freed from the Trouble of answering so many together, which would unavoidably bring Confusion and Disorder to mine and their Proceedings. I further shewed, that according to their Appointment, my Witnesses were present and ready, desiring them to consider that I had been at Trouble and Charges in bringing them; and that I must unavoidably be at more, if they would not then hear them: Notwithstanding this, they denied to hear them at that time, calling for two Witnesses which they had summoned to attest my second Charge of Articles. Here I desired, that as my Charges had been openly read to the People, so the Examination of the Witnesses might be open, that so the People might as well hear the Proof, as the Accusation: but this could not be granted. Then I requested that I might be present; this was also denied: So two Witnesses were privately examined to the second Charge, whose Examination concluded that Day's Transactions, in reference to me; and I received an Order to appear before them again the 22d of November at the Bear in Reading.

Berks. *By the Commissioners for Ejecting of Scandalous Ministers, November 2, 1654, at the Bear in Speenhamland.*

ORdered, that Dr. Pordage of Bradfield (now present) do appear again before us on Monday the 22d Instant at the Bear in Reading, and

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that he then give in his Answer to the further additional Articles now exhibited against him. And it is further ordered, That the said Doctor do then produce his Witnesses, and bring in his Interrogatories in Writing, upon which he will examine the Witnesses in his Defence, or cross-examine them, produced for Proof of the several Charges against him.

On the Day prefixed I appeared at the appointed Place; the Commissioners then sitting, being Mr. Dunch, Chairman; Major Fincher, Mr. Trapham, Mr. Stroud, Mr. Cook, Mr. Nutkins. The Ministers, Mr. Fowler, Mr. Lee, Mr. Woodbridge, Mr. Tickle, Mr. Hewes, with two more.

Just as they were going to Dinner, I was called in, and asked for my Answer to the last Charge of Articles: I told them it was ready, but I should be very long in delivering it; but if they thought fit, I would give it in before Dinner. At this, one Mr. Trapham, a Chirurgeon and Commissioner, began to be very rough, pressing me to give in my Answer, and to leave it with them. I replied, That it was in my power whether I would give it in in Writing only, or by Word of Mouth, and that I resolved of the last. So I was commanded to withdraw.

After Dinner, being called in again, I read this Answer following, and then delivered it to them in Writing.

My Answer to the third Charge of Articles, I present in this Form following:

I Shall first present something by way of general Preface, and so descend to Particulars.

In the first place then, I look upon the first Articles charged upon me by young Mr. Tickle, to be as the casting of my innocent Person, with Daniel, into the Lion's Den: But those Articles, as the Mouths of the Lions, I conceive, were stopped, so that they could not hurt me, because the Authority and just Proceedings of two former Committees, authorized by Acts and Ordinances of Parliament, with some other legal Privileges, had sufficiently muzzled the Mouths of those Lionish Articles.

And as for the second, subscribed by an unknown Name, I believe there hath not been, nor cannot be any thing proved, which may render me obnoxious to any legal Guilt.

As for my third Charge brought forth by Mr. Fowler, who is both my Accuser and my Judge; I look upon it, as the Design of the Evil One, to cast me, with the three Children, into the hot fiery Furnace of unparalleled Wrath and Envy: for I know it will one Day appear, that these Articles were raked together from a Spirit of Bitterness and Spleen, which seem to me as the Furnace heated seven times hotter by the Fire of Wrath, to burn up and consume my Name, Liberty, Estate and Posterity.

But be it known unto you, O you Judges and Commissioners! I am not solicitous what the Event may be; I know the God whom I serve in the Integrity of my Heart, who is *Jehovah*, the true and only God, is able to deliver me from this hot fiery Furnace, and to punish those who cast me in: But however God as yet may order and dispose of me, in reference to the Ex-

ecution of my Enemies Intents, I believe my strict and holy Conversation, with my holding forth what God in the Riches of his Grace hath bestowed upon me, will clearly demonstrate that I am no such Person, as the false and unworthy Aspersions of these Articles represent me to be.

As to the particular Articles (which are raked together in much Confusion, without reducing of them to their particular Heads, of Scandal or Insufficiency, many of them being incapable justly to be referred to either) I thus begin my Answers.

Art. 1. **T**HAT the Righteousness of Christ was a poor, vain, sapless Righteousness.

1 Part. *Ans.* This Article was in my former Charge, and I was cleared of it by two Committees, who had Power legally to acquit me, even as they did.

2 Part. *Ans.* I do cordially acknowledge, That Christ's Righteousness is not a poor and sapless Righteousness, but very precious, being the material Cause, and spotless Robe of a Christian's Justification; and that every Saint ought to be found in this Righteousness of Christ in point of Justification, and not in his own Self-righteousness.

3 Part. *Ans.* I deny that ever I spake such Words, without some Limitation; which Limitation, if annexed, would free me from any Guilt resulting from such Expressions: and though any one should swear I spake those Words, yet that could not render me justly guilty, it not being declared what preceded, or what followed in the Series of my Discourse. And I have many Witnesses sufficiently known, and pious, who being constant Hearers of me, have testified by Oath, and will upon occasion again, that the Scope of my Ministry drives not against the due Application of Christ's Righteousness to the Souls of Believers, but against the mis-applying it to those who have not the Spirit of Christ living in their Hearts, purifying their Consciences, and subduing their Lusts.

Art. 2. *That Jesus Christ was not perfect; alledging that Scripture to confirm it, My God, my God, why hast thou, &c.*

1 Part. *Ans.* I do nakedly, without any Veils, profess that I ever did, and still do look upon Christ as a most perfect Copy and Pattern to square our Lives and Conversations by; yea, and to be a perfect Mediator, in reference to that Work he undertook for the Redemption of the World, being free from the least Tincture either of original or actual Sin: and truly the Thought of any such thing never lodged in my Heart.

2 Part. *Ans.* But suppose I uttered such Expressions as these, yet the manner of it will sufficiently free me from that Guilt my Accuser may hope, and believe I am obnoxious to by it: I confess I uttered these or the like Words, yet it was only by way of relating what I heard in a Sermon of Mr. Erbery's in Somerset-House, who at that time endeavoured to enumerate Christ's (supposed) Imperfections, whereof he made his crying out upon the Cross, in those Expressions, one. Now I leave it to your Considerations, whether my relating to some that were wise and knowing, what I heard from another, with much Grief to my Soul, makes me any way culpable or guilty.

Art. 3. *That the Blood of Christ was not meritorious of any Man's Salvation.*

Ans. I call Heaven and Earth to witness, that such Thoughts never entred into my Soul; nor did such Words ever come out of my Mouth: For my Judgment ever hath been, and still is, that the Blood of Christ is satisfying, reconciling, cleansing Blood; that it is interceding, redeeming, meriting Blood, in relation to all those who through Faith and Patience come to inherit eternal Life.

Art. 4. *That it was a poor thing to live upon the Blood of Christ; and fetching it over again in a contemptuous kind of speaking, Pish, said he, thou art a Babe, thou knowest nothing; to live upon the Blood of Christ, is a poor thing.*

1 Part. *Ans.* I acknowledge that about four Years since such Expressions were uttered by me to one Mrs. Grip; but without any such Intent as may be supposed by my Accusers, and not with that circumstantial Aggravation of repeating it in a contemptuous manner, which is but a Supposition of my Adversary, and cannot be attested by an Oath, without this Witness pretends infallibly to know my Thoughts and Purposes.

2 Part. *Ans.* Again, this being spoken to a particular Person, on a particular Occasion, might be true, if the Circumstances of the Discourse were accordingly added; though as here presented it seems very monstrous.

3 Part. *Ans.* Therefore to make things clear, I shall here insert some particular Circumstances, which may present this Article, though in a new, yet true face. I coming to Mrs. Grip's House, she took me into a private Room to have some Conference with me alone, where she brake forth into a violent Passion of Tears, weeping, and wringing her Hands, and pouring forth bitter Complaints and Invectives against Mr. Fowler, as that he was a graceless Man, a Lyar, a Slanderer, not worthy to come up into a Pulpit, or to have the Name of a Minister of Christ, with other such bitter Expressions. The Cause of which was, as she then told me, Mr. Fowler's reporting about, That she then lived in Adultery. And after her Passion was somewhat allayed, she brake forth into these or such like Expressions of high Assurance; Christ hath loved me, and died for me, and justified me by his Blood, from all Guilt of Sin; I am an elect Person, a justified Person, and what is this Fowler to charge Sin upon me? These and other Expressions fell from her to this purpose: from some of which, I feared she was drenched with Antinomianism, and told her more than once, it was a poor thing to live upon the Blood of Christ, and to look so much upon that, except she had the Nature of Christ, and the Spirit of Christ; asking her, where was the Meekness of Christ, and the Patience of Christ, to suffer as an innocent Lamb quietly? But still she crying out, she lived on the Blood of Christ; I told her, it was a poor Thing to be thus exalted with Notions of the Blood of Christ, without mentioning Sanctification, and those holy Graces which flow from Christ's Nature dwelling in the Soul. Now by these Expressions of mine, my Scope was to make Mrs. Grip see the Necessity of Sanctification, and of a pure and holy Life, and not to make void the blessed Effect of the Blood of Christ, applied according to the Mind of God, and the true Meaning of the Scripture.

Scripture. And now having related the Circumstances as near as I can remember, I believe a sober and knowing Christian will not judge me either scandalous or ignorant for these Expressions.

Art. 5. *That one speaking to me of the glorious Persons of the Trinity, I replied, Pish, there is no such Thing as Persons in Trinity.*

1 Part. *Answ.* I do here profess and avow from the Sincerity of my Heart, that I believe the Trinity of Persons as an Article of my Faith, viz. That there are three Persons distinct from each other; the Person of the Father, the Person of the Son, the Person of the Holy Ghost, yet not so as to prejudice the Unity in Essence; and I so believe the Unity, as not to confound the Trinity of Persons.

2 Part. *Answ.* I never uttered such Expressions in that way, as to give any just ground of Suspicion of my denying the Trinity. But I remember, about four Years since, being before the Committee of Berks, Mr. Fowler, or Mr. Gilbert, I remember not which, desired the Committee to give them liberty to ask me two or three Questions: Amongst the rest, they asked me whether there were three Persons in the Deity. I answered them, I believed the Trinity as it is recorded in 1 John v. 7. *There are three that bear record in Heaven, the Father, the Word, and the Holy Ghost.* Thus you see I believe the Trinity. But do you believe the Trinity of Persons, said they? I replied, I find not the Term Persons in the Text; but to put you out of doubt, I do not stumble at the word Person. And this afterward I told to the above-mentioned Mrs. Grip, in a private Conference, some Years since; to whom I affirmed, that I found no such Expressions as Persons in Trinity in the Scripture; and that the Word Person being a School-Term, was very difficult to be apprehended by common Capacities. But I never spake thus to prejudice the true Notion of the Persons in the sacred Trinity, which I do cordially believe; but only to shew that ordinary Christians should not be too curious in prying into that deep Mystery of the three Persons in the Trinity, but rather content themselves with what the Scripture plainly affirms of the Father, Son, and Holy Ghost, as distinct, yet one. But to conclude this Answer, pray consider what hard Measure it is, thus to pick a broken Sentence out of a long Discourse, and so to accuse one without relating the Circumstances which might serve to clear what otherwise may seem very strange to prejudiced Persons.

Art. 6. *That it was a Weakness to be troubled for Sin.*

Answ. I do not remember that any such Expression as this ever dropped from my Mouth, either publickly or privately; and I am persuaded that no one dare assert it with an Oath: Which if they did, would not make much to the purpose; for with a charitable Qualification it might thus be made forth, That 'tis a Weakness for one to be troubled for Sin, who hath the Assurance of God's Love, his Sin pardoned, his Person justified, sanctified, and his Will converted from, and crucified to Sin: For such a one should be triumphing in the Power of Faith and Love, enjoying sweet heavenly Communion with God,

and saying, *O Death, where is thy Sting? And there is no Condemnation to them that are in Christ Jesus, who walk not after the Flesh, but after the Spirit.* Whereas Trouble for Sin thus pardoned and mortified, may be an Engine of Satan to make a Soul question God's Love, and to bring it out of a blessed spiritual Enjoyment of God, into a slavish Fear and Disturbance.

Art. 7. *That he might say any thing to the Men of the World.*

1 Part. *Answ.* I answer, To the best of my Remembrance, I never uttered any such unchristian Maxim, much less ever held it as my Judgment; and I confidently believe there is no one on the Earth that dare witness it with an Oath.

2 Part. *Answ.* I know very well that Mr. Fowler hath been, if not the Author, yet the Reporter of my holding this monstrous Tenet; for he hath confidently averred, and often insinuated into some of the Gentry of this County, and into his own Profelytes, that I am a Familist, and that it is my Principle to say or unsay any thing that may make to my own Advantage. Which God knows is a sad Scandal, and a monstrous Untruth; and clearly appears, to those who know the Integrity of my Principles and Conversation, to be a Blur cast upon me from the Contrivance of subtile Machiavellian Policy, to prejudice all I say or answer to those horrid Things objected against me: For if this be once settled in those who are my Judges, it is vain for me to answer, deny, or avow any thing. But the Lord forgive my Adversary for this his unchristian Dealing, and grant he may repent of it before he comes to give up his last Account before the great Tribunal of Christ.

Art. 8. *That I asserted I knew nothing to the contrary, but that a Man might company with more than one Woman; being taxed for keeping carnal Company with a Woman in London.*

Answ. I never kept scandalous Company with any Woman in London; neither was I ever taxed for any such Thing, except once by Mistress Grip, who I believe is the Witness against me; and that upon this Occasion:

At the time I had my former Conference with her, the Heat of her Passion being over, she told me that I was also taxed for keeping of carnal Company with a Woman in London. I replied, I am a Man born to all kind of Sufferings; and told her, that she saw and knew the manner of my Conversation; asking her whether she believed it. And she answered, No truly. And then I solemnly protested the contrary. And this is all the Taxing I ever had from any one. At which time I was earnest with Mrs. Grip to discover to me from whom she heard it: But she put me off, telling me she did not believe it, and that she would tell me some other time. But from that long Discourse I had with her, fearing, as I said before, she was deeply tainted with the Principles of Antinomianism, and not knowing whether she might not be tainted with some Notions of Rantism, which at that time were every where frequently discours'd of, I took this occasion to try her; telling her (as near as I remember) that there were some that affirm'd they knew nothing to the contrary, but that a Man might company with more than one Woman. But, to speak the Truth, she let it fall,

fall, without seeming to approve of any such thing. And this I solemnly avow to be the Truth, as near as I can remember. And I believe Mrs. *Grip* dare not swear that I maintained any such thing as my Judgment, or produced one Scripture or Argument to defend it.

I profess to the whole World, in the Presence of that Eye that seeth through all Hearts, that all such loose Principles, which turn the Grace of God into Wantonness, and that run opposite to the Laws of Morality, Civility, Modesty, and Sobriety, or that any ways indulge Wantonness and Lasciviousness, are as inconsistent with my Principles, as Heaven and Hell, Light and Darkness, are opposite one to another; which will one Day clearly appear to the World, whatever I am now thought of.

Art. 9. *That he hath frequent and familiar Converse with Angels.*

Ans. As this Article is presented in general Terms, without expressing whether the Communion be visible or invisible, I do not see how it can touch me, tho my Enemies were my Judges; because every true Christian hath frequent Communion or Converse with Angels, as you may see solidly and clearly proved from Scripture by the Lord *Lawrence*, one very learned and pious, now President of the Lord Protector's Council, in his Book, entitled, *Our Communion and War with Angels*.

Art. 10, 11, 12, 13. *Concerning the Vision of a Dragon, and the Apparition of Spirits.*

Ans. 1. I may deny these four Articles as they are taken together, and expressed in those Terms, and in that Manner, in which they are set down in my Accusation; for I believe none dare swear the Measures and Teeth of the Dragon with the Appearance of my own Angel, &c. without the Crime of Perjury.

Ans. 2. I will not confess any Apparitions in particular till they be proved, lest I should seem to accuse my self; they being brought in as a Crime against me, and as Instruments to condemn me.

Yet in general I acknowledge, that some four Years since there were many strange and wonderful Apparitions seen in my House. But what can these in Justice amount to, though attested by Oath, and confessed particularly by my self, when brought before those who profess themselves Christians, and acquainted with the History of the Holy Scriptures? Pray was not *Job* a pious, sincere, and eminent Righteous Man? Yet how was he scared with Dreams, and terrified through Visions? *Chap. vii. ver. 14.* Did not *Zechariah* the Prophet (*Zeck. iii.*) see Satan standing at the Right-hand of *Joshua* to resist him? Did not *John* (*Rev. xii.*) in a Vision behold a great red Dragon, that made War against *Michael* and the Holy Angels? And was not Christ himself tempted of the Devil by Voice and Visions? *Matt. iv. 6, 8.* Now the *Servant is not greater than the Lord*, *John xv. 20.* and therefore not exempted from the like Attempts of the Devil. I beseech you consider whether this Earth be not the Place where the Devil walks up and down, seeking whom he may devour? How then can *Bradfield*, or any other Place, be exempted from his appearing, when God permits? And may not all this be for the manifesting of his Glory, Goodness, and Power? And who can tell whose Family may

be next exposed, by God's Permission, to be tried and proved by the Representations of *Satan*? And I desire you seriously to consider how any such Apparitions, raised by the Devil, and permitted by God for his own Glory, argue me either scandalous, ignorant, or insufficient? Surely it rather argues that he hath blest me with a strong Faith, in that he permitted such great Tryals, and made me instrumental to overcome them by Prayer and Fasting. If it can be proved that I ever so much as looked toward the unlawful Art of Black Magick, or that any evil Spirits were raised up by any Compact of mine, explicate or implicate, or that those evil Apparitions were subdued and overcome by any other Means than by God's Blessing upon our Fasting and Prayers; I shall judge my self worthy of Punishment. But otherwise it is hard Measure to be prosecuted and prejudiced for the Malice of the Devil towards me, inflicting what I was passive in, and could not help; especially by those who profess the Christian Religion, and know that the God of Heaven rules over all, permitting and disposing of whatever comes to pass.

Art. 14. *That Mrs. Margaret Pendar doth think she was bewitched by them of Bradfield.*

1 Part. Ans. Here is a long and tedious Relation, in which Truth and Untruths are mixed together: The whole Structure of which Relation, so far as it concerns me, depends on this weak Basis and Foundation, That she thinks she was bewitched by them of *Bradfield*. But what a sad thing is this, for my Accuser to impeach me for that which might endanger, if true, my Estate and Life, upon the Thoughts of a discomposed Maid? Because she thinks I sent those Visions, therefore I must be thus arraigned. But, for my part, I do not believe she dare say so, much less swear it, having no ground at all for it.

2 Part. Ans. I shall briefly relate some Circumstances which concern this Business, and may serve something to clear it up. Before these Visions of hers, I had never seen her, as I know of, nor exchanged so much as a Word with her. In the time of her Visions, Mr. *Daniel Blagrove*, whose Servant then she was, came for me himself, to fetch me to his House, to visit her. To which Motion I yielded, being suitable to the Law of Christian Charity. And when I came, I had no Conference with her but in the Presence of Master and Mistress *Blagrove*, with others that were then present. And from this Visit there arose a Rumour that I was a Conjuror, and a Sorcerer: Which Report was spread abroad by two that carry the Name of Ministers of Christ, Mr. *Fowler* and Mr. *Ford*. The last of which so exceeded the Bounds of Charity and Christian Moderation, as in his Sermon, at the Assizes, to call me a horrid Blasphemer, asserting that the Devil was as visibly familiar in my Family as my own Servants; and so excited the Magistrates to persecute me.

3 Part. Ans. As for those Untruths which are mixed in the Relation, I shall not trouble my self to answer them; for I know when they come to be sworn to, and to be cross-examined, they will appear to be but the fulfilling of that wicked Maxim, *Calumniare audacter aliquid habebit*; Calumniate and asperse boldly, something will stick. Which being a Piece of Jesuitical

Policy, hath been practised by my Accuser in this confused Rhapsody of Articles.

Articles of one Francis Knight of Wallingford.

Art. 1. **T**HAT some of Blewbery, who spake against Marriage, said they came then from my House.

Ans. I hope I have enough to do to answer for my self; what need the Assertions of others be alledged as Articles against me? They spake against Marriage, having lately been at my House, therefore I must be guilty of it: Surely this Consequence is neither according to natural, artificial, nor divine Reason.

Art. 2. *That my Chamber hath been filled with Spirits.*

Ans. I hope none will be so unadvised as to swear to this Article, being Spirits are immaterial, and cannot take up Place, or fill a Room.

Art. 3. *That I preached that Water-Baptism was not an Ordinance of Jesus Christ.*

Ans. It was never so preached by me. All that I then affirmed was this; That Water-Baptism could not be proved to be the Ordinance of Christ, by way of Eminency so called, from that Text of Scripture, *Matth. xxviii. 19. Go teach all Nations, baptizing them in the Name of the Father, Son, and Holy Ghost:* For that Baptism may very well be understood of the Baptism of the Spirit, which by the Disciples was instrumentally administer'd to all Converts. Yet I denied not Water-Baptism to be a Gospel-Ordinance, instituted by John, as the chief Instrument under God, from whom he received his Commission. And that this was the Sum of what I then preached, I can prove by Oath.

Art. 4. *That about 1653, I was commanded by my Angel, or from Heaven, to give off Preaching, and to take no more Tithes; but that since I have had a Dispensation.*

Ans. I believe no one, that hath the Fear of God before his Eyes, dare attest this Article by Oath, which is here stated. This is Answer enough to such a Thing, which is merely brought in as an Odium by my Accuser, the more to prejudice me.

Art. 5. *That in July 1654, I was taken up into Heaven, &c.*

Ans. If Paul were now upon the Earth, he were in danger to be accused by my Accuser, for his Rapture into Heaven or Paradise. But this concerning me will prove but some idle Dream, created by somebody's Fancy to make People wonder at me.

Art. 6. *That I cursed the People of Bradfield in my Pulpit, and their Posterity for ever, &c.*

Ans. This Article was one of those heard and examined four Years since by the Committee of Plundered Ministers, from which I was acquitted by them; these Witnesses, viz. Richard Luinton, John Hambleton, Mary Pocock, Richard Holmes, with four more, attesting by Oath that I did not curse the People of Bradfield, so as is expressed in the Article. The Testimony of these Witnesses was this: That they being present September 29, the Doctor expressed himself thus: *Bradfield is a Place partly made famous, partly infamous, by reason of the false and lying Reports that are abroad: But I say, Cursed be the*

Tongue and Mouth that shall say, That what is done by the Power of God, is done by the Power of the Devil. What one Parishioner is here cursed by me, except any one's Conscience accuseth him of the Guilt of that forementioned Blasphemy.

Art. 7. *Concerning the little Horn mentioned Dan. vii. to be Christ.*

This Article was four Years since exhibited against me, from which I was discharged by the Committee; Richard Higs, John Higs, and Richard Luinton, attesting on Oath that I paraphrasing on the Seventh of Daniel, and speaking on the little Horn, said, That some Interpreters would have the little Horn in the Letter to be meant of Antiochus Epiphanes, a bloody and persecuting Tyrant; others think the little Horn to be the Turk, who is a great Persecuter of Christians: But in the Mystery, in regard of its Power, we will apply it to the Power of Christ in a Christian, who is often in Scripture resembled to the Horn of David, and to the Horn of Salvation; and that upon three Considerations:

Confid. 1. In regard that Christ's Power in the Soul doth appear to be a little Horn, a small despised Instrument to Sense and Reason; for Flesh and Blood look on it as a poor Instrument, in regard of bringing down the Strength of Sin in us.

Confid. 2. In regard of Sin and Satan, who laughs the Power of Christ in the Soul to scorn, yet before him his accursed Kingdom must fall.

Confid. 3. In regard its Birth and Beginning in the Soul is at the first a very little Grain of Mustard-seed, yet in due time it will destroy the Kingdom of Sin, and set up the Kingdom of Holiness in us.

Having thus drawn away the Veil from this Article, I hope it appears with a more tolerable and innocent Face.

Art. 8. *Concerning Goodwife Pocock's singing Hymns and Spiritual Songs.*

Ans. She acknowledgeth it as her Gift bestowed by God, being according to the Gifts of Christians in the primitive Time. But this doth not directly concern me.

Art. 9. *Concerning the same Person's coming to Colonel Evelyn's, and saying she had a Word from God, viz. Have nothing to do with that just Man.*

Ans. She owneth these Words, and looks upon me as a just Man, and a true Christian; and believeth that Colonel Evelyn will one Day know she gave good Counsel upon good Grounds.

Art. 10. *Concerning Mr. Snelling and his Wife coming to my House, &c.*

Ans. This Article hath as little of Truth as Sense or Force to prejudice me; and I believe none will be found to swear it: However, I think it not worthy of a larger Answer.

Art. 11, 12. *Concerning the sending of my Man Bolt in an uncivil manner for Mr. Forster, with his speaking of strange things there to be seen, and of my telling Mr. Forster he should see very wonderful Things, &c.*

1 Part. Ans. These Articles were heard, and I acquitted four Years since by the Committee of Plundered Ministers, and are of so little Consequence, that they might well have been omitted, but

but that my Accuser thinks he hath never enough against me.

2 Part. *Ans.* I believe Mr. Forster dares not swear to these Particulars, some of which are very untrue.

3 Part. *Ans.* The forementioned Robert Bolt asserted on Oath that I sent him not with any Message, but that it was his Mistress that sent him to desire Mr. Forster and his Wife to come to my House.

Art. 13. Concerning Goodwife Pocock's coming to Mr. Forster's, and saying, *The Doctor had fought with, and overcome an evil Spirit; and that the Family had been strangely acted, the Power taking some of them in one part, some in another; and that they spake glorious things.*

1 Part. *Ans.* This was another of the Articles heard, discussed, and I acquitted by the forementioned Committee, because nothing material could be made of it.

2 Part. *Ans.* The said Mary Pocock attested on Oath she saw no Apparitions in my House, being cross-examined concerning that Particular. And though she did say God gave extraordinary Power to sustain both our Spirits and Bodies in an extraordinary Trial, what Hurt was there in that? Why should it be brought as an Article against me?

Art. 14. *That Mrs. Flavel was in a Trance, and in it saw the Philosopher's Stone, which she knew to be the Divinity in the Humanity.*

Ans. Not to speak any thing concerning the mystical Writings of the deep Hermetick Philosophers, or what the Judgment of some of them is concerning this Secret, I myself being not here accused to have seen it, or to have affirmed it was the Divinity in the Humanity; all that I shall answer is this, I wonder that this is brought in as an Article against me, to prove me Scandalous, Ignorant, or Insufficient; it not directly proving any thing against me, being affirmed of another, and being one of those Articles I was discharged of by the Committee for Plundered Ministers.

Art. 15. *Touching Sawood's Depositions of the Birth of a Child, and one being in Travail.*

Ans. 1. This was one of the Articles of which I was acquitted by the forementioned Committee.

Ans. 2. Mrs. Elizabeth Pordage and Mary Pocock asserted on Oath, That there was no Woman in Travail, nor any Child born, nor any other Cry heard, but of those at Prayer; which was also witnessed on Oath by Mr. Francis Pordage.

Art. 16. *That in my House the New Jerusalem hath been seen to come down from Heaven, and that in it was a Globe, in which Globe was Eternity, and in that Eternity all the Saints.*

Ans. As to the Substance of this Article; If God have favoured any with such a Vision, surely they would be no more ashamed to own it, when called to it, than John was, when he wrote, Rev. xxi. 1. That he saw the Holy City, New Jerusalem, come down from God out of Heaven; where he also describes it by all the most precious Stones in the Creation. But in reference to my Family, I believe none dare attest they heard this spoken by any of them, which I believe will prove but some groundless Imagination.

Art. 17. *That in my House God hath been seen Face to Face, &c.*

Ans. As this Article is stated, I shall give no other Answer but this, That I shall wait to see who dare swear to it, or what Proof can be brought of it.

Now I am come to the Articles exhibited against me by some of Bradfield Parish.

And as to those which concern Mrs Flavel, I shall answer,

1. Somewhat in general touching their Import and Nature.

2. By way of Negation.

3. By way of Acknowledgment or Affirmation.

Ans. Gen. This Charge of Articles hath no legal Reference of Charge at all to me, but is merely scandalous, importing but a Libel, nothing of Fact really criminal being laid to my Charge; which will more clearly appear, when the erroneous Circumstances of it are detected: by which also the Subtily and Envy of my Adversaries will be discovered, who positively alledge nothing against me that may bear any Action of Damage at the Common Law, by which they might suffer for their injurious Dealing; yet by plausible prevaricating Circumstances, would seem to make me highly criminal and guilty.

Now I shall answer negatively to many erroneous prejudicing Circumstances, which are by Design heaped together, to put a plausible Face upon an envious Libel or illegal Charge.

1 Circ. It's said it was some eight Years since I brought one Mrs. Flavel to Goodman Loader's, &c.

Ans. neg. Which is an Error, tho one of the smallest, brought in to prejudice the more, for it was some nine Years since.

2 Circ. It's further said, this was carrying her to London.

Ans. neg. Which I deny; for it was coming from London, where she had for some time been.

3 Circ. That I asked whether my Friend behind me, being sick, might have Entertainment, &c.

Ans. neg. This I also deny; she was not then sick, neither did I use any such Expressions.

4 Circ. That I never mentioned she was with child.

Ans. neg. Tho I did not, it not concerning me to do it, yet she herself did not deny it.

5 Circ. That in a short time she fell in Travail.

Ans. neg. A short time may seem to imply some few Days, or Weeks, being brought in as an aggravating Circumstance; whereas it was some four or five Months after.

6 Circ. That she had no Husband then, as the World knew of.

Ans. neg. She owned then to the People where she was, and doth still, that she had had a second Husband, which some in the World knew of very well, whose Testimonies she can and will produce when she hath sufficient occasion offered by a legal Call thereto: who is also able and ready to give a sufficient account, when occasion serves, of her not openly assuming her second Husband's Name, her Estate then standing as it did; which having concealed for that time

time she was in Law, she thought good ever since to be called by her first Husband's Name. But this subtle Dealing of her Adversaries by libelling Scandals, without positively asserting she was not married, makes her incapable of recovering any Damage of those who now enviously, yet indirectly, asperse her: which the Commissioners ought to take notice of, who should not receive such Libels, which tend to the blasting of one's Credit and good Name, which all sober Christians ought (for the Gospel sake) to value; and yet absolutely prove nothing of such criminous Fact, which they design seemingly to prove, nor yet give sufficient ground of calling them to an account for such evil malicious Scandals. But this not directly concerning me, I shall omit much which might be spoken of it.

7 *Circ.* That I came often to visit her.

Ans. neg. This is not true: it was rather seldom, being but three times in three quarters of a Year, and that in Term-time, upon urgent Occasions at Law.

8 *Circ.* That I removed her to *Kensington*.

Ans. neg. This is false, for I knew not when she removed thither.

9 *Circ.* That I paid the Smith for her being at his House.

Ans. neg. This is another Untruth; I never paid him a Penny, neither did I ever agree with him for her being there.

10 *Circ.* That the Nurse's Husband wrote a Letter to me at *Bradfield*, for Money for the Child's nursing.

Ans. neg. This is a mere Lye; for no such Letter was wrote, neither did I ever agree to pay for the nursing of it, as the Nurse and her Husband can witness.

11 *Circ.* That shortly after he sent for the Child away.

Ans. neg. This I also deny, it containing two Untruths in it: For first, the Child was not shortly after sent for away, neither did I send for it at all, for it was fetch'd away by the Mother herself.

12 *Circ.* That a little while after, the said Little-one was brought into my Family.

Ans. neg. This is also false.

13 *Circ.* As to the seventh Article of this libelling Charge, in which many Circumstances are produced to scandal the Gentlewoman, as tho she had told a great Untruth; it deserves no other Answer but this, That it is compacted of many Lyes, nothing being there true that really tends to prejudice her, as I believe will appear by the Event.

Thus in this short Relation, wherein there is some Truth, pray take notice how many Untruths and mere Lyes are mixed with it, to put a beautiful Face upon an envious and unchristian Design: And is not this to bear false witness against one's Neighbour? May not any one's Innocency and Integrity be in this manner undeservedly clouded, aspersed, and wounded? Which I leave to the serious Consideration of the Judges.

As to my affirmative Answer, what I acknowledge is this:

Ans. Affirm. **A**Bout nine Years since I brought behind me from *London* the

fore-mentioned Mrs. *Flavel*, who had been of antient and near Acquaintance with me and my Family, to one Goodman *Loader's* a Smith in *Hessen*, where some four or five months after she was brought to bed of a Daughter, which she owned to the People where she then was, to be by a second Husband, even as she still acknowledgeth. And further, that I visited her three times in the space of three quarters of a Year, at Term-time, being then engaged in a Law-Suit that concerned her; that one of those times I christned her Child, and called it *Hannah*: That afterward her Occasions not requiring so much Privacy, she came to live with her antient Acquaintance at my House, where also for some Years her Daughter hath been with her.

Now to take away any thing that may seem to reflect upon me in this my Acknowledgment, pray consider these subsequent Particulars.

1. **T**HAT I and Mrs. *Pordage* being of very near and long Acquaintance with her, it was but a Friend's Courtesy, for me upon her desire to carry her to this House behind me.

2. That she had sufficient ground to retire into some such place in the Country: first, in that the City-Air was offensive to her Health: secondly, in that by the Counsel of able Lawyers she was advised to retire into some private place, she being then in Law-Engagements, and continually subject to Arrests, by the Entanglement of her first Husband's Estate; her Brother-in-Law, who was her Adversary, then threatening to seize on her if she were above-ground.

3. In reference to my Engagement in her Law-Business, I think it material briefly to relate the Ground and Occasion of it. In the time of her Widowhood, her Brother-in-Law began a Suit with her in the Common Law, which fearing he should there be overthrown, he removed to the Chancery: now she being very unfit and incapable to manage this herself, she earnestly desired me, as an antient and trusty Friend, to undertake it. Upon this I went to Judge *Rolle* and Mr. *Chute* with her, who looking into her Evidences, and into the Will of her late deceased Husband, found that for want of one Clause in it she was liable to many Suits and Arrests, and to great Entanglements, and that her Interest could not be established, but by much difficulty; and at length this was the Result of the Counsel, That she must let all her Estate, which was under Mortgage, be forfeited into the hand of some faithful Friend, and so sell it away. Hence I through much Importunity laid down some hundred Pounds, rescued the Mortgage, and so became interested in a Suit at Chancery, which lasted three Years.

Now from this may further appear sufficient ground why I brought her to that private House: secondly, why I came to her in the time of her Retirement, I then receiving Money from her to follow her Suit: thirdly, why I came alone, it being then her Interest to be concealed, being subject to Arrests.

I shall now proceed to add some few Circumstances more, which may serve to clear me before all sober Persons.

1. **A**T my coming, I told the People my Name, and that I dwelt at *Reading*, and that I was Minister of *St. Lawrence Church*, knowing the Gentlewoman to be sober and pious. Now had I been as my Enemies enviously pretend, I might have concealed my Name, Quality, and Place of Residence.

2. We discovered to them that the Gentlewoman had an Estate in the Bulwark at *London*, and Rents there to receive, which they might enquire after (as they did) for their Security: Now this was not the way to cover a Work of Darkness.

3. She sometimes went to *London* to the Lawyers, whilst she was there, some belonging to that Family accompanying her; who found, that as she had related, she was in great Troubles at Law, and were convinced that she returned on that account.

Now in reference to most of these Particulars, in which I have contradicted, and deny'd the alledged Circumstances, and further vindicated myself, they are exactly agreeing with what I have in writing confessed and acknowledged by *Loader* himself, from whom this Charge is pretended to be received, and by the Nurse of the Child, subscribed by them both before Witnesses; which Acknowledgment I shall produce when I see occasion.

And by this I hope it may appear to moderate, sober, and judicious Men, that this libelling Charge, drawn up so falsely, enviously, and yet so subtilly, calling from the dead a Business past some nine or ten Years since; (which tho it were criminous, as it is not, were invalid legally to prejudice, by the Act of Oblivion, or general Pardon, as all other things pretended to be spoken or acted by me before 1651, according to the Judgment of judicious Men, which I leave to the Commissioners to consider of) I say, that this is but the Effect of the evil and wicked Policy of my Accuser, brought forth to prejudice and overcloud that pure and innocent Principle, which I profess and faithfully live to; and the better to cover that evil Design they have against my Person and Livelihood.

And now I appeal unto you the Commissioners, and to all that are pious and sober-minded, whether my Enemies do not deal very unreasonably, enviously, and unbeseeming Christians, from this Business, so long since past, in which nothing criminous is positively objected against me, to draw such horrid Conclusions, as commonly to report that I now live in base Lust and Wantonness, notwithstanding my commending of, and owning the Virgin-Life; I say, whether this be not exceeding hard Measure, and ungodly Dealing, let all judge. But I see the Design of the Devil in it, which my Enemies may be ignorant of, which is to overcloud and darken by monstrous Lyes and Scandals, which are the Smoke of the bottomless Pit, that Life of Purity, Chastity, Mortification, Self-denial, and heavenly Enjoyment, which God hath favoured me to live in, and so to affright all from my Acquaintance, which otherwise might very much prejudice and overthrow his Kingdom. For the old Serpent knows very well, as also my near Friends and Acquaintance, that for these four Years, even since the time of my

great Trials, by the extraordinary Temptations and Representations of the Devil, that I have been abstracted more than ordinary from all outward things, giving myself up wholly to Prayer, Watchfulness, Mortification, and constant Self-denial, in dying to all earthly Pleasures, even to things permitted and accounted lawful; as finding many things which ordinarily are embraced, to be great Hindrances of the Soul's Progress to God, and great Burdens to a Spirit which hath tasted much of that Tree of Life which groweth in the midst of the Paradise of God, and great Clogs to a Soul that sees through the Veil of the sensitive Nature into the spiritual Glory of Eternity. But what I have enjoyed and experimented in this time of my extraordinary Mortification and Self-denial, in the Death of the Animal Man, and rising of Christ's Image in me, is not seasonable now to declare; yet for the Glory of my God, and the undeceiving of those who strangely mistake me, this much in all humility I must say, That did my Accuser and my Enemies know what I have enjoyed in this Way of the Cross, of the secret hidden Treasures of Eternity, and of the Out-goings of divine Goodness; were they but acquainted with these Discoveries of celestial Glory, Instillations of the heavenly Dew, and secret Touches of the Holy Ghost; did they but know those bright Irradiations of Eternal Light, those strong Motions of Divine Life, and pleasant Streams of Eternal Love, together with those deep Sufferings in bearing Christ's Cross, which I and many in my Family have in this time experienced; they durst not thus condemn me, and judge me as an Evil-doer, and one that lives in the Lusts of the Flesh. But my God hath taught me to bless whilst they curse, to pray for them whilst they design to ruin me, and to love them whilst they hate me; and to say with Christ, *Father forgive them, for they know not what they do.*

This I thought fit in all humility to annex to that libelling Charge concerning Mrs. *Flavel*, from which I have undeservedly suffered so much, by the Malice of the Devil. And now I shall proceed to answer the remaining Articles, one of which is intermixed with the former seven that concern Mrs. *Flavel*; which is this.

Artic. *That we have changed our Names.*

Ans. 'Tis well known that we own and subscribe our Names in our Civil Converse with the World, as this and my former Answers testify; I shall therefore wait to see, whether any one dare swear to this Article: And tho we did in our own private Family call one another by Scripture-Names, yet I conceive it did not concern the Civil Magistrate to take cognizance of such a thing, it being not practised to make any Disturbance or Confusion in the State.

Artic. 8. *That I am extremely covetous, taking five Shillings at a time to marry one.*

Ans. I wonder my Accuser should let this Article pass, whose Consequence is so much against Reason, as to argue me extremely covetous for one such poor inconsiderable Act done six or seven Years since: and I appeal to the Inhabitants of *Reading*, and Mr. *Fowler's* own Conscience, whether he hath not taken ten Shillings oftner than five for marrying.

Artic. 9. *That my Preaching doth not tend to Edification.*

Ans. I can bring those that are knowing, spiritual, and sober Christians, who will assert that my Preaching doth tend to Edification, and to the building up of Souls in the true Knowledge and Love of Christ; and I believe these my Accusers will be found to be like those of *Chorazin* and *Bethsaida*, of whom Christ said, *That if the mighty Works which were done amongst them had been done in Sodom and Gomorrah, they had repented long since in Dust and Ashes.* And was Christ's Ministry ineffectual, because they did not believe, but remained in the Hardness and Impenitency of their Hearts? Neither doth it follow that my Preaching doth not tend to Edification, because those that bring this Article, through their Unbelief, are not edified by it: for there are many, that come from Places round about, that are edified, strengthened, and refreshed by it; and there are many that have been enlightned, convicted, and converted by it, who still receive quickning Growth and Comfort under it, confessing that God is in it of a truth, as finding it instrumentally effectual to the pulling down of the Kingdom of Sin and Satan, and to the erecting the Kingdom of Christ in their Hearts; for which I bless God, and praise his Grace, by which it is what it is.

Art. 10. *That I am very ignorant and insufficient for the Work of the Ministry.*

Ans. I believe those that exhibit this Article against me, upon trial will be found very ignorant and insufficient to judge of it; and as to those that are to be my Judges, I hope they will not make their own Wills the Rule of Ignorance and Insufficiency, but proceed according to the Canons of pure Reason, or supernatural Revelation, in giving Judgment concerning this Particular: the Event of which I leave to God.

Now to conclude: Tho in reference to this, and the two last Charges of Articles, I stand free from any Guilt in the sight of God, and I hope, by my Answers to them, in the sight of all judicious and sober Men: yet to leave any inexcusable, that may design, whether by Law, or without Law, absolutely to condemn me; I crave the Benefit and Privilege of the Act of general Pardon in reference to all those things that are pretended to be spoken or acted by me before the Year 1651, as most of these are, that seem to be of any moment and consequence.

John Pordage.

After this was read, not knowing but that the Commissioners retained their former Resolution of examining their Witnesses in private, I pressed them to an open Examination, for the Satisfaction of all Parties, and for the more full Discovery of the Truth; alledging, that I hoped they would not deal worse with me than the *Jews* did with Christ, and the *Ethnick Romans* with *Paul*, who suffered them to hear their Accusers face to face. So after some dispute it was granted, and agreed upon.

But before I proceed to give you an account of the Depositions taken *pro* and *con*, I must inform you, that the 22d of *November* was the time of my fourth Appearance, which continued three days; all which three days were wholly spent in taking the Depositions of my Accusers

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Witnesses, to make good the first and last Charge: And when they had ended their Examinations on the 24th, being Friday, late at Night, they called upon me to produce my Witnesses, if I had any. I answered them, I had Witnesses; but they were not then present, neither had I received any Summons for their Appearance; whereupon I desired a Summons to call in my Witnesses, which they after much Debate, and many Outcries against me for not having them ready, granted; together with an Order, by which I was to appear at the *Bear* in *Speenhamland* at *Newbury* the 30th of that Month, which was just a Week after, to make proof of my Defence by Witnesses. I seeing they had prescribed so short a time for making my Defence, alledged that it was impossible for me to be ready with my Witnesses so soon, and desired a fortnight's time; which, tho I urged it with many Reasons, could not be granted me.

But I was afterward prevented by a vehement Cold, in reference to my appearing at *Newbury* on the Day prescribed: whereupon I sent three Friends to attest my Inability to appear on that Day before them; who likewise presented the Commissioners with a Letter from me, in which I gave them an account of my great Distemper. Whereupon, the Truth of my extraordinary Weakness being attested by those I sent, this Order with a new Summons was granted by the Commissioners.

Berks. *By the Commissioners for ejecting of Scandalous Ministers, Novemb. 30, 1654.*

WHEREAS Dr. *Pordage* was required this day to appear before us in the Cause depending concerning him; and it is now attested that the said Doctor is sick, and cannot without further danger of his Health this day appear: It is therefore ordered, that he shall have further day given till the seventh of *December* next, at the *Bear* in *Reading*; which Day is to be peremptory unto him.

According to which Order, I appeared at *Reading* the seventh of *December*, with my Witnesses; where two Days were spent in Examination, (now this was my fifth and last time of Appearance) the Transactions of which cannot distinctly be set down by themselves, in regard of my joining the Depositions then taken, with those of the adverse Party, according to this subsequent Method.

Now then I shall proceed to the Merits of the Cause, *secundum Allegata & Probata.*

Here then I must present you with the Depositions of the Witnesses, and first with those that concern the first Charge of Articles; in reference to which, Mr. *Tickle* gave Evidence by Oath against me, first at *Newbury* the fifth of *October*, and again at *Reading* the 22d of *November*, being the Day in which my Answer was read.

Now to the first Article;

John Tickle Minister of *Abingdon*, sworn at *Newbury* the fifth of *October*, deposed, That I delivered in the Pulpit, That the fiery Deity of Christ mingleth and mixeth itself with our Flesh.

H h 2

On

On farther Examination upon Oath at *Reading*, Nov. 2. Mr. *Tickle* affirmed, That he charged Blasphemy on the former Expression, and that I repeated my Sense to be thus, viz. That I did not mean with our Corruption, but with our Flesh; holding my Hand over the Pulpit.

The said Mr. *Tickle* being cross-examined touching this Article, upon this Interrogatory, viz. Whether he did swear positively to this Article, as thus delivered by me in the very same Terms, and Order, without any addition or diminution; or only so, according to his best Remembrance; thus reply'd, That the Sum and Substance of that Article was clearly and fully delivered by me, and as far as he could remember in these words, or words to that purpose.

The same Person being sworn again, and further examined at the *Bear* in *Reading*, Novemb. 22. after some Expostulation with me, in which he grew somewhat passionate, further said, That after I had held up my Hand, as he had formerly deposed, I said I did not mean our Flesh, but with the Soul of Christ; and that this was delivered without any the least Limitation as to the Sense of it.

Now these last Depositions were taken by the Court from Mr. *Tickle* occasionally, (after he had answered the cross Interrogatories by writing) when Mr. *Tickle* was sometimes raised into seeming Passion against me, from accidental Discourses that fell in upon Examination.

But I shall here discover my own Meaning, and bring in the intended Evidence of my Witnesses in reference to this Article. My Meaning then (notwithstanding Mr. *Tickle*'s rash Allegations) was this; By Flesh I meant the pure regenerated part of the Soul, with which the Spirit of Christ is united, according to that of the Apostle, *Eph. v. 30. For we are Members of his Body, of his Flesh, &c.*

My Evidence was this; there were present three Witnesses, viz. Mr. *Francis Pordage* Minister, Mrs. *Mary Pocock*, and one *Robert Bolt*, who offered to attest upon Oath, That they being present at the Committee of Plundered Ministers, about *March 27, 1651*, heard me upon the Interpretation of this Article, *That the fiery Deity of Christ mingles itself with our Flesh*, explain myself thus; That by Flesh I understand not the sinful and fleshly part of the Soul, that lusteth against the Spirit, for in this there can be no Union, for these are contrary; neither by Flesh did I understand the outward elementish Flesh of the Body, but by Flesh I understood the pure regenerated part of the Soul.

But this Testimony they rejected, and would not receive it as Evidence, denying to examine the Witnesses, in regard they were not present at *Ilsey*, where Mr. *Tickle* alledged this was spoken. But I believe the judicious Reader will find this Testimony to be more pertinent to the clearing of the Truth, in reference to my Sense in the former Proposition, than what Mr. *Tickle* hath uncertainly, according to his best Remembrance, asserted.

To the second Article;

Mr. *Tickle* saith, That I delivered, *That the Imputative Righteousness of Christ is a sapless Righteousness.*

And being further examined by Interrogato-

ries, he answered to the first of them, That this was fully and roundly delivered in my Sermon at *Ilsey*.

But to the second Interrogatory, which was this, Whether it was with a Limitation, or without? he thus answers, That he doth not remember any Addition therein, unless it were in opposition to the Righteousness, which (as he said) I called sapless.

Being further examined Nov. 22. the same Deponent said, That I did not deliver any such Limitation, as I made in my Answer thereunto, and that there was no such word as *except* spoken, nor any thing like it.

Roger Stevens, sworn to the same Article, deposed, That I delivered in a Sermon at *Ilsey*, *That the Righteousness of Christ was a sapless Righteousness.*

And that he doth not remember any thing to the contrary, but that the same was an intire Sentence, and only so. And that to his apprehension the Drift of my Sermon was to take away the Strength and Efficacy of the Righteousness of Christ.

And this Deponent further said, That in the aforesaid Sermon at *Ilsey* I delivered these words, *That you are not to look to this*, (meaning, as the Deponent apprehended, Christ's Righteousness) *but to the fiery Deity burning in the Center of our Souls, consuming and destroying Sin there.* Which said words did not immediately follow the words that I used, when I said the Righteousness of Christ was sapless; but the same were further off in my Sermon, to his best Remembrance.

Now I shall present the Depositions of my own Witnesses touching the second Article.

Mrs. *Mary Pocock* being sworn and examined Decemb. 7. was asked by me whether she heard me deliver the second Article at the Sermon at *Ilsey*, viz. That the imputative Righteousness of Christ was sapless; she reply'd, she was then present at the Sermon, and did hear these words delivered. Then being further asked, Whether delivered with a Limitation, or without a Limitation? she answered, that it was with a Limitation. Then she was further asked, What that Limitation was? she re-answered, That it was with this Limitation, *Except the fiery Deity of Christ be in the Center of our Souls, burning up our Lusts and Corruptions.* And being further asked, Whether these last words were spoken together with the other words, to make up one Sentence? she said, Yes, in these express words, viz. *That the Righteousness of Christ was sapless, except the fiery Deity of Christ be in the Center of our Souls, burning up our Lusts and Corruptions.*

After this I brought three Witnesses more to be sworn touching this Article.

Their Evidence was this, which every one in particular intended to give in, in writing, after this manner, viz. I do confess I was present before the Committee of Plundered Ministers, the 27th of *March 1651*; where I did hear the Doctor, upon his Examination touching that Article, *That the imputative Righteousness of Christ is a sapless Righteousness*, deliver himself to this purpose; That to him that hath not the Spirit of Christ indwelling in his Heart by Faith, notwithstanding all his Application of Christ and his Merits, it is but a sapless Righteousness; so saith the Scripture, *He*

‘ He that hath not the Spirit of Christ, is none of his.

‘ But this Testimony and Evidence the Commissioners rejected, and would not suffer the Witnesses to depose it upon Oath.

‘ In the next place, I certified the Commissioners, that I had present divers knowing Christians that were constant Hearers of me, who were ready to depose on Oath what the Scope of my Ministry was, and what they had frequently heard me hold forth in it, touching Christ’s imputative Righteousness.’

But the Commissioners rejected this Testimony also, and would not hear the Evidence of these intended Witnesses; saying, that it was not to the purpose, but merely dilatory. To which I reply’d, That altho the Proofs were weak and altogether impertinent, yet being Judges, they ought to hear them, and afterward to judge of their Force or Invalidity: and I further told them, That this Proceeding of theirs, in thus preventing and rejecting the Testimony of my Witnesses, in not suffering them to depose what they could, did much strengthen my Belief of the common Report spread abroad the Country, That they had resolved before-hand to condemn and eject me, whether by right or wrong. At this Mr. *Trapham*’s Choler seemed much to be stirred, that the Court, of which he was one, should thus be charged; saying with much passion, That this should be looked upon as a Contempt and an Affront against the Court.

But the Commissioners peremptorily resolving not to take the Evidence of the forementioned Witnesses, because it contradicted not Mr. *Tickle*’s Testimony, *quoad idem tempus*, in reference to the same particular time; I was forced to tell them, that I must be subject to the Determinations of the Court: but I hoped they would be more ingenuous and Christian-like, than condemn me for a Word or Expression, tho proved ever so clearly, if the Drift and Tenour of my Ministry were otherwise.

But I shall here insert, and so leave it to the Judgment of the Reader, what eight substantial Witnesses, who almost constantly hear me, would willingly have deposed upon Oath, touching this Article, *viz.* That the Scope of my Ministry is not to take away the due Application of Christ’s Righteousness, but the misapplying of it in reference to those who have no Interest in it.

After this, I further pressing the Commissioners to hear those Witnesses which were to attest this, they seemed somewhat to change their Resolution, and to admit one or two of them to be examined. So I mentioned Mrs. *Mary Pocock*, a very pious and experienced Christian, and so known to be in the place where she lives. Against whom it was objected, that she was one of my own Tribe. Then I mentioned another discreet prudent Christian, by name *Richard Higgs*, who is known to be one of a very good Conversation. Against whom Mr. *Fowler* having somewhat to object for his supposed Judgment, was willing to have him called to Examination.

So this *Richard Higgs* being sworn, deposed, That he had been a Hearer of me at certain times for five or six Years last past, and that during that time, for ought the Deponent knew, the Scope of my Ministry hath not been against the right and due Application of Christ’s Righteous-

ness, but against the Misapplication thereof, for ought he knew or ever understood. And being asked, Whether he had been a constant Hearer of me? he said, he had heard me very often, but that he was usually at his own Parish in the Morning, and that sometimes he was absent, but had often heard me.

And being further asked, What he had usually heard me preach concerning the imputative Righteousness of Christ, he said, He could not charge his own Memory, but had a Note to which he would reflect, for recollecting his Memory; and thereupon produced a Note, which he confessed was given him from the Doctor.

[Here, upon this, were many Outcries against me, from the Accuser, and others of the Ministers and Commissioners, as though I had committed some heinous Act in suborning a Witness to swear what I pleased: whereas there was no such thing; for this Man and two more, meeting at my House, compared their Note-books together, out of which this was taken, which was in that Paper, which he after mature Deliberation, and Reflection upon it, could with a good Conscience swear to; as looking upon it more safe, than to swear upon sudden Memory.]

But I shall now proceed to the further Examination of this Witness, as it was taken by the Clerk, but very partially, as you shall see presently.

This *Richard Higgs* being asked, what he meant, or what the Doctor meant by the Righteousness of Christ? he saith he cannot depose: but the Doctor interposing, said, Christ’s Righteousness was his active and passive Obedience. And thereupon the Deponent being asked, What was Christ’s active Obedience? presently denied his words again.

To this he refused to subscribe.

‘ The Clerk hath left out something touching *Richard Higgs*’s Answer to that Question about Christ’s active Obedience; which Answer being caught up by the Clerk, before he had liberty to express his Meaning, he might very well deny, though the Clerk had wrote it down, it being not according to his Meaning and Purpose; and so not fit to be subscribed.’

After this, Mr. *Fowler*, the Accuser, openly attested against this Deponent, That he denied the Bible to be the Word of God, and said, that the same was but old Declaratives; which the said Deponent denies.

‘ Here the Clerk’s Partiality is again apparent, who left out a weighty Distinction which the Deponent made, concerning the Word of God, in answer to Mr. *Fowler*’s Accusation, which was this; That he never denied the Scripture or Bible to be the written Word, but had said, it was not the Essential Word: And this very Distinction the Deponent had formerly given to the Minister of the Parish, who being present, confessed it before the Court, acknowledging that he walked like an honest and sober Christian in his Conversation.

‘ But to proceed: Although this Deponent’s written Evidence would not be received, yet I shall here present it as it was to be given in, and attested by seven more Witnesses besides himself. The Form of it was this; I confess I have heard the Doctor preach at *Bradfield*

‘ about

about the Year 49, out of *Dan. ix. 24.* thus:
Quest. What is meant here by this Righteousness? *Ans.* By this Righteousness is meant Christ's Righteousness, *John xxiii. 6. The Lord our Righteousness.* And *Paul* desireth not to be found in his own Righteousness, but in the Righteousness of Christ, *Phil. iii. 9.* Christ's Righteousness is the Soul's Wedding-Robe; *Isa. vi. 10. He hath covered me with the Robe of Righteousness.* As to the nature of Christ's Righteousness, it is a pure, spotless, perfect and compleat Righteousness, *Eph. v. 27. That he might present to himself a glorious Church, in this Righteousness of his, not having Spot or Wrinkle.*

This which follows was also intended to be given in, and was to be attested by three Witnesses: I confess, I heard the Doctor preach in *Bradfield Church*, out of *Luke i. 68.* That the free Grace of God the Father is the first Cause of the Soul's Justification.

Quest. What is the Matter out of which a Sinner cometh to be justified in the sight of God? *Ans.* It is Righteousness. As a Man cannot live without a Life, so a Christian cannot be just without Righteousness; and this Righteousness is called Christ's Righteousness; no other Righteousness, but the Righteousness of Christ, can justify the Soul. Therefore he is styled, *Jer. xxiii. 6. The Lord our Righteousness.* *1 Cor. i. 30. Christ is made unto us Wisdom and Righteousness;* that is, for our Justification. This Righteousness of Christ, in its own nature, is an everlasting Righteousness, *Dan. ix. 24. 2 Cor. v. That we might be made the Righteousness of God, in being clothed upon with Christ's Righteousness. Phil. iii. 9.* We are not to be found in our own self Pharisaical Righteousness, but in Christ's Righteousness, which is the Righteousness of Justification. And the formal Cause of a Sinner's Justification, is his Union and Communion with this Righteousness of Christ, through Faith and believing on it; *Rom. x. 6. The Righteousness of Faith speaketh on this wise, &c.* that is, the Righteousness of Christ apprehended by Faith.

This was also intended to have been given into the Court in Writing, being transcribed out of three or four Note-Books compared together, and afterward seriously considered and weighed; to which the Witnesses could swear with good Consciences, notwithstanding all those Outcries were against this Evidence by some of the Ministers and Commissioners, as though I had prescribed what they should swear; and that we were all combined to commit a heinous Sin, and bring the Guilt of Perjury upon our selves: whereas we all stood in Innocency as to this thing, having no other End in it, but the stable Assurance of the Truth of what was to be attested by serious Reflections upon it, after the comparing of divers Note-books together, which served to help and strengthen the Memory of the Witnesses; together with the avoiding of the Clerk's Prevarications in Writing, by partially taking the Depositions, in which we oft found him defective.

But to conclude this Article, I have produced these Testimonies to shew my Judgment touching Christ's Righteousness, which (with the positive Deposition of Mrs. Mary Pocock, That

I spake that of the Impurative Righteousness of Christ with a Limitation) may in Justice out-weigh the Depositions of the other two Witnesses against me, being neither of them are positive, and so not effectual in Law or Reason.

Now I shall pass to the third Article;

To which Mr. Tickle being sworn, saith, That I delivered, that the Discoveries of the Sinfulness of Sin, the Terrors of the Law, the Death of Christ, the free Grace of God, are fleshly and flashy Discoveries.

Afterward being cross-examined by me to this Interrogatory, Whether this Article was delivered in the same express Words, and in the same Order? he answered thus:

That the very Sum and Substance of this Article was delivered fully and roundly by me, and in the express words for the Substance of them, and to the best of his Remembrance.

Now I not remembering that ever I said that these were but fleshly and flashy Discoveries, and knowing that it was but his single Testimony, and not positively sworn to, and so no legal Evidence to condemn; and besides, that it was not comprehended in the Act of blasphemous Opinions, to which the Ordinance refers: I passed it by formerly without any Answer. But now to satisfy knowing Christians concerning my Judgment in this Particular, I shall here present this Answer; That I then held forth, and do still own it, That the Discoveries of the Sinfulness of Sin, the Terrors of the Law, the free Grace of God, the Death of Christ, were but preparatory Works under the Father's Dispensation, to the higher and more powerful Workings of God under the Dispensation of the Son, in changing and transforming the Heart into his Image; and so but weak in comparison of the more full and clear Manifestations and Operations of God upon the Soul, in bringing it up into divine Union and Fruition.

To the fourth Article;

Mr. Tickle saith, that I delivered, That the Liberty and Freedom spoken of, purchased by the Blood of Christ, is not a Liberty and Freedom from the Guilt of Sin, the Curse of the Law, the Wrath of God, but the fiery Deity of Christ in the Center of our Souls.

Mr. Tickle being further examined on this Article by me, to this Interrogatory, viz. Whether this was delivered first in the same express Words? Secondly, and in the same Order? Answers:

First, The very Sum and Substance of this Article was delivered fully and roundly by the Doctor. Secondly, That it was delivered in the express words, for the Substance of them.

To a third Interrogatory proposed by me, viz. Whether this Article was thus expressed by me, without any Addition or Diminution of his own? He thus answers; To the best of his Remembrance, without any Limitation, Addition or Diminution of his own.

But here, courteous Reader, you must give me leave to shew you Mr. Tickle's Uncertainty and Disagreement with himself in delivering this Article, which cannot but make it invalid in the Eyes of those that are judicious.

In

‘ In his attesting of this Article three several times, he never agreed with himself, but either diminished or added. The first time he swore to this Article, he had this Clause (*And applied by the clinging and cleaving of the Soul to Christ*) as you may see in the first Paper of Articles, which, being sworn again *Octob. 5.* he left out: and neither of these agreed with his own Deposition given under his own Hand some four Years since, to the Committee of Plundered Ministers, when it was more fresh in his Memory, and yet not delivered so fully and positively as now; which you may see by his own words (taken out of his former Depositions) which were these.

‘ Another Preparation was the instating of the Soul into a glorious Liberty and Freedom, in these Expressions: Which Liberty and Freedom is not that Liberty and Freedom from the Guilt of Sin, the Curse of the Law, the Wrath of God, brought about (or in an Expression of the same Signification) by the Death and Blood of another; and applied (or a word like it) by the clinging and cleaving of the Soul to Christ.

‘ Now you may take notice, that in the two former, this Clause was added, *viz. But the fiery Deity of Christ in the Center of the Soul*; which here is not mentioned. Moreover the Order is changed, and some doubtful Expressions are inserted; which shewed his Uncertainty four Years since. All which compared with that Answer of his, given by Oath at my late Trial, That this Article was delivered in the same express words, for the Substance of them, cannot but shew that he hath almost, if not altogether, incurred the Sin of Perjury. Now all this being well weighed, cannot but demonstrate that this Testimony is of no force at all.

‘ And although I formerly gave no Answer to this Article, because it was not sworn to positively; but with Reserves and Alterations, and that by one Witness only, and came not under the Act of scandalous Opinions; yet I shall now speak something to it, and shew you the Deponent's Mistake, which was in leaving out this word (*only*) which inserted, makes it appear with a more innocent Face.

‘ But now I shall further answer, That I delivered this Sentence thus, which I still own, *viz.* That the second preparatory Work that Christ did in the Soul of a true Saint, for the manifesting of his Glory in it, was the instating of the Soul into a glorious Liberty and Freedom, which doth not *only* consist in the Liberty and Freedom from the Guilt of Sin, the Curse of the Law, the Wrath of God; but also in the enjoying of the Spirit of Christ in the Center of the Soul, there purifying our Natures, mortifying our Lusts, and restoring us into the Image of God. And so this, truly represented, is a glorious Truth; though as Mr. Tickle by Mistake delivered it, it seemed monstrous.

To the fifth Article.

Mr. Tickle saith, that I did deliver, That by Male and Female, *Gen. i.* we are to understand by Male, the Deity; and by Female, the Humanity; and that these two became one Flesh. These things were delivered without any Limitation whatsoever.

Mr. Tickle being further examined on this Article, *viz.* Whether I spake this as my own avowed Judgment, or as the Judgment of some other Person? answers thus: That I delivered those Expressions of the Article with Approbation; and that therefore he had cause to believe it was my Judgment; and, as far as he remembers, it was delivered as my Judgment.

‘ Here the Reader may observe, that Mr. Tickle doth not answer directly and nakedly as a Christian should, but subtilly and indirectly, like a Sophister; for he answers, That I delivered this with Approbation: but whether this Approbation was from my self, or from some other (I might then cite) he doth not express, passing it over in silence. Afterward he saith, he hath Cause to believe it was my Judgment; which is a mere Prevarication, but no Answer to the Question; which was not, Whether he believed it to be my Judgment, but whether I delivered it as my Judgment, or as the Judgment of another? To which in the last Clause he answers somewhat, *viz.* That I delivered it as my own, as far as he remembers. But though this be somewhat to the Question, yet not much to the Purpose, it being no legal Proof or Evidence; for his Memory might fail him.

‘ Now the Reason of this Interrogatory was, in that Mr. Tickle, some four Years since, when this was better in his Memory than now it can be, gave in this that followeth, under his own hand, to the Committee of Plundered Ministers, *viz.* That *Gen. i.* by Male, we are to understand, saith Mr. *Porridge*, the Deity; by the Female, the Humanity. This he gave from a Rabbi, with that Approbation.

‘ Now how consistent this is with his late Answer to my Interrogatories, let all judge; especially with that part of it in which he affirms, that as far as he remembers, I delivered it as my own Judgment.

‘ But now to answer something positively to this, which may give Satisfaction to judicious and knowing Christians, I acknowledge that in the Sermon before-mentioned, I delivered for Substance, this which follows, *viz.*

‘ That another preparatory Work that Christ did in the Soul of a true Christian, for the manifesting of his own Glory in it, was the bringing up the Spirit of the Soul into a glorious, mystical, yet real Union with himself: And after I had proved the Truth and Substantiality of this Union betwixt Christ and a Christian, from several Texts of Scripture, which directly evinced it; I came by way of Illustration to speak of that Scripture, *Gen. i.* out of which I said, That by Male and Female, according to the Judgment of a learned Rabbi, the Deity and pure Humanity might be shadowed forth, which by Union become one; the Male representing the Deity, the Female the pure Humanity, or regenerated part of the Soul, which by Union is made Partaker of the Divine Nature.

‘ By this you may see, that if Mr. Tickle had been but a charitable and knowing Christian, he needed not have troubled himself and me about this Article.

To the sixth Article;

Mr. Tickle saith, That he heard me deliver in
‘ Discourse

Discourse with Mr. Pendarvis, That the Gifts and Graces of the Spirit were but Flesh. Being further examined, he said, That to this sixth Article there was no Limitation whatsoever in the delivering of it.

Here the Reader must know that Mr. Pendarvis was summoned by me to witness to the Truth in this particular, but he came not; alledging that he could say no more than what he had already deposed. Whereupon I desired the Commissioners (after Information that I had summoned him) to hear his former Deposition read; but they peremptorily denied it. By which I clearly saw that they had more mind to take all Occasion of Advantage against me, than to be fully informed of the Truth of things.

But Mr. Pendarvis's Deposition given in before the Committee of Plundered Ministers, was this, viz. That the Doctor, in Conference, did say, That the Gifts and Graces of the Spirit, were but Flesh; and I opposed him: but then the Doctor replied, by way of Explanation, that he understood them only to be Flesh; that is, weak in point of Rest and Trust on them for eternal Life and Salvation: and in this I agreed with him.

Correspondent to this, was my Answer to, and Explanation of this Article before the Committee of Plundered Ministers, which three Witnesses were ready to depose on Oath before the present Commissioners, who refused to hear their Testimony.

To the seventh Article;

Mr. Tickle saith, That he heard me deliver in Discourse, That Christ is a Type, and but a Type.

Being further examined, he saith, That I endeavoured to prove that Christ was but a Type, out of *Peter*, where he is called *τυπος*.

Further, *Roger Stephens* being sworn to this Article, deposed, That the Doctor, in Dispute with Mr. Pendarvis, delivered, That Christ was but a Type, and went to prove it by that Scripture, *1 Pet. ii. He is our Example*. To which Mr. Pendarvis replied, That is not meant by way of Righteousness to Justification, but by way of Example, as to Reproaches. To which the Doctor answered, You understand it one way, and I another; or words to that effect.

Now to ballance these Depositions, the Reader must take notice,

1. That my true Sense of this Article may be seen in my Answer to this first Charge, in which I have truly shewed in what Sense I owned Christ to be a Type, viz. as he is a Pattern and Example for us to imitate and follow.

That this Discourse being with Mr. Pendarvis, it is requisite I should here insert his Deposition taken by the Justices of Peace of that County, and afterward presented to the Committee of Plundered Ministers; which was as follows:

This Examinant (which was Mr. Pendarvis) further saith, That the said Doctor Pordage, in a Conference had with him at the same time, after his Sermon at *Illey*, said, That Christ was a Type, and but a Type: but this Expression was immediately waved by him, but he constantly affirmed that Christ was a Type.

But because Mr. Pendarvis could not be there to witness *viva voce*, the Commissioners would not admit this Evidence.

But Mrs. *Mary Pocock* being sworn and examined on this Article, saith, That she heard the Doctor maintain in that Discourse with Mr. Pendarvis, That Christ was a Type; and proved it out of *Peter* (*He was an Example*) and that she heard the Doctor say, He would not stand to the word *But*.

And further,

John Pordage, Son to the Doctor, aged between 19 and 20 Years, and examined *December* the 7th; this Deponent saith, That in Dispute between the Doctor and Mr. Pendarvis, about five or six Years since, about Christ's being a Type, the Doctor said, That Christ was but a Type. To which Mr. Pendarvis asked, Do you say but a Type? Whereupon the Doctor answered, He did not stand to the Expression, *but a Type*; it was but the slip of his Tongue: but he maintained that Christ was a Type.

You see here are three Witnesses that attest I never owned or stood to that of Christ's being but a Type.

Correspondent to which Testimony, I gave in my Answer before the Committee of Plundered Ministers, which I offered to prove by three Witnesses then present, who heard me, who were ready to attest this which follows, viz.

That they being present (about the 27th of *March* 1651.) before the Committee of Plundered Ministers, heard me touching this Article *That Christ was a Type, and but a Type*, deliver my self thus; That I had owned Christ to be a Type, that is, a Pattern and Example for us Christians to square our Lives and Conversations by; but that I had not owned him to be but a Type, or a Type only: But the Commissioners would by no means hear this Evidence.

After this I earnestly pressed them to hear what my Witnesses could further say, touching what I had publickly delivered in my Ministry about this Subject; telling them, that such Evidence was in Justice more to be respected, than a Mistake in sudden speaking, presently retracted: but they denied all such Evidence, and would not hear; which clearly shewed their Partiality, and that they little regarded what my avowed Judgment was.

Notwithstanding, I shall here insert what some were ready to witness, in reference to this Article, who had been constant Hearers of me; whose Testimony was this: We confess we have heard the Doctor preach out of *Luke i. 68*. First, This by way of Doctrine, viz. That God's free Grace is the first and chief Cause of our Redemption. Then he proceeded thus: That the inward Man was redeemed in, for, and through Christ, *Rom. iii. 24. through the Redemption that is in Jesus Christ*. How through Christ? *Ans.* Through Christ's Death and Passion; *Isa. liii. 5. He was wounded for our Transgressions, he was broken for our Iniquities. 1 Pet. ii. 24. Who bare our Sins in his own Body on the Cross. Rom. iv. 25. Who was delivered for our Offences to the Death of the Cross. 1 Cor. v. 7. Christ our Passover is sacrificed for us.*

Now

' Now this clearly shews, that Christ is more than a Type, and that he is a compleat Redeemer.'

So much for this Article.

To the Eighth and Ninth Articles;

Mr. *Tickle* saith, That he heard me deliver before the Committee of this County, sitting at *Reading*, That Christ was not God; and that he was not *Jehovah*.

Being further examined to this Article, my Interrogatories to him were these:

1. *Whether these Words were not expressed in a hot Dispute before the Committee?* To this Mr. *Tickle* replied, That I endeavoured in Dispute with great Seriousness, before the Committee, to maintain, That Christ was not God, that Christ was not *Jehovah*.

My second Question was this, *Whether, in the same Dispute, this Article was not limited and explained by me?*

' But this Question was wholly waved and passed over in Silence; but whether voluntarily by Mr. *Tickle*, or by the Clerk's Deceit, the Interrogatories being given in in Writing, I do not know; but this I am sure, it was much to the prejudicing of my Cause to let such a weighty Question pass without an Answer.'

3. *Whether this Article was held forth by me as my avowed Judgment?*

Ans. To this he thus answers: The Doctor did maintain and defend this Article as his avowed Judgment.

' Here Mr. *Tickle* is very peremptory in a rash Answer, though that Interrogatory before could be slid over in Silence; the Answer to which, if Mr. *Tickle* had not easily incurred Perjury, would have much cleared the Truth, in regard I meant, and explained my self, of God the Father, as you shall see afterward.'

This Deponent, Mr. *Tickle*, further deposeth to the eighth and ninth Articles, That there was no such Expression, *of the Father*, used in the Definition of Blasphemy, as is mentioned in the Doctor's Answer; but saith that the Definition was, That Blasphemy was an Evil-speaking against God, derogating from his Glory, either in his Name, Nature, Word or Works. Mr. *Tickle* further affirms, That my immediate Words thereupon were, Hark! he answereth, Blasphemy is an Evil-speaking against God; and in his Paper chargeth me with Blasphemy against Christ, as if Christ were God: And hereupon we began a hot Dispute about the Godhead of Christ.

' The Reader must here know, That upon Mr. *Tickle*'s defining Blasphemy to be an Evil-speaking against God the Father, as I then really apprehended, I immediately cried out, Hark! he defineth Blasphemy to be an Evil-speaking against God the Father, and in his Paper chargeth me with Blasphemy against Christ, who is God the Son. Whereupon began a Dispute; in reference to which Mr. *Tickle* further deposeth;

That he asked the Doctor if Christ were God: who did deny it, and put the Deponent upon Proof of the same. Whereupon he cited that Scripture, *In the Beginning was the Word*, &c. To which the Doctor replied, He is called God, but he is not *Jehovah*. To which the Deponent replied, He

is *Jehovah*; which the Doctor likewise put him upon Proof of. To which he answered that Scripture, *His Name shall be called Jehovah, our Righteousness*: And, as he remembers, the Doctor did disallow of that Proof, as being out of the Old Testament; to which he cited that Scripture, *He that was, is, and is to come*, as of the same purpose with *Jehovah*.

' Tis well that Mr. *Tickle* adds, According to his best Remembrance, which saves him from Perjury: For I esteem the old Testament to be Scripture as well as the New; neither did I disallow of that Proof as being taken thence, as he would insinuate: But I said that *Jehovah* in the Old Testament most commonly signified the Person of the Father.'

But now we shall pass to the next Witness.

Thomas Trapham, one of the Commissioners, sworn and examined, deposeth;

That, to his Remembrance, the Word *Father* was not in Mr. *Tickle*'s Definition of Blasphemy; and that the Doctor did then deny Christ to be God; which the Deponent did acquaint Mr. *Blaggrave* with. To which Mr. *Blaggrave* said, If he say Christ is not God, we must take further Course with him. To which the Doctor replied, Christ is not *Jehovah*: and that when Mr. *Tickle* had confuted him in that Argument, (I must now tell the whole Truth) the Doctor replied, He was not God the Father.

' Note, This was rather a Confutation of Mr. *Tickle*'s own Apprehensions concerning me, than of my Meaning in what I then spake: And if he swears truly that the Term *Father* was not in his Definition, then as he mistook me, I mistook him; upon which Mistakes his needless Proofs were grounded.'

But now to the next.

Mr. *Roger Stephens*, of *Reading*, sworn and examined November 22, deposeth, That the Doctor did confess in the Deponent's hearing, in a Sermon, That Christ was not *Jehovah*.

' Note, Before I proceed any further, I cannot but desire all sober Christians to take notice what a bitter and envious Spirit this Deponent is of; which will appear by what follows.'

After his before-expressed Depositions, I put these Interrogatories to him:

1. Where did you hear me preach this? To this he replied, In a Sermon at St. *Lawrence's* Church.

2. I asked him before whom? He answered, Before the Committee of *Berks*.

3. I demanded of him how I explained my self, when in the Sermon I affirmed openly, That Christ was not *Jehovah*? He replied, He did indeed explain himself thus, That he had said that Christ was not *Jehovah*, in opposition to the Father.

' Note, Here the Reader must know that this Sermon was delivered at *Reading* by the Appointment of the Committee, (before which we had the Dispute about the Godhead of Christ) in which Sermon I openly cleared my self from that dismal Aspersions of denying the Godhead of Christ; which so satisfied the Committee, that upon this they judged me innocent in that Particular, and by Vote cleared me. And now considering the Scope of my Sermon at that time, together with the Deponent's Deposition, viz. That he heard me

‘in a Sermon confess that Christ was not *Jehovah*, without adding any more to shew how
 ‘I said it, till I cross-examined him: I say,
 ‘weighing these well together, the judicious
 ‘Reader cannot but see this Deponent’s Envy
 ‘and Partiality, and Unfitness to take Oath, or
 ‘be much regarded after Oath; who swearing
 ‘to speak all the Truth, dares yet take one Sentence out of a whole Discourse, without adding any further Explanation of it, to make the
 ‘Commissioners believe that I accused my self of
 ‘Blasphemy at that time, when my whole Scope
 ‘was to vindicate my self from the undeserved
 ‘Imputation of it.

Now I shall present you with the Depositions and Evidence given in on my behalf, touching the Eighth and Ninth Articles, *viz.* That Christ is not God; and, That Christ is not *Jehovah*.

BUT in the first Place I refer you to my Answer to these Articles; in which you may see the Occasion of the Discourse before the Committee, touching the Godhead of Christ; and that I never owned any such monstrous Position, as, That Christ is not God.

In the second Place I come to the Witnesses: The first of which was Mr. *Francis Pordage*, Brother to me.

Now this Deponent being asked whether the Words, *That Christ was not God, and that Christ was not Jehovah*, before the Committee at Reading, were not delivered in a hot Dispute; he saith they were.

And being further asked whether in the same Dispute these Words, *That Christ was not God*, were not limited by me; he saith, The Doctor did express it with this Limitation, *That Christ was not the Father*.

Now follow the Cross-Examinations of the Accuser, and some other of the Ministers.

MR. *Pordage* being asked by them the ground of this Dispute, he thus answered, That the Dispute arose upon a Definition of Blasphemy which Mr. *Tickle* gave to Mr. *Blagrove*, That it was against God. To which the Doctor replied, He saith it is against God, and yet chargeth me for speaking against Christ.

‘Note, Here are some Things prevaricated by
 ‘the Clerk, the Ministers at that time being very
 ‘hot in examining this Deponent.

‘I must here therefore a little correct it by
 ‘the Line of Truth.’

Mr. *Pordage* indeed said that the Dispute arose upon a Definition of Blasphemy, which Mr. *Tickle* gave to Mr. *Blagrove*: But then a Minister asking him whether the Definition was not thus expressed, That Blasphemy was an Evil-speaking against God? he replied, He could not tell whether it was expressed against God, or against God the Father. But now I shall proceed as the Clerk took them.

Mr. *Pordage* being further asked by me, whether in that Dispute I did deny that I held Christ not to be God? he saith the Doctor did declare to Mr. *Blagrove*, That Christ was God.

Hereupon he was asked by the Commissioners and Ministers, whether there was not so much distance of time at the least between the Do-

ctor’s Denial of Christ to be God, and his correcting of it afterwards, as required Proof of Mr. *Tickle*, to prove him to be God and *Jehovah*? the Deponent doth acknowledge the same.

And the Deponent being asked whether he did hear Mr. *Tickle* speak any Word of God the Father in that Dispute? he saith, He doth not remember that Mr. *Tickle* used any such Expression.

This Deponent being asked by me, whether frequently in that Dispute, when I spake of denying Christ to be God, I did not speak it always in relation to God the Father? he thus answered, The Doctor did then speak it in relation to God the Father; but he cannot say frequently or always.

Moreover the former Deponent being asked by me, How I did explain my self in St. *Lawrence Church* concerning the Divinity of Christ, when I was commanded by the Committee at Reading to explain my self in a Sermon there? he saith, In that Sermon the Doctor did clear himself concerning the Trinity of Persons, and that Christ was God; and did assert the same as his avowed Judgment.

After this, being asked by the Commissioners whether the Doctor did not make his Limitation, if any, after he was confuted by Mr. *Tickle* concerning the Deity of Christ? the Deponent answereth to this, That it was after Mr. *Tickle* had cited many Scriptures to prove the Deity of Christ.

But last of all being asked by me, whether he understood me at that time to be confuted or mistaken? he saith, Mistaken.

Francis Pordage.

The next Witness is *Mary Pocock*, sworn again, and further examined.

WHO being asked by me whether this Expression, *That Christ was not God and Jehovah*, was not spoken in a Dispute before the Committee at Reading? she saith, She was before the Committee of *Berks*, where she heard the Doctor in a Dispute with Mr. *Tickle* concerning Christ; in which Dispute she heard the Doctor say, *Christ was not the Father*: But she did not hear him deny that he was God the Son, neither then, nor at any other time, but owning him to be perfect God, and perfect Man.

And being further asked, whether she did not hear the Doctor express that Christ was not God with a Limitation, and with what Limitation? she answered, Yes; and that the same was thus, *He was not God the Father*.

And being further asked by the Doctor, Whether she did not hear him deny in that Dispute, That he held Christ not to be God? she saith, she did apprehend him so, *viz.* That he did deny he held Christ not to be God; and so far as she was satisfied with it.

And being asked by the Commissioners, Whether she did not hear the Doctor in that Dispute, deny Christ to be God? she answereth, she heard him deny Christ to be God the Father.

And being further asked, Whether the Words of God the Father were not spoken by the Doctor, after Mr. *Blagrove* did tell him, If he held such Opinions, they must proceed against him? To this she saith, Mr. *Blagrove* put some

Questions to him, what they were she cannot remember.

And being further asked, Whether the Doctor did not bring in the Expression of God the Father, after many Scriptures cited by Mr. *Tickle* to prove Christ to be God? To this she saith, some Scriptures Mr. *Tickle* did bring; but she is not able to say it was before the Doctor did express God the Father.

Mary Pocock.

After this, I desired the Commissioners, that if they were not yet satisfied, they would hear my Witnesses which I had there ready to be sworn; that I had formerly cleared my self of holding Christ not to be God and *Jehovah*; and that I had held forth the contrary as my avowed Judgment, viz. That Christ was God and *Jehovah*, in a Sermon before the Committee of *Berks* at *Lawrence-Church* in *Reading*; and how afterward I was cleared by their Vote from these Articles now in Debate, and particularly from this of holding Christ not to be God. But they would not suffer me to produce the Evidence of these Witnesses, replying, They had nothing to do with what other Committees before had done; they would proceed according to the Proofs of the present Witnesses.

But nevertheless I shall here present to the judicious Reader the Evidence which they through Prejudice rejected.

Which was this that follows.

I confess I heard the Doctor deliver himself in a Sermon at *Reading* in *Lawrence Church*, where the Committee of *Berks* was present, out of *Ezek. cap. ix. ver. 4, 5, 6, 7.* after this manner, That *Jehovah*, taken late, largely, including the Trinity of Persons, so they are all *Jehovah*: But take *Jehovah* strictly, only for the Person of the Father, and then Christ is not *Jehovah*. And hereupon he further said, What Dealings have I had from my Fellow-Ministers, but as *Jacob* had from *Esau*, *Obad. ver. 10, 12.* who spake proudly against his Brother *Jacob* in the Day of his Distress. And there he avowedly declared, That the Thought of denying the Deity or Godhead of Christ never entered into his Soul.

Moreover,

These following Witnesses were present to attest on Oath their former Depositions, taken before the Committee of Plundered Ministers, which were these.

This Deponent (Mr. *Francis Pordage*) further saith on Oath, That he was present before the Honourable Committee of *Berks*, when the Doctor was cleared by the Vote of the whole Committee, touching the Business at *Ilsey*, and concerning those Articles, That Christ is not God and *Jehovah*.

This Deponent (*John Hambleton*) saith on his Oath, That he was present before the Honourable Committee of *Berks* when the Doctor was cleared by the Vote of the whole Committee, concerning *Ilsey* Business, and these Articles of Christ's not being God and *Jehovah*.

And this Deponent further saith on Oath, That he was at *Reading* before the Committee of *Berks*, where the Doctor was cleared of the Business at *Ilsey*, and from the false Aspersions laid to him, as if he denied Christ to be God

or *Jehovah*, and that by the Vote of the whole Committee.

But the Commissioners not receiving these Testimonies, I earnestly desired them they would hear the Evidence of some Witnesses there present, touching the Tenor of my Ministry since that Dispute concerning Christ's being God, which I looked upon more considerable than one Expression uttered in a Dispute upon a Mistake, (if Mr. *Tickle* swears the Truth.) But they denied this reasonable Request, saying, They were in haste; and that these Testimonies were but dilatory and impertinent. Which notwithstanding I shall here present, to be weighed by the judicious Reader.

These four Witnesses (Mr. *Francis Pordage*, *Richard Higgs*, Mr. *Samuel Pordage*, *John Higgs*) were ready to attest this which follows upon their Oaths, which was writ down in some of their Note-Books.

We confess we heard the Doctor preach out of *Matt. i. 23.* in the Year 1652, concerning Christ's Birth; at which time he speaking of six Wonders, deliver'd the four last after this manner:

The third Wonder in Christ's Birth was this, That he was born a perfect Man, a true natural Man, *Luke i. 42.* where Christ is called by *Elizabeth* the Fruit of the Virgin *Mary's* Womb; *Gal. iv. 4.* made of a Woman; *Gal. i. 1.* not only in and through a Woman, but out of the Substance and Nature of the Virgin. Fourth Wonder, That Christ was born perfect God, *John i. 14.* The Word was made Flesh: Who is meant by this Word? The Eternal Word, the Word Christ, *Heb. i. 2.* Fifth Wonder, Behold two distinct Natures born in him, viz. The Deity and Humanity, the Godhead and the Manhood, *Rom. i. 3, 4.* According to the Flesh, he is of the Seed of *David*; and according to his divine Nature, he is the Son of God. These two Natures remain distinct in Christ's Person; *Joh. viii. 58.* Before Abraham was, I am. According to his divine Nature, he was before Abraham; and according to his human, after. Sixth Wonder, Behold two Natures hypostatically united in one Person! These two Natures do not make two Persons, two Christs, but both these Natures hypostatically united together, make up but one Person, *Matt. i. 23.* Emanuel, God with us.

The Nature of this Union was after this manner explained:

It was an inconvertible Union, an indivisible Union, an unconfused Union, an inseparable Union, a substantial and real Union, yet a mystical Union.

We also heard the Doctor in *Bradfield Church*, at another time, about 1653, deliver himself (out of *John i. 14.* concerning the Word's being made Flesh) thus, viz. That this Word was Christ, the Eternal Word, that is co-eternal, co-essential, and co-equal with the Father, *Prov. viii. 22, 23, 24, 25.* I was set up from everlasting, &c. *John x. 30.* I and my Father are one.

Besides, we can with a good Conscience testify, that in his publick Ministry, out of divers Texts of Scripture, we have heard him clearly hold forth Christ to be God.

So much for these Articles, as to the Testimony of Witnesses. I i 2 And

‘ And now we must inform the Readers, that
 ‘ I have hitherto in truth, without Partiality
 ‘ toward myself, or Passion and Prevarication to-
 ‘ ward my Adversaries, presented the Depositions
 ‘ and Evidence on both sides, touching the
 ‘ first Charge: I would therefore request, that
 ‘ these following Particulars, drawn together
 ‘ by way of Recapitulation, may be seriously
 ‘ weighed and considered.

‘ *Part. 1.* That to most of these nine Articles
 ‘ they have but one Witness, without any concur-
 ‘ rent Testimony, which is not sufficient Proof,
 ‘ according to the Ordinance they are to act by;
 ‘ in which it is expressed, that at least there must
 ‘ be one Witness with concurrent Evidence.

‘ *Part. 2.* That wheresoever the Accuser hath
 ‘ two, I have also two to ballance them.

‘ *Part. 3.* That altho many of the Articles
 ‘ are in gross sworn to positively, yet in the
 ‘ Cross-Examinations you will find such Limi-
 ‘ tations as these, According to our best Re-
 ‘ membrance, and According to our Apprehen-
 ‘ sions, In the same express words for the Sub-
 ‘ stance of them, &c. which cannot therefore
 ‘ amount to legal Evidence, being invalid in
 ‘ point of Law; because, as the judicious Law-
 ‘ yer saith, if the Deponents swear not positive-
 ‘ ly and syllabically, they may by changing, ad-
 ‘ ding to, or taking from the express words,
 ‘ usurp the place of Judges, and so prevent their
 ‘ Work and Duty, which is to judge whether
 ‘ such express Terms are criminous or not;
 ‘ which they cannot do after the Terms be al-
 ‘ tered, and made criminous already by the
 ‘ Witnesses misrepresenting them.

‘ *Part. 4.* That my Witnesses in reference to
 ‘ the most substantial Questions, are positive in
 ‘ their Answers.

Now I come to the second Charge of Articles
 in reference to the Proof, being exhibited against
 me by one *Joseph Cook*, an unknown Person.

Art. 1. **O**NE Mrs. Lewyn being with child,
 and near the time of Travail, sent
 for Dr. Pordage's Mother to be her Midwife; but
 he would not suffer her to go, saying they would not
 be guilty of such a beast-like Life, meaning Mrs.
 Lewyn's being with child by her Husband.

Depos. Mr. John Lewyn of Hamsted-Norris
 sworn and examined the second of November, at
 the Bear in Speenhamland, before the Commis-
 sioners, to this Article saith, he cannot depose.

Ann Lewyn, Wife of John Lewyn, Minister of
 Hamsted-Norris, sworn and examined to the se-
 cond Paper of Articles exhibited against Dr. Por-
 dage, saith, to the first Article she cannot depose.

Art. 2. The said Dr. Pordage coming to the House
 of Mr. Lewyn, in his Discourse with Mrs. Lewyn
 blamed her for having Children by her Husband,
 and argued with her the Unlawfulness of having
 Children by her Husband.

Depos. To this Article Mr. Lewyn saith he
 cannot depose.

To this second Article Mrs. Lewyn saith, That
 the Doctor told her, when she had two Chil-
 dren, a Boy and a Girl, she had enough, one
 for her Husband, another for herself: To which
 the Deponent answered, *As it shall please God.*
 Then the Doctor reply'd, *Pish, it is as yourselves*
will. But she saith the Doctor did never per-
 suade her to live from her Husband.

Art. 3. In his Discourse to Mr. Lewyn con-
 cerning the same Subject, he endeavoured to main-
 tain the Unlawfulness of their having Children; and
 said, that Adam was Male and Female in himself,
 and had he not fallen, he had brought forth Chil-
 dren himself; and to maintain and prove the same
 by Scripture and otherwise.

Depos. To this third Article Mr. Lewyn saith,
 That about three Years since the Doctor and
 this Deponent had some Discourse at the Depo-
 nent's House, about some Principles of Reli-
 gion: the Doctor did urge that place in *Genesis*,
 That he made them Male and Female, but whe-
 ther he meant Adam singly, or what mental Re-
 servation he had, the Deponent knoweth not.
 And further to this Article he cannot depose.

To this third Article Mrs. Lewyn saith, She
 heard the Doctor and her Husband in discourse
 to the purpose of the said Article; but what the
 words were, she cannot depose.

Art. 4. In his Discourse with Mr. Lewyn,
 which was about the time that one Everard was
 with him in his House at Bradfield, who was gene-
 rally reputed a Conjurer, he asked Mr. Lewyn
 whether he would not be afraid, if he should see his
 own Picture or Shape, intimating that he himself
 had used to see his.

Depos. To this fourth Article Mr. Lewyn saith,
 That about the time mentioned in the Article,
 the Deponent met the Doctor in London; in Dis-
 course with him the Doctor asked him, If it would
 not be terrible to see Apparitions? but did inti-
 mate nothing, that he used to see any himself.

To this Mrs. Lewyn saith she cannot depose.

Art. 5. The said Dr. Pordage hath had for some
 Weeks together in his House the said Everard, and
 one Tawny, who styled himself King of the Jews,
 who had been questioned, as it is generally reported,
 for holding dangerous and unsound Opinions, as that
 there is no Hell, and the like.

Depos. To this Mr. Lewyn deposeth nothing,
 and Mrs. Lewyn saith she cannot depose.

‘ Now all that I shall say to this Charge, and
 ‘ the Proofs of it, consists in these three subse-
 ‘ quent Particulars.

‘ *Part. 1.* What Paul saith, *Acts xxiv. 13.* Nei-
 ‘ ther can they prove the things whereof they now
 ‘ accuse me, I may say here; for many things are
 ‘ laid to my charge, but nothing proved by this
 ‘ unknown Accuser. But it is an Act of subtile
 ‘ Policy, to charge boldly, tho they prove little
 ‘ of it, which hath been practised against me in
 ‘ this Trial, as every one may see.

‘ *Part. 2.* For the further Satisfaction of the
 ‘ Reader in reference to this Charge, let him
 ‘ look back upon my former Answer, given un-
 ‘ to it before the Witnesses were examined.

‘ *Part. 3.* I look upon myself in some mea-
 ‘ sure obliged here to give a short account of
 ‘ my Judgment concerning Marriage; the hold-
 ‘ ing forth of which, may have occasion'd my
 ‘ Enemies to have framed some of the precedent
 ‘ Articles against me. I must therefore acknow-
 ‘ ledge, That I prefer Virginity before Matrimo-
 ‘ ny, the single State before the conjunct; and
 ‘ that Persons, tho in a married State, [*1 Cor.*
 ‘ *vii. 38.*] may by consent abstain from the En-
 ‘ joyments of that State, and so be in it as tho
 ‘ they were not in it, living as single, tho in an
 ‘ united Form. This now is my Judgment and
 ‘ deliberate Practice, being according to that of
 ‘ Christ, *Mat. xix. 12.* He that is able to receive
 ‘ it,

‘ it, let him receive it: where he speaks of the
 ‘ Law of Abstinence, and Christian Eunuchism,
 ‘ which these words immediately going before
 ‘ shew, viz. *There be Eunuchs, that have made
 ‘ themselves Eunuchs for the Kingdom of Heaven’s
 ‘ sake.* Here is the Practice, and the End of it,
 ‘ which ought to be the Growth and Increase
 ‘ of God’s Kingdom in the Heart; to which
 ‘ the Mortification of the Affections, and the
 ‘ Abstraction of the Soul from the corrupt sen-
 ‘ sitive Nature, does make way. And certainly
 ‘ it were well, if Christians, in this corrupt de-
 ‘ clining Age of the World, did more eye and
 ‘ imitate the Pattern of Christ’s Life, who as
 ‘ he was born of a Virgin, so lived in Virginity,
 ‘ and the single devoted Life; leaving an Ex-
 ‘ ample to all that are able [*Mat. xix. 12.*] to
 ‘ tread in his steps, and follow him. And fur-
 ‘ ther, it is fit for all that are either single or
 ‘ married to consider, that all private Bonds,
 ‘ Laws, and Engagements, ought to strike sail
 ‘ to our highest Laws and Engagements to God;
 ‘ and that whensoever they cross one another,
 ‘ the highest and supreme Law, by which we
 ‘ are obliged to live to God in Purity and Inte-
 ‘ grity, must have the precedency. Now my
 ‘ holding forth and declaring this my Judgment,
 ‘ together with my own Practice, hath given
 ‘ occasion to many (who are as the Generation
 ‘ before the Flood, eating and drinking, mar-
 ‘ rying and giving in Marriage, and taking com-
 ‘ placency in the Delights of the Flesh) to speak
 ‘ evil of me, as one that breaks Bonds between
 ‘ Relations, tho no such thing can (in truth) be
 ‘ proved against me: for it is not my design to
 ‘ make Profelytes to my Judgment, being wil-
 ‘ ling to leave all to the Rule of Light in their
 ‘ own Consciences. Tho I have said, and can-
 ‘ not but say, that it were well if Christians
 ‘ would more labour after, and pray for the Gift
 ‘ of Continency, and not involve themselves in
 ‘ the Entanglements of the World, till they had
 ‘ used all Means of Mortification prescribed in
 ‘ the Holy Scripture, to subdue their Natures:
 ‘ and it were happy if the present Generation
 ‘ could clearly distinguish betwixt those Mar-
 ‘ riages that are Idolatrous, Adulterous, and
 ‘ Bestial, and those that are Holy, Pure, Divine,
 ‘ being made in the Lord, according to his Will,
 ‘ and so lawful and honourable. But alas! most
 ‘ People now are as those in the days of *Noah*,
 ‘ who being insensible of God’s intended Judg-
 ‘ ment by the Deluge, solaced themselves in the
 ‘ Pleasures and Delights of the Earth, till the
 ‘ Flood came and destroy’d them. Hence there
 ‘ is much need of some at this time, to call
 ‘ People to Self-denial and Imitation of Christ’s
 ‘ Life, to live up to the highest and purest Rules
 ‘ of Christianity, in the Mortification of their
 ‘ Flesh, and in the compleat devoting of them-
 ‘ selves to a constant Attendance upon the Lord,
 ‘ as waiting for his coming in Spirit, to destroy
 ‘ the Man of Sin, and overthrow *Babylon* with
 ‘ all its Idols. So much for the third and last
 ‘ Particular, which shall conclude the things of
 ‘ this Charge.’

Now I am come to the Depositions of my third
 and last Charge, some of which were taken *Nov.*
22. being the fourth time of my Appearance;
 the other *Decemb. 7, & 8.* being the fifth and
 last time of my appearing before the Court.

But before I present the particular Depositions,
 I must here inform the Reader of two things,
 which relate to the last time of my Appearance,
 and to this last Charge; one of which shews
 the Cruelty, the other the Injustness of the
 Commissioners. The first then is this: The
 seventh of *December* having been taken up in the
 Examination of my Witnesses to the first Charge,
 which continued till it was late in the Night, the
 Commissioners called for more Lights, that they
 might proceed to the Examination of Witnesses
 in reference to the third Charge. Whereupon
 I reply’d it was late, and I had many Witnesses
 to examine upon the last Charge. At this Mr.
Fowler the Accuser rose up, and urged the Pro-
 ceeding to the last Charge; saying, it would
 quickly be dispatched. Then the Commissio-
 ners cry’d out, Fetch us more Candles, we will
 make an end of it this Night. To which I re-
 ply’d, Gentlemen, I have here stood very long
 before you, and having not dined, (through the
 Urgency of my Business) I am not well, being
 very faint, and much spent and wearied; I de-
 sire you would therefore stay till the next Mor-
 ning. But they peremptorily denied this just
 Request, and resolved to proceed. But they
 permitting me to withdraw for a little space,
 through Emptiness and Weariness I fell very
 sick, and was forced to go into my Bed: at
 which the Commissioners were very much trou-
 bled, seeming to consult whether they should
 proceed to Judgment. The second thing is this;
 On the morrow the Commissioners requiring me,
 against many Objections which I made, to give
 in my Interrogatories by writing; afterward
 judged most of them dilatory and impertinent
 to the Business, and so not fit to be examined.
 To which I objected, whatever my Proofs were,
 they ought in justice to hear them, by exami-
 ning the Witnesses to my Interrogatories, and
 afterwards to judge of them, whether valid or
 invalid. But nothing I could speak prevailed
 with them, to obstruct their rejecting most of
 my Testimonies.

But now as to the particular Depositions, re-
 lating to the third Charge, exhibited by Mr.
Fowler, I shall here present them to be weigh’d
 in the Scales of Justice by the Reader.

Art. 2. **T**HAT *Jesus Christ was not perfect;*
allegding that Text to confirm it, He
 cry’d out, My God, my God, why, &c.

Mr. *Christopher Fowler* sworn and examined (at
Reading, Novemb. 23.) to this Article, saith,
 That about five Weeks or a Month since, he
 acquainted Mr. *Daniel Blagrove* the younger,
 that the Commissioners did intend to summon
 him to testify what he knew of Dr. *Pordage* in
 relation to *Jesus Christ*; and the Deponent
 asked him, if he heard the Doctor say, *That*
Christ was not perfect? To which he answered,
 Yes.

Now as to my Defence against this Testimo-
 ny, not repeating the Illegality and Invalidity of
 it, I have these things to say.

1. **T**HAT the Clerk hath left out some Cross-
 Interrogatories, which were propos’d by
 me to the Accuser, in reference to this his De-
 position. As first, Whether he asked Mr. *Blagrove*,

grave, whether I spake it from myself, as my Judgment, or related it as delivered by and heard from another? Which Question the Accuser waved. And secondly, If he did ask it, what was reply'd to it by Mr. *Blagrove*? Which likewise was waved by him without any positive Answer. Whereupon I said to the Commissioners, I hope you will not take this Deposition as Evidence against me, without summoning Mr. *Blagrove* himself, who only can resolve the Truth of these Particulars.

2. In the second place, I shall refer you to my Answer to this Article; in which you may see, that I only related what I had heard another speak at a publick Meeting in *London*, the thing itself being much against my Judgment.

3. In the third place, I must tell you that I had three Witnesses ready to depose on Oath, That after my coming from *London* they heard me relate this, as spoken by Mr. *Erbery* in a publick Sermon at *Somerset-House*; which Testimony was according to my Answer to this Article, tho accounted impertinent by the Commissioners, and so rejected, without examining the Witnesses.

4. Farther to clear my Innocency in this particular, I desired them to hear what my Witnesses could say, as to the Tenour of my Ministry, touching Christ's being a perfect Redeemer: But this was also rejected as impertinent. But whether this subsequent Testimony, intended to have been given in, was not as weighty as the Accusers Deposition or Hearsay, let the Reader judge.

"We have heard the Doctor preach in *Bradfield Church* (about 1652, out of *Coloss. i. 14. In whom we have Redemption, &c.*) after this manner. These words he divided into three Particulars; 1. Into the Redeemer, in whom. 2. The Redeemed, We. 3. The Act itself, Redemption. As to the first Particular, he thus enlarged himself; Who can this Redeeming Person be, but Christ? *Acts iv. 12. Neither is there Salvation in any other, for there is no other Name given under Heaven, whereby we must be saved. 1 Cor. iii. 7. For other Foundation can no Man lay, than that is laid, which is Jesus Christ.* As to the second Particular, The Persons redeemed, he said they were the whole mystical Body of Christ. Thirdly, As to the third Particular, the Act itself, Redemption, he said it imply'd a Deliverance from a State of Bondage into a State of Liberty; which he opened at large in every Particular, setting forth the Riches of this Redemption to us by Christ.

"And we heard him further preach in *Bradfield Church*, about 1654, from these words out of *1 Tim. i. 15. That Jesus Christ came into the World to save Sinners, viz. That Jesus Christ was a perfect Saviour, in reference both to his Prophetical, Priestly, and Kingly Office, every one of which Heads he opened at large.*"

"Now let the Reader but impartially weigh the Accusers illegal Deposition, with the Particulars here recited on my behalf, and judge whether the Commissioners have not broken their own Law, the Law of Nature, and the Law of Scripture, in taking this Deposition of my Accusers into their Sentence of Ejection, in which they expressly condemn me for holding, *That Christ was not perfect.*"

Artic. 3. *That the Blood of Christ was not meritorious of any Man's Salvation.*

To this Mr. *Christopher Fowler*, sworn and examined, deposeth, That about three Weeks or a Month since he asked Mr. *Daniel Blagrove* the younger, whether he did not hear the Doctor say, That the Blood of Christ was not meritorious of any Man's Salvation? he answered, He heard him to that purpose.

To ballance this Deposition, let the Reader consider,

1. That the Accuser is here Deponent, which is against Law.

2. That the Deposition is but a Story or Hearsay, and no legal Testimony.

3. That the Deponent was not able to answer to any of my Interrogatories, so as to declare where, before whom, or on what occasion this was spoken; only protested as he was a Minister of the Gospel, that Mr. *Blagrove* told him so.

4. That I am not guilty of holding any such thing, as my Answer to this Article shews.

5. That seeing I had no other way of clearing my Innocency, but by shewing my Judgment, and producing Proofs of the Tenour of my Ministry touching this particular; I desired them to examine some Witnesses, that were there ready to attest this which follows.

"We heard the Doctor in *Bradfield Church* (about 1652, out of *Coloss. i. 4. viz. In whom we have Redemption through his Blood*) deliver himself thus: That the fourth particular in this Text, was the Means of this Redemption, expressed in the last words, *Through his Blood*, to be understood *per modum meriti*, through his meritorious Blood. *1 Cor. vi. 20. Ye are bought with a Price*, that is, the Price of Blood. *1 Pet. i. 18, 19. Forasmuch as ye know that ye were not redeemed with corruptible things, as with Silver and Gold, from your vain Conversations, but with the precious Blood of Christ. Acts xx. 28. Which he hath purchased with his own Blood.*

"We also heard the Doctor in *Bradfield Church*, (about 1654, out of these words, *Isa. xxv. 6. In this Mountain will the Lord of Hosts make a Feast of fat things, &c.*) speak thus; That one Dish amongst the Dainties of this Feast, was the Blood of Christ; which he opened, to be cleansing purging Blood: *1 John i. 7. Having cleansed us from all our Sins through his Blood.* And reconciling Blood, *Coloss. i. 20. Reconciled through his Blood.* And pardoning Blood, *Coloss. i. 14. Through his Blood, even the Forgiveness of our Sin.*

"And we have oft heard him in his Ministry thus set forth the Efficacy of the Blood of Christ."

"But you must know that this Testimony would not be received, for they judged it invalid, tho they received the Accusers Hearsay as Evidence against me. Now whether this Dealing was not more suitable to corrupted Ethnicks, than to such Professors of Religion, let knowing Persons judge."

Art. 4. *Pish! It is a poor thing to live upon the Blood of Christ.*

Depos. *Susannah Grip*, Wife of *John Grip* of *Reading*, Joyner, sworn, deposeth, This Deponent told Dr. *Pordage*, That it was a high thing to live upon the Blood of Christ. To which he

he replied; To live upon the Blood of Christ, that is a poor thing: and repeated the same again, and said, Thou art a Babe, thou knowest nothing; to live upon the Blood of Christ, that is a poor thing. Whereupon the Deponent's Heart fell almost dead with Fear at his Words. And being asked by the Doctor, whether the same were delivered in the same very words? she answered, Yes, in the very same words. Being asked where? she replied, In the Kitchen: Being further asked when? she saith, Four Years since, to the best of her Remembrance; but who was then present, she doth not remember. And being asked by the Doctor, upon what Occasion the same was spoken? she saith, The Doctor was speaking something in a rambling manner, which she did not understand; but she said, she thought would speak something to him, that he should understand and rejoyce with her for it: and that was the Occasion of the Discourse; and that the Doctor's words were without any Explanation. This Deponent being ready to faint, said, What then, Doctor? He answered, I know not what the matter is, that I must speak to you; I do not use to discover my self: but he told her something of the Man that died at *Jerusalem*, which she did not remember, being then so amazed.

The Doctor's Answer to the eighth Article being read unto her, she saith, that all the Circumstances mentioned in the said Answer, are all of them false and untrue.

Now as to this Deposition, what is further to be added, to give the Reader more Light to judge of both the Article and Deposition, is this:

NOT to speak any thing of the Levity and Rashness of this Woman, which is well known to the Inhabitants of *Reading*, and may make her Testimony the less to be valued; she in her rash Denial of the Circumstances of my Answer, confidently spake a known Untruth upon her Oath, and so made herself guilty of open Perjury.

Whereupon, when I came to make my Defence, to invalidate her Testimony, I presented four Witnesses, who were ready upon Oath to prove her perjured.

The first of these was one Mr. *Richard Stockwell*, esteemed by all moderate Persons that know him to be a sober and pious Christian. Although he was excepted against by Mr. *Fowler* the Accuser, as an *Erberist*, as this subsequent Deposition sheweth.

Mr. *Fowler* being sworn, as to his knowledge of Mr. *Stockwell*, deposeth, That he conceives the said *Stockwell* is an *Erberist*; because that when the Deponent (being charged to be a Slanderer of him) did offer to make a publick Recantation, and to confess himself to be a Slanderer, in case the said Mr. *Stockwell* would deny the Doctrine and Opinion of Mr. *Erbery*, which he refused.

Notwithstanding which, the Commissioners would examine him, if the Doctor would ask him any material Question; but do not think fit to examine him to their due or undue taking of Mr. *Grip*'s Examination, which the Doctor insisteth on.

Now let the Reader judge whether the Question was not material, which this Witness

would have answered to by Oath, viz. Whether Mrs. *Grip* did not aver on Oath in open Court, That she never railed against Mr. *Fowler*? To this one Mr. *Tench* was ready also to be sworn in the Affirmative: there were also many others which heard it. And further, I had two more substantial Witnesses, who offered to swear they had heard Mrs. *Grip* rail against Mr. *Fowler* in publick Meetings before many Witnesses. Mrs. *Eleanor Burleigh* was willing to depose, That she heard Mrs. *Grip* say, That Mr. *Fowler* was a Son of *Belial*, &c. and one Mrs. *Kent* would have attested, that she heard her rail against Mr. *Fowler* in the same and the like Speeches, with much more. Now because the Clerk had not taken that Expression of hers, That she never railed against him, therefore the Commissioners made it their Pretence, of not examining the Witnesses to it, as a thing impertinent; though by the Attestation of thar, with the Testimony of the other two Witnesses, she had been proved directly perjured. But Mr. *Fowler* the Accuser, being a great Friend of the Woman's, and seeing she was in danger to be proved perjured, and so an insufficient Witness in all her Testimonies, prevailed with the Court against the importunate, rational and legal Pleas of my Counsel, to reject these fore-mentioned Witnesses. The Unjustness, palpable Partiality and Illegality of which Action I leave to be weighed in the Balance of Equity by the impartial Reader, who in Justice may esteem this Woman as really perjured, as though the Witnesses had proved it, and value her Testimony accordingly. And truly, some of the godly Party at *Reading* hearing with what Impudence and Rashness she affirmed on Oath she never railed against Mr. *Fowler*, confessed they could not but wonder at her, being it was so commonly known.

But, to conclude, let the Reader take notice, First, That this Article may be either true or false, according to the applying of it to particular Persons. Secondly, That though it were taken in the worst Sense, yet it were not within the Act of Scandal. Thirdly, That there was only one Witness to it, to whose Testimony what Credit is to be given, let the foregoing Particulars declare. Fourthly, That I had Witnesses ready to depose, That in the Tenour of my Ministry, I had often held forth Christ's Blood to be of a cleansing, redeeming and justifying Nature. Fifthly, That in my Answer to it, I have given the true Ground and Occasion of it.

Art. 5. *Pish! there was no such thing as Persons in Trinity.*

Depos. The former *Susannah Grip* saith, That the Doctor came into her Kitchen at another time, as she thinks, from the Committee, and said, That whereas Ministers spake of Persons in Trinity, there is no such thing; *There are three that bear record in Heaven*: but there is no such thing as Persons in Trinity——Note, *In that Scripture, 1 John v. 7.* should be added; and that in reference only to the Terms.

Now my Interrogatories to her upon this Article, were these: 1st, When I spake these Words? She saith, When I came from the Committee, which was two or three Years since, or thereabouts. 2dly, Before whom? She answereth, Whether her Maid, or any body else, or who was present, she doth not remember. 3dly, Being

Being further asked, Whether this Expression was delivered without any further Limitation or Explanation? She replies, Without any, as she remembers.

Now what I have more to add, to clear the Truth in reference to this Deposition, is this.

First, I refer the Reader to my Answer to this Article, in which you may see that I made a Relation to this Woman of what had passed before the Committee, where some Questions were proposed to me concerning the holy Trinity. Secondly, I had a Witness present to testify on Oath, That what I said before the Committee, was only this, That there was no such word as Persons in Trinity in that Text, 1 John v. 7. a Relation of which I made to this Woman, who, as it seems, mistaking my Meaning, comes now four Years after to accuse me; though at the very time she seemed to assent to what I spake, and made no Exception against it; nor so much as asked me to explain my self for her Satisfaction, though she had a very convenient Opportunity. Thirdly, She is but a single Witness, and her Testimony not positive, she adding, As she remembers. Fourthly, I desired the Commissioners to hear what my avowed Judgment was, from the Testimony of some Witnesses who were ready to depose what I had held forth in my publick Ministry, touching the Persons in the holy Trinity. But the Commissioners refused to examine the Witnesses, whose Evidence was this:

'We heard the Doctor in *Bradfield Church* (about 1653, from these words, *John i. 14. The Word was made Flesh*) deliver himself thus: For the understanding of the Person that was made Flesh, you must consider the unutterable Mystery of the holy Trinity; the Unity distinguishing it self into three Persons, the Father, Son, and Holy Ghost: *Mat. xxviii. 14. Baptizing them in the Name of the Father, Son, and Holy Ghost.* 1 John v. 7. *There are three that bear record in Heaven, the Father, the Word, and the Holy Ghost.* Now which of these three Persons are made Flesh? 'Tis not the first Person, the Father, nor the third Person, the Holy Ghost; but it is to be understood of the Son, the second Person in the Trinity.

'We have also heard him out of these Texts, *Ezek. ix. 4, 5, 6. Psalm cx. 1. Matth. xxviii. 19.* 1 John v. 7. deliver in *Bradfield Church*, the Distinctions of the Persons in the Trinity; as that the Father is not the Son, nor the Son the Holy Ghost, and the Holy Ghost neither the Father nor the Son, but each distinct.'

So much for this Article.

Art. 6. *That it was a Weakness to be troubled for Sin.*

Depos. Mr. Benjamin Woodbridge, Minister of *Newbury*, sworn and examined, deposeth, That Mr. William Twiss of *Dorchester* told the Depo- nent, That Dr. Pordage maintained it to him, or spake in his Company, That he was no Christian that could not commit the greatest Sin, and not be troubled for the same; or Words to that effect, to his best Remembrance.

To this I replied before the Court:

I knew not the said Mr. Twiss, and to my knowledge I never saw his Face. Being then engaged in the business of examining my Witnesses,

I said not much to the Vindication of my self, as to this horrid Imputation; the Testimony being but a mere Hear-say, and the Deponent rendering it more invalid by these Expressions, viz. *or Words to that effect*, and, *to his best Remembrance.*

But I desire the Reader here to take notice of the Weakness or Envy of Mr. Woodbridge, that he should thus with a Hear-say only, which he himself did not exactly remember, thus endeavour to asperse me, and render me odious, when he saw there were so many horrid things laid to my charge before: but I believe he will one day be touched in his Conscience for dealing thus with me; for the Lord knows I am innocent as to the acting or holding of what he saith.

'I therefore (for the Satisfaction of the Reader) solemnly protest in the presence of Almighty God, that I never held any such Opinion; for it is diametrically opposite to my Principles: neither did I ever utter any such Expressions as my Judgment; and am confident, were that Mr. Twiss brought to my Face, he durst not aver any such thing.'

To the seventh Article, nothing is deposed, being contrived and reported abroad by the Accuser, to draw an *Odium* upon me, as you may see in my Answer to it.

Art. 8. *That he asserted he knew nothing to the contrary, but that a Man might company with more than one Woman, &c.*

Depos. *Susannah Grip* saith, she told the Doctor, That she heard it was reported of him, he should keep unlawful Company with a Woman in *London*, and asked him, if it were true? To which the Doctor asked her, Who said so? The Deponent replied, She would not tell him. Whereupon the Doctor smiled, and was not troubled, but denied it, saying, No: but he made her a further Answer, That he did not disallow of any such thing, as she understood him. But what his express words were, she cannot now remember.

Note, This last Clause makes all invalid, and shews her Rashness in swearing, that I did not disallow of any such thing; being she hath forgotten my words, by which only she can judge of my Sense.

And the Answer of the Doctor to this Particular being read to her, she thus replied: She doth not remember the Doctor uttered any such Passages as are therein mentioned; to wit, That he should say, I am a Man born to all manner of Sufferings.

It was further read to her, That the Depo- nent knew his Life and Conversation: This she could remember; and doth confess, she did then reply, she did not believe any such thing of him.

Being further asked by the Doctor, Whether this was expressed as his own Judgment, or the Judgment of some other? She thus replied; As far as she conceived, the Doctor did speak that Passage of allowing that a Man may have more than one Woman, as his own Judgment, not as another Man's.

Note, She did conceive amiss; for if ever I spake it, it was in reference to the Ranters, who then were much talked of: for such carnal Principles are very much against my Judgment, and questionless against the Truth.

Being

Being further asked, Where it was spoken? she saith, In the Deponent's own Court: Being asked before whom? she answers, No body else was then present. Being asked when? she saith, it was about three or four Years since.

But let the Reader here take notice,

1. That this Article is not within the Limits of the Act. 2. That her Testimony is not legal, in that it is single and not positive, she confessing that she had forgot the express Words. 3. That this is against my avowed Judgment; to prove which, besides my own Assertions, I had present three Witnesses, who were ready to depose, That I had often affirmed in Conference, That although this Principle was owned by the Ranters, yet it was much against my Judgment, as you may further see in my Answer.

Artic. 9. *That he hath very frequent and familiar Converse with Angels.*

Depos. Mr. Christopher Fowler of Reading, sworn and examined, depose, That about three Weeks or a Month since, he asked Mr. Daniel Blagrove the younger, whether he could not speak to the Doctor's Converse with Angels? He answered (as far as the Deponent remembers) he could speak much.

Mr. Fowler sworn again, and further examined, November 23, at the Bear in Reading, before the Commissioners, depose, That about Michaelmas last, the Deponent speaking with Mr. Daniel Blagrove the elder, concerning the Visions of Angels that were at his House, in reference to Mrs. Pindar; the Deponent told him, he the said Mr. Blagrove was able to say much to the purpose, it being in his House: and desired him thereupon to speak his knowledge of the Truth, both in point of Conscience and Reputation, being censured for supporting such a Man as Dr. Pordage.

The said Mr. Blagrove answered, Why, the Doctor doth converse with Angels; and I believe when he comes before the Commissioners, he will not deny but he doth converse with Angels.

The Deponent thus replied to Mr. Blagrove, If the Doctor will confess them Angels, we will prove them Devils.

Note, How full of Pride and Rashness was this Speech of Mr. Fowler's, and how unsuitable to the Scriptures, and the Law of Charity? For there are two sorts of Angels and Spirits, good and evil, light and dark, holy and wicked, which are continually tending upon Men in this World: the evil to tempt and draw Men into the same Condemnation with themselves: the good, to guard and preserve them from the evil Influences and malicious Designs of the other. But doth not the Accuser seem to forget, that the Ministration of the holy Angels still abides; who are *ministering Spirits sent forth to minister for those who shall inherit Salvation*? Heb. i. 14. And the Psalmist says, *The Angel of the Lord pitcheth his Tent round about those that fear him.* How then dare Mr. Fowler affirm, that if I confess I have Communion with Angels, they will prove them Devils? How dare he thus limit the Holy One of Israel, and shut up his Favours within the narrow Limits of his own Conceptions and Enjoyments? And why may not God, for the Support and Comfort of some precious Saints, who in Humility, Self-denial

and Abstractedness of Spirit, serve him Day and Night; I say, why may he not afford such a sweet and heavenly Converse with the holy Angels? What Scripture is there that speaks against it? Is it not suitable to what he afforded the Patriarchs, Prophets and Apostles, and the Primitive Christians? But if my Accuser lives so much in his Senses, as to have no Sense or Knowledge of it, yet why should he thus rashly condemn others?

But the Accuser proceeds in his Depositions: And further, this Deponent saith, That he hath credibly heard something tending to this purpose, That Doctor Pordage hath seen the Vision of the said Mr. Blagrove, somewhat a bright Vision.

But here I put in a Question, which was this: Mr. Chairman, I do confess in my Answer, Communion and Converse with Angels; but pray ask Mr. Fowler, What Converse with Angels Mr. Blagrove understood, visible or invisible?

To this the Deponent further saith,

That the entrance of this Discourse with Mr. Blagrove, was in reference to Visions that were seen with a bodily Eye; and mentioned the Visions of Mrs. Pindar, that were by her reported to be such. Upon this, he understood Mr. Blagrove, that the Purport of his Answer was a visible Converse with Angels.

And the Deponent further saith, That he delivered a Summons for Mr. Blagrove to attest these things in person, to Mr. Cook, one of the Commissioners, who sent the Deponent word by Letter, that he had shewed the same to Mr. Blagrove, who hath notwithstanding refused to appear.

And further, he spake thus in open Court against Mr. Blagrove, though the Clerk did not take it, viz. I do verily believe, such a Judge as he was in this Case before, such a Witness he would have been, were he now present: But I say, it was the Plague of this County to have such a cursed Committee.

Note, Mr. Fowler here asked me some Questions to ensnare me, as, Whether I had not seen the Vision of Mr. Daniel Blagrove? To which I answered, To this profound Question I will answer when I see it attested upon Oath. And further asking me concerning Converse with Angels; the Clerk took this Answer:

The Doctor doth confess that he hath daily Converse with Angels: But he desires Mr. Fowler to declare what Converse with Angels Mr. Blagrove did inform that the said Doctor had.

The Doctor doth further say, That he heard it credibly reported, that he hath every Day two Angels dressing of him: To which he added, That they that reported it to him, said they had it from the Mouths of two godly Ministers, that would not lye, viz. Mr. Fowler and Mr. Ford.

Note, I brought in this Story to shew the Vanity and Invalidity of such Proofs as the Accuser had before produced, as that he had credibly heard somewhat to that purpose, That I had seen the Vision of Mr. Blagrove. And, for all the Accuser knows, that which he heard so credibly reported might be as great an Untruth as that which I heard reported of my self, as coming from him and his Brother Ford, whose Function seems very unsuitable to that of Lying and Slandering.

Afterward Mr. *Fowler* asked me again, Whether I had seen the Vision of Mr. *Daniel Blagrove*? I answered, As long as it is attested only upon Report, I would not answer to it.

Art. 10, 11, 12, 13. Concerning the Apparitions of Spirits, and of a great Dragon.

Here I must entreat the Reader seriously to weigh the following Depositions, from which my Enemies have charged me to be a *Conjuror* and a *Sorcerer*; that so it may be seen whether they have any better ground thus to esteem me, than they have to esteem *Job*, who was terrified through Visions; and *Christ*, who was tempted by Voice and Vision in the Wilderness; and *John*, who in Visions saw a great red Dragon, and terrible Locusts go forth of the bottomless Pit, and three unclean Frogs, the Spirits of Devils, going forth to deceive the World; I say, than they have to esteem these *Conjurors* and *Negromancers* for such Sights.

But now to the Depositions:

Depos. Susanna Grip, Wife of *John Grip*, of *Reading*, sworn and examined, deposeth, That the Doctor told her that a great many Spirits hovered about his Window, and kept a Noise; but the Doctor said, He told the Company there should come in but one at a time; and that a Dragon did come in with a long Tail, and great Eyes and Fangs, and did spit Fire at him.

And this Witness further saith, That his Angel stood by him in his own Shape, in the same Clothes, Band, and Cuffs, and did protect him.

Note, Where this Woman speaks Truth, I shall not contradict her: But where she mistakes, I must inform the Reader of the Truth, and shew that she rashly swears Untruths. This then I told her, That I had an Angel of God that stood by me, assisted me, comforted me, and protected me, when that dreadful Apparition was before me; and that the Dragon was then overcome.

And I further told her, That the Angel or Spirit of one *Everard* appeared in his own Shape, Clothes, Band, and Cuffs, &c. Which compared with Mrs. *Grip*'s Deposition, shews her Mistake. This *Everard* I suspected to be a Conjuror, and to be instrumental in the raising of those Apparitions; though I was not so sure of it as to prosecute him, or to swear he caused them: for the Devil may take up any one's Shape by God's Permission, as it is generally thought he did *Samuel's*.

Further this Deponent saith, that the Doctor likewise told her, that Mrs. *Pordage* and Mrs. *Flavel* had their Angels standing by them; and that he overcame the Dragon; and that he said the Children saw the Spirits, and said, Look there, Father! being not afraid, after they had fasted and prayed. And that the Doctor further said, That the Spirits did afterward come into their Chambers, and drew the Curtains, and looked on them; but they would not take notice of them: And that the Spirits did come about three Days after he had fasted and prayed, and flashed open the Curtains, and looked upon them.

Note, For three Weeks or a Month there were very many, and very strange Apparitions; but the Curtains were never drawn but once, and that was by a Spirit in the Shape of *Everard*. For some other Particulars of this De-

position, I do not remember whether I spake them or not.

Depos. The Doctor being asked by Mr. *Fowler*, What he saith concerning the Apparition of the Dragon? the Doctor doth confess before the Commissioners, That he hath seen very many dreadful Apparitions of Devils at his House; and that some of his Family did see them; and that a Dragon did come into his House with a long Tail, and great Teeth: but that he said his Angel did protect him, he denies. But he further saith, That about four Years since he had Apparitions both of good and bad Angels, for three Weeks together, at his own House: But from that time to this, they have ceased in that manner.

Being further asked by Mr. *Fowler*, the Doctor doth deny that ever any Angel appeared in his Clothes, Band, and Cuffs; and further saith, That his Angel never did appear to him in any visible Shape.

And being asked, Whether he ever saw Mrs. *Pordage's* and Mrs. *Flavel's* Angels standing by them? he answereth, He never saw them standing by them; but it doth not therefore follow that they might not stand by them: And though he can, yet he will not answer to any Questions, but such as concern himself immediately.

And being further asked by Mr. *Fowler*, Whether he did not relate to Mrs. *Grip* that Mrs. *Flavel* and Mrs. *Pordage* had their Angels standing by them? he answereth, He can neither affirm nor deny it; for he doth not remember whether he did, or no.

And being further asked by Mr. *Fowler*, Whether he did not relate to the said Mrs. *Grip* that his Children saw the Spirits come into his House, and cried, Look there, Father! and that the Spirits did often come into his Chamber, and drew the Curtains when they were in Bed?

To the first Part of the Question he answereth, He cannot affirm or deny it; for in truth he doth not remember whether he did, or no. To the second Part of the Question he saith, He doth deny it positively; and he will prove the Deposition to be Perjury.

And the Doctor being further asked whether or no he knows that the Children did see the Spirits come up and down the House, or no; and whether they thereupon did say, Look there, Father!

To the first part of this Question, he saith, He cannot know what the Eyes of Children do see; and otherwise he will not answer. And to the other part of the Question, he answers, He cannot remember whether the Children did say so, or no; and therefore will neither affirm nor deny it.

2d Witness. *Susanna Grip*, Daughter of the foresaid *John Grip*, aged 21 Years, sworn and examined, deposeth;

That about three or four Years since, in her Mother's Kitchen she heard Dr. *Pordage* say, That a Dragon came into his Chamber, and that he expostulated and contended with it; and that he said the Dragon did spit Fire at him; and that his Angel did appear to him in the Shape of a Man, with his Band, and his Clothes, and Bandstrings, and did support him while he contended with the Dragon. The Deponent further saith, That she heard the Doctor say that the Spirits did

did come into his Chamber, and drew the Curtains, and looked upon him; and that the Doctor likewise said they were affrighted at it at first, but afterward, when they were used to it, they were not.

She saith she heard several other Things to this purpose, which she cannot now remember to depose.

And being asked by the Doctor, whether the Doctor said that the Angel that appeared with the Band and Band-strings, was the Doctor's own Angel, or the Angel of some other? she saith, To her best Remembrance, he said it was his own Angel.

3d Witness. Elizabeth Benwell, Servant to Mr. Ellis of Shinfield, and formerly Servant to the Doctor, sworn and examined, deposeth:

That she saw something like a Star in the Red Chamber in the Doctor's House by the Bed's Leg: It was light, and somewhat like a Star; but the Deponent cannot say it was a Star. Yet it was in the Night, and no other Light in the Room, to the best of her Remembrance.

She further saith, That she hath heard Musick at several times at the Doctor's House, when she did not know that any Instruments or Musicians were in the said House. She saith she hath heard it in the Kitchen, and in her Mistress's Closet; did apprehend the same to be near her, but saw none playing.

She further saith, That Mrs. Flavel did usually lie in the Doctor's Bed-chamber during the Time the Deponent was Servant there, which was about a Year and a quarter.

But immediately to this the Maid added, But I never lived in such a Family for Piety and Holiness, as that was; and I believe never shall again, except I return thither.

But this, by the Clerk's Knavery, was left out, although I stood by, and asked him why he did not write down those Words. To which he replied, If you will have me, I must. I said, I will have it. Yet he neglected it; and I believe by the Command of some of the Court, who were troubled at any thing that seemed to make for me: But what Unjustness this was, let the Reader judge.

' But from these preceding Apparitions of Spirits in my Family, in which we were merely passive, and by which we were excited the more to wait upon God in Prayer and Fasting, my Enemies have scandalized me for Conjururation and Sorcery, reporting so confidently that I am a Conjuror, that many, who are not acquainted with my Principles and Conversation, believe it so in earnest. But these horrid Scandals I take up as my Cross, and see my self in them conformable to Christ's Sufferings, who was reckoned amongst Conjurors and Transgressors by the Jewish Zealots.

' But the Lord hath given me Peace in my Conscience, whilst my Enemies have railed against me in their Pulpits, as Mr. Ford in his Sermon at the Affizes held at Reading, Feb. 28, 1653. In which, Page 22, he saith, That there is one of the most eminent Church-Livings in the County possessed by a Blasphemer, and in whose House the Devil is as visibly familiar, as any of the Family; and shall the Horns of these Beasts never be pared off by the Civil Magistrate?

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' Here you see he endeavours to brand me for a Conjuror, and calls me Blasphemer, exciting the Magistrate to persecute me. And this was he who was chosen by the Commissioners to make a Speech in the Court before they gave Sentence against me, who there by envious Prevarication shewed himself a second Tertullus, though no Orator.

Art. 14. That Mrs. Margaret Pindar acquainted with this Doctrine of Spirits, and pretending to be converted by Visions of Angels, doth think she was bewitched by them of Bradfield, &c.

Depos. Mr. Christopher Fowler, sworn to this Article, and examined, saith, That Mrs. Pindar, being asked by him, did acknowledge on Thursday last, at London, that at Mr. Blaggrave's House, at Southcot, she heard a great Noise of Drums and Trumpets; which Dr. Pordage (who was then sent for to her) told her was the Alarm to the Spiritual War. And that one Night she had the Vision of young Mr. Daniel Blaggrave come to her Bed-side, and she took him by the Hand, which Hand felt cold; which Dr. Pordage expounded to her thus: That the Coldness of his Hand signified that he began to be cold to Vanity. And that she asked the Doctor what the Visions meant; and he replied to her, We do not use to reveal one another's Visions.

The Deposition taken on my behalf was this that follows:

MRS. Elizabeth Blaggrave, Wife of Mr. Daniel Blaggrave, sworn and examined: This Deponent saith, She never heard Mrs. Pindar say that she was bewitched by them of Bradfield; but the said Mrs. Pindar told the Deponent that her Visions were from God; and that the said Mrs. Pindar told the Deponent she never spake with the Doctor in her Life.

This Deponent further saith, That Mrs. Pindar told her she had been at Mr. Fowler's House; and that Mr. Fowler examined her touching her Visions, and the Deponent asked her what she said: To which she replied, She was sure she had said nothing to him that could hurt the Doctor. Hereupon the Deponent asked her if she told Mr. Fowler that the Doctor did send these Visions? To which she answered, She could not say the Doctor sent them for a World.

This Deponent further saith, That Mr. Pindar told the Deponent that his Wife said, when she came to London, she would not say what she had said to Mr. Fowler, if it were to do again; for she perceived it was a Snare, or a Trap.

This Deponent further saith, She was by when the Question concerning the Coldness of young Mr. Blaggrave's Hand was put; and the Deponent asked it her self to one in the Room: And the Answer was, That the Coldness of his Hand, as far as they knew, signified his dying to Vanity; which was delivered in a jesting manner. Which Answer was not delivered by the Doctor. And the Deponent saith, The Doctor never gave such an Answer in his Life, as she knows.

Here follow the Depositions of John Grip of Reading, Joiner; who being sworn and examined, deposeth:

K k 2

That

That he was at Mr. *Blagrove's* when Mrs. *Pindar* saw the Visions that are mentioned in her Confession; and that she said she saw a Man in white, (as she thought) with the Lamb's Book; and that the said Man told her her Name was written in the Book; and that she heard a Watch going; and that there appeared another in the Likeness of a black Man, with a Knife, which he offered unto her.

And this Deponent further saith, That at another time, at the Deponent's House, the said Mrs. *Pindar* did inform the Deponent that Dr. *Pordage* had said he had power to bestow the Gifts and Graces of the Spirit on whom he pleased.

Note, That this disagreeeth from Mrs. *Pindar's* Confession, under the Head of the 14th Article, where she saith that she heard it reported at *Southcot*, That e'er long the Doctor should have power — to bestow saving Graces on whom he pleased.

And this Deponent further saith, That another time he was at Mr. *Blagrove's* House, when the said Mr. *Blagrove* was ill, and kept his Chamber; and Mr. *Blagrove* and the Deponent fell into Discourse concerning Dr. *Pordage* in presence of Mrs. *Blagrove*; that in the said Discourse Mr. *Blagrove* said to his Wife, That the Doctor held strange Opinions, such as were not agreeable to the Word of God: for he did maintain that Jesus Christ was not God; and that he was a Type, and but a Type; Man, and not God; a Shadow, and not the Substance. And Mr. *Blagrove* did labour very much to take off his Wife's Affections from the Doctor and his Ways; but could not prevail. This was about three quarters of a Year since, to the Deponent's best Remembrance.

In reference to these two last Particulars, touching Mr. *Blagrove* and his Wife, consider this following Deposition and Evidence.

MRS. *Blagrove*, sworn and examined, deposeth, That she never knew any thing of the Doctor's Judgment; neither did he ever bring the Deponent into any Judgment; and that she had never any Discourse with the Doctor, till she did first begin with him: and that if ever he had confirmed her in any thing, it was in nothing disagreeable to the Word of God.

As to that part of the former Depositions, which concerns Mr. *Blagrove's* Relation of what Opinions I held, I had a Summons for his personal Appearance to witness the Truth in that Particular: But he being detained in *London* by earnest Business, could not appear according to the Summons, and therefore wrote this following Letter to the Commissioners, which was exactly copied out by a Friend of mine, who had the Favour from Mr. *Blagrove* to read it.

Gentlemen,

UNDERstanding by this Bearer, Mr. *Samuel Pordage*, that one *John Grip* of *Reading*, upon his Examination against Dr. *Pordage*, did affirm upon Oath, That having Discourse with me lately touching the Doctor's Opinions, I should say that he denied that Christ was God; and that he held him to be a Man, and not God; a Type, and but a Type; a Shadow, and not

the Substance: The Things are highly blasphemous, if true. But this I assure you, if ever any such Language fell from me, (which truly I do not remember) it was spoken as relating to that Charge he lay under at that time, raised by some who seem to know Mens Meanings and Opinions better than I do. In short, this I do affirm, and shall readily attest upon Oath, when required, That the Doctor hath several times most solemnly avowed the contrary; and to me by Scripture, under his own Hand, evinced it: For the truth is, I have with much Boldness charged the Doctor with Things of that nature, having received them upon report. But upon Debate he hath given me such clear Satisfaction, both touching the Divinity of Christ, and other Matters of Faith of the highest Concernment, that I have stood silent, having nothing to object against him. I did therefore apprehend it a Duty incumbent upon me thus to write; for as I will never be instrumental to clear him in what he is guilty, so not to condemn him wherein I believe he is innocent.

Thus, desiring the just and all-knowing God to direct you in this great Work, I remain,

Gentlemen,

28 Novemb. 1654.
Westminster.

Your Friend and Servant,

Dan. Blagrove.

I desired that this Letter might have been read in the open Court: But they denied it, though I alledged that it was Evidence on my behalf. But whether this was not more considerable, and so more fit openly to be read, than Mr. *Grip's* Stories and Hearsays to be openly received as Evidence, let the Reader judge.

But Mr. *Grip* further on Oath deposeth, That at other times he hath often had Conference with Mr. *Blagrove*. And at one time, above the rest, walking over the Fields towards *Southcot*, we fell into Discourse concerning Dr. *Pordage*; and the said Mr. *Blagrove* did then tell him that the Doctor did go about to persuade him to leave off all Employment, and to sell his Estate, and retire to his House; for his House was the Ark, as *Noah's* Ark was, to receive all those that must be saved. This was some time the last Summer. And that Mr. *Blagrove* did seem very much to slight and scorn it, and asked the Deponent what he thought he should have got by it, had the Doctor prevailed. To which the Deponent replied, That he thought the Doctor had a grand Design in it: For Mr. *Blagrove* being taken notice of to be one of the wisest Men in the County, if the Doctor had prevailed to draw him away, he might likewise have drawn away most of the County; and then the Doctor would have set himself up like a *Mahomet*.

In opposition to this Story, Mrs. *Blagrove*, sworn and examined, deposeth, That she had heard a Muttering that Mr. *Grip* should say that the Doctor had persuaded Mr. *Blagrove* to leave all, and come and live with him. Whereupon the Deponent asked Mr. *Blagrove*, about five or six Weeks since, concerning it; and the said Mr. *Blagrove* answered to the Deponent, That he did not remember that the Doctor ever said any such thing.

This

This Deponent, *John Grip*, further saith, That *Mr. Daniel Blagrove*, the younger, told him, When the Spirit came upon the Doctor, he could leap over Pales of a great height, about five Foot and an half high, as the Deponent could conceive by his Relation; and that this was told him within five Months last past.

This Deponent further saith, That *Mr. Charles Blagrove* told him some time the last Summer, that *Dr. Pordage* should say that Christ was not perfect; and that he quoted that Place of Scripture, mentioning our Saviour's Passion, when he cried out, *My God, my God, &c.* to prove the same.

Art. 28, 29. *Concerning Mrs. Mary Pocock's Relation to Mrs. Forster, of what was acted in my House; and of Mrs. Flavel's being in a Trance, and seeing what was the Philosopher's Stone.*

The Depositions of Mrs. Mary Pocock, taken at the Bear in Speenhamland, November 30, before the Commissioners, for the Proof of the two former Articles.

M*RS. Pocock*, sworn and examined, deposeth: The Question being asked, Whether the Deponent did not tell *Mrs. Forster* and *Mrs. Evelyn*, That the Doctor had contended with the dark Power in his Shirt two or three Hours? she answereth, It is so long since that she cannot remember any thing positive she then said: But she saith there was some great Power then amongst the Doctor's Family.

And being asked, Whether she did not say to the aforesaid Parties, that when the Doctor contended with the dark Power, there was such an Expostulation between them, as, *Thou lye'st; and thou lye'st, &c.* she answereth, She cannot tell.

And being further asked, Whether upon this Conquest of the dark Power by the Doctor, she did not tell the aforesaid Parties she should think the Doctor to be a bright Man? To this Question she answereth, If she did not say so, she hopes she shall, when he hath the Victory.

And being asked, Whether she did not tell the aforesaid Parties, the Doctor's Family were strangely acted, some in their Legs, Thighs, and Arms? To this she answereth, She cannot tell.

And being further asked, Whether she did not tell the said Parties, that *Mrs. Flavel* did see in a Trance the Philosopher's Stone? she saith, She cannot tell.

And being further asked, Whether the Philosopher's Stone, seen by *Mrs. Flavel* in a Trance, were not the Divinity in the Humanity? she answereth, She knows no such Thing.

Art. 30. *This consists of seven Particulars, being the first that relates to Scandal in my Conversation.*

Depos. Roger Laughton of *Heston* in the County of *Middlesex*, Locksmith, sworn and examined, deposeth;

That about nine Years since, or upwards, *Dr. Pordage* brought to the Deponent's House *Mrs. Flavel* behind him, under the Name of *Mrs. Fruin*; and that both the Doctor and the said *Mrs. Flavel* did ask for Entertainment for her; and

that they did ask what they should give for her Board, and her Son *Stephen's*: and that they did bargain for Eight Shillings a Week, and then he carried her away; and she came not till after *Christmas*. But he saith, How she then came, whether in a Cart, with her Trunk and Cloaths, or otherwise, he knoweth not; but the Doctor did not then come with her. And after she had been there a while, the Deponent's Wife conceived she was with Child; which she denied, saying it was a Tympany. And that she remained there till betwixt *Easter* and *Whitsuntide*, where and when she was brought to bed of a Daughter; and she did not desire any Store of Company to come to her Labour, though the Deponent's Wife did desire it. And after she had been a short time delivered, the Doctor came and baptized the Child in the Deponent's Chamber, and named it *Hannah*. And after that the Doctor called the Deponent aside into his Orchard, and prayed him to find out a private Place, two or three Miles from the Deponent's House, where the said *Mrs. Flavel* might come now and then to see her Child. The Deponent said it would be inconvenient, because it was a Time of Soldiers, and the Corn was high; and thereupon the Deponent did not look out as he desired. And he further saith, When the Nurse did bring the Child oft-times to see the said *Mrs. Flavel*, she would not permit her Son *Stephen* to call her Sister, saying, *Stephen*, it is Nurse's Child. Afterwards the said *Mrs. Flavel* departed from the Deponent's House to *Kensington*, where she remained about a Month. And that the Deponent having occasion to go to *London*, called at *Kensington* by the way, to speak with her; but she was gone: Whereupon the Deponent said her Child was not well. Then two Gentlemen of the House told the Deponent, that she denied unto them that she had any other Child but her Son *Stephen*. And the Deponent further saith, That the Doctor came to the Deponent's House three or four times, in Term-time only: And that both the Doctor and the said *Mrs. Flavel* did inform the Deponent that she was married to one *Mr. Fruin*, a Minister; but was now a Widow, as both of them said when they came to the Deponent's House.

For the clearing of Truth, in reference to this Deposition, I shall here annex the Confession of the same Person, as subscribed by him, and owned before two sufficient Witnesses; which is as follows.

THAT about nine Years ago *Dr. Pordage* brought a Gentlewoman, by Name *Mrs. Fruin*, behind him from *London*, as he said, to one *Roger Laughton's* House, a Smith in *Heston* Parish: That the said *Mrs. Fruin* agreed with him herself for her Boarding.

That she told his Wife, at her first coming, she knew not certainly whether she were with Child, or not; but thought she was.

That her first Husband's Name was *Mr. Flavel*; and that she had had a second Husband, by Name *Mr. Fruin*, who also was then dead.

That the Cause of her private living there was, in that her Brother-in-Law threaten'd he would have her Body, if it were above Ground, she being then in Law with him.

That

That at the same time the Doctor owned that he dwelt at *Reading*; and that he was Minister of *St. Lawrence Church*; and that he knew the Gentlewoman to be sober and godly.

That she told him, for his Security, he might enquire at the *Bulwark* by the *Tower of London*; where he might know that she had there an Estate in Houses.

That after she had been in the said *Roger Laughton's* House about four Months, she was brought to-bed of a Girl, which was christened by the said Doctor, and named *Hannah*. That the Time of her Continuance with him was about three quarters of a Year; in which Time the said Doctor visited her some three times, or four at the most, and that in Term-time, when he went to *London*.

That by Enquiry he came to know she was in great Troubles at Law.

That the said Doctor never agreed with him, nor paid him for her Board, nor removed her, so far as he knows, to *Kensington* from his House.

R. L.

This was delivered into the Court after *Laughton* had finished his Deposition: But they would not suffer it to be enrolled among the Depositions, it in some Particulars crossing *Laughton's* present Testimony, and in others, tending to clear the Truth, in reference to the Occasion of *Mrs. Flavel's* being there. But the Accuser asking him whether he would not stand to his present Deposition? he said, Yea. Whereupon the Clerk returning me the Paper again, wrote this at the bottom of it, *Mr. Laughton acknowledgeth the two Letters R. L. to be his Writing; but will stick to what he hath now deposed.*

There was not a Word altered after he had subscribed the Paper, as two Witnesses then present could attest by Oath. Now the Particulars in which he crosseth himself, cannot be all true. And if a Man will solemnly own and subscribe an Untruth, he may after swear an Untruth: But the Confession he wrote last is much to be regarded, being he owned and subscribed it before the other, being then in a calm, sober Posture; but the other he deposed after my Adversaries had been a whole Day tampering with him at the *Bear* in *Reading*, and possessing him with Prejudice against me; which he openly shewed in the Court by bitter Expressions, and by those Circumstances in the former Deposition, which tend to blast the Gentlewoman's good Name and Reputation.

But for further Satisfaction, I. I refer you to my Answer; in which I have largely shewed the Reasons of her private Retirement, there, which may in Justice clear me from that undeserved Aspersions my Enemies have cast upon me.

2. Consider that this, as to me, is no legal Proof of any Crime, but a mere circumstantial Thing, brought to raise Suspicions and Prejudices against me, being but of the nature of a Libel, and so unfit to have been received into a judicial Court: for whose Name and Reputation may not be blasted, if such libellous illegal Things, so long past, should be received into Courts of Judicature as Accusations to condemn them?

3. Tho that Crime, which my Accuser would render me suspected for by this circumstantial Deposition, had been ever so clearly proved, yet the Date of it (being nine or ten Years since) had put it quite out of the Cognizance of the Commissioners, not only by the Act of general Pardon, but also by another Law, made particularly by the Parliament in reference to things of this nature, which takes away all legal Guilt from any Persons that are not accused within a Year after the Commission of any such Crime; besides, the Act to which the Commissioners are confined, as their Rule to judge of Scandal, was made many Years since. Therefore, I say, they neither had nor have Power to take a Business so long past, tho otherwise ever so criminal, into their Cognizance.

But notwithstanding these Things, the Commissioners sent a Summons for *Mrs. Flavel*, tho they had no positive Charge against her; and after her Appearance, would have forced an Oath upon her, and examined her to Questions concerning her self. But she, as in Justice she might, refused to answer them, alledging, That if any one durst lay any positive Crime to her Charge, she would answer by the Mouth of her Lawyer. Whereupon the Commissioners threaten'd to send her immediately to Prison, tho they durst positively accuse her of nothing.

Art. 33. That he is a very ignorant and insufficient Man for the Work of the Ministry.

George Hastlet, of *Bradfield*, Weaver, sworn and examined, deposeth, That he heard *Dr. Pordage* in a Sermon, in the Church of *Bradfield*, about two Years since deliver, That it was a vain Thing to trust in the Blood of him that died at *Jerusalem* 1600 Years since, or more, unless it were acted in me, or in thee; for that was but in the Type, the Substance must be fulfilled in us: And that Christ must be crucified in us, we must have the *Jews* and *Pilate* to put him to death in us; otherwise it was a vain Thing to believe in him that died at *Jerusalem* 1600 Years since without us.

Note, As I own and embrace the Historical Birth, Life, Death, and Resurrection of Christ without us, with the blessed Effects of them, clearly held forth in the Gospel; so do I also believe the Mystical Birth, Death, and Resurrection of Christ in us, according to the Scriptures, *Matt. xii. 50. Gal. iii. 1. Ephes. ii. 5.*

And to say that both these are necessary to be known, at least experimentally enjoyed by all that will be saved; and that it is vain to depend upon the first, without some Sense and Feeling of the last, as it is to depend upon a notional Justification, without a real Sanctification: I say, to aver this, is not against, nay, altogether according to the Holy Scriptures; For we know that Christ Jesus is in us, except we be Reprobates: And if we have not his Spirit, we are none of his.

This Deponent further saith, That the said Doctor, about a Month since, in *Bradfield Church*, did deliver, That doubtless the Apostles by that Text (*Know you not that your Bodies are the Temple of the Holy Ghost?*) did not mean these earthly Bodies.

Note,

' *Note*, I never denied our elemental Bodies to
' be the mediate Temples of the Holy Ghost,
' but the immediate: For the immediate Temple
' of the Spirit is the Image of God in us, which
' is renewed in Righteousness and true Holiness,
' and may truly be called the Body of Righte-
' ousness and Life, in opposition to that Body of
' Sin and Death, *Rom. vii. 24.* which hath ma-
' ny Members, *Colos. iii. 5.* being the evil cor-
' rupt Inclinations and Habits of the Old Man.
' This inward Body, which is the immediate
' Temple of the Spirit, is called, *Rev. xvi. 15.*
' our Garments, which we are exhorted there
' to keep, lest we walk naked; and the Armour
' of Light, *Rom. xiii. 12.* which we are there
' commanded to put on, in opposition to the
' Works of Darkness, which we are to cast off.
' This may also be called our pure Flesh, in op-
' position to that sinful Flesh spoken of *Rom.*
' *vii. 18.* And as in the last there dwells no good
' Thing, so in the first nothing but Good, be-
' ing it is the immediate Tabernacle of the Ho-
' ly Ghost, *Joel ii. 28.* *I will pour out my Spirit*
' *upon all Flesh.*

And this Deponent further saith, The Doctor
did deliver, That by that Text (*Gen. xviii. 19. I*
know him, that he will command his Children and
his Household after him, &c.) was not meant the
outward Household of *Abraham*, but his inward
Household, his Will and Affections, which he
was Lord Paramount over; and he quoted that
Text in the last of *Joshua*, (*As for me and my*
House, we will serve the Lord) which he likewise
said was the inward House, and not the outward.
This was about two Years since, as far as this
Deponent can remember. And the Deponent
saith, He judged the same contrary to the Mind
of the Holy Ghost.

' *Note*, Had the Commissioners allowed me
' so much Time as to have brought in what E-
' vidence I could against this Man's Deposition,
' I should have proved, that in the Tenor of my
' Ministry I never denied or rejected the Histo-
' rical or Literal Sense of the Scriptures, for
' which there can be no just Ground; but that
' I have usually joined the literal and allegorical
' Interpretation together, even as *Paul* doth,
' *Gal. iv. 24, 25, 26.* which sweetly united, can-
' not but make an amiable Harmony. And the
' Deponent mistakes, in saying I excluded the
' History; for I had before opened it in the plain
' historical Sense, and afterwards came to open
' it mystically, in making a spiritually moral Use
' of those Scriptures, in applying them to the
' Work of God upon the inward Man.

' Let the Reader further know, That the Com-
' missioners could not in Justice take this as Evi-
' dence against me, because it was all brought
' the very Day of my Sentence, I having no
' Time allowed me to make my Defence by the
' Testimonies of some others that constantly hear
' me, who might have certified this Deponent's
' Mistakes, in misrepresenting both my Words
' and Meaning, by shewing I excluded not the
' literal Meaning of the Texts produced. 2. In
' regard I objected against him as a Drunkard,
' and so an insufficient Witness. 3. In that
' there was no concurrent Testimony. 4. In
' that he wrote not this down, and so could
' not exactly deliver so much Word for Word,
' as I spake it, especially so long after some
' part of it was delivered, and so by a lit-

' tle Mistake might prevaricate my Sense and
' Meaning.

This Deponent further saith, That Goodwife
Knap told him about a Month since, that she be-
ing at the Doctor's House, Mrs. *Flavel* was very
angry with her, and threatned to have her whipt,
for saying the Child *Hannah* was Mrs. *Flavel*'s
Child; and that she then denied she had any o-
ther Child except *Stephen* her Son. And that
when the said Goodwife *Knap* denied she had
said any such thing, and began to be outrageous,
both old and young Mrs. *Pordage* desired her to
be pacified, saying, Happily it might be another
Woman might speak so.

' *Note*, The Woman here mentioned hath un-
' der her Hand, before Witness, denied what the
' Deponent here relates of her; so that either
' the Deponent is perjured, or this Woman a-
' shamed to stand to so gross an Untruth, as the
' Deponent pretends she related to him. But the
' Sentence being given the Day in which this
' Deposition was taken, I had not time to bring
' this Woman face to face to the Deponent, so
' to see where the Guilt of Perjury, or a lying
' Slander lay. Tho as to the Strength of this
' Testimony, there was no such thing necessary,
' it being a mere Hear-say.'

Art. 34. *The Testimony of Richard Sawood,*
who was neither sworn nor examined in publick
Court.

I came into *Bradfield* Parsonage in the Even-
ing, *Septem. 9, 1650*, and there I heard a very
mournful Cry, as if it had been one in extreme
Pains; but who it was, I knew not, for it con-
tinued all the time I was at the Door, which was
well near a quarter of an Hour; and so it con-
tinued when I went away. And then on the
tenth Day in the Morning I came to Mr. *Francis*
Pordage, at the Parsonage of *Stanford-Dingley*,
and he inquired of me, what I did think of
the Noise that I heard? I told him, I could
not tell. Then he related to me, that the Lord
was about a great Work in this Kingdom, and
to this Nation. And the Cause of this Cry was
one in Travail, and the Pains were so extreme,
that had I staid there but a little longer, I
might have heard it as far as the Town; but
now she was delivered of a Man-Child, and the
Travail was at an end, and that he and others
were Witnesses of it.

Mr. *Pordage*, Minister of *Stanford-Dingley*,
sworn and examined to the former Deposi-
tion of *Richard Sawood*.

This Deponent being asked, Who it was that
was in Travail of the Child in the said Deposi-
tion mentioned, and what became of it? To
this Question he answereth, That it was one
Mrs. *Flavel*. And he further saith, That above
four Years since, Mrs. *Flavel* was very earnest
in Prayer, on a Day when they were Fasting;
which was at the time when one *Sawood* came
to the Door: the said *Sawood* knocking, the
Deponent went to the Door to him. And he
saith, he doth acknowledge that *Richard Sa-*
wood did come to him (about the time mention'd
in the Examination of the said *Sawood*) to the
Parsonage of *Stanford*; and he saith, it is pro-
bable he did ask the said *Sawood*, what he did
think of the Noise he heard in the Doctor's
House

House the Day before? And that when the said *Sawood* answered to this foregoing Question, He could not tell, it is very probable the Deponent did relate to him, that the Lord was doing a great Work in this Kingdom, and to this Nation; and doth confess, that unadvisedly he told the said *Sawood*, that the Cause of the foresaid Cry was one in Travail; but doth not remember he spake any such thing, as that the Pains were so extreme, as that, had he staid longer, he might have heard it as far as the Town: but doth confess, that he said she was in Travail of a Man-Child, and that he and many others were Eye-witnesses of it.

And being asked who it was that was in Travail? he answered, *Mrs. Flavel*. And being further asked, what became of this Man-Child? he answereth, It was the Birth, Death, and Resurrection of Christ in her Nature. And being asked, How the Birth, Death, and Resurrection of Christ, in the Nature of *Mrs. Flavel*, was so great a Work, that God was doing to this Nation? he answereth, He never said any such thing. And being further asked, Whether himself (being demanded what this Man-Child was) did not answer, The Child of Reformation? to this he answereth negatively.

He further saith, That this Travail of a Man-Child was not any natural Birth of a Child out of the Womb; but the Cry that was then made was nothing else but the Groanings and Intercessions of the Spirit in her Prayer.

Note, This last Part is the real Truth of the Business, which I could have proved by many Witnesses more, who were present in my House at the time, and whom I had ready before the Court, to attest upon Oath, that there was no natural Travail, nor any natural Birth, nor any such Child born; but only the Gentlewoman was then very earnest in Prayer. But this was thought superfluous, being that the Deponent *Mr. Pordage*, from the Mistake of whose Discourse this came to be made an Article against me, cleared the Business himself by Oath. But how my Name hath suffered from this groundless Business, is known very well, both to my Friends and Enemies; some of which, as the Accuser *Mr. Fowler* for one, in open Court, scoffed at me, threatening to prove great things against me from this Deposition of *Sawood's*.

To the 35th and 37th Articles;

Mr. John Tickle of *Abingdon*, sworn again, and further examined, deposeth, That a Summons being issued for the Appearance of *Susanna Day*, the Messenger went for her, and met with her on Tuesday Night last, being the fifth Instant, at the Deponent's House, and that she was willing to come, and could not in regard of her Distemper at present: but the said *Susanna* having reported to several People in *Abingdon*, and particularly to the Deponent's Wife, that she was at *Dr. Pordage's* House, and that the People there told her her Eyes were opened, and she said she saw at that time the *New Jerusalem* to come down from Heaven all of precious Stones, and so on, according as in the Article.

The said *Susanna* told the Deponent on the said Tuesday Night, That the last time she was at the Doctor's House, she saw the *New Jerusa-*

lem to come down from Heaven, a City four-square, with Borders and precious Stones. And being asked, whether it was not her Fancy only? she answered, she saw it really.

The Deponent saith, That he asked the said *Susanna*, whether she saw any Angels in the Doctor's House? To which she answered, No. But she said the Doctor's Daughter did see two Angels holding a golden Crown over her head.

Thus have I finished this last Charge of Articles, being in number 37. Of these, 21 were passed by without any Depositions brought to prove them; and of those Articles to which somewhat was said to prove them, most part was attested but by Hear-says and Reports from others; as the Depositions of *Mr. Fowler* the Accuser, of *Mr. Woodbridge*, *Mr. Tickle*, and *John Grip*, clearly shew; which cannot be accounted so much as concurrent Testimonies, being they are not any way Testimonies in Law. The rest were attested but by a single Witness, (except those of Visions and Apparitions, which I acknowledged myself, and which are no way criminal, nor under the cognizance of those Commissioners) viz. *Mrs. Grip*, who in her Testimony is not wholly positive, tho she did swear very desperately to two or three of the Articles; the Particulars of which are no way included in the Act of scandalous Opinions, as to their Nature or Time: for as to the last, I was so far from being accused within six Months after the pretended speaking those words, as it was four Years before they were alledged against me. Besides, this Woman speaking an Untruth upon Oath, was really perjured, and had been so proved, had I had just dealings from the Commissioners; whence in equity her Testimony is to be accounted invalid, as in Law it might have been, had my Witnesses been but examined, who were ready to prove it.

Now as to that Article of Ignorance and Insufficiency, I have before shewed, That the Depositions of *George Hastlet*, brought to prove it, cannot in Justice and Equity weigh any thing to condemn me, for the Reasons before expressed.

And now let the Reader consider, whether *Mr. Fowler* was not very rash, to proclaim in the open Court at *Newbury*, That if he did not prove the greatest part of these Articles, he would be accounted a Slanderer. Which Title, whether he deserves or not, I leave to the Judgment of the judicious Reader.

But to proceed; The Depositions on both sides being ended, I presented into the hands of *Mr. Dunch* the Chairman, this following Protestation, to be read publicly before the Court and the People; but they privately consulting of it, would not suffer it openly to be read, but suppressed it, as before they did *Mr. Blagrove's* Letter.

My Protestation was this:

I John Pordage do solemnly avow and protest, before the all-seeing Eye of Almighty God, That I do maintain, hold, and embrace these following Principles of Divine Truth, as my real and avowed Judgment.

1. That there is a Trinity of Persons in the Unity of the Divine Essence, viz. The Father, Son, and Holy Ghost, distinct from each other.

2. That

2. That Christ is God, coeternal, coessential, and coequal with the Father, and therefore *Jehovah*.

3. That Christ is a perfect Saviour and Redeemer of his Church, and so more than a Type.

4. That Christ's Righteousness is a most holy, pure, spotless, compleat, and perfect Righteousness for the Satisfaction of lost Sinners.

5. That the Blood of Christ is not only redeeming and ransoming, in reference to Hell and Damnation, but also purchasing in reference to Salvation, as having purchased an open Gate and Way to Glorification and Life eternal for purified Saints.

6. That all Arts of Necromancy, and black Magick, all Compacts with evil Spirits, whether explicit or implicit, direct or indirect, are unlawful, being against the Holy Scriptures, and never looked into or practised by me; but, on the contrary, abominated, even as they are to be detested and abhorred, not only by all Christians, but by all Mankind.

7. That Polygamy, and all such Practices that tend to the indulging of the Flesh, are contrary to the Mind of God, and not to be owned by Christians.

I do moreover disown and reject these subsequent Positions, which are contrary to the former Principles.

1. As to maintain that there is no such thing as Persons in the Holy Trinity.

2. That Christ is not God; That Christ is not *Jehovah*.

3. That Christ was not perfect, and that he is no more than a Type.

4. That Christ's Righteousness is a poor, vain, empty, and sapless Righteousness.

5. That the Blood of Christ is not meriting and redeeming Blood, or that it is a poor thing to live upon the Blood of Christ.

6. That it is lawful to have Communion with evil Spirits, or any Compact with them, explicit or implicit.

7. That it is lawful for a Man to keep company with more Women than one.

Now this most solemn Protestation I make in all Humility and Reverence before the Divine Majesty, the Omnipresent God, the Searcher of all Hearts, and from a true Intention, without any Veil or Covering, as I shall answer it at the great Day, when the Secrets of all Hearts shall be revealed. And now if you my Judges have not so much as a Grain of Faith, to believe this my cordial and solemn Protestation; let God, Angels, Saints, and all here present, bear witness that I have left every one of you inexcusable.

And now having performed what I could, and what I thought myself obliged to do in reference to the Vindication of that pure Truth I own and live to; I am as ready to receive any Sentence from you, whether of Acquittal or Ejection, as you are to deliver it.

Now altho the Commissioners would take no notice of this solemn declaring of my Judgment, yet it is of great moment, as you may see by that Passage in the Ordinance, by which the Commissioners are to act, pag. 613. where it runs thus; *Such Ministers shall be deemed and accounted scandalous in their Lives and Conversations, as shall be proved guilty of holding and*
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maintaining such blasphemous and atheistical Opinions, &c. In which you see the time present is only respected: what then have the Commissioners to do to judge any for things many Years past, tho then guilty, as I never was, if now they disown them, and own the contrary as their Judgment?

But to proceed in relating the Transactions of the last Day of Trial: After the Particulars before recited, Mr. *Dunch* the Chairman said to me, If Mr. *Starkey* (being of Counsel for me) had any thing to present on my behalf, he might have liberty to speak. Whereupon Mr. *Starkey*, being desired by me, recited all the Evidence, with much Acuteness, Method, and Judgment; shewing, That if they squared their Proceedings by the Rules of Law they were to act by, they could have no ground to give Sentence against me: which he demonstrated so clearly, by enumerating both the Testimonies on both sides, and also the particular Laws and Privileges which freed me from the Imputation of any legal Guilt, that many, tho prejudiced Persons, were much staggered, doubting of the Issue in reference to Sentence. But after this Speech, we were all commanded to withdraw; and about an hour and a half after, we were called in again, and the Register was commanded to proceed to Publication. Whereupon all the Depositions on both sides were read: which being done, Mr. *Ford* was ordered by the Commissioners to make a Speech in justification of their intended Sentence against me; which Office he performed as wretchedly, as he undertook it willingly, misrepresenting the Evidence with confused Paraphrases and Mistakes, labouring to refute the Law of my Counsel's Speech, with such Assertions as these, viz. That altho many of the Proofs brought against the Doctor, were not Proofs according to Law; yet to the Commissioners, who are a Court of Equity, and of an Ecclesiastical Jurisdiction, and so not obliged to judge according to positive Laws and Statutes, they were, and might be esteemed sufficient Proofs.

Many such Speeches as these he used, contrary to the Liberty of the Subject, the Rule of Reason and Scripture, endeavouring to persuade the People, I was as monstrous, as he and some others had represented me in their Pulpits and Discourses; but I shall say no more of him and his Speech, leaving them both to the righteous Judge of all things, who one day will justify, whom he and others of his way have condemned.

After this Speech of Mr. *Ford's* was ended, I desired liberty of Mr. *Dunch*, the Chairman, to speak something to the People, in reply to some things Mr. *Ford* had untruly said against me: but it would not be permitted.

Then I desired them to receive in this my last Request, and to weigh it seriously, before they proceeded to Sentence; which tho it was returned into my hand again before it was read, I shall here present, for the Satisfaction of the judicious Reader.

Gentlemen,

BEFORE you proceed to Judgment and pass Sentence, I desire you seriously to consider these subsequent Particulars.

L 1

1. That

1. That I was according to Law acquitted of that Charge attested by Mr. *Tickle*, whence I produced my Discharge before you, which according to the Judgment of judicious Lawyers is undoubtedly legal, and will hold good, notwithstanding all Pretensions to the contrary.

2. That the Matters of the same Charge are acknowledged by the Witness to have been spoken a Year before that Act was made, intituled, *An Act against several Blasphemous Atheistical Opinions*; to which the Commission refers, as the Rule to judge of scandalous Opinions, which make a distinct Head from Matters of Ignorance and Insufficiency, according to the Tenour of the Commission.

3. That the same Act cannot take into cognizance any Crime for which the Offender was not accused within six Months after the committing of it; therefore nothing in either the first or last Charge that hath been any way proved, can be judged as an Offence against that Act.

4. In reference to my third or last Charge, there hath been nothing directly proved against me; but some Words and Expressions dropt from me in a private Discourse to one single Witness: which Expressions, as you see, are capable of a harmless Interpretation, being never owned in that sense the Witness took them, as my avow'd Judgment, but solemnly disowned, as contrary to it, and therefore incapable legally to prejudice me; for the former Act doth not make one an Offender for a Word, but for avowedly maintaining or holding forth in Words or Writing, any thing there prohibited.

5. That in reference to those Words in both my Charges, which have been any way proved to have fallen from me, I never owned them as my Judgment, in that sense my Accuser takes them; but have openly denied and disowned them: which therefore cannot render me guilty, either by the Law of that former Act, or by the Law of Scripture, which denounceth Judgment against those who make a Man an Offender for a word, *Isa. xxix. 20, 21.* which deserves your serious Consideration.

6. That the particular Articles both of my first and last Charge, that seem to be of worst consequence, cannot justly be brought within the cognizance of that Act, according to the literal and genuine Scope of it; being chiefly made against the Principles and Practices of those call'd Ranters.

7. That nothing of Scandal in Life and Conversation being proved against me, my free owning and confessing the Appearance of evil Spirits for some time in my Family, permitted by God, opposed and overcome by the Christian Weapons of Prayer and Fasting, ought not in Equity to prejudice any against me, so as to sway them in their Sentence or Judgment; I having cordially, solemnly, and sincerely protested my Innocency, as to any Communion or Compact with evil Spirits: and that you would consider that things of this nature, tho' criminous, are not under the cognizance of the Act, but to be try'd by the Common Law, according to the usual Custom of this Nation.

8. That the Act of general Pardon doth clearly take away all legal Guilt from things done or spoken before 1651, that are not excepted in the said Pardon. Now the Particulars of my first Charge, and all those of my third or last,

which seem to be of moment, and to be any way proved, were spoken or done before the Year 1651. Now this being the positive Judgment of able Lawyers, who have seen it experienced in things of more dangerous consequence, may give you the Commissioners sufficient ground of serious Reflections upon it.

9. That (according to the Judgment of wise, judicious, and knowing Men, your Commission having been long since, and being now again under Consideration and Debate, whether to be confirmed or altered) you the Commissioners in the interim have not compleat Power to act, especially in reference to Sentence, Judgment, and Execution: which I believe is the reason why so few of the Commissioners have sate, and why others that were at first so earnest in their Proceedings, have since withdrawn themselves.

10. That in reference to Judgment and Sentence concerning me, Scandal ought to be preserved as an absolute distinct Head from Ignorance and Insufficiency, according to the Letter of your Commission, and the undoubted Judgment and Intent of the Authors.

11. That the Testimony of any one, tho' by Oath, concerning what another related to him touching a third Person, (*i. e.* the Defendant) is no Proof at all according to Law, being not so much as concurrent Testimony, if the Defendant deny it, and do not own it himself: Moreover, That the Testimony Mr. *Fowler* gave, is not legally valid; because, besides the former Reason, he is the Accuser, and incapable to be Witness, according to Law.

12. That in the Day of Sentence, Mr. *Dunch* and Mr. *Trapham* cannot by Law sit as Judges, because they condemned me long before Proof; threatening me before Witness, to turn me out of my Living, at the sitting of this Parliament; and the last was a Witness against me. That Mr. *Fowler*, Mr. *Woodbridge*, and Mr. *Tickle*, cannot by Law sit as Assistants to the Judges, or give their Votes in the Day of Sentence; the one being my Accuser, the other two Witnesses against me.

After I had delivered this to be read, and had received it again, we all withdrew; and about two hours after were called in again: when the Room being full of People, one Mr. *Lee* a Minister, the gravest Man amongst them, began a very formal Speech to me, in which he very rhetorically expressed what a grief and trouble it was to them to pass Sentence against me, and that he durst not judge that I then was guilty of holding those monstrous Tenets I was accused of; yet they must proceed *secundum Allegata & Probata*. Afterward he proceeded to give me many Exhortations and secret Reproofs, in which he, with much Artifice, made me guilty of all I was accused of. Whereupon, after I had heard him for a pretty space, being very sensible of his disguised prejudicing Discourse, and his Design in it, I was forced to stop him, by replying, That if he had any brotherly Exhortations to give me, he might come in private with me: but thus to pretend to admonish and exhort me, yet really to represent me as guilty of all I was accused of, and that before the People, was the Custom of the *Scribes* and *Pharisees*, who were wont to hide foul Designs under fair Colours, witness their Dealings with Christ. Whence I desired

desired him to spare his Admonitions, and to leave off twisting such silken Halters, saying, I was prepared for Sentence, and that I desired him and the rest to take heed of condemning and betraying the Innocent. Upon this, the Man being struck somewhat silent, Mr. Dunch the Chairman commanded the Register to do his Office; who presently read the Sentence of my Ejection in the open Court, which was then very brief, tho afterwards enlarged with many circumstantial Aggravations, and great Untruths; as this following Copy sent to me from the Clerk, on the next day after my Sentence, clearly shews.

Berks ff. *By the Commissioners appointed by Order of his Highness the Lord Protector and his Council, for ejecting of Scandalous, Ignorant, and Insufficient Ministers and School-Masters.*
Reading, Dec. 8. 1654.

WHEREAS several Charges have been exhibited to us against Dr. John Pordage, Rector of Bradfield in this County, who hath given in several Answers in writing thereunto; and thereupon we have proceeded to Examination of several credible Witnesses upon Oath, for proof of the said Charges in open Court; which Witnesses the said Doctor hath been permitted fully and freely to cross-examine: And the said Doctor hath been required to produce his Witnesses for his Justification, and to bring in his Interrogatories, upon which he would examine his said Witnesses, and hath had day after day assigned him for that purpose; but notwithstanding hath peremptorily refused so to do, persisting in his own way, and refusing to observe our

Direction in his proceeding; and hath publicly, by his evil and contumacious Expressions, slighted and affronted the said Commissioners, and instead of producing his Interrogatories in writing, according to our Order, he hath now verbally offer'd several Questions, which he desires to have propounded to several of his said Witnesses, which the Commissioners (upon consideration of) have judged impertinent to clear him from the Matters charged against him, but merely to delay and weary out the said Commissioners; and therefore they have examined only to two of the said Questions, which they conceived might somewhat tend to his Justification: And upon full hearing what the said Doctor could say, and Mr. Starkey, of Counsel in his behalf, upon the whole matters; and upon due Consideration, it appeareth that the said Doctor is guilty of denying the Deity of Christ, and the Merit of his precious Blood and Passion; and hath asserted and maintained, That Christ was a Type, and but a Type, and not perfect, and that his imputative Righteousness was sapless, and several other hellish Opinions; and is otherwise scandalous, as by the said Depositions may more fully appear. And it is likewise declared, under the Hands of six of the said Commissioners, and several Ministers their Assistants, That upon the Matters proved against him, the said Dr. Pordage is ignorant, and very insufficient for the Work of the Ministry. It is therefore ordered, That the said Dr. Pordage be, and he is hereby ejected out of the Rectory of Bradfield aforesaid, and Profits thereof: But the said Commissioners do grant him time to remove himself, Family, and Goods and Chattels out of the said Parsonage-House, till the second of February next; and further time to remove his Corn out of the Parsonage-Barns, till the 25th of March next.

A True Copy, Mat. Langley Regist.

LI. The Trial of the Honourable Colonel JOHN PENRUDDOCK*, for High-Treason, 19 April, 1655. 7 Car. II.
Wrote by himself.

UPON Thursday the 19th of April, 1655, the Commissioners of Oyer and Terminer being sat in the Castle of Exon, summoned before them myself, Mr. Hugh Grove, Mr. Richard Reeves, Mr. Robert Duke, Mr. George Duke, Mr. Thomas Fitz-James, Mr. Francis Jones, Mr. Edward Davis, Mr. Thomas Poulton, and Mr. Francis Bennet. Being all called to the Bar, we were commanded to hold up our Hands, and an Indictment of High-Treason was read against us: and being asked whether we would plead Guilty or Not Guilty to the Indictment, in the behalf of myself and of the Gentlemen therein charged, I spake as followeth.

Col. Penruddock. My Lords, tho my Educa-

tion hath been such, as not to give me those Advantages which the Knowledge of the Laws would have assisted me with, for the defending myself; yet upon the hearing this very Indictment, my Reason tells me that it is illegal: and therefore I do demand Counsel, that may dispute the Illegality thereof.

Serjeant Glyn. Sir, you desire that which cannot be granted; therefore give your Answer, whether you are Guilty or Not Guilty of the Treason of which you stand charged.

Col. Pen. Sir, by your favour, it is that which hath been granted to my Inferiours, viz. to Mr. Lilburne, and to one Rolf a Shoemaker; and I have as great a Right to the Laws, as any Person that sits here as my Judge: I do there-

fore challenge it as my Right. Judge *Nicholas*, whom I there see, will tell you he himself was Counsel for this *Rolf*: and it is a hard case, if a free-born Gentleman of *England* cannot have the same Privilege that his Inferiours have had before him.

* *Mr. Prideaux*. * *Attorney-General*. Sir, there is a great difference between Treason acting and acted; the latter is your Case: therefore flatter not yourself, and do not think your being mute shall save your Estate in case of Treason; for if you plead not to the Indictment, Sentence will be pronounced against you, as if you had been found guilty of the Fact you are charged with.

Col. Pen. Sir, I observe your Distinction: but all the Logick you have, shall not make me nor any rational Man acknowledge, that this was either acting or acted, before it be proved. Sir, it is but a bare Suspicion, and I hope you will not condemn me before I am convicted: I say the Indictment is illegal, and I do demand Counsel.

At. Gen. Sir, the Court must not be dallied withal: I do peremptorily demand of you, Are you Guilty or Not Guilty? If you plead, you may have favour; otherwise we shall proceed to Sentence.

Col. Pen. Sir, put case I do plead, shall I then have Counsel allowed me?

At. Gen. Sir, the Court makes no Bargains; refer yourself to us.

[Hereupon my Fellow-Prisoners persuaded me to plead Not Guilty: which being done, I demanded Counsel, as being partly promised it. Mr. Attorney told me, I could have none. Then I reply'd;]

Col. Pen. Sir, *Durus est hic Sermo*, it is no more than I expected from you; but rather than I will be taken off unheard, I will make my own Defence as well as I can.

[The Jurors being then called, I challenged about 24 of the 35 I might have challenged. The rest of the Gentlemen were sent from the Bar, I was left alone upon my Trial: and the Jurors were so pack'd, that had I known them the Issue had been the same that it was. The Jurors being sworn, and the Indictment again read, Mr. Attorney demanded what Exception I could make to it.]

Col. Pen. Sir, I except against every part thereof; for I take it to be illegal *in toto Composito*.

Record. Steel. Sir, it is not usual for any Court to admit of general Exceptions, therefore we expect that you should make it to some Particular.

Col. Pen. Sir, I desire a Copy of my Indictment, and time until to-morrow to make my Defence.

At. Gen. Sir, you cannot have it; the Court expects you should do it now.

Col. Pen. Then if I cannot have Time, if my general Exception might have been admitted, it would have told you, That there can be no High-Treason in this Nation, but it must be grounded either upon the Common or Statute Law. But this is neither grounded upon the Common Law, or the Statute; *ergo*, no Treason, (against a Protector, who hath no Power ac-

cording to Law:) neither is there any such thing in Law as a Protector, for all Treasons and such Pleas are *propria Causa Regis*.

Serj. Glyn. Sir, you are peremptory, you strike at the Government; you will fare never a whit the better for this Speech: Speak as to any particular Exception you have to the Indictment.

Col. Pen. Sir, if I speak any thing which grates upon the present Government, I may confidently expect your Pardon: my Life is as dear to me, as this Government can be to any of you. The holy Prophet *David*, when he was in danger of his Life, feigned himself mad, and the Spittle hung upon his Beard: you may easily therefore excuse my Imperfections. And since I am now forced to give you my particular Exception (more plainly) to the Indictment, I am bold to tell you, I observe in the latter part of the Indictment, you say I am guilty of High-Treason, by vertue of a Statute in that case made and provided: If there be any such Statute, pray let it be read; I know none such. My Actions were for the King; and I well remember what *Bracton* saith, [*5 Tract. de Delictis cap.*] *Rex non habet superiorem nisi Deum; satis habet ad poenam, quod Deum expectat ultorem.* And in another place he saith, [*Bract. Rem. H. 3. cap. 3. sect. 24.*] *Rex habet potestatem & jurisdictionem super omnes qui in Regno suo sunt: ea quae sunt jurisdictionis & pacis, ad nullum pertinent, nisi ad regiam Dignitatem; habet etiam coercionem, ut Delinquentes puniat & coerceat.* Again he saith, *Omnes sub Rege, & ipse nullo nisi tantum Deo; non est inferior sibi subjectis; non parem habet in Regno suo.* This shews us where the true Power is: You shall find also,

That whoever shall refuse to aid the King when War is levied against him, or against any that keep the King from his just Rights, offends the Law, and is thereby guilty of Treason. [*Parl. Rol. num. 7.*] Again

All Men that adhere to the King in personal Service, are freed from Treason by Law: [*Rex & Consuetudo Parliament. 11 H. 7. cap. 1.*] And yet you tell me of a Statute, which makes my adhering to my King according to Law, to be High-Treason: Pray let it be read.

Attorn. Gen. Sir, you have not behaved yourself so as to have such a Favour from the Court.

Col. Pen. I require it not as a Favour, but as my Right.

Attorn. Gen. Sir, you cannot have it.

Col. Pen. If I cannot have it, these Gentlemen that are the Jurors, have not offended you, their Verdict reaches to their Souls, as to my Life; pray let not them go blind-fold, but let that Statute be their Guide.

Attorn. Gen. Sir, The Jury ought to be satisfied with what hath been already said, and so might you too.

Col. Pen. Sir, I thank you; you now tell me what I must trust to.

Mr. Attorney then made a large Speech in the Face of the Court, wherein he aggravated the Offence with divers Circumstances; as saying, I had been four Years in *France*, and held a Correspondency with the King my Master, of whom I had learned the Popish Religion; That I endeavoured to bring in a debauch'd lewd young Man, and to engage this Nation in another

ther bloody War; and that if I had not been timely prevented, I had destroyed them, (meaning the Jurors) and their whole Families. I interrupted him, and said,

Col. Pen. Mr. Attorney, you have been heretofore of Counsel for me; you then made my Case better than indeed it was: I see you have the Faculty to make Men believe Falshoods to be Truth too.

Attorn. Gen. Sir, you interrupt me; you said but now you were a Gentleman.

Col. Pen. I have been thought worthy heretofore to sit on the Bench, though now I am at the Bar. Mr. Attorney then proceeded in his Speech, and called the Witnesses. Then I said,

Sir, you have put me in a Bear's Skin, and now you will bait me with a witness. But I see the Face of a Gentleman here in Court, (I mean Captain Crook) whose Conscience can tell him, that I had Articles from him which ought to have kept me from hence. Captain Crook hereupon stood up, and his guilty Conscience (I suppose) advised him to sit down again, after he had made this Speech, (that is to say) he opened his Lips and spake nothing. The several Witnesses now come in, Mr. Dove the Sheriff of Wilts, and others; my Charity forbids me to tell you what many of them swore: I shall therefore omit that, and only tell you that one of our own Party (and indeed I think an honest Man) being forc'd to give his Evidence; I said, My Lords, it is a hard case, that when you find you cannot otherwise cleave me in pieces, that you must look after Wedges made of my own Timber. The vertuous Cryer of *Blanford* being asked what were the words I used in the proclaiming King *Charles* at the Market? he said, I declared for *Charles* the Second, and settling the true Protestant Religion; for the Liberty of the Subject, and Privilege of Parliaments.

Then I said to the Attorney-General and the whole Court, You said even now, that I had learn'd of the King my Master the Popish Religion, and endeavoured to bring him in: your own Witness tells you what, and whom I would bring in; and that it was the true Protestant, and not the Popish Religion, his Majesty is of, and intends to settle. I urged divers Cases to make the Business but a Riot (as my Lord of *Northumberland's*) pretending it was for the taking of Taxes; and that the Power was not declared to be where they say it is. I required the Judges to be of Counsel for me, and told them it was their Duty. Commissioner *Lisle* told me I should have no Wrong, (but he meant Right) but Judge *Rolle* and *Nicholas* confessed themselves Parties, therefore would say nothing. Then I told the Court, if I had seen a Crown upon the Head of any Person, I had known what had been Treason; The Law of *England* would have taken hold of me, out of the Respect it has to Monarchy: There were no such Landmarks before me, therefore I conceive I cannot be guilty of what I am charged with. And my Lord, and Mr. Attorney, you here indict me for a Treason committed at *South-moulton* in *Devonshire*; and, Gentlemen, ye swear Witnesses against me for Facts done in other Countries; *Sarum*, *Blanford* and *South-moulton* are not in a Parish. You puzzle the Jurors with these Circumstances, pray go to the Kernel. And you,

Gentlemen of the Jury, save your Labour of taking those Notes. Mr. Attorney then addressed himself to the Jury; and to be short, after the space of half an Hour long, gave them Directions to bring me in guilty. This being done, I craved the Favour from the Court, that I might speak to the Jury; which being allowed, I said to them as followeth, or to the same effect.

Gentlemen, You are called a Jury of Life and Death; and happy will it be for your Souls, if you prove to be a Jury of Life. You have heard what hath been said to make my Actions Treason; and with what Vigour many Untruths have been urged to you. I have made appear to you, that there can be no Treason but against the King; that the Law knows no such Person as a Protector. Mr. Attorney pretends a Statute for it, but refuseth the reading thereof either to me or you; villifies me at pleasure, and tells you I am a Papist, and would bring in the Popish Religion; and that if I had not been timely prevented, I had destroyed you. I hope you are also satisfied of the contrary, from the Mouth of one of the bitterest Witnesses. You are now Judges between me and these Judges. Let not the Majesty of their Looks, or the Glory of their Habits betray you to a Sin which is of a deeper Dye than their Scarlet: I mean that Sin, Blood; which calls to Heaven for Vengeance. Gentlemen, you do not see a Hair of my Head but is numbered, neither can you make any one of them, much less can you put Breath into my Nostrils when it is taken out: A Sparrow doth not fall to the Ground without the Providence of God, much less shall Man, to whom he hath given Dominion and Rule over all the Creatures of the Earth. Gentlemen, look upon me, I am the Image of my Creator, and that Stamp of his which is in my Visage, is not to be defaced, without an Account given wherefore it was. I have here challenged, as I am a Gentleman, and free-born Man of *England*, the Right which the Law allows me; I demanded a Copy of my Indictment and Counsel, but it is denied me. The Law which I would have been tried by, is the known Law of the Land, which was drawn by the wise Consultation of our Princes, and by the ready Pens of our Progenitors. The Law which I am now tried by, is no Law, but what is cut out by the Point of a rebellious Sword; and the Sheets in which they are recorded, being varnished with the Moisture of an eloquent Tongue, if you look not well to it, may chance to serve for some of your Shrouds. If the Fear of displeasing others, shall betray you to find me guilty of any thing, you can at the most but make a Riot of this. Pray, by the way, take notice, that the last Parliament would not allow the Legislative Power to be out of themselves; seventeen of twenty in this very County were of that Opinion, and deserted the House; they were your Representative: if you should find me guilty, you bring them in danger, and in them your selves. Have a care of being drawn into a Snare. Gentlemen, your Blood may run in the same Channel with mine: If what I have said do not satisfy you, so as to acquit me; if you bring a special Verdict, you do in some measure acquit your selves, and throw the Blood that will be spilt upon the Judges. Consider of it, and the Lord direct you for the best.

The

The Jury, after a quarter of an Hour's Retirement, brought me in Guilty: The Lord forgive them, for they knew not what they did.

Upon Monday the 23^d of *April*, we were again called to the Bar, being then in number twenty-six. Serjeant *Glyn* asked of me first, what I could say for my self, that I should not have Sentence according to Law? Then I said,

My Lords and Gentlemen, you ask what I can say for my self, that I should not have Sentence passed upon me. The Jury found me guilty: if I should go about to make a Defence now, it would signify no more than as if my Friends should petition for my Pardon after I am executed. I could have offered you Articles here, but I thought them inconsistent with this Court. When I look upon my Offence (as to the Protector) I conclude my self a dead Man; but when I reflect upon the Favour he hath shewed to others of my Condition, and the Hopes I have of your Intercession, methinks I feel my Spirits renewed again. My Lords, Death is a Debt due from me to Nature; the Protector has now the keeping the Bond, and has put it in suit by his Attorney; if he please to forbear the serving me with an Execution, and let me keep it a little longer, I will pay him the Interest of Thanks for it as long as I live, and engage my Posterity and a numerous Alliance to be bound for me. So the Lord direct you all for the best. If I have found Favour, I shall thank you; if not, I shall forgive you.

This being done, Serjeant *Glyn*, after a most bitter and nonsensical Speech, gave Sentence against us; viz. to be drawn, hanged and quartered. A pretty Exchange for unworthy *Crook's* Articles for Life, Liberty and Estate; which I can prove, and will die upon. My Trial held at least five Hours. This is as much as at present I can remember of it; excuse the Errors.

One of the Jury being asked by a Gentleman, why he found me guilty? answered, He was resolved to hang me, before he did see me.

I observe Treason in this Age to be an *individuum vagum*, like the Wind in the Gospel, which bloweth where it listeth; for that shall be Treason in me to-day, which shall be none in another to-morrow, as it pleaseth Mr. Attorney.

The Judges are sworn to do Justice according to the Law of the Land [3 *Part Inst. pag. 22. 2 Part Inst. 47, 48. Prince's Case. 8 Report.*] and therefore have miserably perjured themselves in condemning me contrary to Law: And (not so contented) must cause the Jury (so wise they were) through their false and unjust Directions, to destroy their own Rights and Properties, and set up a New, Arbitrary and Tyrannical Government.

The Judges would not give me their Advice in point of Law, (as was their Duty) because they said they were Parties; yet could sit still on the Bench in their Robes, to countenance, and approve of my Sentence.

No Man can be a Judge where he is a Party in the same Cause; [*Hobart fol. 120. Doct. Bonnam's Case, 8 Part of Coke's Reports.*] therefore my Trial was contrary to Law.

The Judges being Parties, ought not to sit upon the Bench, but stand by; therefore my Trial was illegal: the rest being no Judges, but the Protector's immediate Servants, so could not be my Judges in case of High-Treason; for none

but the sworn Judges of the Land are capable of it by Law.

One thing of Colonel *Dove*, the reverend Sheriff of *Wilts*, who, that the Jury might be sufficiently incensed, complaining of the many Incivilities (he pretended) were offered him by our Party, being upon his Oath, said, That one of our Men did run him through the Side with a Carabine. Surely it was a very small one, for the Wound is not discernable.

A great deal of pains every Man in his place took for the carrying on his Master's Work.

Be merciful unto me, O Lord, be merciful unto me: under the Shadow of thy Wings will I hide my self till this Tyranny be overpast.

Glory to God on high, in Earth Peace, Good-Will towards Men; and so have Mercy on me, O Lord.

The Sentence was ordered to be executed the 16th of *May* following.

As he was ascending the Scaffold, he said, This, I hope, will prove to be like *Jacob's* Ladder; tho' the Feet of it rest on Earth, yet I doubt not but the Top of it reacheth to Heaven.

When he came upon the Scaffold, he spoke to the People as follows:

Gentlemen,

IT hath ever been the Custom of all Persons whatsoever, when they come to die, to give some Satisfaction to the World, whether they be guilty of the Fact of which they stand charged. The Crime for which I am now to die, is Loyalty, (but) in this Age call'd High-Treason. I cannot deny but I was at *South-moulton*, in this County; but whether my being there, or my Actions there, amount to so high a Crime as High-Treason, I leave to the World, and to the Law, to judge: Truly, if I were conscious to my self of any base Ends that I had in this Undertaking, I would not be so injurious to my own Soul, or disingenuous to you, as not to make a publick Acknowledgment thereof. I suppose that divers Persons, according as they are bias'd in their several Interests and Relations, give their Opinions to the World concerning us. I conceive it impossible therefore, so to express my self in this Particular, as not to expose both my Judgment and Reputation to the Censure of many whom I shall leave behind me; because I will not put others (therefore) upon a Breach of Charity concerning me, or my Actions, I have thought fit to decline all Discourses which may give them a Capacity either to injure themselves, or me. My Trial was publick, and my several Examinations (I believe) will be produc'd when I am in my Grave: I will refer you therefore to the first, which I am sure some of you heard; and to the latter, which many of you (in good time) may see; had Captain *Crook* done himself and us that Right which a Gentleman and a Soldier ought to have done, I had not now been here. The Man I forgive with all my heart: But truly, Gentlemen, his protesting against those Articles he himself, with so many Protestations and Importunities put upon us, hath drawn so much Dishonour and Blood upon his Head, that I fear some heavy Judgment will pursue him; tho' he hath

hath been false to us, I pray God I do not prove a true Prophet to him; nay, I must say more, that coming on the Road to *Exon*, he, the said Captain *Crook*, told me, Sir *Joseph Wagstaff* was a gallant Gentleman, and that he was sorry he was not taken with us; that then he might have had the Benefit of our Articles; but now, said he, I have beset all the Country for him, so that he cannot escape, but must be hang'd. He also question'd me, as I pass'd through *Salisbury* from *London*, whether he had given me Conditions, which I endeavouring to make appear to Major *Butler*, he interrupted me, and unwillingly confess'd it, saying I proffer'd him Four Hundred Pounds to perform his Articles; which had been a strange Proffer of mine, had I not really condition'd with him; and I told him then (having found him unworthy) I would have given him Five Hundred Pounds, believing him to be mercenary; to make it yet farther appear, I injure him not, by styling him unworthy; after these Articles were given, he proffer'd to pistol me, if I did not persuade another House to yield, which then were boldly resisting; to which my Servant, *John Biby* (now a Prisoner) reply'd, I hope you will not be so unworthy as to break the Law of Arms. Thus much I am obliged to say to the Honour of the Soldiery, That they have been so far from breaking any Articles given to others, that they have rather better'd them than otherwise. It is now our Misfortune to be made Precedents and Examples together: But I will not do the Protector so much Injury, as to load him with Dishonour, since I have been inform'd, that he would have made our Conditions good, if *Crook*, that gave them, had not abjur'd them. This is not a Time for me to enlarge upon any Subject, since I am now become the Subject of Death; but since the Articles were drawn by my Hand, I thought my self oblig'd to a particular Justification of them. I could tell you of some Soldiers which are turn'd out of his Troop for defending those Conditions of ours; but let that pass, and henceforward, instead of Life, Liberty, and Estate, (which were the Articles agreed upon) let Drawing, Hanging, and Quartering bear the Denomination of Captain *Crook's* Articles. However, I thank the Protector for granting me this honourable Death. I should now give you an Account of my Faith; but truly, Gentlemen, this poor Nation is rent into so many several Opinions, that it is impossible for me to give you mine, without displeasing some of you; however, if any Man be so critical as to enquire of what Faith I die, I shall refer him to the Apostles, *Athanasius*, and the *Nicene-Creed*, and to the Testimony of this reverend Gentleman, Dr. *Short*, to whom I have unbosom'd my self: And if this do not satisfy, look in the Thirty Nine Articles of the Catholick Church of *England*, to them I have subscribed, and do own them as authentick. Having now given you an Account concerning my self, I hold my self obliged in Duty to some of my Friends, to take off a Suspicion which lies upon them; I mean, as to some Persons of Honour, which upon my Examination I was charged to have held Correspondency with; the Marquess of *Hertford*, the Marquess of *Winchester*, and my Lord of *Pembroke*, were the Persons nominated to me; I did than acquit them, and do now second it with this Protestation, that I never held any Correspondency with either, or any of them, in

relation to this particular Business, or indeed to any thing which concern'd the Protector, or his Government: As for the Marquess of *Winchester*, I saw him some twelve Years since, and not later; and if I should see him here present, I believe I should not know him; and for the Earl of *Pembroke*, he was not a Man likely to whom I should discover my Thoughts, because he is a Man of contrary Judgment. I was examin'd likewise concerning my Brother *Freke*, my Cousin *Hastings*, Mr. *Dorrington*, and others: It is probable their Estates may make them liable to this my Condition; but I do here so far acquit them, as to give the World this further Protestation, that I am confident they are as innocent in this Business as the youngest Child here: I have no more to say to you now, but to let you know that I am in Charity with all Men, I thank God; I both can and do forgive my greatest Persecutors, and all that ever had any Hand in my Death. I have offer'd the Protector as good Security for my future Demeanour, as I suppose he could have expected; if he had thought fit to have given me my Life, certainly I should not have been so ungrateful as to have employ'd it against him. I do humbly submit to God's Pleasure, knowing that the Issues of Life and Death are in his Hand; my Blood is but a small Sacrifice; if it had been saved, I am so much a Gentleman as to have given Thanks to him that preserv'd it, and so much a Christian as to forgive them which take it; but seeing God by his Providence hath call'd me to lay it down, I willingly submit to it, tho' terrible to Nature; but blessed be my Saviour, who hath taken out the Sting; so that I look upon it, without Terror. Death is a Debt, and a due Debt; and it hath pleased God to make me so good a Husband that I am come to pay it before it is due. I am not asham'd of the Cause for which I die, but rather rejoice that I am thought worthy to suffer in the Defence and Cause of God's true Church, my lawful King, the Liberty of the Subject, and Privilege of Parliaments; therefore I hope none of my Alliance and Friends will be asham'd of it; it is so far from pulling down my Family, that I look upon it as the raising of it one Story higher; neither was I so prodigal of Nature, as to throw away my Life, but have used (tho' none but honourable and honest) means to preserve it. These unhappy Times indeed have been very fatal to my Family, two of my Brothers already slain, and my self going to the Slaughter; it is God's Will, and I humbly submit to that Providence. I must render an Acknowledgment of the great Civilities that I have receiv'd from this City of *Exon*, and some Persons of Quality, and for their plentiful Provision made for the Prisoners. I thank Mr. *Sheriff* for his Favour towards us, in particular to myself, and I desire him to present my due Respects to the Protector, and tho' he had no Mercy for myself, yet that he would have respect to my Family. I am now a stripping off my Cloaths to fight a Duel with Death (I conceive no other Duel lawful) but my Saviour hath pulled out the Sting of this mine Enemy, by making himself a Sacrifice for me, and truly I do not think that Man deserving one Drop of his Blood that will not spend all for him in so good a Cause. The Truth is, Gentlemen, in this Age Treason is an *Individuum Vagum*, like the Wind in the Gospel, it bloweth where it listeth: So now Treason is what they

they please, and lighteth upon whom they will. Indeed no Man, except he will be a Traitor, can avoid this Censure of Treason. I know not to what End it may come, but I pray God my own and my Brother's Blood, that is now to die with me, may be the last upon this score: Now, Gentlemen, you may see what a Condition you are in without a King; you have no Law to protect you, no Rule to walk by when you perform your Duty to God, your King and Country; you displease the Arbitrary Power now set up (I cannot call it Government.) I shall leave you to peruse my Trial, and there you shall see what a Condition this poor Nation is brought into; and (no Question) will be utterly destroy'd, if not restor'd (by loyal Subjects) to its old and glorious Government; I pray God he lay not his Judgments upon *England* for their sluggishness in doing their Duty, and readiness to put their Hands in their Bosoms, or rather taking Part with the Enemy of Truth. The Lord open their Eyes, that they may be no longer led, or drawn into such Snares, else the Child that is unborn will curse the Day of their Parents Birth. God Almighty preserve my lawful King, *Charles II.* from the Hands of his Enemies, and break down that Wall of Pride and Rebellion, which so long hath kept him from his just Rights. God preserve his Royal Mother, and all his Majesty's Royal Brethren; and incline their Hearts to seek after him. God incline the Hearts of all true *English-men* to stand up as one Man to bring in the King, and redeem themselves and this poor Kingdom out of its more than *Egyptian* Slavery. As I have now put off these Garments of Cloth, so I hope I have put off my Garments of Sin, and have put on the Robes of Christ's Righteousness here, which will bring me to the Enjoyment of his glorious Robes anon. Then he kneel'd down and kiss'd the Block, and said thus; I commit my Soul to God my Creator and Redeemer, Look upon me, O Lord, at my last gasping, hear my Prayer, and the Prayers of all good People; I thank thee, O God, for all thy Dispensations towards me. Then kneeling down, he pray'd most devoutly. Then he desir'd to see the Ax, and kiss'd it, saying, I am like to have a sharp Passage of it, but my Saviour hath sweeten'd it unto me. Then he said, If I would have been so unworthy as others have been, I suppose I might by a Lie have saved my Life, which I scorn to purchase at such a rate; I defy such Temptations and them that gave them me. Glory be to God on high, on Earth Peace, good Will towards Men, and the Lord have Mercy upon my poor Soul. *Amen.*

So laying his Neck upon the Block, after some private Ejaculations, he gave the Headsmen a Sign with his Hand, who at one Blow sever'd his Head from his Body.

The Night before his Execution he received the following Letter from his Lady.

My dear Heart,

MY sad Parting was so far from making me forget you, that I scarce thought upon my self since, but wholly upon you. Those dear Embraces which I yet feel, and shall never lose, being the faithful Testimonies of an indulgent Husband, have charm'd my Soul to such a Reverence of your Remembrance, that

were it possible, I would, with my own Blood, cement your dead Limbs to Life again; and (with Reverence) think it no Sin to rob Heaven a little while longer of a Martyr. Oh my Dear! you must now pardon my Passion, this being my last (oh fatal) Word that ever you will receive from me; and know, that until the last Minute that I can imagine you shall live, I will sacrifice the Prayers of a Christian, and the Groans of an afflicted Wife. And when you are not (which sure by Sympathy I shall know) I shall wish my own Dissolution with you, that so we may go Hand in Hand to Heaven. 'Tis too late to tell you what I have, or rather have not done for you; how turn'd out of Doors because I came to beg Mercy; the Lord lay not your Blood to their Charge. I would fain discourse longer with you, but dare not; Passion begins to drown my Reason, and will rob me of my *devoire*, which is all I have left to serve you. Adieu therefore ten thousand times, my dearest Dear; and since I must never see you more, take this Prayer; May your Faith be so strengthened, that your Constancy may continue, and then I know Heaven will receive you; whither Grief and Love will in a short time (I hope) translate,

My Dear,

Your sad, but constant Wife, even to love your Ashes when Dead,

Arundel Penruddock.

May the 15th, 1655, 11 a-Clock at Night. Your Children beg your Blessing, and present their Duties to you.

To which he wrote this Answer:

Dearest best of Creatures,

I Had taken leave of the World when I receiv'd Yours: It did at once recal my Fondness for Life, and enable me to resign it. As I am sure I shall leave none behind me like you, which weakens my Resolution to part from you, so when I reflect I am going to a Place where there are none but such as you, I recover my Courage. But Fondness breaks in upon me; and as I would not have my Tears flow to-morrow, when your Husband and the Father of our dear Babes, is a Publick Spectacle; do not think meanly of me, that I give way to Grief now in private, when I see my Sand run so fast, and I within few Hours am to leave you Helpless, and exposed to the Merciless and Insolent, that have wrongfully put me to a shameless Death, and will object that Shame to my poor Children. I thank you for all your Goodness to me, and will endeavour so to die, as to do nothing unworthy that Virtue in which we have mutually supported each other, and for which I desire you not repine that I am first to be rewarded; since you ever preferred me to your self in all other things, afford me, with Chearfulness, the Precedence in this.

I desire your Prayers in the Article of Death, for my own will then be offered for You and Yours.

J. Penruddock.

LII. *Proceedings in the House of Commons against JAMES NAYLER for Blasphemy, and other Misdemeanours, December 1659. 8 Car. II.*

Resolved,



HAT the Matter of Fact, together with the particular Resolutions of this Committee thereupon, be reported to the House.

First, I shall give you the short History of his Life, as the Committee had it from his own Mouth. He saith he was born in the Parish of *Ardistoe*, near *Wakefield* in *Yorkshire*, where he lived 22 or 23 Years, till he was married (according to the World) as he expressed it. Then he removed into the Parish of *Wakefield*, where he continued till the last Wars began; during which time he was under several Commands, and at last was Quarter-master in Major-General *Lambert's* Troop; in which Service he continued till disabled by Sickness in *Scotland*, and so retired to his own Home: about which time he was a Member of an Independent Church at *Horbery* in *Yorkshire*, of which Church Mr. *Christopher Marshal* was Pastor; and by the same Church since cast out (as himself confesseth he hath heard:) by which Church he was charged as guilty of Blasphemy, and uncivil and wanton Carriage with one Mrs. *Roper* a married Woman, as that she should sit on his Knee, and kiss him before divers other Persons; and that it was his Opinion, he might lie with any Woman, that was of his Judgment. And then after some time went to visit the Quakers in *Cornwall*, and by his way was by Major *Saunders* committed to the common Goal in *Exon*, as a Vagrant: And thence he and his Company being delivered by an Order from the Council, they travelling to *Bristol*, in the way *Nayler* took upon him, as was alledged against him. And as he passed through *Chewstoke* in the County of *Somerset*, towards *Bristol*, it is informed upon Oath, certified by three Justices to the Committee, That staying in that Town one Night, he was there in a Chamber with three Women of his Company, leaning upon the Bed with one of them at Night when the Servant of the House left them: And in the Morning the Servant found *Nayler* on the Bed with one of the Women, and the Curtains drawn; and some of the Company wished the Servant to make no noise to awake them.

The way taken in this Report, will be,

First, To give you the Articles charged against him.

Secondly, the Evidence, wherein there will be a little mention of the Examinations and Informations upon Oath taken at *Bristol*; against

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which, because there lies a seeming Objection, I shall first clear that upon the Matter of Fact.

The Objection was, That they were not read again to the Parties, as is usual in such Cases.

Answer. That two Witnesses, both of more than ordinary good Repute, in that Place were both put, and took Characters of the Questions and Answers there; and comparing their Notes, did both of them publicly avow to the Committee, as that which they were ready to depose, That every material Passage was read unto the Parties once or twice after they writ it down; and that they were the same which were offered to the Committee, attested under the Mayor of *Bristol's* Hand to every of the said Examinations and Informations, and the City Seal annexed to the whole. And besides, there is nothing in the said Examinations and Informations taken there, but what is generally more clearly made out upon their Examinations before the Committee.

Other Evidence will be from *Nayler's* Examination, wherein is most of this whole Matter, which was taken in Characters by Five of the Committee, who were appointed to, and did compare their Notes.

Thirdly, The Opinion of the Committee.

The whole Fact will fall under one of these two Articles.

First, *James Nayler* did assume the Gesture, Words, Honour, Worship and Miracles of our blessed Saviour.

Secondly, The Names and incommunicable Attributes and Titles of our blessed Saviour.

As to part of the first Article, That *James Nayler* riding through a Town in *Somerset*, his Company spread their Garments, and sang, Holy, Holy, before him; and also sang the like at his Entrance into *Bristol*, one going bare-headed before his Horse:

The Evidence was, That *Dorcas Erbury*, in her Examination before the Committee in the Painted Chamber, confessed, That she did spread Garments before him. And *Martha Simmons* in her Examination at the same time saith, That those Garments that she did spread she spread in obedience to the Lord. And *Hannah Stranger* being then also examined, said, she threw two Handkerchiefs before him, which she did, because he that is Lord of all commanded her so to do. And

John Stranger confesseth, That he saw others spread Garments before him in the way from *Exon* to *Bristol*. And

James Nayler himself confesseth (upon the Question, Whether Garments were spread before him?) That some Cloaths were cast down, and afterwards, that some Gloves and other things.

The Evidence for singing Holy, Holy, was thus :

Dorcas Erbury, in her Examination at *Bristol*, being then asked, Why she passed along singing? said, She did not do it; but they that did it, were commanded to do it: and the Lord hath made it manifest that they were moved of the Lord to do it. And being asked, To whom they sang? and whom they called the *Holy One of Israel*? she said, Him that rode upon the Horse; and she would maintain it with her Blood. And being examined by the Committee as to this part of the Examination, and advised to deny, if it were false; yet did not deny it, though she did some other part of that Examination.

Martha Simmons being examined in the Painted Chamber, Whether she did sing the words, Holy, Holy, before the said *James Nayler*? answered, It is my Life to praise the Lord, whether he be before me, or from me, it is my Life to praise the Lord. And being asked, Whether she heard any Persons sing Holy, Holy, before the said *James Nayler*? she answered, It is our Life to praise the Lord.

Hannah Stranger being examined in the Painted Chamber, Whether she sang the words, Holy, Holy? answered, She could not well remember the Words; but if she did not sing Holy, Holy, she witnesseth the Holy of Holies was risen, which moved her so to do: but said further, she did not stand there to accuse her self.

James Nayler being examined by the Committee, whether any sang Holy, Holy, before him as he rode? answered, There were Praises sung to the Lord. And being asked, Whether those words, Holy, Holy, were sung? answered, That he heard those words. And being asked as to the singing before him when he rode into *Bristol*, answered, That there was a Psalm sung, such a one as the Lord was pleased to give into the Hearts of them that sang. And being asked as to the words of the Psalm, whether they were not Holy, Holy? said, It may be it was; very like it might be so.

And in his Examination at *Bristol*, being asked why he came in there in such an unusual manner, two Women leading his Horse, and singing, with one bare before him? said, It was for the Praises of his Father; and that he may not refuse any thing that is moved of the Lord: and that he did think the Father did command them to do it. And being there asked, Whom they meant by the word *Holy* that they sang? he answered, That they that sang were all of Age to answer for themselves.

And this speaks something for the proving of another Part of the first Article, vindicating one going bare-headed before him, and Women leading his Horse; which is more fully proved by the Informations upon Oath of *George Witherley* and *Richard Hart*, taken at *Bristol*, before the Mayor there, and certified as aforesaid; and up-

on the Confession of one *Thomas Woodcock* before the said Mayor, who went bare-headed before *James Nayler*, and said he was moved by the Spirit so to do. And *James Nayler* himself, upon his Examination by the Committee, when he was asked, Whether any went bare-headed before him as he went into *Bristol*? answered, He did not know, he took little notice of it, but heard some say it was so. And being asked whether any Women led his Horse? answered, There was a Woman took hold of the Bridle of the Horse.

Resolution of the Committee upon this whole Evidence.

The Committee were of Opinion, that the first Article was proved.

One thing also, being part of the Matter of Fact, we think worthy your Knowledge, though much Stress will not be laid on it; and that is, That the Description of our Saviour by *Publius Lentulus* to the Senate of *Rome* in Writing, (which is also imprinted) was taken upon one of *James Nayler's* Attendants, which is also certified by the said Mayor. And for *Nayler's* Hair, both Colour and Manner of wearing it, as also the Fashion of his Beard, and Feature and Person, did much agree with that Description; which also was taken notice of by many of the Committee, how much he resembled (as they apprehended with some Affectation) the Picture usually drawn for our Saviour.

That in divers Answers he imitated our Saviour Jesus Christ, using the same Expressions that he did; in one Place he saith, That he lived some Weeks, fifteen or sixteen Days, without any Food or other Sustenance; and being asked, wherewithal God fed him, if not with Food? answered, *Man liveth not by Bread alone, but by every Word which proceedeth out of the Mouth of the Lord.*

I shall here mention one remarkable one in his Examination at *Bristol*: his Expression was, If they had known the Father, they should know him also. And *Nayler* being examined by the Committee to this, Whether that were his Answer at *Bristol*? he answered in these Words; Truly I can say little of that, whether I did say it or no; but if I did say it there, it is true: for if any one do know the Father, they shall know what I am, and where I live; and none can know my Life further than they know the Father; for the Father is my Life: none can know my Life, but they that know my Father; for he is my Life. This I particularly mention, being commanded by the Committee, who resolved, That this whole Answer of *James Nayler* be reported to the House.

Another Part of this Article was, That he received the outward Worship of being kneeled unto, and having his Feet kissed. And for this the Evidence was

Martha Simmons, in her Examination at *Bristol*, said, She ought to worship him, but here denied.

And further the Evidence went, That after his Imprisonment at *Bristol*, it appeared by the Information upon Oath at *Bristol*, to wit, of *Thomas Perkins* and *Thomas Cole*:

Thomas Perkins informeth, That *Dorcas Erbury* fell down at *Nayler's* Feet, and kissed his Feet;

Feet; and the same Evening one *Alice Brock* fell on her Knees before the said *Nayler*, and *Nayler* put his Hands upon her Head, and said, Stand fast, &c.

Thomas Cole informeth, That the 25th of October *Martha Simmons* and *Hannah Stranger* being called out of *Nayler's* Room into their own Lodging, they one after another kneeled before *Nayler*, and laid their Heads on his Knees; and he laid his Hands on their Heads, making a groaning Noise within himself; and before they rose from his Knees, he crossed his Hands over their Heads. And *Hannah Stranger* at her Examination before the Committee, confessed, That she kneeled at *James Nayler's* Feet, and kissed them. And others being demanded concerning these Actions, would give no Answer. And

James Nayler being examined, whether any kneeled and kissed his Feet, answered, That there might be such things, though he did not mind it, being things that he did not glory in.

As for his doing of Miracles particularly, *Dorcas Erbury* saith, That she was dead in *Exeter* Goal two Days, and that *Nayler* laid his Hands upon her, and raised her; which she affirmed in her Examination at *Bristol*, and did not deny when examined as to this by the Committee.

To which *Nayler* being examined whether *Dorcas Erbury* was dead in *Exon* Goal, as in her Examination, answered, If you speak of such a Death as you may understand, she was dead. Being further asked, How she was dead, in his Understanding? answered, I shall say little of my self in that thing. And being further asked, whether he raised her from the Dead? answered, I can do nothing of my self. Being asked, whether any other did raise her by his Hands, and if he laid his Hands upon her? answered, There is a Power in me from above. And being demanded, whether he had such a Power as to raise from the Dead? answered, I have said before, I cannot bear witness of my self in the thing. And being asked, who bore witness of him? answered, The Scriptures do bear witness to the Power which is in me, which is everlasting. And being demanded, whether he raised from the Dead by vertue of that Power? answered, I can do nothing but what the Power doth in me: and it is the same Power whereof you read in the Scriptures, that hath raised the Dead, according to the Measure of the Power manifest.

And being asked, whether that Power were manifest in such a manner in him as to raise *Dorcas Erbury* from the Dead? answered, I have said; I shall not satisfy in words concerning the thing further than only this, that you may clearly understand that wherein *Dorcas Erbury*, or any else do attribute unto me, as to a Creature that hath Beginning and Ending, that I utterly deny; but that that any see of God in me, by the same Spirit that revealed any thing to them, that I do not deny. This may serve at one word; for there cannot be a more abominable thing than to take from the Creator, and give to the Creature: the same Power which did raise from the Dead, which you read in the Scripture, the same Christ, the same Anointing according to the Measure of him, is manifest in me, and no other. And being asked, if

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any prayed to Christ in him, whether he did disown it? answered, As a Creature I do disown it.

These things and divers others we have reported as part of the Matter of Fact.

Second Article: That the said *James Nayler* assumed the Name, and the incommunicable Attributes and Titles of our blessed Saviour: as first,

The Fairest of Ten Thousand.

As for this, the Evidence was in a Letter of *Hannah Stranger*, found about him at *Bristol*, she giving him the Title of *the Fairest of ten thousand*: which upon her Examination at *Bristol* and before the Committee, she confessed she wrote to him in her Letter. And *James Nayler* being asked by the Committee, whether any such Title as *the Fairest of ten thousand*, had been given to him in any Writing or Letter? he answered, To what they did in the Letter, if they gave it to me as to the visible, then I do deny it; but if they speak it to that begotten of the Father in me, then I dare not deny it. And being willed to repeat that Answer again, he said, If they speak it as to the visible, as to that which is earthly, then I deny any such thing belonging to me in that Sense: but if they speak it to that which the Father hath begotten in me, then I dare not deny it; because that (as he said) is beautiful, where-ever it is begotten. And in his second Examination before the Committee, his Answer was to the same effect.

Resolution of the Committee.

Upon this Evidence the Committee were of Opinion, That *James Nayler* had assumed the Title of *the Fairest of Ten Thousand*.

The Only-begotten Son of God.

And for that the Evidence was, That *Hannah Stranger* in the said Letter gave him that Title: And being demanded whether he did assume that Title, answered in these words; That there are many Sons besides, yet the Son of God I must witness, and dare not deny: The Son of God I am, and dare not deny. And being often pressed to give a direct Answer, whether he were the only-begotten Son of God? answered thus; I am the Son of God, but I have many Brethren; and again said, I have many Brethren, though some of them do not yet know me. And being urged to confess or deny it, answered in these words; I have answered, that I have given of my Father to speak for the present unto that thing. Being asked, whether he were the only-begotten Son of God? he answered, Thou hast said it. Which Question and Answer being repeated to him as his Answer, he answered, Do not ensnare the Innocent. And upon his Examination taken, certified and attested, as aforesaid, being asked, whether he be the only-begotten Son of God? answered, That he was the Son of God; and that the Son of God was but one.

But being examined by the Committee as to this Part of his Examination at *Bristol*, he affirmed, that this was not his Answer.

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Resolu-

Resolution of the Committee.

Upon this Evidence the Committee were of Opinion, That the Title of *the only begotten Son of God*, was given to *James Nayler*. And being demanded whether he assumed that Title, he did not deny it.

The Prophet of the Most High.

This Title we find given him in a Letter to *Nayler* from one *Jane Woodcock*, found about him at *Bristol*. And being examined there upon that Clause in the Letter, he answered, That he was the Prophet of the most high God.

And *Martha Simmons*, upon her Examination at *Bristol*, said, There was a Time when *James Nayler* was a true Prophet of the most high God, but now he is gone beyond, and is in the Administration of Peace, and is the Beloved of the Lord.

James Nayler being examined by the Committee, whether he owned this Title of *the Prophet of the most high God*? he answered, Yea, I am a Prophet of the most high God. And being pressed to answer whether he were the Prophet, he answered, There be other Prophets besides me. And being pressed again with the same Question, answered, I have said what I may, as to that thing in the Counsel of my Father.

Upon this his Confession at *Bristol*, and Answer as aforesaid,

Resolution of the Committee.

The Committee were of Opinion, That *James Nayler* had assumed the Title of *the Prophet of the most high God*.

The King of Israel.

And for this the Evidence was, We find in a Letter from one *Thomas Simmons* this Title given to *James Nayler*; and in the Examination of *Dorcas Erbury*, taken at *Bristol* aforesaid, we find something to this purpose; who being asked why she pulled off his Stockings, she answered, Because he is the Holy One of *Israel*, and deserves and is worthy of it.

And *Martha Simmons*, upon her Examination at *Bristol*, saith, That *James Nayler's* Name is now buried, and that he is anointed King of *Israel*. To which being examined by the Committee, expressly owned the Examination as to that to be true, and the thing itself: But because this varies a little from the Charge, and fastens it not altogether upon *James Nayler*, they had this further Proof: *James Nayler*, in his Examination at *Bristol*, being asked whether he were the King of *Israel*? answered, Thou hast said. To this *James Nayler*, being examined by the Committee, whether this Question were so demanded as aforesaid? he answered, That it was not asked by way of a Question, whether he were the King of *Israel*, but that the Examiner did positively affirm, Thou art the King of *Israel*; to which he answered, Thou hast said it. And being particularly examined by the Committee, whether he did own the Title of the King of *Israel*? he answered in these words, I have no Kingdom in this World, yet a Kingdom I have; and he that hath redeemed me,

hath redeemed me to be a King for ever. And being examined again to the same Question, whether he owned the Title of the King of *Israel*? he answered, As a Creature, I deny any such Thing, further than as God manifested in the Flesh: And if they gave that Title to Christ in me, then I do own it.

Resolution of the Committee.

Upon this Evidence the Committee were of opinion, That *James Nayler* assumed the Title of the King of *Israel*.

The Everlasting Son of Righteousness.

This we find given to him in a Letter by *Hannah Stranger* in these Words, Thou Everlasting Son of Righteousness. And *Martha Simmons*, in her Examination at *Bristol*, calls him Lord of Righteousness; which she also affirmed before the Committee. And *James Nayler* himself being examined by the Committee, whether any Person had given him that Title of the Everlasting Son of Righteousness? he answered, Where God is manifested in the Flesh, there is the Everlasting Son of Righteousness. And being asked twice, Whether God was manifested in the Flesh in him? answered both times, God manifest in the Flesh I witness, and may not deny.

Prince of Peace.

This we find given him in a Letter by the said *Hannah Stranger*; and in her Examination at *Bristol* she owned him to be the Prince of Peace. The same Title was also given him by *Martha Simmons*, as it appeared by her Examination at *Bristol*, which was confessed by her before the Committee. And being particularly asked, what she called the Man whom we call *James Nayler*? answered, I call him a perfect Man. And being further demanded, whether she did not call him the Prince of Peace? answered, He that is a perfect Man, he is the Prince of Peace. And *Nayler* being examined by the Committee, whether he owned the Title of the Prince of Peace? answered, the Prince of Peace I own, the Everlasting Peace is begotten in me.

Sent to judge and try the Cause of Israel.

The Evidence of this was in the same Letter of *Jane Woodcock's* we find it given to him; and in his Examination at *Bristol*, whether that Title was given to him, he would make no Answer. And being examined by the Committee, whether he assumed to judge and try the Cause of *Israel*? answered in these Words; The Judge of *Israel* is but one, and that Judge I witness in me, which is the Christ: And further answered, If thou speak of him whom the Father hath sent into the World and begotten in me, the Holy Ghost, the Spirit of the Father, and the Son in me, which is in me; if thou speak of it, this I own. And being asked, in what respect he was sent? he answered, no otherwise but as God manifest in the Flesh, though not as mortal. And being asked, by whom he was sent to try the Cause of *Israel*? answered, By him who

who hath made all Creatures, and hath sent his Spirit into me, his Son into me, to try the Cause; though he said he was no Judge in carnal Matters. And being asked, whether he were more sent to judge and try the Cause of *Israel*, than another? answered in these Words; As to my saying I am sent, mind that no otherwise than as the Father and the Son is in me: and to that I say further, That no other Man is sent in that Sense, but he that knoweth the indwelling of that God, and according to the Measure of his Knowledge of the living God, so far is Judgment committed to him, and no further.

And being urged to answer, whether any other had the same Measure of Judgment, to judge the Cause of *Israel*, as he had? he answered, That he had not at present any thing given him of his Father to answer unto that.

Resolution of the Committee.

That *James Nayler* hath assumed to be sent to judge and try the Cause of *Israel*.

J E S U S.

And for this the Evidence was,

John Stranger, in a Postscript in his Wife's Letter directed to, and found upon *James Nayler*, used these Words; Thy Name is no more to be called *James*, but *Jesus*. Which Postscript being shewed to *Stranger* by the Committee, he owned it written by him: and being asked, wherefore he called him *Jesus*? answered in these Words; I was moved of the Lord, and afterwards by the Spirit of the Lord. And being asked, whether by *Jesus* he meant the Saviour of the World? he would give no Answer. And *Martha Symmons* in her Examination at *Bristol*, saith, That she hath heard some call him *Jesus*; which Examination being read unto her, she denied not that, though she denied another part of that Examination. And *James Nayler* being examined, whether any Person had called him by the Name of *Jesus*? answered in these Words; As I am visible here before you, I believe they have not; but that the Name of the Lord is in me, that I dare not deny: And further said, That they have given that Name to him who is the *Jesus*, but if they have given it to any other than to the Son of God that is in me, I do deny what they have spoken. And being asked, whether he denied that they gave him the Name of *Jesus*? answered, As I am a Creature, I believe they did not: And afterwards confessed that the Name of *Jesus* was given him in a Letter; and if he had understood it of any other than the *Jesus*, he should have denied it. Being demanded, whether they gave the Name of *Jesus* to him? he answered in these Words, No otherwise than as to the Son of God. Being demanded, whether any had given him the Name of *Jesus*? answered, Not as to the Visible. And being demanded, to what then they gave the Name of *Jesus*? answered in these Words, I understand they gave that Name to the *Jesus*, to the Christ that is in me.

Upon his second Examination, being asked whether he owned the Name of *Jesus*; and if that Title belonged to him, as to Christ with-

in? he answered, That Name was never published to be called by me, neither do I call myself by that Name; but what my Father hath published, is another thing.

Resolution of the Committee.

Upon this Evidence the Committee were of Opinion, That *James Nayler* assumed the Name of *Jesus*.

He in whom the Hope of Israel standeth.

And for this, the Evidence was in the Letter of *Martha Symmons*, found upon *James Nayler*, where were these Words, Thou well-beloved Lamb of God, in whom the Hope of *Israel* stands. And *James Nayler*, in his Examination at *Bristol*, being asked, whether he were the Lamb of God, in whom the Hope of *Israel* stands? answered, That if I were not his Lamb, I should not be so sought to be devoured; and that the true Hope of *Israel* stands in the Righteousness of the Father, in whomsoever it is. And being asked, whether *Israel's* Hope were in any measure in him? he answered, Yea. Which Examination of his at *Bristol* being read to him by the Committee, he denied not this part of it. And being examined by the Committee, whether their Hope of *Israel* did stand in him? answered in these Words, It stands only in Christ *Jesus*, and as Christ *Jesus* is known in me. And being asked again, whether he were he in whom the Hope of *Israel* stands? answered in these Words, No way but as Christ is in me. And being then asked, whether as Christ is in you, so are you he in whom the Hope of *Israel* stands? answered, Nay, do not add to my Words; I speak as plain as I can, that all the Glory may be given to God, and none to the Creature; that the whole Glory may be given to my Father, and none to me, as you look upon me as a Creature. And the next Question was, Whether as Christ is in you, are you he in whom the Hope of *Israel* stands? To which he answered, Christ in me, the Hope of Glory. And being examined, what Hopes *Israel* had in him beyond any other Person? answered, None can know, but they that are of *Israel*: They can give an Account of their Hopes; *Israel* must give an Account of their Hopes themselves.

The Resolution of the Committee.

That *James Nayler* assumed to beset him in whom the Hope of *Israel* stands.

The Committee being desirous to inform themselves how far the said *Nayler* was consenting unto that Worship, and those Titles, before given unto him, besides the former Evidence, they did find in his Examination at *Bristol*, where being asked why he came in so unusual a Manner, as the Woman leading his Horse, and singing before him? he answered, That he might not refuse any thing that's moved of the Lord: Which being read unto him at the Committee, he denied not. And for the better clearing of this, the Committee examined *Hannah Stranger*, whether *Nayler* reproved her for casting her Garments before him, or for kneeling, or kissing his

his Feet? From whom they could get no other Answer than this, She would not accuse or justify any. The Committee did also find in their Examination of *Nayler*, being asked by them, whether he reproved the Women for spreading their Garments, and singing before him, answered in these Words, Nay, only I said unto them, take heed that they did nothing but what they were really moved of the Lord. And being also examined by the Committee, whether he reproved those that gave him the Titles before mentioned? answered, That he had not at all spoken unto them concerning that Thing, only the Letters he had, wherein the Titles were given; and did not think at all that any should have seen them, because he knew there was Things in them that many could not bear; but now he saw his Father purposed they should not be hid.

Nayler, at his second Examination before the Committee, being demanded; whether he had reproved the Persons that gave him those Titles and Attributes? he would not say he had reproved them. Being demanded, whether he owned them, or disclaimed them? answered in these Words, If they had it from the Lord, what am I, that I should judge it? And being pressed again with the same Question, answered thus, If the Father move them by his Spirit to give them to Christ, I may not deny; if they give that to any other but Christ, I disown it. And being asked again, whether he reproved them, or not? answered, If attributed to the Creature, then it is reprovably; if they did it to the Lord, then I dare not reprove it. And being asked, whether he thought not Christ robbed of his Honour, by that Honour or Worship given unto him? answered, That he looked upon it to be really to the true Honour of Christ, or else he would utterly have denied it. And being asked, whether he had at any time whatsoever reproved those Persons? he answered, I never understood that they gave that Honour but to God.

Here we thought to have concluded this Report; but the Committee meeting with some further Evidence, they were willing you should be Partakers of it. And it is this: *John Baynham*, Deputy to the Serjeant of the House, to whose Custody *Nayler* and his Company are committed, informed, That the usual Posture of *James Nayler* is sitting in a Chair, and his Company, both Men and Women, do sometimes kneel; and when they are weary of kneeling, they sit upon the Ground before him, singing these and divers other Words to the like purpose, viz. Holy, holy, to the Almighty, to the true God, and great God; and Glory to the Almighty, &c. And thus they do usually all the Day long: But the Informer never heard *Nayler* sing as aforesaid. And saith, There is great Resort to the said *Nayler* by divers Persons, who, most of them, do kneel before him in the manner aforesaid. And *Martha Symmons*, in the Posture aforesaid, sung, This is the joyful Day; behold the King of Righteousness is come. And further, the Informer saith, That he never knew the said *Nayler* shew any Dislike, either by Reproof or otherwise, of that Honour or Worship which *John Stranger* and his Wife, *Martha Symmons*, and *Dorcas Erbury*, and the rest, gave him,

as aforesaid. And a Member of the House, being lately at the Place where *Nayler* is now a Prisoner, informs the Committee, That he saw *Nayler* and his Company in the Posture aforesaid: and heard *John Stranger*, and one of the Women sing, Holy, holy, holy Lord God; and, Holy, holy, holy to thee, thee, thee, Lord God. And whilst *John Stranger* sung these Words, he did sometimes look upwards, and sometimes upon *James Nayler*. Another Member informed us, as upon his own View, to the same purpose. And at *Nayler's* last Examination before the Committee, being Wednesday the 3d instant, one *William Piggot* did inform, That *Nayler* sitting in a Chair where he is now a Prisoner, one *Sarah Blackbery* came to him, and took him by the Hand, and said, Rise up my Love, my Dove, my Fair-one, and come away: Why sittest thou among the Pots? And presently put her Mouth upon his Hand, and sunk down upon the Ground before him.

To which *Nayler* himself, being examined by the Committee, confessed she took him by the Hand, and spoke the Words aforesaid; but denies the putting her Mouth upon his Hand, and such Bowing-down: But saith, That he sat low; and that he was not free to go with her. And *Nayler* being asked to whom she directed that Speech? answered, To the Lord, and to him that raiseth from the Dust, and casteth them down that are exalted. And being asked, whether he reproved her for that Expression? he answered, He reproved her not. And further, *William Piggot* informed the Committee, That the last Week he was at the Place aforesaid, where *Nayler* is now a Prisoner; and that one *Stranger* and *Martha Symmons* were, with others, sitting upon their Heels before and about *Nayler*; and that *Stranger* rose up, and stood and sung just before *Nayler*, according to their usual manner of singing, when and where a Man Quaker (being present) asked *Nayler*, Dost thou own that Voice? *Nayler* answered, Yea, I do. And *Nayler* being asked by the Committee, if this were so, answered, If I tell you the Truth, you will not believe me. And *Nayler* being pressed to answer, whether he owned the Voice aforesaid? answered, that Voice I will not deny.

To sum up all: The Committee asked *Nayler* what he had more to say? (that being likely to be the last Time of hearing him, before the Committee reported the whole Fact to the House) he thus answered:

I do abhor that any of that Honour which is due to God should be given to me, as I am a Creature: But it pleased the Lord to set me up as a Sign of the coming of the Righteous One; and what hath been done in my passing through the Towns, I was commanded by the Power of the Lord to suffer such Things to be done to the Outward as a Sign. I abhor any Honour as a Creature.



December 5.

THE Report concerning *James Nayler* received and read in the House this Day from the Committee.

December

December 6.

The House this Day resumed the Debate upon the Report touching *James Nayler*.

Resolved, That *James Nayler* be brought forth with to the Bar; and that the Report of the Committee be read to him; and that it be then demanded of him what he saith hereunto by Confession or Denial. He was sent for accordingly: And being brought to the Bar, was spoken to to kneel, which he did not; and keeping his Hat on, the Serjeant by Command of the Speaker took off his Hat. And being asked whether his Name were *James Nayler*? he answered, He is so called. Being asked, how long he hath been so called? he answered, Ever since he can remember.

The Report that the Committee had drawn up was read to him, and he was demanded to every Particular, whether that were his Answer to the Committee? To which he answered particularly, acknowledging them to be so, or to that effect, and so withdrew.

Resolved, That *James Nayler* be called in to the Bar, and demanded several Questions. He was accordingly called in, and these * Questions demanded of him.

Resolved, That the House doth agree with the Committee in the Report of the Matter touching *James Nayler*.

Resolved, That this Debate be adjourned till Monday Morning; and nothing to intervene.

Resolved, That *James Nayler* be kept private.

Monday 8.

The House, according to former Order, resumed the Debate upon the Business of *James Nayler*.

Resolved, That this Debate be adjourned till Three of the clock.

Resolved, That Candles be brought in.

The Question being propounded, That *James Nayler*, upon the whole Matter of Fact, is guilty of Blasphemy: And the Question being put, That the Word *Horrid* be inserted in the Question, next before the Word *Blasphemy*, it passed in the Affirmative.

And the Question being propounded, That *James Nayler*, upon the whole Matter in Fact, is guilty of horrid Blasphemy;

And the Question being put, That the Question be now put, it passed in the Affirmative.

And the main Question being put, it was

Resolved, That *James Nayler*, upon the whole Matter of Fact, is guilty of horrid Blasphemy.

Resolved, That *James Nayler* is a grand Impostor, and Seducer of the People.

Resolved, That the Debate upon this Report, touching *James Nayler*, be adjourned till to-morrow Morning.

Tuesday 9.

The House, according to former Order, did resume the Debate upon the Report touching *James Nayler*.

Resolved, That the Debate be adjourned two Hours.

The House adjourned till Three of the clock.

* What these Questions were, is not known, there being no Record kept of them.

The House resumed the Debate upon the Report touching *James Nayler*.

Resolved, That this Debate touching *James Nayler* be adjourned till to-morrow Morning.

Wednesday 10.

Resolved, That this Debate be adjourned till to-morrow Morning eight of the clock, and nothing to intervene.

Thursday 11.

The House resolved, &c.

The Question being put, That the House adjourn two Hours, the House was divided.

Yeas went forth	84
Noes	87

So it passed in the Negative.

Resolved, That the Debate touching *James Nayler* be adjourned till to-morrow Morning, and nothing to intervene.

Friday 12.

The House, according to former Order, resumed the Debate upon the Business of *James Nayler*.

Resolved, That this Debate, &c. till to-morrow Morning, and nothing to intervene.

Saturday 13.

The House this Day, according to former Order, assumed, &c.

The Question being propounded, That the Debate touching *James Nayler* be adjourned till Monday Morning, and nothing to intervene, the House was divided.

Noes went out	65
Yeas	108

So it was resolved, That the Debate touching *James Nayler* should be adjourned till Monday Morning Eight of the clock, and nothing to intervene.

Monday 15.

The House, according to former Order, resumed the Debate about *James Nayler*, and adjourned till to-morrow Morning.

Tuesday 16.

The House, according to former Order, resumed, &c.

The Question being propounded, That the Punishment of *James Nayler* for his Crimes shall be Death; and that a Bill be prepared, and brought in for that purpose: And the Question being put, That the Question be now put, the House was divided.

The Noes went forth	96
The Yeas	82

So it passed in the Negative.

The Question being put, That this be part of the Punishment of *James Nayler*, To have his Hair cut off, it passed in the Negative.

Resolved, That this be part of the Punishment of *James Nayler*, That his Tongue be bored through with a hot Iron.

That

That the further Punishment of *James Nayler* shall be, That he shall be stigmatized in the Forehead with the Letter *B*.

The Question being propounded, That *James Nayler* be set on the Pillory in the *New Palace-Yard, Westminster*, the space of two Hours, and then shall be whipped by the Hangman through the Streets, from *Westminster* to *Cheapside*; and there likewise be set upon the Pillory for the Space of two Hours in each of the said Places, wearing a Paper, containing an Inscription of his Crimes: That his Tongue shall be bored through with a hot Iron; and that he be stigmatized in the Forehead with the Letter *B*.

Resolved, That instead of the Word *Cheapside* in this Question, the *Old Exchange* be inserted.

Resolved, That these Words be added in the Question, *With his Head in the Pillory*.

Resolved, That the Place for boring his Tongue, and stigmatizing, be near the *Old Exchange*.

The Question being propounded, That the Prison he shall be committed to, be *Bridewell* in *Bristol*: And the Question being put, it passed in the Negative.

Resolved, He be committed to Prison to *Bridewell, London*.

Resolved, That instead of the Words, *From the Society of all Men*, these be inserted *From the Society of all People*.

Resolved, That he have no Pen, Ink, or Paper.

Resolved, That he shall have no Relief but what he earn by his daily Labour.

Wednesday 17.

Resolved, That *James Nayler* be set on the Pillory, with his Head in the Pillory, in the *Palace-Yard, Westminster*, during the space of two Hours, on Thursday next; and shall be whipped by the Hangman through the Streets, from *Westminster* to the *Old Exchange, London*; and there likewise be set on the Pillory, with his Head in the Pillory, for the space of two Hours, between the Hours of Eleven and One, on Saturday next; in each Place wearing a Paper containing an Inscription of his Crimes: and that at the *Old Exchange* his Tongue be bored through with a hot Iron; and that he be there also stigmatized in the Forehead with the Letter *B*; and that he be afterwards sent to *Bristol*, and be conveyed into and through the said City on horseback, bare ridged, with his Face backward, and there also publicly whipped the next Market-Day after he come thither; and that from thence he be committed to Prison in *Bridewell, London*, and there restrained from the Society of all People, and there to labour hard till he shall be released by Parliament; and during that Time, to be debarred the use of Pen, Ink, and Paper,

and shall have no Relief but what he earns by his daily Labours.

Resolved, That the said *James Nayler* be brought to the Bar to-morrow Morning by Ten of the clock, to receive this Judgment.

Resolved, That the Speaker be authorized to issue his Warrants to the Sheriffs of *London* and *Middlesex*, the Sheriff of *Bristol*, and Governor of *Bridewell*, to see this Judgment put in Execution respectively in the said Places.

Resolved, That the Speaker be authorized to make his Warrant to the Sheriffs of *London* and *Middlesex*, to convey the said *Nayler* to *Bristol*.

Resolved, That the Speaker do issue the like Warrant to the Sheriff of *Bristol*, to convey him up to *London* after the Execution of this Judgment there.

Resolved, That to-morrow after the Sentence is pronounced against *James Nayler*, the several Petitions now offered be read.

Resolved, That then the House do likewise take into Consideration the Persons brought up with *James Nayler*.

The House being informed that *James Nayler* was brought to the Door, according to the former Order made yesterday, that he should be brought to the Bar to receive the Judgment and the Resolution made yesterday, touching the said *James Nayler*, for his Punishment:

Resolved, That these Words be added to the said Resolution, viz. *And the Parliament do declare and judge the same accordingly*.

The Question being propounded, That *James Nayler* be had in, and before Judgment pronounced be demanded, whether he have any thing to say why Judgment should not be pronounced upon him? And the Question being put, That the Question be now put, the House was divided.

The Noes went forth, 107

The Yeas, 87

So it past in the Negative.

The said *James Nayler* was by Order of the House brought in to the Bar; where the Speaker acquainted him of the Heinousness of the Crime of which the Parliament found him guilty; and accordingly did pronounce the Judgment against him; upon which he withdrew.

Which Sentence was accordingly Executed upon him; and some of his Followers were so prodigiously impious and silly as to lick his Wounds, kiss his Feet, lean in his Bosom, &c.

When he came first to *Bridewell*, to carry on the Imposture he fasted three Days; but Flesh and Blood being able to hold out no longer, he fell to work to earn himself some Food. Upon the return of the *Rump* he obtained his liberty, and died soon after, without any signs of Repentance.



The Speech of Lord Commissioner Whitlock, in behalf of James Nayler.

In the Debate upon the Question, Whether James Nayler should be punish'd with Death, Lord Commissioner Whitlock delivered his Opinion to this Effect, viz.

THE Arguments of those Gentlemen who would have *James Nayler* put to Death, are chiefly drawn from these three Grounds:

1. From the Law of Nature.
2. From the Law of God.
3. From the Law of the Land.

And I hold that he ought not to suffer Death by any of these Laws:

First, As to the Law of Nature;

1. It is held amongst the Politicians, That the Subject thereof is *Conservatio sui*; for that every Creature by the Law of Nature seeks his own Conservation.

Then, Whether the Conservation of the People and Commonwealth of *England* do depend upon the Life or Death of *James Nayler*? is the Question.

It is likewise held among the Politicians, That there is no Judge of the Law of Nature, but only the Supreme Magistracy of each particular Commonwealth; and that within their own Bounds only; and of a present Case, not of a past or future Case.

As in *England*; the Parliament only is the Judge of the Law of Nature in *England*, and of the present Case before them; wherein, if the Parliament shall adjudge, That it is necessary for the Being and Preservation of the People and Commonwealth of *England*, that *James Nayler* be put to Death, then he ought to die by the Law of Nature.

But I suppose that no Gentleman is of Opinion, That it is necessary for the Being and Preservation of the People and Commonwealth of *England*, that *James Nayler* should be put to Death; and therefore on that Head or Principle of the Law of Nature, he is not to die.

2. If by the Law of Nature a Blasphemer is to die, How comes it to pass that *Moses* was so doubtful in the Case of the *Ægyptian*, in the 24th Chapter of *Leviticus*? he put him in Ward, and asked Counsel of God what should be done with him.

Moses was a Man of great Knowledge and Wisdom, and as able to understand the Law of Nature as any of us are; and if the Case of the *Ægyptian* had been against the Law of Nature, he was surely capable to have found it out, and not to have made so much Difficulty as he did of it, so as to know the immediate Pleasure of God in it.

3. The Crimes of *James Nayler* cannot be against the Law of Nature, because they are against the Second Person of the Trinity, the Knowledge of whom is not by the Law of Nature, but by the Law of Grace only; and therefore cannot be an Offence against the Law of Nature, by which there cannot be any Knowledge of him.

But it hath been objected, That the Papists put to Death those who deny the Real Presence,

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and other of their Opinions held contrary to the Truth; and, that the very Heathens, by the Light of Nature, did put to Death such as denied or reproached their Idol Gods: and how much more Zeal ought we to have for the Honour of the only true God whom we worship?

This may be answered in the Parallel, That neither are we to follow the Examples of those bloody, persecuting Papists; nor is *James Nayler* worthy the Honour to be ranked amongst the Holy Martyrs. And,

As to the Judgments of the Heathens, they were against such as denied their Gods to be Gods; but *James Nayler* at the Bar did acknowledge, That *Jesus Christ*, who died at *Jerusalem*, was the Son of God, and the Saviour of the World.

And some of the Heathen Princes, by their Light of Nature, when Flattery and their own Strength did bear them out, assumed the Names and Titles of the Gods of their Countries, and were worshipped by their Vassals.

Herein, *James Nayler* comes towards them, permitting, and not reproving those who did adore him; which he would evade by the Distinction, That as he is a poor Creature, and visible, no Adoration is due to him; but, as to that Power which is invisible (that Christ within him) he is to be worshipped.

That Christ is in the Heart of a true Believer, is not so strange a Doctrine, as that a Man is to be worshipped, who saith, That Christ is in him. But yet it cannot be warranted by the Law of Nature, to put a Man to Death for these Assertions.

Then *Secondly*,

The Second Ground is the Law of God: By which it is objected, That this Man being guilty of horrid Blasphemy, ought to be put to Death.

And the Case of the *Ægyptian* is instanced in, and much insisted on as a positive Rule and Law for us to do the like in the Case of *James Nayler*.

Herein I think it not improper, first to consider the Signification of the Word *Blasphemy*, and what it comprehends in the Extensiveness of it; and I take it to comprehend, *The reviling or cursing the Name of God, or of our Neighbour*.

And *Gregorius Turonensis*, in his *Appendix*, cap. 51. hath this Expression, *Liberare poterat de Blasphemia hanc causam*. From whence the French Word, *Blasme*; and our English, *Blame*.

Spelman saith it is *increpare, vel convitiis aliquem afficere*.

Paræus derives it from *βλάπτω τὴν φάμην*; i. e. *Lesio Famæ*.

And is this in relation to Men, as well as to God.

And therefore the great Objection is taken away, That the Parliament having voted him Guilty of horrid Blasphemy, cannot in Honour and Conscience inflict upon him a less Punishment than Death, for this Offence.

[M m]

They

They have not Voted it Blasphemy against God; and it appears the Word extends to Men, in the genuine Signification of it.

But I shall take it according to the usual Acceptation amongst us, and, as I suppose, is intended by the Vote, That he is Guilty of horrid Blasphemy against God.

Yet I do not find my self convinced, that by the Law of God, whosoever is guilty of horrid Blasphemy amongst us, is to be put to Death.

That we ought all of us, as Magistrates and Christians, to bear our Testimony against these abominable Crimes, and against this poor Wretch, I do agree; but that the Punishment for those Offences must be Death, I am not satisfy'd.

That the Law of God is so, many Gentlemen have urged the Case of the *Aegyptian*, the *Israelitish* Woman's Son striving with the *Israelite*, in the 24th Chapter of *Leviticus*, because God determined that he should die; and therefore, as their Argument is, *James Nayler* must also die.

By the same Argument he must be stoned to Death; and so must every rebellious Son, and even he that gathereth Sticks upon the Sabbath Day, and the like.

Very learned Divines are of Opinion, and I think it not to be confuted, That no part of the Law of the *Jews* doth bind any other Nation, but that part of it only, which is Moral.

The Laws of the *Israelites* were by the Wisdom of God suited to the Inclinations and Dispositions of that People; and others (as there is great difference between the Inclinations of People) must have different Laws: and none hath ever yet affirmed, That this or that Punishment of any Offence is Moral, tho the Offence itself be so.

But to come to a more particular Disquisition of the Case of this *Aegyptian*. He was one bred up in the Worship of the Idol Gods of *Aegypt*, and in striving with the *Israelite*, it is conceived, that he preferred his own God before the God of *Israel*, and said, that their God did not bring them out of the Land of *Aegypt*, nor was able to do it.

There is a difference to be observed in this Chapter between the Offence of this *Aegyptian*, and the Offence of Blaspheming or Cursing of God in another Case.

In the 15th Verse of this 24th Chapter of *Leviticus* it is said thus, *And thou shalt speak to the Children of Israel, saying* מַן אִישׁ מֵאִישׁ *Man, Man. i. e. Whosoever or whatever Man shall* יְקַלֵּל *curse God shall bear his Sin; that is, shall be punished as the Nature of the Fact shall require; so saith Aynsworth in locum, shall bear the Punishment due for his Sin.*

The word *Curse*, in *Hebrew* is יְקַלֵּל *Jicallel*, the Root of which signifieth, *to count light of*; and in the Conjugation *Piel* is found to signify *to Curse out of Evil Will, to speak ill of, or to Imprecate*; and also, *to speak Evil, so as by speaking to bring it.*

This 15th Verse in *Grotius's* Opinion (in his Exposition upon this Text) is to be understood of him that Curseth, but not distinctly naming the Sacred Name *Jehovah*, nor taking from him his Reverence and Deity, as if he were no God, and so is to be punished with an arbitrary Punishment, as Stripes, or the like.

But the 16th Verse is thus, *And he that Blasphemeth* נִקֵּב *Nokeb*, from the Root נִקֵּב *Nacabb*,

which signifies, *to run through; or, to bore through*, and also to speak or name to ones Disgrace; and is the same with the *Latin* phrase, *configere Nomen alicujus maledictis.*

The Emphasis is not in this Word, but in the other שֵׁם *Shem*, and יְהוָה *Jehovah*; and when that Name was named, it was a most immediate and direct Blaspheming of God; detracting from him his Honour and Deity.

He that Blasphemeth the Name Jehovah, or the Name of Jehovah, shall surely be put to Death, and all the Congregation shall stone him.

Upon this, *Aynsworth* is of Opinion, that the *Hebrews* some of them will not sentence this Blasphemer with Death, unless *Jehovah* be named; which Opinion he disalloweth, saying, That the Word is not so much, but the Thing is to be respected. But he seems to require, that the Blasphemer must immediately speak ill of God or blaspheme him, or else he is not subject to this Punishment.

Grotius agrees with the *Rabbins*, who say that every Cursing of God was not punishable with Death, but that the Punishment in some Cases was Arbitrary, as the godly Judgment of those, who were to censure, should determine. But if *Jehovah* were named by a *Jew*, or others under their Government, and so expressly and immediately dishonoured, that was to be punished with Death.

Wherein he doth distinguish, between immediate, and express Blasphemy, and that which is so interpretatively only; and signifieth, that the Punishment by Stripes was only inflicted upon him that did Blaspheme but *interpretatively*, and not *maliciously* nominating *Jehovah*.

This Judgment of *Grotius* seems to me to be reasonable, and that the Offence of *James Nayler* is within the 15th Verse of this Text, a Blasphemy interpretatively only, and therefore punishable with Stripes or the like. But that it is not within the 16th Verse, an immediate and direct reproaching of the Name of God; for at your Bar he did acknowledge *Jesus Christ* to be the Saviour of the World, &c.

And if it be not within the 16th Verse, then it is not punishable by Death according to that Law of the *Jews*, admitting the same to be binding amongst us Christians; as with Submission to better Judgments I think it is not, no more than those other Laws of theirs of the like Nature. Nor can any sort of Punishment be construed to be Moral.

I (therefore) conclude this Point, that there is no binding Rule or Law of God, that for these Offences *James Nayler* ought to be put to Death.

And if the Matter be but doubtful, we should, *in favorem Vitæ*, incline to the way of most Mercy.

Thirdly, The Third Ground, is, *The Law of the Land.*

And hereupon hath been observed, That by the Laws of other Nations Blasphemy is punishable with Death: And shall we do less for the Honour of God, than others? And a worthy Gentleman reported a Case, which did lately happen in *France*, where the Parliament of *Bordeaux* adjudg'd an *Englishman* to Death, upon the Complaint of the Protestants there, for Blasphemy, in saying, *That he was Christ.*

I know not what might be lately done there, but I find the Laws of *France* concerning Blasphemy, in the *Code of Foreign Decisions*, and of *Henry III.* to be this; That for the first four Offences, a Blasphemer may be committed to Prison to Bread and Water; for the fifth Offence, to have his under Lip slit; for the sixth, that his under Lip should be cut so that his Teeth be seen; for the seventh his Tongue to be bored, and for the eighth Offence he is to be put to Death.

It is true, that the Popish Countries, where the Inquisition is in Force, do put Protestants to Death as Blasphemers: but I hope that will be no Precedent for us to imitate.

The *Lutherans* do hold the Ubiquity of *Christ* in such sort, that the News of *James Nayler's* being put to Death for these Offences, would not be pleasing to them.

But to come to that which is most proper for your Consideration, and for my Discourse, *The Law of England.*

I must acknowledge my own Ignorance, that I do not know any Law of this Nation now in Force, for the putting of *James Nayler* for these Offences to Death.

It is held that the Ordinance * of the Long Parliament concerning Blasphemy is not now in Force, and I do agree to that Opinion; nor do I know any other Law in that Case.

That Ordinance cost much Debate, and therein was a great diversity of Judgments; and so I presume we shall again find it, whensoever these Matters shall fall under Consideration.

The Objection was very weightily urged, That there is a Law in Force against *Heresy*, as appears by the Writ *De Heretico comburendo*, which (they say) was by the Common Law; and that Blasphemy is an *Heresy* within that Law; by which he may be put to Death.

This Objection may receive a clear Answer.

I am not of Opinion, That *Heresy* was punishable by the Common Law with Death, notwithstanding the Writ *De Heretico comburendo* be in the Register; for it is not in the antient Manuscript Registers, which indeed is a true part and demonstration of the Common Law.

But this Writ was of later Date, and brought in by *Arundel* Archbishop of *Canterbury* in *Henry* the Fourth's time for the Punishment and Suppression of *Lollards*, who were good Christians, and of the same Profession that we are. But the bloody practice of that Prelate did not work the Effect he intended, as appears (blessed be God) at this Day.

Yet if it should be admitted that *Heresy* was punishable by Death at the Common Law, that cannot include *Blasphemy*.

They are Offences of a different Nature; *Heresy* is *Crimen Judicii*, an erroneous Opinion: *Blasphemy* is *Crimen Malitiæ*, a reviling the Name and Honour of God.

Heresy was to be declared in particular, and by the four first general Councils. But the Blasphemy in this Vote is general; and I do not find it reckoned in those Councils for *Heresy*.

I remember a Case in our Book of *H. 7.* where the Bishop committed one to Prison for

a *Heretick*, and the *Heresy* was, denying *That Tythes were due to his Parson.* This at that Time was a very great *Heresy*; but now I believe some are inclinable to think, that to say, *Tythes are due to the Parson*, is a kind of *Heresy*.

So in this Case, That which now may be accounted Blasphemy, and the Offender to be put to Death for it; in another Age the contrary may be esteemed Blasphemy, and the Offender likewise put to Death for that; which may be warranted by the present Case before you, if *James Nayler* should be put to Death upon the general Vote for being guilty of *Horrid Blasphemy*, the Particulars thereof not being exprest.

And what Mischief and Inconvenience in the Consequence thereof may ensue to the People of *England*, and to Posterity, is worthy the Care of a Parliament, and to be avoided, we being sent hither to provide for the Good and Safety of the People; and not to do that, which may bring them into Snarcs and Dangers.

If this Wretch be put to Death, it must be either by Judgment of the Parliament, as the Supreme Court of Justice; or by Act of Parliament to attain him of the Crimes, and to inflict the Punishment of Death upon him for those Crimes.

If you shall think fit to proceed in the judicial way, I hope you will be pleased to consider the Weight of the Consequences thereof, and to be very clear in the Foundation, we being here in a Constitution different from the former.

And whosoever will take the Pains to read the Records of the Parliament-Rolls in *Edward* the Second, and *Richard* the Second's time, of the Judgments then given in Parliament (with quickness and sharpness enough) and the speedy Executions thereupon, will be the more tender of making new Precedents of such Proceedings in Parliament.

I am far from derogating from the Honour and Authority of Parliaments, and of this especially; but I humbly inform you what I have observed, and submit it to your better Judgment.

It is held, That antiently the Judicatory of Parliaments was in the Lords House, and particularly in Criminal Causes, which was very frequent; but seldom without an Impeachment by the then House of Commons, who were as the Grand Jury in that respect of the whole Nation.

You are now the sole Parliament of *England*, and have the sole Power in you; yet probably some may object, whether in a Judicial Proceeding the Lord Protector ought not to join with you.

I do not know any Judgment given in Parliament, but where there was a known Law then in force against the Offence adjudged, and the Judgment given according to that known Law.

In this Case of *James Nayler* there is no known Law in force for the Punishment of his Offence with Death, and therefore I am not satisfied, that we should by Judgment of Parliament condemn him to Death; nor to make a new Law

* This Ordinance bears date May 2, 1648, and Ordains, that whoever should maintain any one of the several Opinions (there call'd Errors) unless he would Abjure the same, or after Abjuration should relapse, should be Guilty of Felony without Benefit of Clergy.

for the Punishment of an Offence by Death, which Law was not known nor made at the time of the Offence committed; and this to be done by a Judgment.

Perhaps it will be said, That this may be done by a Bill of Attainder, and I perceive many Gentlemen inclined thereunto; they have remembred the Cases of the Earl of *Strafford*, and of the Archbishop of *Canterbury*, who were attainted by Bill, and the Offences by them committed were not Treason by the known Law at the Time when they were committed, and yet by Act of Parliament they were attainted of Treason for those Offences.

But (here we are to) observe, That in those Acts of Attainder is a Clause, That they shall not be drawn into Precedent; and I hope they shall not.

And further give me leave to inform you, That there is a great difference between those Cases, and that now before you.

By the Stat. 25 E.3. Treasons are enumerated, and a Power is left in the Parliament to declare any other Facts to be Treason.

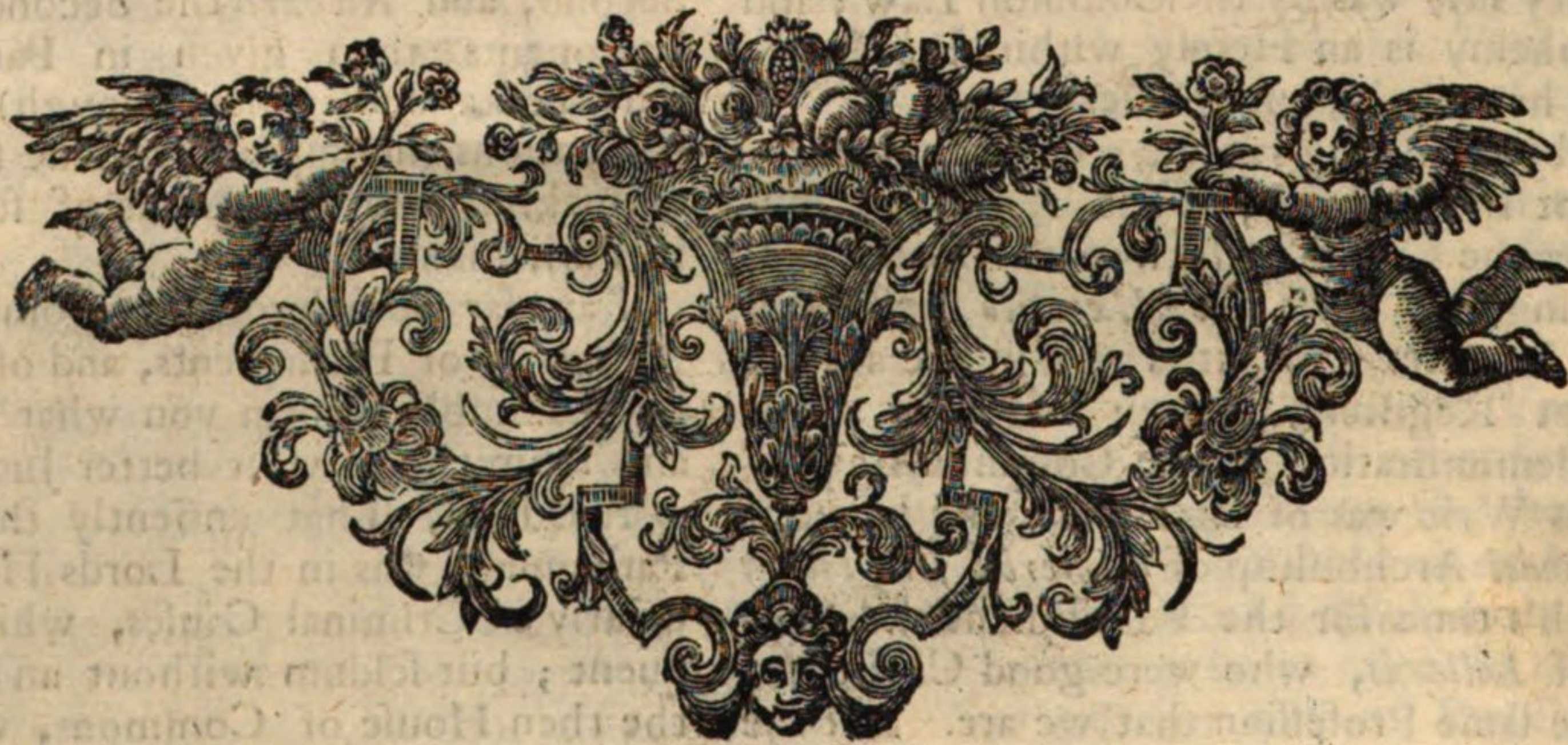
And the Facts of the Earl of *Strafford*, and of the Archbishop, in the general was the same, endeavouring to subvert the Fundamental Laws

of the Land, and to introduce an Arbitrary and Tyrannical Government; which were maintained by the Arguments of a very learned and honourable Person, now a Chief Justice, to be Treason by the Common Law of *England*.

But it will be hard to maintain, that the Offences of *James Nayler* are punishable by Death by the Common Law of *England*, and therefore it will be very dangerous in the Consequence of it to inflict this Punishment upon him by a new Law.

I shall not mention the loss of Time (whereof too much hath been already spent about this matter) in case you shall proceed by Bill. All the matter must be again debated and examined by you, and after that by my Lord *Protector*.

But the Mischief which it may produce to the People of *England* in the Precedent of it, wherein no Man can be safe, that by a Law now to be made you should inflict the Punishment of Death upon *James Nayler* for Offences, which were not by the Law of *England* punishable by Death at the Time when they were committed, is the strong Argument with me to be against the Question for the putting of *James Nayler* to Death for these Offences.



LIII. *The Trial of Sir HENRY SLINGSBY* Kt. before the High Court of Justice, for High-Treason, the 25th of May, 1658. 10 Car. II.*

THE High Court being set, and the Names of the Commissioners being called, the Serjeant at Arms was commanded to fetch the Prisoner to the Bar. Sir *Henry Slingsby* was brought accordingly to the Bar. Then Proclamation made for Silence, and the Commission for Trial of the Prisoner read. Proclamation for Silence again was made. Then Mr. Attorney-General *Prideaux* exhibited a Charge of High-Treason against Sir *Henry Slingsby* the Prisoner; which was read. The Substance of which Charge was as followeth, viz.

THAT the Town of *Kingston upon Hull*, in the County of *Kingston upon Hull*, in *England*, on the 11th of *October*, 1656, and ever since, unto the Day of the exhibiting of this Charge, was and hath been, and is yet, a Town belonging to this Commonwealth; where there is a Garison, and a great part of the Army and Forces belonging to this Commonwealth: That Sir *Henry Slingsby*, late of *Redhouse*, in the County of *York*, Knight, minding and intending to imbroid this Commonwealth in intestine Wars, the 30th of *April* last, and divers Times since the 10th of *October* 1656, and before the said 30th of *April* last, as a false Traitor and Enemy then and yet to his Highness *Oliver*, Lord Protector of these Nations, together with one *Robert Gardiner* and *Edward Chapman*, and with one *William Smith*, of the said County of *York*, Gentlemen, and divers others, did traitorously, advisedly, and maliciously combine together, and plot and contrive to betray and yield up the said Garison of *Hull* unto *Charles Stuart*, eldest Son of the late King *Charles*, now an Enemy to this Commonwealth.

That the said Sir *Henry Slingsby*, by like traitorous Combination, the said 30th of *April* last, and divers Times after the said 10th of *Oct.* 1656, did traitorously and maliciously plot, and contrive, and endeavour to stir up Mutinies within the said Garison, to withdraw *Ralph Waterhouse*, *John Overton*, *George Thompson*, &c. Officers of the same, from their Obedience to his Highness *Oliver* Lord Protector.

That then and there, and at divers other Times, as well before as after the said 30th of *April* last, and after the said 10th of *October*, 1656, he the said Sir *Henry Slingsby* did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir and raise up Forces against *Oliver* Lord Protector, and against the Government of this Commonwealth, as the same is established, and to alter the same.

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That the said Sir *Henry Slingsby* did traitorously, &c. then and there declare, publish, and promote the said *Charles Stuart* to be King of *England*, *Scotland*, and *Ireland*, and the Dominions thereto belonging, and held Correspondence with him. All these Things the said Sir *Henry Slingsby*, at *Kingston upon Hull* aforesaid, did maliciously, &c. carry on by conferring with the said Officers how to effect the aforesaid Treason, and encouraging the said Officers thereto, by promising to them, and every of them, Rewards and Sums of Money to join with him in the Treason aforesaid, and by delivering to the said *Ralph Waterhouse*, one of the Officers of the Garison, a certain Instrument under Seal, which the said Sir *Henry Slingsby* said was from *Charles Stuart*; and did purport to be a Commission from the said *Charles Stuart*, to him the said *Ralph Waterhouse*, to be Governor of the Castle. All which said Treasons are contrary to the Statute in that Case made and provided. With which Treasons the said Attorney-General, on behalf of the Lord Protector, &c. doth Charge the said Sir *Henry Slingsby*, and prays that the said Sir *Henry Slingsby* may be put to answer thereto; averring that the said Sir *Henry Slingsby* is the Person by Name appointed by his Highness the Lord Protector to be tried and proceeded against. Signed May 25, 1658.

Edm. Prideaux.

* Lord President. Thou here standest charged for High-Treason: This Court requires that thou give a positive Answer, whether Guilty, or Not guilty.

Sir *Henry Slingsby*. I desire to have Counsel assigned me.

Ld President. There is Matter of Fact laid to your Charge, which amounts to Treason; and there is no Law allowed in Matters of Fact.

Sir *H. Slingsby*. There is also Matter of Law: And I desire to be tried by a Jury, which is according to the Law of the Land.

Ld President. We are all here your Jury, as well as your Judges: We are the Number of two or three Juries. And your Jury is well known; for they are chosen by the Parliament. You are to plead to your Indictment.

Sir *H. Slingsby*. I desire to know whether there can be any Conviction, unless it be by Confession?

Ld President. If you had looked upon the Act of Parliament, that would have told you: It speaks of Examination of Witnesses; it speaks of your Confession and Answer, and of your De-

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fault; and if you do not plead to it, it will be very penal to you.

Sir *H. Slingsby*. If it be by the Laws of the Land, that the Trial should be by a Jury, I desire I may have that Privilege.

Ld President. Acts of Parliament make Justice and Law: They are both. They think fit to change the Custom of Trials that have been in former Times, and all Persons must submit to it. And the Parliament hath thought fit to make this Court both Jury and Judges. And therefore I require that you answer, whether Guilty or Not guilty.

Sir *H. Slingsby*. I desire that the Act of Parliament may be read.

Ld President. You are before your Jury and Judges. Parliaments have great Care of the Rights of the People, and have appointed this Court; and his Highness hath appointed you to be tried by us; you ought therefore to plead to your Indictment.

Sir *H. Slingsby*. The Law gives Liberty in case of Juries to the Party accused, to make his Exceptions against the Jury; which he cannot do here, where you are both Judge and Jury.

Ld President. If you have any particular Exception to any Man, you may make it: You were, Sir, of the Parliament when this Act was made.

Sir *H. Slingsby*. I was a Prisoner at the same time.

Ld President. Although a Prisoner, yet you are bound by Act of Parliament.

Mr. Phelps, Clerk. You have heard your Charge read, and Plea demanded: The Court again requires of you that you give a positive Answer, whether guilty, or not.

Sir *H. Slingsby*. I am, my Lord, of an Opinion (though you account it a Paradox) that I cannot trespass against your Laws, because I did not submit to them.

Ld President. All the People of *England* must submit to the Laws of *England*, to the Authorities of *England*; all must submit to my Lord Protector and Acts of Parliament. We sit here by Authority of his Highness, by a Commission under the Great Seal of *England*, and by Authority of Parliament; and you must submit to our Authority.

Sir *H. Slingsby*. The Laws have been so uncertain with me, that I could not well know them; and when I was a Prisoner, I could not take notice of them: I could have no Benefit by your Laws, because that is no Law to me which doth not give me Interest and Property to what I have. It is the Benefit of Laws, that they do distinguish between *meum* and *tuum*: But when you take all from me, in my Case it is not so.

Mr. Attorn. Gen. Prideaux. He may enjoy as much Benefit by the Laws as any, if he have not forfeited it; and I desire he may be put to answer.

Ld President. The Court again require you to plead to your Indictment.

Sir *H. Slingsby*. Not guilty.

Mr. Phelps. Your Plea then is, That you are Not guilty. To which Sir *Henry Slingsby* answered, Yes.

Mr. Lechmere. Mr. Attorney-General having exhibited a Charge of High-Treason against this Gentleman, Sir *H. Slingsby*, the Prisoner at

the Bar, the Charge doth set forth, That the Town of *Kingston upon Hull*, October 11, 1656, and ever since, to the Time of exhibiting the Charge, was a Town of this Commonwealth's; and that within that Town, in all that Time, there is and hath been a Garison, and part of the Army of this Commonwealth; and during that Time *Ralph Waterhouse*, *John Overton*, *George Thompson*, &c. were Officers of the Forces of that Garison. That Sir *H. Slingsby*, minding to imbroil the Commonwealth in War, April 30 last, and divers other Times since October 10, 1656, as a false Traitor and Enemy to his Highness the Lord Protector, did plot, contrive, and endeavour to betray the said Town and Garison to *Charles Stuart*, an Enemy to this Commonwealth. It sets forth further, That Sir *H. Slingsby*, the Time and Place aforesaid, did contrive and endeavour to stir up Mutinies among the Soldiery of that Garison, and to raise Forces against this Commonwealth; and that he did publish and declare the said *Charles Stuart* to be King of *England*, *Scotland*, and *Ireland*, &c. and hath held Correspondence with him; and that he delivered to the said *Ralph Waterhouse* a certain Instrument, which he said was a Commission from *Charles Stuart*: All which Treasons are contrary to the Form and Effect of the Act of Parliament. And the Prisoner having pleaded Not guilty, which Plea is recorded, we are ready to prove him guilty, and ready to call our Witnesses.

Mr. At. Gen. You have heard the Charge, and Plea Not guilty; it rests upon us to prove it to you. This Gentleman himself, I believe, when he hath heard them particularly opened, will be convinced that of these Acts he hath been guilty. It would not have been expected from him to have tasted of the Mercy of this Court: For had he had Justice done formerly, he had not been to have answered this here. I do believe it was expected from those that did govern, to have got him off by Mercy, not to take him off by Justice. But he ceased not to interpose on the behalf of *Charles Stuart*, and endeavoured to bring him in again, and had like to have withdrawn the faithful Officers of that Garison to betray their Trust: If Money would have done it, that was not wanting to be offered; if Preferment would have wrought upon them, that was proffered; if Hopes of higher Preferment under *Charles Stuart* would have wrought upon them, it would have been done. But to our Witnesses.

Ralph Waterhouse sworn.

Mr. At. Gen. What Discourse had you with Sir *Henry Slingsby*, touching the delivering up of *Hull*?

Mr. Waterhouse. I had several Discourses with him; particularly about the latter end of December last, being a hunting, Sir *Henry Slingsby's* Son came to me in the Field, and told me his Father presented his Service to me, and gave me a Book; which I looked on about an Hour after, and found it was a printed Book. At the beginning was a Paper thus written, Put this out with your Finger, and then tell me whether *Rob. Gardiner* had not spoke to me to serve the King, &c. Presently after I acquainted Col. *Smith*, who advised me to discover, if I could, whether Sir *H. Slingsby* was carrying on any Plot. I went to Sir *H. Slingsby*, and Sir *H. S.* took me to the Window;

dow-side, and hugged and embraced me; and asked me if *Robert Gardiner* had not spoke to me to serve the King: And then began with a great many good words, and said that one (meaning his Highness) had put a Disrespect upon me, and if I would I might right myself; with many other words; and promised me a Sum of Money, to secure the South-house for the Service of the King. About a Week after, he sent the Book again, and in the same Leaf wrote a few Lines more, which I also shew'd to *Col. Smith*; he promised me 5000*l.* in Land or Money here or elsewhere. I made many Queries, and told him I thought it was to no purpose: he told me, that if that House were secured, in a little time he would bring an Army to besiege *Hull*, and then half our Work would be done. He after sent me another Paper, which was to this purpose, That if the Governour fought for him, he would give Security for his peaceable living; and said, if I would give him a Piece, he would make it twenty if he did not procure me a Commission from *C. Stuart* within fourteen days. He said further, That a great Party were engaged in *Scotland*. Upon the second of *April* he delivered to me a Commission, which he said was from the King; and the Commission being read in Court, the said *Mr. Waterhouse* averred it to be the same he received of *Sir Henry Slingsby*, and which ran thus:

C. R.

CHARLES by the Grace of God (with the old usual Title, &c.) To our Right Trusty and Well-beloved Major *Ralph Waterhouse*: We do by these Presents constitute and appoint you to be Governour of the Castle and two Block-Houses near *Hull*, and to put such a Garison of Horse and Foot therein, as you shall judge necessary for the Defence of the same; and to command the Garison as Governour thereof, and to do all things necessary for the Preservation of the said Place. Given at *Bruges*, *March 12, 1657.*

Sir H. Slingsby also said to me, That he had spoken with *Capt. Overton*, and promised to furnish him with Money to lay in Provision, and engaged by a Bond to repay such Money, as I should lay out for the victualling of the South-House: and also read a Letter from *C. Stuart* running thus, *I can never be enough sensible of your Favours, &c.* I demanded how the Army should come; he answered, that the Duke of *York* had 7 or 8000 Men, that the King of *Spain* would furnish them, if there was a Place of Security. And asking what way of Correspondence he had with *C. Stuart*, he said he had a way of having Commissions from *C. Stuart*, which he would not discover. [*Here Sir H. Slingsby stood up, and disowned any such Expression.*]

Mr. At. Gen. What Officer were you, *Mr. Waterhouse*?

Mr. Waterhouse. I have the Command of a Company, and of the South Block-house.

Mr. At. Gen. *Mr. Waterhouse*, what Letter was that *Sir H. Slingsby* sent to his Son?

Mr. Wat. The Contents were thus; That *Harry* would speak to the two Men to be very importunate with the twelve. *Sir H. Slingsby* promised so many Men that he offered *Capt. Overton* 20*l.* to raise forty Men.

Mr. At. Gen. How many Men did he tell you should be at *Paul* near *Hull*?

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Mr. Wat. 600 to march into *Hull*.

Mr. At. Gen. What Men did he tell you *Andrew* would raise?

Mr. Wat. He said *Andrew* would raise fifty or sixty Men when he pleased, and that *Capt. Overton* should have a Deputation to command the Castle under me: he said he had good hopes of *Col. Smith*, and that he had a Commission for him, if he would accept of it.

Sir H. Slingsby. This which is here spoken in Seriousness, was then spoke in Mirth, a mere Discourse, as those that are in good Fellowship may have, and what I said or did was but in jest.

Ld President. There ought to be no good Fellowship in Treason.

Mr. Wat. I never visited him but by *Col. Smith's* Commission. *Sir H. Slingsby* according to his Engagement, upon receipt of a Piece, gave me another Commission running thus; *Oliver, Lord Protector, &c.* took it again, and burned it.

Mr. At. Gen. *Sir Henry*, was it you that filled up that blank Commission?

Sir H. Slingsby. It is more than any Man knows: but it is not the Commission I gave *Waterhouse*, which is dated 12 *March, 1657.*

Capt. John Overton sworn.

Mr. Phelps shew'd him the Commission dated 12 *March, 1657.*

Mr. At. Gen. Did you see that Commission delivered to *Waterhouse* by *Sir H. Slingsby*?

Capt. Overton. Yes, I did; he delivered it to him in the Castle, about the second of *April* last.

Sir H. Slingsby. *Mr. Overton*, what Date did that Commission which I then delivered, bear?

Capt. Overton. This is the same Commission, and (having it in his hand) I here see it is dated 12 *March, 1657.*

Sir H. Slingsby. I deny that the Commission I then delivered did bear that Date.

Waterh. & Overton. My Lord, we are upon our Oaths.

Capt. Overton. I saw *Sir H.* give it to Major *Waterhouse* in his own Chamber in the Castle of *Hull*, and Major *W.* bid me read it, which I did.

Sir H. Slingsby. Was that Commission, which you read, dated 12 *March*?

[*Capt. Overton* reads the Copy of it, which he then wrote from the Original, which agreed with this.]

Sir H. Slingsby. I deny that the Commission then delivered was of that date.

Waterh. and Overton both deny the altering of the Date.

Sir H. Slingsby. Major *Waterhouse* desired me to alter the Date of the Commission, and I scraped out *April* and the Day, and put in *March*.

Capt. Overton examined.

Mr. At. Gen. What Treaty was between *Sir H.* and you at *Hull*? Are you an Officer there?

Capt. Overton. Yes.

Mr. At. Gen. How long have you been an Officer there?

Capt. Overton. About ten Years.

Mr. At. Gen. What Proceedings was there between *Sir H.* and you? What Meetings had you, &c. Was he your Prisoner?

N n 2

Capt.

That the further Punishment of *James Nayler* shall be, That he shall be stigmatized in the Forehead with the Letter *B*.

The Question being propounded, That *James Nayler* be set on the Pillory in the *New Palace-Yard, Westminster*, the space of two Hours, and then shall be whipped by the Hangman through the Streets, from *Westminster* to *Cheapside*; and there likewise be set upon the Pillory for the Space of two Hours in each of the said Places, wearing a Paper, containing an Inscription of his Crimes: That his Tongue shall be bored through with a hot Iron; and that he be stigmatized in the Forehead with the Letter *B*.

Resolved, That instead of the Word *Cheapside* in this Question, *the Old Exchange* be inserted.

Resolved, That these Words be added in the Question, *With his Head in the Pillory*.

Resolved, That the Place for boring his Tongue, and stigmatizing, be near the *Old Exchange*.

The Question being propounded, That the Prison he shall be committed to, be *Bridewell* in *Bristol*: And the Question being put, it passed in the Negative.

Resolved, He be committed to Prison to *Bridewell, London*.

Resolved, That instead of the Words, *From the Society of all Men*, these be inserted *From the Society of all People*.

Resolved, That he have no Pen, Ink, or Paper.

Resolved, That he shall have no Relief but what he earn by his daily Labour.

Wednesday 17.

Resolved, That *James Nayler* be set on the Pillory, with his Head in the Pillory, in the *Palace-Yard, Westminster*, during the space of two Hours, on Thursday next; and shall be whipped by the Hangman through the Streets, from *Westminster* to the *Old Exchange, London*; and there likewise be set on the Pillory, with his Head in the Pillory, for the space of two Hours, between the Hours of Eleven and One, on Saturday next; in each Place wearing a Paper containing an Inscription of his Crimes: and that at the *Old Exchange* his Tongue be bored through with a hot Iron; and that he be there also stigmatized in the Forehead with the Letter *B*; and that he be afterwards sent to *Bristol*, and be conveyed into and through the said City on horseback, bare ridged, with his Face backward, and there also publicly whipped the next Market-Day after he come thither; and that from thence he be committed to Prison in *Bridewell, London*, and there restrained from the Society of all People, and there to labour hard till he shall be released by Parliament; and during that Time, to be debarred the use of Pen, Ink, and Paper,

and shall have no Relief but what he earns by his daily Labours.

Resolved, That the said *James Nayler* be brought to the Bar to-morrow Morning by Ten of the clock, to receive this Judgment.

Resolved, That the Speaker be authorized to issue his Warrants to the Sheriffs of *London* and *Middlesex*, the Sheriff of *Bristol*, and Governor of *Bridewell*, to see this Judgment put in Execution respectively in the said Places.

Resolved, That the Speaker be authorized to make his Warrant to the Sheriffs of *London* and *Middlesex*, to convey the said *Nayler* to *Bristol*.

Resolved, That the Speaker do issue the like Warrant to the Sheriff of *Bristol*, to convey him up to *London* after the Execution of this Judgment there.

Resolved, That to-morrow after the Sentence is pronounced against *James Nayler*, the several Petitions now offered be read.

Resolved, That then the House do likewise take into Consideration the Persons brought up with *James Nayler*.

The House being informed that *James Nayler* was brought to the Door, according to the former Order made yesterday, that he should be brought to the Bar to receive the Judgment and the Resolution made yesterday, touching the said *James Nayler*, for his Punishment:

Resolved, That these Words be added to the said Resolution, viz. *And the Parliament do declare and judge the same accordingly*.

The Question being propounded, That *James Nayler* be had in, and before Judgment pronounced be demanded, whether he have any thing to say why Judgment should not be pronounced upon him? And the Question being put, That the Question be now put, the House was divided.

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So it past in the Negative.

The said *James Nayler* was by Order of the House brought in to the Bar; where the Speaker acquainted him of the Heinousness of the Crime of which the Parliament found him guilty; and accordingly did pronounce the Judgment against him; upon which he withdrew.

Which Sentence was accordingly Executed upon him; and some of his Followers were so prodigiously impious and silly as to lick his Wounds, kiss his Feet, lean in his Bosom, &c.

When he came first to *Bridewell*, to carry on the Imposture he fasted three Days; but Flesh and Blood being able to hold out no longer, he fell to work to earn himself some Food. Upon the return of the *Rump* he obtained his liberty, and died soon after, without any signs of Repentance.



The Speech of Lord Commissioner Whitlock, in behalf of James Nayler.

In the Debate upon the Question, Whether James Nayler should be punish'd with Death, Lord Commissioner Whitlock delivered his Opinion to this Effect, viz.

THE Arguments of those Gentlemen who would have *James Nayler* put to Death, are chiefly drawn from these three Grounds:

1. From the Law of Nature.
2. From the Law of God.
3. From the Law of the Land.

And I hold that he ought not to suffer Death by any of these Laws:

First, As to the Law of Nature;

1. It is held amongst the Politicians, That the Subject thereof is *Conservatio sui*; for that every Creature by the Law of Nature seeks his own Conservation.

Then, Whether the Conservation of the People and Commonwealth of *England* do depend upon the Life or Death of *James Nayler*? is the Question.

It is likewise held among the Politicians, That there is no Judge of the Law of Nature, but only the Supreme Magistracy of each particular Commonwealth; and that within their own Bounds only; and of a present Case, not of a past or future Case.

As in *England*; the Parliament only is the Judge of the Law of Nature in *England*, and of the present Case before them; wherein, if the Parliament shall adjudge, That it is necessary for the Being and Preservation of the People and Commonwealth of *England*, that *James Nayler* be put to Death, then he ought to die by the Law of Nature.

But I suppose that no Gentleman is of Opinion, That it is necessary for the Being and Preservation of the People and Commonwealth of *England*, that *James Nayler* should be put to Death; and therefore on that Head or Principle of the Law of Nature, he is not to die.

2. If by the Law of Nature a Blasphemer is to die, How comes it to pass that *Moses* was so doubtful in the Case of the *Aegyptian*, in the 24th Chapter of *Leviticus*? he put him in Ward, and asked Counsel of God what should be done with him.

Moses was a Man of great Knowledge and Wisdom, and as able to understand the Law of Nature as any of us are; and if the Case of the *Aegyptian* had been against the Law of Nature, he was surely capable to have found it out, and not to have made so much Difficulty as he did of it, so as to know the immediate Pleasure of God in it.

3. The Crimes of *James Nayler* cannot be against the Law of Nature, because they are against the Second Person of the Trinity, the Knowledge of whom is not by the Law of Nature, but by the Law of Grace only; and therefore cannot be an Offence against the Law of Nature, by which there cannot be any Knowledge of him.

But it hath been objected, That the Papists put to Death those who deny the Real Presence,
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and other of their Opinions held contrary to the Truth; and, that the very Heathens, by the Light of Nature, did put to Death such as denied or reproached their Idol Gods: and how much more Zeal ought we to have for the Honour of the only true God whom we worship?

This may be answered in the Parallel, That neither are we to follow the Examples of those bloody, persecuting Papists; nor is *James Nayler* worthy the Honour to be ranked amongst the Holy Martyrs. And,

As to the Judgments of the Heathens, they were against such as denied their Gods to be Gods; but *James Nayler* at the Bar did acknowledge, That *Jesus Christ*, who died at *Jerusalem*, was the Son of God, and the Saviour of the World.

And some of the Heathen Princes, by their Light of Nature, when Flattery and their own Strength did bear them out, assumed the Names and Titles of the Gods of their Countries, and were worshipped by their Vassals.

Herein, *James Nayler* comes towards them, permitting, and not reproving those who did adore him; which he would evade by the Distinction, That as he is a poor Creature, and visible, no Adoration is due to him; but, as to that Power which is invisible (that Christ within him) he is to be worshipped.

That Christ is in the Heart of a true Believer, is not so strange a Doctrine, as that a Man is to be worshipped, who saith, That Christ is in him. But yet it cannot be warranted by the Law of Nature, to put a Man to Death for these Assertions.

Then Secondly,

The Second Ground is the Law of God: By which it is objected, That this Man being guilty of horrid Blasphemy, ought to be put to Death.

And the Case of the *Aegyptian* is instanced in, and much insisted on as a positive Rule and Law for us to do the like in the Case of *James Nayler*.

Herein I think it not improper, first to consider the Signification of the Word *Blasphemy*, and what it comprehends in the Extensiveness of it; and I take it to comprehend, *The reviling or cursing the Name of God, or of our Neighbour*.

And *Gregorius Turonensis*, in his *Appendix*, cap. 51. hath this Expression, *Liberare poteras de Blasphemia hanc causam*. From whence the French Word, *Blasme*; and our *English*, *Blame*.

Spelman saith it is *increpare, vel convitiis aliquem afficere*.

Paræus derives it from *βλάπτω τὴν φωνήν*; i. e. *Læso Famæ*.

And is this in relation to Men, as well as to God.

And therefore the great Objection is taken away, That the Parliament having voted him Guilty of horrid Blasphemy, cannot in Honour and Conscience inflict upon him a less Punishment than Death, for this Offence.

[M m]

They

They have not Voted it Blasphemy against God; and it appears the Word extends to Men, in the genuine Signification of it.

But I shall take it according to the usual Acceptation amongst us, and, as I suppose, is intended by the Vote, That he is Guilty of horrid Blasphemy against God.

Yet I do not find my self convinced, that by the Law of God, whosoever is guilty of horrid Blasphemy amongst us, is to be put to Death.

That we ought all of us, as Magistrates and Christians, to bear our Testimony against these abominable Crimes, and against this poor Wretch, I do agree; but that the Punishment for those Offences must be Death, I am not satisfy'd.

That the Law of God is so, many Gentlemen have urged the Case of the *Aegyptian*, the *Israelitish* Woman's Son striving with the *Israelite*, in the 24th Chapter of *Leviticus*, because God determined that he should die; and therefore, as their Argument is, *James Nayler* must also die.

By the same Argument he must be stoned to Death; and so must every rebellious Son, and even he that gathereth Sticks upon the Sabbath Day, and the like.

Very learned Divines are of Opinion, and I think it not to be confuted, That no part of the Law of the *Jews* doth bind any other Nation, but that part of it only, which is Moral.

The Laws of the *Israelites* were by the Wisdom of God suited to the Inclinations and Dispositions of that People; and others (as there is great difference between the Inclinations of People) must have different Laws: and none hath ever yet affirmed, That this or that Punishment of any Offence is Moral, tho the Offence itself be so.

But to come to a more particular Disquisition of the Case of this *Aegyptian*. He was one bred up in the Worship of the Idol Gods of *Aegypt*, and in striving with the *Israelite*, it is conceived, that he preferred his own God before the God of *Israel*, and said, that their God did not bring them out of the Land of *Aegypt*, nor was able to do it.

There is a difference to be observed in this Chapter between the Offence of this *Aegyptian*, and the Offence of Blaspheming or Cursing of God in another Case.

In the 15th Verse of this 24th Chapter of *Leviticus* it is said thus, *And thou shalt speak to the Children of Israel*, saying *איש איש* *Man, Man*. i.e. *Whosoever or whatever Man shall curse God shall bear his Sin*; that is, shall be punished as the Nature of the Fact shall require; so saith *Aynsworth* in locum, shall bear the Punishment due for his Sin.

The word *Curse*, in *Hebrew* is *יקלל* *Jicallel*, the Root of which signifieth, *to count light of*; and in the Conjugation *Piel* is found to signify *to Curse out of Evil Will*, to speak ill of, or to Imprecate; and also, to speak Evil, so as by speaking to bring it.

This 15th Verse in *Grotius's* Opinion (in his Exposition upon this Text) is to be understood of him that Curseth, but not distinctly naming the Sacred Name *Jehovah*, nor taking from him his Reverence and Deity, as if he were no God, and so is to be punished with an arbitrary Punishment, as Stripes, or the like.

But the 16th Verse is thus, *And he that Blasphemeth* *נקב* *Nokeb*, from the Root *נקב* *Nacabb*,

which signifies, *to run through*; or, *to bore through*, and also to speak or name to ones Disgrace; and is the same with the *Latin* phrase, *configere Nomen alicujus maledictis*.

The Emphasis is not in this Word, but in the other *שם* *Shem*, and *יהוה* *Jehovah*; and when that Name was named, it was a most immediate and direct Blaspheming of God; detracting from him his Honour and Deity.

He that Blasphemeth the Name Jehovah, or the Name of Jehovah, shall surely be put to Death, and all the Congregation shall stone him.

Upon this, *Aynsworth* is of Opinion, that the *Hebrews* some of them will not sentence this Blasphemer with Death, unless *Jehovah* be named; which Opinion he disalloweth, saying, That the Word is not so much, but the Thing is to be respected. But he seems to require, that the Blasphemer must immediately speak ill of God or blaspheme him, or else he is not subject to this Punishment.

Grotius agrees with the *Rabbins*, who say that every Cursing of God was not punishable with Death, but that the Punishment in some Cases was Arbitrary, as the godly Judgment of those, who were to censure, should determine. But if *Jehovah* were named by a *Jew*, or others under their Government, and so expressly and immediately dishonoured, that was to be punished with Death.

Wherein he doth distinguish, between immediate, and express Blasphemy, and that which is so interpretatively only; and signifieth, that the Punishment by Stripes was only inflicted upon him that did Blaspheme but *interpretatively*, and not *maliciously* nominating *Jehovah*.

This Judgment of *Grotius* seems to me to be reasonable, and that the Offence of *James Nayler* is within the 15th Verse of this Text, a Blasphemy interpretatively only, and therefore punishable with Stripes or the like. But that it is not within the 16th Verse, an immediate and direct reproaching of the Name of God; for at your Bar he did acknowledge *Jesus Christ* to be the Saviour of the World, &c.

And if it be not within the 16th Verse, then it is not punishable by Death according to that Law of the *Jews*, admitting the same to be binding amongst us Christians; as with Submission to better Judgments I think it is not, no more than those other Laws of theirs of the like Nature. Nor can any sort of Punishment be construed to be Moral.

I (therefore) conclude this Point, that there is no binding Rule or Law of God, that for these Offences *James Nayler* ought to be put to Death.

And if the Matter be but doubtful, we should, *in favorem Vitæ*, incline to the way of most Mercy.

Thirdly, The Third Ground, is, *The Law of the Land*.

And hereupon hath been observed, That by the Laws of other Nations Blasphemy is punishable with Death: And shall we do less for the Honour of God, than others? And a worthy Gentleman reported a Case, which did lately happen in *France*, where the Parliament of *Bourdeaux* adjudg'd an *Englishman* to Death, upon the Complaint of the Protestants there, for Blasphemy, in saying, *That he was Christ*.

I know not what might be lately done there, but I find the Laws of *France* concerning Blasphemy, in the *Code of Foreign Decisions*, and of *Henry III.* to be this; That for the first four Offences, a Blasphemer may be committed to Prison to Bread and Water; for the fifth Offence, to have his under Lip slit; for the sixth, that his under Lip should be cut so that his Teeth be seen; for the seventh his Tongue to be bored, and for the eighth Offence he is to be put to Death.

It is true, that the Popish Countries, where the Inquisition is in Force, do put Protestants to Death as Blasphemers: but I hope that will be no Precedent for us to imitate.

The *Lutherans* do hold the Ubiquity of *Christ* in such sort, that the News of *James Nayler's* being put to Death for these Offences, would not be pleasing to them.

But to come to that which is most proper for your Consideration, and for my Discourse, *The Law of England.*

I must acknowledge my own Ignorance, that I do not know any Law of this Nation now in Force, for the putting of *James Nayler* for these Offences to Death.

It is held that the Ordinance * of the Long Parliament concerning Blasphemy is not now in Force, and I do agree to that Opinion; nor do I know any other Law in that Case.

That Ordinance cost much Debate, and therein was a great diversity of Judgments; and so I presume we shall again find it, whensoever these Matters shall fall under Consideration.

The Objection was very weightily urged, That there is a Law in Force against *Heresy*, as appears by the Writ *De Heretico comburendo*, which (they say) was by the Common Law; and that Blasphemy is an *Heresy* within that Law; by which he may be put to Death.

This Objection may receive a clear Answer.

I am not of Opinion, That *Heresy* was punishable by the Common Law with Death, notwithstanding the Writ *De Heretico comburendo* be in the Register; for it is not in the antient Manuscript Registers, which indeed is a true part and demonstration of the Common Law.

But this Writ was of later Date, and brought in by *Arundel* Archbishop of *Canterbury* in *Henry* the Fourth's time for the Punishment and Suppression of *Lollards*, who were good Christians, and of the same Profession that we are. But the bloody practice of that Prelate did not work the Effect he intended, as appears (blessed be God) at this Day.

Yet if it should be admitted that *Heresy* was punishable by Death at the Common Law, that cannot include *Blasphemy*.

They are Offences of a different Nature; *Heresy* is *Crimen Judicii*, an erroneous Opinion: *Blasphemy* is *Crimen Malitiæ*, a reviling the Name and Honour of God.

Heresy was to be declared in particular, and by the four first general Councils. But the Blasphemy in this Vote is general; and I do not find it reckoned in those Councils for *Heresy*.

I remember a Case in our Book of *H. 7.* where the Bishop committed one to Prison for

a *Heretick*, and the *Heresy* was, denying *That Tythes were due to his Parson.* This at that Time was a very great *Heresy*; but now I believe some are inclinable to think, that to say, *Tythes are due to the Parson*, is a kind of *Heresy*.

So in this Case, That which now may be accounted Blasphemy, and the Offender to be put to Death for it; in another Age the contrary may be esteemed Blasphemy, and the Offender likewise put to Death for that; which may be warranted by the present Case before you, if *James Nayler* should be put to Death upon the general Vote for being guilty of Horrid Blasphemy, the Particulars thereof not being exprest.

And what Mischief and Inconvenience in the Consequence thereof may ensue to the People of *England*, and to Posterity, is worthy the Care of a Parliament, and to be avoided, we being sent hither to provide for the Good and Safety of the People; and not to do that, which may bring them into Snarcs and Dangers.

If this Wretch be put to Death, it must be either by Judgment of the Parliament, as the Supreme Court of Justice; or by Act of Parliament to attain him of the Crimes, and to inflict the Punishment of Death upon him for those Crimes.

If you shall think fit to proceed in the judicial way, I hope you will be pleased to consider the Weight of the Consequences thereof, and to be very clear in the Foundation, we being here in a Constitution different from the former.

And whosoever will take the Pains to read the Records of the Parliament-Rolls in *Edward* the Second, and *Richard* the Second's time, of the Judgments then given in Parliament (with quickness and sharpness enough) and the speedy Executions thereupon, will be the more tender of making new Precedents of such Proceedings in Parliament.

I am far from derogating from the Honour and Authority of Parliaments, and of this especially; but I humbly inform you what I have observed, and submit it to your better Judgment.

It is held, That antiently the Judicatory of Parliaments was in the Lords House, and particularly in Criminal Causes, which was very frequent; but seldom without an Impeachment by the then House of Commons, who were as the Grand Jury in that respect of the whole Nation.

You are now the sole Parliament of *England*, and have the sole Power in you; yet probably some may object, whether in a Judicial Proceeding the Lord Protector ought not to join with you.

I do not know any Judgment given in Parliament, but where there was a known Law then in force against the Offence adjudged, and the Judgment given according to that known Law.

In this Case of *James Nayler* there is no known Law in force for the Punishment of his Offence with Death, and therefore I am not satisfied, that we should by Judgment of Parliament condemn him to Death; nor to make a new Law

* This Ordinance bears date May 2, 1648, and Ordains, that whoever should maintain any one of the several Opinions (there call'd Errors) unless he would Abjure the same, or after Abjuration should relapse, should be Guilty of Felony without Benefit of Clergy.

for the Punishment of an Offence by Death, which Law was not known nor made at the time of the Offence committed; and this to be done by a Judgment.

Perhaps it will be said, That this may be done by a Bill of Attainder, and I perceive many Gentlemen inclined thereunto; they have remembered the Cases of the Earl of *Strafford*, and of the Archbishop of *Canterbury*, who were attainted by Bill, and the Offences by them committed were not Treason by the known Law at the Time when they were committed, and yet by Act of Parliament they were attainted of Treason for those Offences.

But (here we are to) observe, That in those Acts of Attainder is a Clause, That they shall not be drawn into Precedent; and I hope they shall not.

And further give me leave to inform you, That there is a great difference between those Cases, and that now before you.

By the Stat. 25 E.3. Treasons are enumerated, and a Power is left in the Parliament to declare any other Facts to be Treason.

And the Facts of the Earl of *Strafford*, and of the Archbishop, in the general was the same, endeavouring to subvert the Fundamental Laws

of the Land, and to introduce an Arbitrary and Tyrannical Government; which were maintained by the Arguments of a very learned and honourable Person, now a Chief Justice, to be Treason by the Common Law of *England*.

But it will be hard to maintain, that the Offences of *James Nayler* are punishable by Death by the Common Law of *England*, and therefore it will be very dangerous in the Consequence of it to inflict this Punishment upon him by a new Law.

I shall not mention the loss of Time (whereof too much hath been already spent about this matter) in case you shall proceed by Bill. All the matter must be again debated and examined by you, and after that by my Lord *Protector*.

But the Mischief which it may produce to the People of *England* in the Precedent of it, wherein no Man can be safe, that by a Law now to be made you should inflict the Punishment of Death upon *James Nayler* for Offences, which were not by the Law of *England* punishable by Death at the Time when they were committed, is the strong Argument with me to be against the Question for the putting of *James Nayler* to Death for these Offences.



LIII. *The Trial of Sir HENRY SLINGSBY* Kt. before the High Court of Justice, for High-Treason, the 25th of May, 1658. 10 Car. II.*

THE High Court being set, and the Names of the Commissioners being called, the Serjeant at Arms was commanded to fetch the Prisoner to the Bar. Sir *Henry Slingsby* was brought accordingly to the Bar. Then Proclamation made for Silence, and the Commission for Trial of the Prisoner read. Proclamation for Silence again was made. Then Mr. Attorney-General *Prideaux* exhibited a Charge of High-Treason against Sir *Henry Slingsby* the Prisoner; which was read. The Substance of which Charge was as followeth, viz.

THAT the Town of *Kingston upon Hull*, in the County of *Kingston upon Hull*, in *England*, on the 11th of *October*, 1656, and ever since, unto the Day of the exhibiting of this Charge, was and hath been, and is yet, a Town belonging to this Commonwealth; where there is a Garison, and a great part of the Army and Forces belonging to this Commonwealth: That Sir *Henry Slingsby*, late of *Redhouse*, in the County of *York*, Knight, minding and intending to imbroid this Commonwealth in intestine Wars, the 30th of *April* last, and divers Times since the 10th of *October* 1656, and before the said 30th of *April* last, as a false Traitor and Enemy then and yet to his Highness *Oliver*, Lord Protector of these Nations, together with one *Robert Gardiner* and *Edward Chapman*, and with one *William Smith*, of the said County of *York*, Gentlemen, and divers others, did traitorously, advisedly, and maliciously combine together, and plot and contrive to betray and yield up the said Garison of *Hull* unto *Charles Stuart*, eldest Son of the late King *Charles*, now an Enemy to this Commonwealth.

That the said Sir *Henry Slingsby*, by like traitorous Combination, the said 30th of *April* last, and divers Times after the said 10th of *Oct.* 1656, did traitorously and maliciously plot, and contrive, and endeavour to stir up Mutinies within the said Garison, to withdraw *Ralph Waterhouse*, *John Overton*, *George Thompson*, &c. Officers of the same, from their Obedience to his Highness *Oliver* Lord Protector.

That then and there, and at divers other Times, as well before as after the said 30th of *April* last, and after the said 10th of *October*, 1656, he the said Sir *Henry Slingsby* did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir and raise up Forces against *Oliver* Lord Protector, and against the Government of this Commonwealth, as the same is established, and to alter the same.

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That the said Sir *Henry Slingsby* did traitorously, &c. then and there declare, publish, and promote the said *Charles Stuart* to be King of *England*, *Scotland*, and *Ireland*, and the Dominions thereto belonging, and held Correspondence with him. All these Things the said Sir *Henry Slingsby*, at *Kingston upon Hull* aforesaid, did maliciously, &c. carry on by conferring with the said Officers how to effect the aforesaid Treason, and encouraging the said Officers thereto, by promising to them, and every of them, Rewards and Sums of Money to join with him in the Treason aforesaid, and by delivering to the said *Ralph Waterhouse*, one of the Officers of the Garison, a certain Instrument under Seal, which the said Sir *Henry Slingsby* said was from *Charles Stuart*; and did purport to be a Commission from the said *Charles Stuart*, to him the said *Ralph Waterhouse*, to be Governor of the Castle. All which said Treasons are contrary to the Statute in that Case made and provided. With which Treasons the said Attorney-General, on behalf of the Lord Protector, &c. doth Charge the said Sir *Henry Slingsby*, and prays that the said Sir *Henry Slingsby* may be put to answer thereto; averring that the said Sir *Henry Slingsby* is the Person by Name appointed by his Highness the Lord Protector to be tried and proceeded against. Signed May 25, 1658.

Edm. Prideaux.

* Lord President. Thou here standest charged for High-Treason: This Court requires that thou give a positive Answer, whether Guilty, or Not guilty.

Sir *Henry Slingsby*. I desire to have Counsel assigned me.

Ld President. There is Matter of Fact laid to your Charge, which amounts to Treason; and there is no Law allowed in Matters of Fact.

Sir *H. Slingsby*. There is also Matter of Law: And I desire to be tried by a Jury, which is according to the Law of the Land.

Ld President. We are all here your Jury, as well as your Judges: We are the Number of two or three Juries. And your Jury is well known; for they are chosen by the Parliament. You are to plead to your Indictment.

Sir *H. Slingsby*. I desire to know whether there can be any Conviction, unless it be by Confession?

Ld President. If you had looked upon the Act of Parliament, that would have told you: It speaks of Examination of Witnesses; it speaks of your Confession and Answer, and of your Default;

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fault; and if you do not plead to it, it will be very penal to you.

Sir *H. Slingsby*. If it be by the Laws of the Land, that the Trial should be by a Jury, I desire I may have that Privilege.

Ld President. Acts of Parliament make Justice and Law: They are both. They think fit to change the Custom of Trials that have been in former Times, and all Persons must submit to it. And the Parliament hath thought fit to make this Court both Jury and Judges. And therefore I require that you answer, whether Guilty or Not guilty.

Sir *H. Slingsby*. I desire that the Act of Parliament may be read.

Ld President. You are before your Jury and Judges. Parliaments have great Care of the Rights of the People, and have appointed this Court; and his Highness hath appointed you to be tried by us; you ought therefore to plead to your Indictment.

Sir *H. Slingsby*. The Law gives Liberty in case of Juries to the Party accused, to make his Exceptions against the Jury; which he cannot do here, where you are both Judge and Jury.

Ld President. If you have any particular Exception to any Man, you may make it: You were, Sir, of the Parliament when this Act was made.

Sir *H. Slingsby*. I was a Prisoner at the same time.

Ld President. Although a Prisoner, yet you are bound by Act of Parliament.

Mr. Phelps, Clerk. You have heard your Charge read, and Plea demanded: The Court again requires of you that you give a positive Answer, whether guilty, or not.

Sir *H. Slingsby*. I am, my Lord, of an Opinion (though you account it a Paradox) that I cannot trespass against your Laws, because I did not submit to them.

Ld President. All the People of *England* must submit to the Laws of *England*, to the Authorities of *England*; all must submit to my Lord Protector and Acts of Parliament. We sit here by Authority of his Highness, by a Commission under the Great Seal of *England*, and by Authority of Parliament; and you must submit to our Authority.

Sir *H. Slingsby*. The Laws have been so uncertain with me, that I could not well know them; and when I was a Prisoner, I could not take notice of them: I could have no Benefit by your Laws, because that is no Law to me which doth not give me Interest and Property to what I have. It is the Benefit of Laws, that they do distinguish between *meum* and *tuum*: But when you take all from me, in my Case it is not so.

Mr. Attorn. Gen. Prideaux. He may enjoy as much Benefit by the Laws as any, if he have not forfeited it; and I desire he may be put to answer.

Ld President. The Court again require you to plead to your Indictment.

Sir *H. Slingsby*. Not guilty.

Mr. Phelps. Your Plea then is, That you are Not guilty. To which Sir *Henry Slingsby* answered, Yes.

Mr. Lechmere. Mr. Attorney-General having exhibited a Charge of High-Treason against this Gentleman, Sir *H. Slingsby*, the Prisoner at

the Bar, the Charge doth set forth, That the Town of *Kingston upon Hull*, October 11, 1656, and ever since, to the Time of exhibiting the Charge, was a Town of this Commonwealth's; and that within that Town, in all that Time, there is and hath been a Garison, and part of the Army of this Commonwealth; and during that Time *Ralph Waterhouse*, *John Overton*, *George Thompson*, &c. were Officers of the Forces of that Garison. That Sir *H. Slingsby*, minding to imbroil the Commonwealth in War, April 30 last, and divers other Times since October 10, 1656, as a false Traitor and Enemy to his Highness the Lord Protector, did plot, contrive, and endeavour to betray the said Town and Garison to *Charles Stuart*, an Enemy to this Commonwealth. It sets forth further, That Sir *H. Slingsby*, the Time and Place aforesaid, did contrive and endeavour to stir up Mutinies among the Soldiery of that Garison, and to raise Forces against this Commonwealth; and that he did publish and declare the said *Charles Stuart* to be King of *England*, *Scotland*, and *Ireland*, &c. and hath held Correspondence with him; and that he delivered to the said *Ralph Waterhouse* a certain Instrument, which he said was a Commission from *Charles Stuart*: All which Treasons are contrary to the Form and Effect of the Act of Parliament. And the Prisoner having pleaded Not guilty, which Plea is recorded, we are ready to prove him guilty, and ready to call our Witnesses.

Mr. At. Gen. You have heard the Charge, and Plea Not guilty; it rests upon us to prove it to you. This Gentleman himself, I believe, when he hath heard them particularly opened, will be convinced that of these Acts he hath been guilty. It would not have been expected from him to have tasted of the Mercy of this Court: For had he had Justice done formerly, he had not been to have answered this here. I do believe it was expected from those that did govern, to have got him off by Mercy, not to take him off by Justice. But he ceased not to interpose on the behalf of *Charles Stuart*, and endeavoured to bring him in again, and had like to have withdrawn the faithful Officers of that Garison to betray their Trust: If Money would have done it, that was not wanting to be offered; if Preferment would have wrought upon them, that was proffered; if Hopes of higher Preferment under *Charles Stuart* would have wrought upon them, it would have been done. But to our Witnesses.

Ralph Waterhouse sworn.

Mr. At. Gen. What Discourse had you with Sir *Henry Slingsby*, touching the delivering up of *Hull*?

Mr. Waterhouse. I had several Discourses with him; particularly about the latter end of December last, being a hunting, Sir *Henry Slingsby's* Son came to me in the Field, and told me his Father presented his Service to me, and gave me a Book; which I looked on about an Hour after, and found it was a printed Book. At the beginning was a Paper thus written, Put this out with your Finger, and then tell me whether *Rob. Gardiner* had not spoke to me to serve the King, &c. Presently after I acquainted Col. *Smith*, who advised me to discover, if I could, whether Sir *H. Slingsby* was carrying on any Plot. I went to Sir *H. Slingsby*, and Sir *H. S.* took me to the Window-

dow-side, and hugged and embraced me; and asked me if *Robert Gardiner* had not spoke to me to serve the King: And then began with a great many good words, and said that one (meaning his Highness) had put a Disrespect upon me, and if I would I might right myself; with many other words; and promised me a Sum of Money, to secure the South-house for the Service of the King. About a Week after, he sent the Book again, and in the same Leaf wrote a few Lines more, which I also shew'd to *Col. Smith*; he promised me 5000 *l.* in Land or Money here or elsewhere. I made many Queries, and told him I thought it was to no purpose: he told me, that if that House were secured, in a little time he would bring an Army to besiege *Hull*, and then half our Work would be done. He after sent me another Paper, which was to this purpose, That if the Governour sought for him, he would give Security for his peaceable living; and said, if I would give him a Piece, he would make it twenty if he did not procure me a Commission from *C. Stuart* within fourteen days. He said further, That a great Party were engaged in *Scotland*. Upon the second of *April* he delivered to me a Commission, which he said was from the King; and the Commission being read in Court, the said *Mr. Waterhouse* averred it to be the same he received of *Sir Henry Slingsby*, and which ran thus:

C. R.

CHARLES by the Grace of God (with the old usual Title, &c.) To our Right Trusty and Well-beloved Major *Ralph Waterhouse*: We do by these Presents constitute and appoint you to be Governour of the Castle and two Block-Houses near *Hull*, and to put such a Garison of Horse and Foot therein, as you shall judge necessary for the Defence of the same; and to command the Garison as Governour thereof, and to do all things necessary for the Preservation of the said Place. Given at *Bruges*, March 12, 1657.

Sir H. Slingsby also said to me, That he had spoken with *Capt. Overton*, and promised to furnish him with Money to lay in Provision, and engaged by a Bond to repay such Money, as I should lay out for the victualling of the South-House: and also read a Letter from *C. Stuart* running thus, *I can never be enough sensible of your Favours, &c.* I demanded how [the Army should come; he answered, that the Duke of York had 7 or 8000 Men, that the King of Spain would furnish them, if there was a Place of Security. And asking what way of Correspondence he had with *C. Stuart*, he said he had a way of having Commissions from *C. Stuart*, which he would not discover. [Here *Sir H. Slingsby* stood up, and disowned any such Expression.]

Mr. At. Gen. What Officer were you, *Mr. Waterhouse*?

Mr. Waterhouse. I have the Command of a Company, and of the South Block-house.

Mr. At. Gen. *Mr. Waterhouse*, what Letter was that *Sir H. Slingsby* sent to his Son?

Mr. Wat. The Contents were thus; That *Harry* would speak to the two Men to be very importunate with the twelve. *Sir H. Slingsby* promised so many Men that he offered *Capt. Overton* 20 *l.* to raise forty Men.

Mr. At. Gen. How many Men did he tell you should be at *Paul* near *Hull*?

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Mr. Wat. 600 to march into *Hull*.

Mr. At. Gen. What Men did he tell you *Andrew* would raise?

Mr. Wat. He said *Andrew* would raise fifty or sixty Men when he pleased, and that *Capt. Overton* should have a Deputation to command the Castle under me: he said he had good hopes of *Col. Smith*, and that he had a Commission for him, if he would accept of it.

Sir H. Slingsby. This which is here spoken in Seriousness, was then spoke in Mirth, a mere Discourse, as those that are in good Fellowship may have, and what I said or did was but in jest.

Ld. President. There ought to be no good Fellowship in Treason.

Mr. Wat. I never visited him but by *Col. Smith's* Commission. *Sir H. Slingsby* according to his Engagement, upon receipt of a Piece, gave me another Commission running thus; *Oliver, Lord Protector, &c.* took it again, and burned it.

Mr. At. Gen. *Sir Henry*, was it you that filled up that blank Commission?

Sir H. Slingsby. It is more than any Man knows: but it is not the Commission I gave *Waterhouse*, which is dated 12 March, 1657.

Capt. John Overton sworn.

Mr. Phelps shew'd him the Commission dated 12 March, 1657.

Mr. At. Gen. Did you see that Commission delivered to *Waterhouse* by *Sir H. Slingsby*?

Capt. Overton. Yes, I did; he delivered it to him in the Castle, about the second of *April* last.

Sir H. Slingsby. *Mr. Overton*, what Date did that Commission which I then delivered, bear?

Capt. Overton. This is the same Commission, and (having it in his hand) I here see it is dated 12 March, 1657.

Sir H. Slingsby. I deny that the Commission I then delivered did bear that Date.

Waterh. & Overton. My Lord, we are upon our Oaths.

Capt. Overton. I saw *Sir H.* give it to *Major Waterhouse* in his own Chamber in the Castle of *Hull*, and *Major W.* bid me read it, which I did.

Sir H. Slingsby. Was that Commission, which you read, dated 12 March?

[*Capt. Overton* reads the Copy of it, which he then wrote from the Original, which agreed with this.]

Sir H. Slingsby. I deny that the Commission then delivered was of that date.

Waterh. and Overton both deny the altering of the Date.

Sir H. Slingsby. *Major Waterhouse* desired me to alter the Date of the Commission, and I scraped out *April* and the Day, and put in *March*.

Capt. Overton examined.

Mr. At. Gen. What Treaty was between *Sir H.* and you at *Hull*? Are you an Officer there?

Capt. Overton. Yes.

Mr. At. Gen. How long have you been an Officer there?

Capt. Overton. About ten Years.

Mr. At. Gen. What Proceedings was there between *Sir H.* and you? What Meetings had you, &c. Was he your Prisoner?

N n 2

Capt.

Capt. Overton. He was my Prisoner. The first time he spake any thing to me, was on *Feb. 18.* last, when he told me, he thought me the strictest Man alive with Prisoners, but now would believe the contrary: said, that I searched a Man of his for a Letter; but afterwards, to prevent me, he gave his Letter in a Purse with some Money to his Landress, who carried it into the Town, and sent it away; and after that (he told me) I never found any Letter. I told him, if he wanted any thing necessary, I would go the Governour about it: he told me, it was not much for that, but that I might very much befriend him. He wrote to me, that a Colonel (naming him) was engaged to bring six Regiments from the King; asking whether I knew my Men were right for me, and particularized one *Clark*: I told him he was right. He asked me what I thought of 100*l.* to give them: I told him they did not use to have such great Gratuities. This was 18 *Feb. 1657.*

28 *Feb.* He asked me where the Sally-port was: I told him it was twenty yards from the Castle. He told me, some Prisoners not long ago intended to make an Escape that way, but were prevented, and asked me which way it enter'd into the Castle, which way I could let in any Men into the Castle, that I should not want Money; whether I could tell how to victual the Castle, he would be glad if I could do it. He told me, that the King kept his Designs so close, that none knew of them, and that it was not known whether he would land at *Hull* or *Scarborough.*

3 *March.* He asked me whether I continued my Command: I told him I knew nothing to the contrary; to which he shew'd much gladness. He told me, Duke *Daffy* was to bring a considerable Party, but staid so long that the rest were gone.

6 *March.* He asked me what News, and said that *Chapman* had assured his Son the Town was too strong for the Garison; and asked me who I knew in the Town to be right: I told him, *Edw. Chapman* was not for the Soldiery.

14 *March.* I told him, that his old Master *C. Stuart* was about to set sail with 7 or 8000 Men. He said, that the King was more private than to let any Man know his Design; but asked me, whether I was ready to receive him?

23 *March.* *Sir H. Slingsby* being below in our Chamber, told me that I had a fit opportunity to receive such Men as might be right for me. I told him, I thought I could not have half my number. He told me, he was glad I would serve the King; and said, that if he had any Favour from the King, I should not want any thing. He told me he had assurance, that any that assisted the King when he first came to kiss his Mother Earth, he would give them 4 or 5000*l.* That he would furnish me with Money; and desired that I would not shoot any great Bullets at King *Charles's* Men when they were landing. And further told me, That if I would take a Deputation to command under Major *Waterhouse*, he would procure it.

On *April 2.* *Sir H. S.* told Major *Waterhouse*, That he had a Commission for him to be Governour of *Hull*, and I saw him deliver a Parchment Commission to Major *Waterhouse.*

Mr. At. Gen. If *Sir H.* hath any thing to object, he may.

Sir H. Slingsby. I see that I am trepan'd by these two Fellows: they have said that seriously against me, which was spoken in mirth between us: I never sought to them, but they to me: the Commission was procured by no Intercourse with any Persons beyond the Seas, but a Blank which I had for four Years together. Nor had I any Correspondence beyond Sea, to carry on any Design here.

Lieutenant George Thompson sworn.

Being asked what Officer he was, he answered, I am a Lieutenant to Major *Waterhouse*, I was desired to go and see *Sir H. Slingsby*, *April 16*, who told me, That he had great Confidence in me. I said to him, Why? He told me, he thought I had good Thoughts of the King. His Son told me, he heard the King was to come in, and to bring in a considerable Army, but knew not when. Next day I went again to *Sir H.* and asked him if he would walk on the Leads, which he did; and there I told him, I had been pondering on the words he last spoke to me: who then hugging me, said, I have a great deal of Confidence in you, there is a Design in agitation to bring in the King with a considerable Army, but he did not know how soon it would be; but told me, I should have notice of it: and said that the King had promised Pardon to all Officers but the Lord Protector and Lord *Bradshaw.*

Sir H. Slingsby. I confess such like Discourses; but ——— *Waterhouse* spoke to me, that I would speak to *Thompson* to try whether he would be assistant; but I told him I would not, lest he should not accept it, and then turn him out of his Place. *Waterhouse* pressed me to go to *Thompson*, and Major *Waterhouse* invited us to his House to Dinner: After Dinner he spoke to *Thompson* to go with me on the Leads, to shew me the Guns; we walked about, and came down again. Then said *Waterhouse* to me, Did not you speak to *Thompson*? I said not. You had a good opportunity, said he. At last *Thompson* came to me, and I had some Discourse with him about it.

Ld President. *Sir H. S.* have you any thing else to say?

Sir H. Slingsby. No, my Lord.

[Then *Mr. Serjeant Maynard* summed up the Charge, Plea, and Evidence, and eloquently set forth the Fulness and Clearness of the Evidence, with the Heinousness of the Offence, and demanded the Judgment of the Court.]

Mr. At. Gen. I shall not trouble you with Repetition, the Matter being clearly laid open. The Place where this Acting was, and where the Design was laid, was, I may safely say, the most considerable Place in *England* for *Charles Stuart's* Design; a Place strongly seated and situated, and remote from this City: and had he prevailed there, as he endeavoured, it had not been Peace with us that now are here. And truly, my Lord, I cannot but pity those Gentlemen that are thus drawn into Designs which I am confident will never take; and I am sorry that People should be so seduced as they are, for their Seducers bring them to the Gallows, and then laugh at them. And my Lord, I pity this Gentleman

(pointing at Sir H.) that those grey Hairs should thus go to the Grave. I have no more to say, but crave the Justice of this Court.

The Serjeant at Arms was commanded to take away the Prisoner.

Proclamation for Adjournment of the Court into the Painted Chamber: after a little private Debate in the Painted Chamber, they adjourned

till Thursday next, Nine in the Morning.

Thursday, May 27, being appointed for the Meeting of the same Court, about Ten of the clock they accordingly met in the Painted Chamber *Westminster*; where after about two Hours private Debate, they adjourned till Tuesday next, the first Day of June.

LIV. *The Trial of Dr. JOHN HEWET**, before the High Court of Justice for High-Treason, the 1st of June, 1658.
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HE Serjeant at Arms being commanded by the Court to fetch the Prisoners to the Bar; Dr. Hewet was brought to the Bar accordingly.

After Proclamation was made for Silence, the Lord President asked Mr. Attorney-General what he had to say against the Prisoner at the Bar. Mr. Attorney-General thereupon exhibited an Impeachment of High-Treason against the Prisoner, and desired it might be read, and pray'd that the Court would please to receive his Answer thereunto. The Charge was read by Mr. Phelps the Clerk; the Effect of which was as followeth, viz.

THAT *John Hewet*, late of the Parish of Gregory's in the City of London, Doctor of Divinity, minding and intending to embroil this Commonwealth in new and intestine Wars, the 30th of April now last past, and at divers times since the 10th of October, which was in the Year of our Lord 1656, and before the said 30th of April last past, as a false Traitor and Enemy to *Oliver* then and yet Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the Dominions and Territories thereunto belonging, and to the said Commonwealth; together with one *Trelawney* late of London Gent. *Henry Bishop* of Lewes in *Sussex* Gent. and other their Complices, at the Parish of Gregory's aforesaid, and at Lewes in *Sussex*, did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir up Force, and levy War against the said *Oliver* Lord Protector, and against the Government of this Commonwealth, as the same is now established, and to subvert and alter the same. And did also then and there, and at divers other times and places, as well before as after the said 30th Day of April now last past, and after the said 10th of October 1656, traitorously, advisedly, and maliciously declare, publish, and promote *Charles Stuart*, eldest Son to the late King *Charles*, to be King of England, Scotland, and Ireland, and the Dominions thereunto belonging: And did then and there traitorously, advisedly, and mali-

ciously hold Intelligence and Correspondence with the said *Charles Stuart*. All which said Treasons he the said *John Hewet*, at the Parish of Gregory's in the said City of London, and also at Lewes and elsewhere, did traitorously, advisedly, and maliciously declare, at the times and places aforesaid, by conferring with *John Stapely* and *Henry Mallory* how to effect the same; and by encouraging the said *John Stapely* and *Henry Mallory* thereunto, and by delivering Commissions to them from the said *Charles Stuart*, concerning the levying War against the said *Oliver* Lord Protector of the Commonwealth of England, Scotland, and Ireland, &c. — All which said Treasons are contrary to the Statute in that case made and provided. With which said Treasons committed and done, the said Attorney-General, for and on the behalf of his Highness the Lord Protector and the Commonwealth, doth charge and impeach the said *John Hewet*; and for and on the behalf of the said *Oliver* Lord Protector, and the Commonwealth, prayeth that the said *John Hewet* may be put to answer; that such Trial, Judgment, and Proceedings may be had against him, as to Justice doth appertain. And the said Attorney-General doth aver that the said *John Hewet* is the Person by Name appointed by his Highness the Lord Protector to be try'd and proceeded against according to the Act.

[Dr. Hewet the Prisoner sitting covered whilst his Impeachment was reading, the Lord President commanded his Hat to be taken off; which the Doctor observing took it off himself. Then Mr. Phelps, Clerk to the High Court, address'd to the Prisoner to this effect:]

Mr. Phelps. *John Hewet* D.D. thou standest here charged of High-Treason; this Court requires you to give a positive Answer, whether Guilty or Not guilty.

Dr. Hewet. My Lord, if I have already misbehaved myself here, my Error is the more pardonable, because I have not had any Counsel; and I dare not presume to have any Knowledge

in any Faculty, especially in the Law. I never did change my Cassock into a Jump; I am better acquainted with a Pulpit than a Bar; better read in *St. Austin* than my Lord *Coke*; and in the *Fathers*, than *Rastal's Entries*, or *Plowden's Commentaries*. In all my Life I never studied any Law-Case till now; that Necessity that hath no Law hath made me thus far to become a Lawyer, as to think to plead (not for my Livelihood, but) for my Life. God forgive them that have occasioned this unusual and unaccustomed Study, that hath put me into such a Pulpit as I never saw before. And therefore, my Lord, in as much as I have often heard that there are such Niceties in the Law, that a Man may be lost in the Severity of it for a word spoken in mere Simplicity; I shall crave that there may be nothing taken, in prejudice to my Innocency, from words spoken in Simplicity: and I hope you will please to grant me that.

‡ *Ld President.* Dr. *Hewet*, I am sorry, truly very sorry, to see such a one as you in that place; but you are impeached of High-Treason: All Favour will be shewn you according to the Rules of Justice. I think you desire Counsel?

Dr. *Hewet*. No, my Lord, it is first, that I knowing nothing of the Law, may have nothing (simply spoken) prejudice me; and that you will allow me Counsel.

Ld President. The Court is Counsel for you, your Business is to plead to the Indictment; you are required by the Court to answer whether Guilty or Not guilty.

Dr. *Hewet*. My Lord, you sit there as Judge, I beseech you let me know by what Commission you sit there.

Ld President. Dr. *Hewet*, we sit here by a Commission under the Great Seal of *England*, in pursuance of an Act of Parliament; that's our Commission.

Dr. *Hewet*. Pray give me the favour to have the Commission read, my Lord.

Ld President. Dr. *Hewet*, we know our own Authority, it is not usual to read Commissions to Prisoners; the Laws of *England* and Acts of Parliament are to be submitted to.

Dr. *Hewet*. I am not to own every Person that will sit to judge me, therefore I desire to know by what Commission you sit, and who are the Judges, and then I shall say more.

Ld President. Those that are to judge you, are very well known; you consented your self to the Judges, we are all chosen by Act of Parliament, the Parliament hath consented to it; we are chosen Judges, and are your Judges by Act of Parliament.

Dr. *Hewet*. My Lord, I must know the Persons, whether they be all here; I see but very few.

Ld President. Here be very many, and we have been all called this Morning, as the Course is, and we sit now as your Judges.

Dr. *Hewet*. Under favour, my Lord, as I remember, the Commission by the Act is directed to 150, and there are the Lords Commissioners of the Great Seal, with the Lords of his Highness's Treasury, and all the Judges, and divers other Persons, are named in the Act of Parliament: I do not see so many Faces as are mentioned in that Act.

Ld President. Dr. *Hewet*, I must tell you the *Quorum* is any Seventeen or more of them: if we are here Seventeen or more, we are a *Quorum* by that Commission: we are here I believe Forty or Fifty.

Dr. *Hewet*. My Lord, with Submission, the Case is true, in case the Commissioners were but Seventeen, and they all present, then they might hear and determine; but if one were absent, they cannot, my Lord, as I conceive.

Ld President. You are a Person of Parts, and therefore we may delight to hear you; but we must keep our selves to the Business of the Court: You are required by the Court to answer the Impeachment.

Dr. *Hewet*. My Lord, if you sit by the Act, sit according to the Act, and then I shall submit. It was resolved by all the Judges of the *King's-Bench* in the 13th of *Eliz.* in the Earl of * *Leicester's Case*.

† *Mr. At. Gen.* The Doctor did profess his Ignorance of the Laws, yet pretends more Knowledge than the Court: The Court are here, and know themselves lawfully authorized to try you. Dr. *Hewet*, if you please to proceed to give your Answer, whether guilty or not, you will find the Justice of the Court to be according to the Laws of *England*.

Dr. *Hewet*. This learned Gentleman, I know his Face, though not his Name; he speaks according to Worth, but I cannot answer him according to Law, and therefore still plead Ignorance of the Law, but desire to be tried according to Law; and I have given you a Law-Precedent, if you will go against it I shall say no more.

Mr. At. Gen. This Gentleman hath it by Tradition, not by his own Knowledge; but the Case he mentions cannot parallel this. The Act of Parliament saith, an Hundred and Fifty, or any Seventeen; here are three Seventeens.

Mr. Sol. Ellis. I think the Commission is directed to your Lordships, or any Seventeen: [*Which Commissioners, or any Seventeen, &c.*] The Meaning whereof is, That those Seventeen, or more respectively, should hear, &c. There were several *Quorums* for *England*, *Scotland* and *Ireland*; Seventeen for *England*, Thirteen for *Scotland*, &c. That Case out of *Plowden* differs clearly from this: for if a Commission be directed, and there be no *Quorum*, then the Commissioners must all certify. We humbly conceive, that if your Lordships be here Seventeen, or more, you are fully authorized to proceed.

Mr. At. Gen. In many Cases you have a *Quorum* of Persons, such and such Men: it's true, here is no *Quorum* of Persons, but a *Quorum* of the Number; and if there be a *Quorum* of Seventeen, it is warrantable.

Dr. *Hewet*. This learned Gentleman, he is better able to speak what is Law than I; but under favour, and with Submission, I do not think he may judge of the Laws, or the other (that spoke his private Conception) to interpret the Meaning of the Parliament. And, my Lord, if your Lordship please, I shall make this my humble Appeal to the learned Judges of the Law, That if they will say in this respect, that this is a lawful Judicature, I shall proceed.

Ld President. You have heard the words of the Act of Parliament read, Authority is given to the Commissioners, or any Seventeen or more of them; [*Which said Commissioners respectively*] that is, for *England* Seventeen, or more of them: and you have heard the Judgment of the Court upon that. That which you speak of in relation to my Lord *Leicester's* Case is true; if a Commission be directed to Commissioners, and no *Quorum* appointed, then all must certify; but by the Act of Parliament, and the Commission made in pursuance of it, the *Quorum* is Seventeen: but here are three *Quorums*.

Dr. Hewet. My Lord, in as much as all the Commissioners are named in that Act, and that Commission is according to the Act, they are all commissioned to sit; and unless all sit, the rest cannot try and examine, &c. And I shall refer it to the Judges of the Laws.

Ld President. We did not call our selves to be your Judges; by being named your Judges by Act of Parliament, we have Power to declare to you what the Law is by that Act of Parliament. I have declared it.

Dr. Hewet. My Lord, if the *Quorum* had been named, then it were somewhat; but it being directed to Seventeen, or more, when more or Seventeen are commissioned, all must sit: I refer it again to the Judges of the Laws.

Ld President. *Dr. Hewet*, what you say now, or what you say hereafter, besides this, you have time to speak to, as to Matter of Law, after Matter of Fact hath been tried; if you plead to Matter of Fact, what you say to the Court as to Matter of Law, we shall be ready to hear it; apply your self to the Court in Matter of Fact. The Court asks you, whether guilty or not?

Dr. Hewet. My Lord, I must first know whether the Court be a lawful Judicature, before I give in my Defence.

Ld President. *Dr. Hewet*, you have offered very much touching the Jurisdiction of the Court, in Conclusion you must acquiesce; I must put you up to plead; you know the Danger, if you do not plead, being required: if you stand mute and do not plead, it is equally as dangerous to you, as if you had confessed the Crimes.

Dr. Hewet. I am so highly sensible of the Privileges of an *Englishman*, that both for the Satisfaction of my own Conscience, and all Persons, I would not willingly give up the Liberties and Privileges of any *English* Freeman to any body that demands it; I am very loth that there should be any just Imputation laid upon me, that I should seek a Disturbance in point of Self-Interest, to divide my self from the Communion of those that are my Fellow-Freemen; and I should (as I have always) abhor to be both a Schismatick from the Church, and singular from the State. My Lord, I am so concerned for the Privileges of an *English* Freeman, and publick Interest, that I should be loth to do any thing towards the giving them up, that might make my Heart ake. I shall desire it may be determined by the Judges.

Ld President. You speak of common Friendship; what is common Friendship, but to be a Friend to the publick Government? If you have been a Friend to the Government and Peace of this Nation, you need not fear to plead to the

Indictment: And therefore I require you to plead to it.

Dr. Hewet. Whenever you shall come to a particular Examination of the Business, it will not appear that I have been an Enemy; I desire, that whereas there are many Niceties in the Laws, I humbly crave the Engagement of your Honours, that there may not be any Advantage taken.

Mr. At. Gen. God forbid.

Dr. Hewet. My Lord, I think I have not spoken any thing unreasonably, or against Law, and therefore humbly crave my former Request.

Mr. At. Gen. If you please, the Doctor knows that there must be a Judgment, in which we must acquiesce: This is that Judicature that calls you before them; you sit by the highest Authority of *England*; an Act of Parliament in the first place, a Commission under the Great Seal in the second place, and a Commission of his Highness, against whom, of which the Doctor is one; I desire he may give an Answer to the Impeachment; that being done, we shall have Liberty on both sides to speak to what is Justice, and Law, and Fact: if you are not guilty, be you assured that this Court will not take your Blood upon them; you have a very fair Court.

Dr. Hewet. This learned Person speaks very fairly; it shall be far from me to question any Act of a lawful Parliament: but under favour, as yet it doth not appear to me, that you have by that Act by which you sit, Power to hear and determine concerning the Matters of which I am charged: I refer it, and appeal again and again to the learned Judges of the Laws, even his Highness's Judges.

Ld President. *Dr. Hewet*, the Court has had much Patience in hearing of you thus long, you having not so much as owned their Authority; if you will not own us, we will own you: therefore I require the Clerk to enter it, that we have required you to plead.

Mr. Phelps Clerk. *John Hewet*, you here stand charged of High Treason against his Highness the Lord Protector and the Commonwealth; the Charge hath been read to you, the Court have demanded whether Guilty or Not guilty; they again demand of you whether Guilty or Not guilty.

Dr. Hewet. My Lord, I shall be very loth to do any thing to save my Life, and forfeit a good Conscience; and I shall not, for my private Interest, give up the Privileges of those that are equal Freemen with my self: I am look'd upon in a double Capacity, as a Clergyman, and as a Commonwealth's Man; I should be very loth to be scandalous in either: And pray be pleased to do that Justice to your selves, as to vindicate the Legality of your Judicature, and then I'll proceed.

Mr. At. Gen. My Lord, you was pleased to tell the Doctor, That you will own him when he doth not own you; but, my Lord, his flying in your Face, and taxing you thus, is not to be endured: I wish he would have that Consideration of himself, that if he doth not own your Authority, you expect to be owned, otherwise he will be supposed to be guilty of all those Crimes that are laid to his Charge; and by not pleading, he doth confess them; that will be an

high Scandal, Mr. Doctor: therefore to vindicate your self, I desire you to answer.

Dr. Hewet. This learned Gentleman hath urged it with a great deal of Civility and Respect to me, which I must own, and thankfully acknowledge: but, my Lord, withal, I dare not, for the saving of my self, give up others; so many thousands of others, by my Precedent, that might likewise be involved in the same Condition that I am in: therefore, my Lord, let it appear that it is a lawful Judicature, and I have done.

Mr. At. Gen. I beseech Mr. Doctor to consider his Case; he is not brought as a Champion for the People of *England*; as he stands charged, he appears to you to be contrary affected: I humbly beg that he may be put to plead, that so his Innocency may be clear'd.

Dr. Hewet. My Lord, I said before that I am no Lawyer, I understand nothing of it, neither desire to be Judge in my own Cause; but I do not desire likewise to be judged by every Person that would sit to judge me; neither would I give up that Right that belongs to an *Englishman*, to every one that demands it: Therefore I desire you to grant this Petition, That you will make appear that you are a lawful Judicature. I would rather die ten thousand times than I will be guilty of giving up my Fellow-Freemen's Liberties and Privileges.

Mr. At. Gen. My Lord, some of his own Coat have acknowledged the like Authority before him; but if Mr. Doctor be peremptory in this, that he will not own your Authority, and plead to his Charge, I must do my Duty; that is, humbly to pray the Court, that if he refuse to answer, I must pray their Judgment, and acquaint him with the words of the Act; [*which accordingly were read.*] So that, my Lord, in default of Answer, if Mr. Doctor will not plead to this, my Lord, I must thereupon pray that you will proceed according to the Act, as in Cases of High-Treason, which is very penal. I have no more to say.

Dr. Hewet. My Lord, I suppose these learned Gentlemen, who are so learned in the Laws, will be cautious what they do against Law; and I hope they will remember what Condemnation and Execution befel *Tresilian* in the 11th of *Richard* the Second, that did there misadvise the King to do such and such things; that is much like to this Case of mine: And withal, I hope they will remember what befel the Judges in the Case of *Ship-money*, in the time of the late King; and therefore I hope they will be cautious themselves in doing any thing that is contrary to Law.

Ld President. Dr. Hewet, you have heard the Clause of the Act of Parliament read to you, whereby you may understand, that either we must proceed upon your Answer, or else to Judgment upon your Refusal; if upon your Answer you clear your Innocency, then those Freemen you speak of, may faithfully embrace you: but if you will not answer, we must proceed to Judgment. I am sorry for your Robe-sake, but if you will not answer, you cannot acquit yourself: you thereby confess it: Therefore let me advise you, for your Robe-sake, to follow the best Counsel; that is, to put your self upon that which Prisoners must do. Answer to it, Guilty, or Not guilty?

Dr. Hewet. My Lord, I hope it is not the Sense of the whole Court, that they should proceed against me, either to Sentence, or any other way, till first they clear themselves to me.

Mr. At. Gen. Pray, who is the Judge? You must clear your self to him.

Ld President. If there be any here that are of another Opinion, let him declare himself. Dr. Hewet, you lose your self mightily in saying this one thing so often, and we lose our Time: I require you again to plead.

Dr. Hewet. My Lord, I cannot speak of that too often, that is so dear and precious to me and every Person.

Mr. At. Gen. I can say no more, but pray your Justice.

Ld President. Dr. Hewet, I am called upon by the Court, because of your Refusal to answer; but I pity you very much, and therefore desire once more the Patience and Favour of the Court, that they would give you leave to answer: Therefore Mr. Doctor, that we may not record your standing mute, and refusing to answer, I shall once more, in favour to you, require you to answer. Clerk, stay your Hand a while.

Dr. Hewet. My Lord, both the Court and all these Persons will thus clear me to the whole World, that I have referred my self, and appealed to his Highness's Judges of the Law, to resolve whether this be a lawful Judicature: this Appeal is denied, therefore I must proceed to some other thing, seeing you all deny me that.

Mr. Phelps, Clerk. *John Hewet, D. D.* you stand here charged on behalf of his Highness the Lord Protector, of Treason against him and his Commonwealth; you have heard the Charge, the Court hath several times demanded your Answer, and you refuse; they the third time require your Answer, whether Guilty, or Not guilty.

Dr. Hewet. Pray, my Lord, is there any Indictment found against me by a Grand Jury, by which I am to be tried? For by the fifth and sixth of *Edward* the Sixth, all Treasons are to be inquired into, and presented by twelve Men: the Commission by which you sit, doth not declare any other way: I beseech you, is there any other Indictment?

Ld President. You have a very great Grand Jury, forty Persons, and we have Power upon a special Act of Parliament, to give order for a Charge to be brought in against you; and we have, according to that Power and Authority, given order for this Charge to be brought in against you, and you are to answer to it.

Dr. Hewet. My Lord, with Submission, you are not a competent Jury.

Mr. At. Gen. My Lord, now it is the second Part to the same Tune; I know there are many others upon the same String when this is resolved. Sir, this is the Grand Jury, the Petty Jury, and your Judge; they require you to give your Answer, whether Guilty, or Not guilty.

Dr. Hewet. My Lord, this is likewise denied me, I now humbly crave a Copy of my Charge, Time to answer to it, and Counsel assigned me.

Ld President. For the Copy of your Charge, it was never granted to any Prisoner indicted for High-Treason. For Counsel, you are now upon

upon Matter of Fact, whether Guilty or Not guilty.

Mr. At. Gen. I have a Word to inform him. I would not press any thing against him, which in my Judgment I thought not legal; you have given him your Resolution as to the Jurisdiction, there is nothing now to say, but Guilty or Not guilty: he must bring himself to be a Party, or else nothing can be asked.

Dr. Hewet. I think the Prisoner cannot be charged and tried on one and the same Day, no more than a Man can be indicted and tried the same Day, as in *Kelway's Reports*; and this was declared to be Law in the Case of the *Portugal Ambassador's Brother* *.

Mr. At. Gen. You are not upon your Trial, you must plead and join Issue, and then we will consider whether we will try you now or no; yet there is many a Man hath been brought to Prison the same Day, found the same Day, and tried the same Day.

Dr. Hewet. I desire a Copy of my Charge; if not that, I desire Time to speak, and Counsel assigned me, which hath been the Course of former times; for Counsel it hath been usually allowed, as in the Case of *Humphry Stafford* in the time of *Henry the Seventh*, and in the Case of *Lilburne*. *Baron Nicholas* and *Serjeant Maynard* were of Counsel for *Major Rolph*, who endeavour'd to poison the late King: And for Matter of Law, it ought to be allowed, as in my Lord *Coke's* sixth Book of his *Reports*, 14 fol. is of the same Opinion. *Arundel* had Counsel assigned him for Murder, in Matter of Law.

Sol. Ellis. For Matter of Fact, it was never allowed; but if he plead, and any Matter of Law do arise that's doubtful to the Court, then the Court, if they doubt of it, assign Counsel; but the Prisoner must plead first to the Matter of Fact. For a Man to be accused the same Day, and tried the same Day, is no new thing. For Counsel, if any thing arise in Matter of Law, then it may be considered. The *Portugal Ambassador's Brother* came, and was accused and tried the same Day. We shall humbly pray that he may plead Guilty or Not guilty; if any Matter of Law arise, your Lordships may do him Justice.

Dr. Hewet. My Lord, with Submission, this learned Gentleman hath understood me but in part; my Request was for Counsel for Matter of Law in general, as well as particular for Matter of Fact. I humbly conceive that there are several Acts of Parliament that do free me from this Charge, and particularly the great Charter of *England*; for which I humbly crave I may have Counsel assigned me.

Ld President. You are now in Generals; you speak of several Acts of Parliament, and you would have Counsel to plead; Counsel was never allowed in this Case upon such a general Desire: many that stand about you may have a Prejudice to you, and think you are loth to plead; I have called upon you often: if we should once record the Refusal, it would be very penal. I would advise you to plead to the Indictment.

Dr. Hewet. My Lord, since you have denied me Counsel, I shall desire to speak something in my own behalf.

Mr. At. Gen. This is a very ill Precedent to the Justice of *England*; I suppose that you will allow him all Favour, but the Justice of *England* must be preferred against all Persons whatsoever. The Jurisdiction is settled to the Satisfaction of the Doctor himself; if he will bring himself a Party, and ask any thing of you, that must be by pleading: till then he can ask nothing.

Dr. Hewet. My Lord, the Judicature is not yet cleared to me, for the Legality of it; and if you please to give a little Patience, I shall give you the Reasons why.

Mr. At. Gen. I shall desire it may be no more thus.

Ld President. I shall say no more to you, we must make our Authority appear to you either by trying of you, or judging of you: will you be try'd?

Dr. Hewet. My Lord, the Charge depends upon an Act of Parliament which was made about two Years * since; the Members of which Parliament were chosen by the People, yet notwithstanding one hundred and fifty of them were not permitted to sit.

* 17 Septem.
1656.

Mr. At. Gen. My Lord, we must not suffer this; pray, if he will not be otherwise satisfied, I must require your strict Justice. Your words they are seditious; this shews the Spirit of the Man.

Dr. Hewet. I hope you will have Patience to hear me for Vindication of my self, and Satisfaction of my own Conscience and all Persons whatever; and withal, for the clearing of your selves, that you do not bring Blood upon your selves by taking that Power that is not justifiable —

Mr. At. Gen. Truly, my Lord, this is insufferable; Mr. Doctor hath had as much Respect as ever any had. I have attended many, I never saw the like in my time; you have had the Patience to hear him oppose your selves, your Authority, your Persons, and to strike at the Root of all. Mr. Doctor, I would have you to carry your self with more Respect. This shews, that much of what is charged against you, is true: if you will scorn the Court, say it positively.

Dr. Hewet. My Lord, I humbly submit my self to the Laws of the Land; I shall not dispute Acts of Parliament, but I conceive (if you will please to give me a little Patience) an House of Commons is not Authority enough —

Ld President. Mr. Doctor, pray remember that Text, *He that seemeth to be religious, and bridleth not his Tongue, his Religion is vain*. Will you plead or not?

Dr. Hewet. My Lord, whilst I speak for the Laws of the Land, this is not an evil Speech.

Mr. At. Gen. My Lord, if you please, I did receive your Commands to prepare this Charge against this Doctor; in obedience to you I have done it, not willingly against your Person, Mr. Doctor; I have some others to proceed against,

* His Name was Don Pontaleon Sa, he was tried and convicted before *Ld. Ch. Just. Rolle*, for the Murder of *Mr. Grenway*, a Gentleman of *Grays-Inn*, July 6, 1654, and was beheaded July 10.

if you will please that Mr. Doctor may dispatch one way or other. I must pray your final Sentence, if he do not plead immediately.

Dr. Hewet. My Lord, what I petitioned for before, I do again, That seeing you will not please to give me leave to speak either as to the Privileges of *Englishmen*, nor as to the Act, I desire time to speak to the Charge, and Counsel.

Ld President. You have heard that I must require your Answer; you must plead Guilty, or Not guilty.

Dr. Hewet. Hath your Lordship assigned me Counsel in Matter of Fact, when Matters of Law arise?

Ld President. We shall then take the Consideration of it, now is not a time.

Dr. Hewet. My Lord, I am in a great straight, I pray God assist me; and I here appeal to Almighty God, and to all the World, that I do against my Soul and Conscience nothing that shall be to the Prejudice of the Privileges of the Laws of England; if there shall be any thing in these Proceedings that shall be to the Disadvantage of others, my Soul be clear of it, the Guilt be upon others; seeing I am necessitated upon this, and cannot have Counsel assigned me for the Judicature, for the Legality of it, I referring my self to the Judges of the Land: I durst refer my self to his Highness's own Counsel, that if they will say that this Particular that I have urged, that this is a lawful Judicature, I will go on.

Ld President. I am required by the Court, before I enter your Refusal, to require your Answer.

Dr. Hewet. I am in a great Dispute, and I pray God direct me what to do in this Case; though I do not at all dispute my own Innocency, which I hope I shall clear; yet I could petition again (though I am tedious to you, that I can never importune enough) to take into your Thoughts your selves and Posterity, and all the People of England.

Ld President. I shall desire, because you may see what I say comes from the Act of Parliament, I shall desire the words may be read to him, what is to be done, if he refuse to answer.

Clerk, read the Clause.

[' And for Examination of Witnesses upon Oath (which the said respective Commissioners are hereby authorized to administer) and thereupon, or upon Confession of the Party, or in Default of such Answer, to proceed to Conviction and final Sentence, as in Cases of High-Treason, and Misprision of Treason, according to Justice and the Merits of the Cause; and such final Sentence to execute, or cause to be executed, speedily and impartially. ']

Dr. Hewet. My Lord, this is a printed Paper which is called an Act of Parliament —

Ld President. I must take you off, you have been required to answer, often required; and having refused, in the Name of the Court I require

the Clerk to record it; and pray take away your Prisoner.

Dr. Hewet. My Lord —

Court. Take him away, take him away.

Dr. Hewet had prepar'd a *Plea* and *Demurrer* to the Jurisdiction and Proceedings of the Court, and Exceptions to their Judgment, drawn up in Form by Council, which was ready Engross'd, and which he designed to have tender'd the Court, had he not plainly perceiv'd their peremptory Resolution to over-rule him.

The Plea and Demurrer of John Hewet, Doctor of Divinity, to the Jurisdiction and Proceedings of the Commissioners in pursuance of an Act, for the Security of the Lord Protector's Person, &c. and to the Sentence of Death pronounced against him by them.

THIS Defendant saith, That he is by Birth a Freeman of England, and that it is the undoubted ancient inseparable Birth-right, Privilege, and Inheritance of every English Freeman, both by the Common Laws, Franchises, Great Charters, Statutes, and Usages of this Land, ratified from Age to Age by the Votes, Resolutions, Declarations, Judgments of the High Court of Parliament, and other publick Courts of Justice, the Oaths of the Kings of England and their Justices, and by many other solemn publick Confirmations, Protestations, Oaths, Vows and Covenants: (a) *That no Freeman of England may or ought to be taken or imprisoned, or disseized, or disinherited of his Freehold, Liberties, or Free Customs; or to be outlawed, exiled, or any way destroyed, passed upon, dealt with, or forejudged of Life or Limb, or put to Death, upon any Accusation whatsoever, but by the lawful Judgment of his Peers, or by the Law of the Land; and that he shall not be put to answer without Presentment before the Justices, or thing of Record, or by due Process of the Law, or by Writ Original, according to the old Law of the Land; (b) And that all Trials hereafter to be had, awarded, or made for any Treason, shall be had and used ONLY according to the due Order and Course of the Common Laws of this Realm, and NOT OTHERWISE, upon Inquest and Presentment by the Oaths of Twelve good and lawful Men, upon good and probable Evidence and Witness; And that (c) if any thing be done to the contrary of the Premises, it shall be void in Law, redressed, and holden for Error, and nought: And if any Statute be made to the contrary, that shall be holden for none.* And moreover this Defendant saith, that in the Parliament of 2 R. 2. rot. Parl. n. 47, the Commons petitioned the King and Lords, that the Constable and Marshal of England (then encroaching upon this Privilege of the Commons, by holding Pleas of Treason and Felony before them after the Course of Martial Law) might from thenceforth surcease to hold Places

(a) Coke's 2 Instit. p. 45, to 57. Magna Charta of King John, H. 3. & E. 1. c. 29. 25 E. 1. c. 1. 28 E. 1. c. 1. 5 E. 3. c. 9. 25 E. 3. n. 26 & c. 4. 28 E. 3. c. 3. 42 E. 3. c. 23. 2 H. 4. rot. Parl. n. 60. The Petition of Right, 3 Caroli.

(b) 25 E. 3. c. 2. 26 H. 8. c. 13. 33 H. 8. c. 20. 35 H. 8. c. 1. 1 Ed. 6. c. 12. 1 & 2 Phil. & Mar. c. 10, 11. 5 E. 6. c. 11. 1 Eliz. c. 6. 5 Eliz. c. 11. 13 Eliz. c. 1. 14 Eliz. c. 1. 18 Eliz. c. 1. 27 Eliz. c. 2. 1 H. 4. c. 14.

(c) 5 E. 1. c. 21. 2. Coke's 2 Instit. p. 526, 527. 28 E. 3. rot. Parl. n. 7, 8, 9, 10, 11, 12, 13. 29 E. 3. rot. Parl. n. 29, 30. E. 3. coram rege, rot. 92. Coke's 3 Instit. p. 52. 42 E. 3. c. 1. 3.

of Treason and Felony before them, done within the Realm, and that the same may be determined ONLY before the King's Justices, according to the great Charter; which was then assented to: And that upon the like Petitions of the Commons in the Parliaments of 1 H. 4. and 2 H. 4. Rot. Parl. n. 89. it was assented to, and enacted by the King and Lords, that the King's Liege People (d) should not be put to answer before the Constable or Marshal in Courts of Chivalry, for any thing done within the Realm, but that (as before in the times of his Progenitors) the same might be tried and determined ONLY BEFORE HIS JUSTICES IN HIS COURTS, AS IT OUGHT TO BE ACCORDING TO THE COMMON LAW OF THE REALM, AND IN NO OTHER PLACE OR MANNER. Upon which Considerations many of the King's loyal Lords, Gentlemen and other Subjects in the general Insurrection of the Villains, and other Rebels against the King, in the fifth Year of Richard the second, having inflicted divers Punishments upon the said Villains and Traitors without due process of the Law, and otherwise than the Laws and Usages of the Realm required; though they did it out of no Malice premeditated, but out of meer Loyalty to the King, and to appease and cease the present mischief, and out of ignorance of the said Laws and Usage, in which if they had been learned, yet at that time they ought not to have tarried the process of the Law in those punishments of their good discretion; yet those punishments and executions of them in a summary way being contrary to, and not warranted by the Laws and Usages of the Realm, they were enforced for their future indemnity against the King and his Heirs, and the Heirs, Wives and Friends of those they punished, to petition the King and Parliament, for a general Pardon by Act of Parliament, to secure and indemnify themselves; which was granted them, in 5 R. 2. Parl. 1. ch. 5. else they might have been impeached and punished for the same, as well as King Richard the second himself; who in the Parliament of 1 H. 4. Rot. Parl. n. 44. (wherein he was enforced to resign his Crown, and then deposed for his Mis-government) was amongst other Articles impeached of this in particular by that Parliament, for that against the great Charter (ch. 29.) and his Coronation Oath, he suffered many of his liege People to be maliciously accused, apprehended, imprisoned, and tried before the Constable and Marshal of England in their military Court, for words secretly spoken, or acts privately done, to the scandal of his Royal Person, where they were enforced to acquit themselves by duel; whence the destruction not only of the Nobles and Great Men, but likewise of all and every the Persons of the Commons of the Realm might probably have ensued. And this Defendant further saith, that one Peter Burchet of the Temple, in the thirteenth Year of Queen Elizabeth's Reign, having wilfully stabbed that famous Sea-Captain John Hawkins, for not being of his Opinion in Religion, (Burchet being persuaded in Conscience that it was lawful for him to kill every one who was not of his Opinion) the Queen being much incensed against him for this horrid fact, commanded him to be forthwith tried and executed for it by Martial Law: But her Judges and Council informing her, that he could not be so tried by Law, it being done not in an Army, but in time of Peace, when her Courts of Law and Justice were open; thereupon she desisted from this way of Trial; After which he was tried according

to Law for this, and his murdering his Keeper in the Tower, as Mr. Camden records in his *Annals* of Queen Elizabeth, p. 242, 243. And whereas in the Parliament of the fourth of King James holden at Westminster, there was some kind of motion made; that to extirpate and reform the inveterate evil Customs, Disorders, Feuds, Blood-sheds, Thefts and Spoils, wherewith the worst sort of Inhabitants near the Borders and Limits of both Realms of England and Scotland, were infected and inured; that they might be tried by a summary Proceeding, by way of Martial Law, or by the Laws of the Kingdom into which they fled to purchase their Impunity: This Parliament was so far from approving thereof, that they specially enacted, in this case (even of these worst sort of men) * That in regard of some difference and inequality in the Laws, Trials, and Proceedings in cases of Life, between the Justice of the Realm of England and that of the Realm of Scotland, it appearing to be most convenient for the contentment and satisfaction of all his Majesty's Subjects, to proceed with all possible Severity against such Offenders in their own Country, ACCORDING TO THE LAWS OF THE SAME, WHEREUNTO THEY ARE BORN AND INHERITABLE; and by and before the natural-born Subjects of the same Realm; by whom their Murders, Felonies, Rapes, &c. should be inquired of, heard and determined before his Majesty's Justices of Assize, or Commissioners of Oyer and Terminer, or Goal delivery, by good and lawful Men of the three Counties therein specified, and NONE OTHER. And that at all such Trials the Jury then and there sworn, shall have in their Power and Election, according to their Conscience and Discretion upon their Oaths, to receive and admit only such sufficient good and lawful Witnesses upon their Oaths, either for or against the Party arraigned, as shall not appear to them, or the greater part of them to be unfit and unworthy to be Witnesses in that cause, either in regard of their hatred and malice, or their favour and affection either to the Party prosecuting, or to the Party arraigned, or of their former evil Life and Conversation.' Which common, equal, indifferent Justice allowed to the worst Malefactors, as their birth-right and inheritance by this Parliament and Act, this Defendant now only craves, and hopes you cannot in Law or Justice deny him; nor proceed against him by way of Martial Law. And so much the rather, because since this Statute, King Charles in the third Year of his Reign, by the advice of his Council (to suppress the Insolencies of Soldiers and Mariners then billeted in sundry parts of the Realm) having issued out Commissions to sundry Persons of Quality, in time of Peace, to execute Martial Law upon those Soldiers and Mariners, and other dissolute persons (only) joyning with them, for Murther, Robbery, Felony, Mutiny, and other Outrages committed by them, by such summary course and order as is agreeable to Martial Law, and as is used in Armies in time of War; to proceed to the Trial and Condemnation of such Offenders, and then to cause them to be Executed and put to death, according to the Law Martial; By pretext whereof some of the said Soldiers and Subjects were put to death by some of the said Commissioners, when and where, if by the Laws and Statutes of the Land they

(d) Coke's 4 Instit. p. 124, 125.

* 4 Jacob. ch. 1.

had deserved death, by the same Laws and Statutes also they might, and by NO OTHER ought to have been Judged, before the Kings Justices) and executed. Upon Complaint of these Commissions, as illegal, in the Parliament of 3 Caroli, they were, after a full debate by both Houses, voted to be against Law. And in the Petition of Right it self, it was then prayed by the Lords and Commons, assented to by the late beheaded King himself, and enacted by this Law, That hereafter no Commissions of LIKE NATURE may issue forth to any Person or Persons whatsoever, to be executed as aforesaid, lest by colour of them any of his Majesty's Subjects be destroyed or put to death, CONTRARY TO THE LAWS AND FRANCHISE OF THE LAND: which the Lords and Commons then prayed, and the King granted, confirmed by Act of Parliament, AS THEIR RIGHT AND LIBERTY ACCORDING TO THE LAWS: which Act stands yet in its full Force. Upon consideration of which late Excellent Law, the last long Parliament, in the cases of the Lord Connor Magwire and Mac-mobun, and the Court of Kings Bench wherein they were tried by their Special Order, in Michaelmas and Hilary Terms 20 Caroli, were so just, punctual and honourable, in confining themselves to the rules of Law and Justice; that though these were principal Conspirators, and Actors in the late most horrid, barbarous, bloody Treason, Rebellion and Massacre in Ireland, and taken in its prosecution; yet they were so far from trying them by Martial Law in a Council of War, or High Court of Justice, even in a time of open War both in England and Ireland, that they assigned the said Magwire Council, to argue against the very Jurisdiction of the King's Bench itself; whether he, being a Peer of Ireland, could in point of Law or Justice by the Statute of 35 H. 8. ch. 2. or any other Act, be outed of his Trial by his Peers, and tried by a Jury of good and lawful Men of the County of Middlesex for a Treason committed in Ireland, being sent a Prisoner from thence against his will? Which was there (e) publicly argued at the Bar by Counsel pro & contra; and then by the Judges, and over-ruled at last against him, before he was put to plead guilty or not guilty to his Indictment: after which they both were admitted to take both their peremptory and legal challenges to the Juries returned; (f) (according to Law, admitting such Challenges even in cases of High-Treason;) and all just Exceptions to the Witnesses produced; and had a most fair and free Trial; being found guilty by the Jury, before any Judgment passed against them. Which Justice he humbly craves in his Case, of less hainousness and importance than theirs, being a native English free-man, and they only Irish Rebels; because this his inherent Birth-right and Liberty, can (g) neither be forfeited by him for any real or pretended Treason or Offence whatsoever, nor yet be denied or deferred to him (after all the premised Laws, Statutes, Charters, Judgments, Resolutions, Precedents) without the highest Injustice. And he further saith, that to proceed against, try, condemn, execute him in this high Court, without a legal Indictment, Presentment, and Trial by the Oaths of twelve good and lawful

Men, according to the due order and course of the Common Laws of this Realm (and that in Westminster Hall it self, the place of Law and publick Justice, in time of Peace, when and where all other Courts of Justice are open) or in any other form by way of Martial Law, or otherwise than a just Jury of his Equals, is not only illegal, erroneous, and against all Rules of Justice (the Commissioners themselves being both his grand and petty Jury, and his Judges likewise; if not Parties interested, to whom he can take no peremptory nor legal Challenges, which the (h) Law allows him if tried by a Jury in cases of High-Treason at this day;) but also wilful and malicious Murder by the Laws of England, being against Magna Charta, c. 29. and done by such power and strength as he this Defendant cannot defend himself against, as is resolved in Sir Edward Coke's 3 Instit. p. 52. & 224. (printed by special Order of the House of Commons, dated 12 May, 1641.) and long before in Andrew Hornhis Mirrour of Justices, c. 5. p. 296, 297, who records, that our noble King Alfred caused no less than 44 of his Justices to be hanged in one Year as MURDERERS, for condemning and executing some of his People without a legal Indictment and Trial by a sworn Jury; and others of them for offences not capital by the known Laws of the Land, and without clear and pregnant Evidence. And this Defendant likewise saith, that the Commons themselves sitting at Westminster, after the late King's Execution, in their printed Declaration of 17 Martii, 1548, (expressing the grounds of their proceedings against the said King, and for settling the present Government in way of a Free State, to which many in present power and sitting here were assenting and gave their Votes) did thereby faithfully promise and engage to the whole English Nation, That the good old Laws and Customs of England, THE BADGES OF OUR FREEDOM, (the benefit whereof our Ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great Charters of their Liberties) which have continued in all former Changes, and being duly executed, are the most just, free, and equal of any other Laws in the World; shall be duly continued and maintained; the Liberty, Property and Peace of the Subject being so fully preserved by them; adding, that 'If these Laws should be taken away, all Industry must cease, all Misery, Blood and Confusion would follow; and greater Calamities, if possible, than fell upon us by the late King's Mis-government would certainly involve all Persons, under which they must inevitably perish.' And moreover, the General Council of the Officers and Army themselves (whereunto most Officers and Soldiers in present Power and some Commissioners here sitting were Parties) in the Declaration of their Engagements, Remonstrances, Representations, Proposals, Desires, and Resolutions for settling the Parliament in their just Privileges, and the Subjects in their Liberties and Freedoms (printed by their own Orders, and reprinted all together by Order of the Lords in Parliament, 27 September, 1647) pag. 11, 36, 37, 38, 39. (especially in their Declaration and Representation tendered to the Parlia-

(e) See Mr. Prynne's Argument thereof.

(f) 32 H. 6. f. 26. 14 H. 7. f. 19. Brook Challenge, 86, 211, 217. Stamford's Pleas l. 3. c. 7. Coke's 3 Instit. p. 27.

(g) 1 E. 6. c. 12. 1 & 2 Phil. & Mar. c. 10, 11. Coke's 3 Instit. c. 1, 2.

(h) Coke's 3 Instit. f. 27. Brook, Challenge 217.

ment concerning the just and fundamental Rights and Liberties of the Kingdom, 14 May 1647) do profess and declare, 'That they were not a meer mercenary Army, hired to serve any Arbitrary power of State, but called forth and conjured by several Declarations of Parliament, to the defence of their own and the Peoples just Rights and Liberties, and that they took up Arms in Judgment and Conscience to those Ends, and have so continued them, and are resolved, according to the Parliament's just desires in their Declarations, and such Principles as they have received from their frequent Informations, and their own common Sense concerning those fundamental Rights and Liberties, to assert and vindicate the same against all Arbitrary Power, Violence and Oppression, and against all particular Parties and Interests whatsoever; that so all the free-born People of this Nation may sit down in quiet under the glorious administration of Justice and Righteousness, and in full possession of those fundamental Rights and Liberties; without which we can have little hopes (as to human considerations) to enjoy any comfort of Life, or so much as Life it self, but at the pleasure of some Men RULING ACCORDING TO WILL AND POWER. That they desire the establishment of such good Laws, as may duly and readily render to every Man their just Rights and Liberties. And more particularly, in their Proposals to the Commissioners of Parliament, in order to the clearing and securing of the Rights and Liberties of the Kingdom, August 1, 1647, Sect. 10. p. 114. they proposed, That the Rights and Liberties of the Commons of England, MAY BE CLEARED AND VINDICATED FROM ANY OTHER JUDGMENT, SENTENCE, OR PROCEEDING AGAINST THEM, OTHER THAN BY THEIR EQUALS, OR ACCORDING TO THE LAW OF THE LAND. And this Defendant finally saith, that by the Instrument of Government it self, 16 December 1653, Artic. 6. and the Oath therein prescribed to, and accordingly taken by his Highness, Oliver Cromwell Lord Protector, he is limited and sworn; 'not to alter, suspend, abrogate or repeal the Laws, and to govern these Nations according to the Laws, Statutes and Customs; causing Justice and Law to be equally administered: whereunto he is likewise obliged and sworn again, by his Oath prescribed in the late printed humble Petition and Advice.' Neither doth that pretended Act, by which you here sit as Commissioners to try this Defendant (made by no legitimate, nor free Parliament of England, and that when near one hundred and fifty Members thereof were causlessly and forcibly secluded) authorize you (as he humbly conceiveth) to proceed against him for any Crime therein specified, to Conviction or final Sentence, but only as in Cases of High-Treason, and misprision of Treason, AND ACCORDING TO JUSTICE; and that you cannot do but only by proceeding against him by a lawful Indictment and Trial by a Grand and Petty Jury, according to the great Charter, Laws, and Statutes of the Land, and the late Petition of Right, which this new Act cannot repeal or null. All which this Defendant is ready to aver, justify, and make good, when and where this high Commission Court, or his Highness the Lord Protector shall appoint: which being a meer

matter of Law, wherein both the Liberties and Lives of all the Free-born People of England are so universally, highly, and equally concerned, as well as the Liberty and Life of this Defendant, proper only to be debated before, and resolved by the Judges of the Law, or the high Court of Parliament; This Defendant thereupon humbly prayeth, That it may be referred to, openly argued by his learned Counsel, before all the Judges, or a Parliament, and by them determined: and in the mean time humbly demandeth the Judgment of this High Commission; Whether they may, can, or ought in point of Law and Justice, to proceed against, condemn, or execute this Defendant, upon any illegal Accusation or Impeachment whatsoever, here exhibited or read against him, without a legal Indictment, Presentment and Trial by a Jury of his Equals? Or can take any further connivance of the Charge against him, for the premised Authorities and Reasons; which he in all humility referreth to, and imploreth you to take into your saddest Considerations, and that in the Name and dreadful Presence of the Omniscent, Omnipotent, Sovereign (i) Judge of all the Earth, (k) before whose glorious Tribunal you must all ere long appear, (stript of all Earthly Honours, Pomp, Guards, and Power,) to give a strict account of all your Actions, whether good or evil, and of your Proceedings in this very Cause; when this his Plea and Demurrer will rise up in Judgment against, and condemn you, in case you wilfully prejudge, misjudge, or reject it now, without due and full examination according to Law, Justice, Conscience: And if the Consideration of this terrible Day of Account and just retribution before Christ's own Tribunal, shall not prevail with you to admit of this his Legal Plea and Demurrer, (as being after your Deaths perhaps many Years yet to come, and no ways endangering the loss of your Lives, Lands, Honours or Estates in this present World,) He shall then humbly intreat you for your own future Indemnity (he hopes, without offence) seriously to consider; That in the Parliament of 11 R. 2. c. 1, 5. 21 R. 2. c. 11, 12. Tresilian Chief Justice of the Kings-Bench, Belknappe Chief Justice of the Common-Pleas, John Care, John Holt, Roger Fulthorpe, William de Burgh Judges, and John Lotton the King's Serjeant, were all impeached of High-Treason, condemned, and some of them executed as Traitors and Enemies to the King and Realm, the rest perpetually banished, their Lands and Estates confiscated to the King, and all access of their Wives, Children or others to them during their Exile, prohibited by Judgment and Act of Parliament, only for delivering their Opinions (through menaces and fear of Death at Nottingham Castle) under their Hands and Seals, against the Law of the Land; That the Lords and Commons who procured the Commission in the Parliament of 10 R. 2. for the better Government of the Realm, and moved the King to consent thereto, deserved to be punished as Traitors, by capital pain of Death: That so by colour of these their Opinions, Robert de Veer Duke of Ireland, Nicholas Brambre, Knight, and others of the King's ill Counsellors, might take occasion to destroy and take away the Lives of the Lords who procured and executed that Commission, and others of the King's People, by undue and illegal Indictments and Proceedings, without any lawful Trial by their Peers, as Traitors to the

(i) Gen. xviii. 25.

(k) 2 Cor. v. 10.

in any Faculty, especially in the Law. I never did change my Cassock into a Jump; I am better acquainted with a Pulpit than a Bar; better read in *Sr. Austin* than my *Lord Coke*; and in the *Fathers*, than *Rastal's Entries*, or *Plowden's Commentaries*. In all my Life I never studied any Law-Case till now; that Necessity that hath no Law hath made me thus far to become a Lawyer, as to think to plead (not for my Livelihood, but) for my Life. God forgive them that have occasioned this unusual and unaccustomed Study, that hath put me into such a Pulpit as I never saw before. And therefore, my Lord, in as much as I have often heard that there are such Niceties in the Law, that a Man may be lost in the Severity of it for a word spoken in mere Simplicity; I shall crave that there may be nothing taken, in prejudice to my Innocency, from words spoken in Simplicity: and I hope you will please to grant me that.

‡ *Ld President.* Dr. Hewet, I am sorry, truly very sorry, to see such a one as you in that place; but you are impeached of High-Treason: All Favour will be shewn you according to the Rules of Justice. I think you desire Counsel?

Dr. Hewet. No, my Lord, it is first, that I knowing nothing of the Law, may have nothing (simply spoken) prejudice me; and that you will allow me Counsel.

Ld President. The Court is Counsel for you, your Business is to plead to the Indictment; you are required by the Court to answer whether Guilty or Not guilty.

Dr. Hewet. My Lord, you sit there as Judge, I beseech you let me know by what Commission you sit there.

Ld President. Dr. Hewet, we sit here by a Commission under the Great Seal of *England*, in pursuance of an Act of Parliament; that's our Commission.

Dr. Hewet. Pray give me the favour to have the Commission read, my Lord.

Ld President. Dr. Hewet, we know our own Authority, it is not usual to read Commissions to Prisoners; the Laws of *England* and Acts of Parliament are to be submitted to.

Dr. Hewet. I am not to own every Person that will sit to judge me, therefore I desire to know by what Commission you sit, and who are the Judges, and then I shall say more.

Ld President. Those that are to judge you, are very well known; you consented your self to the Judges, we are all chosen by Act of Parliament, the Parliament hath consented to it; we are chosen Judges, and are your Judges by Act of Parliament.

Dr. Hewet. My Lord, I must know the Persons, whether they be all here; I see but very few.

Ld President. Here be very many, and we have been all called this Morning, as the Course is, and we sit now as your Judges.

Dr. Hewet. Under favour, my Lord, as I remember, the Commission by the Act is directed to 150, and there are the Lords Commissioners of the Great Seal, with the Lords of his Highness's Treasury, and all the Judges, and divers other Persons, are named in the Act of Parliament: I do not see so many Faces as are mentioned in that Act.

Ld President. Dr. Hewet, I must tell you the *Quorum* is any Seventeen or more of them: if we are here Seventeen or more, we are a *Quorum* by that Commission: we are here I believe Forty or Fifty.

Dr. Hewet. My Lord, with Submission, the Case is true, in case the Commissioners were but Seventeen, and they all present, then they might hear and determine; but if one were absent, they cannot, my Lord, as I conceive.

Ld President. You are a Person of Parts, and therefore we may delight to hear you; but we must keep our selves to the Business of the Court: You are required by the Court to answer the Impeachment.

Dr. Hewet. My Lord, if you sit by the Act, sit according to the Act, and then I shall submit. It was resolved by all the Judges of the *King's-Bench* in the 13th of *Eliz.* in the Earl of * *Leicester's Case*.

† *Mr. At. Gen.* The Doctor did profess his Ignorance of the Laws, yet pretends more Knowledge than the Court: The Court are here, and know themselves lawfully authorized to try you. Dr. Hewet, if you please to proceed to give your Answer, whether guilty or not, you will find the Justice of the Court to be according to the Laws of *England*.

Dr. Hewet. This learned Gentleman, I know his Face, though not his Name; he speaks according to Worth, but I cannot answer him according to Law, and therefore still plead Ignorance of the Law, but desire to be tried according to Law; and I have given you a Law-Precedent, if you will go against it I shall say no more.

Mr. At. Gen. This Gentleman hath it by Tradition, not by his own Knowledge; but the Case he mentions cannot parallel this. The Act of Parliament saith, an Hundred and Fifty, or any Seventeen; here are three Seventeens.

Mr. Sol. Ellis. I think the Commission is directed to your Lordships, or any Seventeen: [*Which Commissioners, or any Seventeen, &c.*] The Meaning whereof is, That those Seventeen, or more respectively, should hear, &c. There were several *Quorums* for *England*, *Scotland* and *Ireland*; Seventeen for *England*, Thirteen for *Scotland*, &c. That Case out of *Plowden* differs clearly from this: for if a Commission be directed, and there be no *Quorum*, then the Commissioners must all certify. We humbly conceive, that if your Lordships be here Seventeen, or more, you are fully authorized to proceed.

Mr. At. Gen. In many Cases you have a *Quorum* of Persons, such and such Men: it's true, here is no *Quorum* of Persons, but a *Quorum* of the Number; and if there be a *Quorum* of Seventeen, it is warrantable.

Dr. Hewet. This learned Gentleman, he is better able to speak what is Law than I; but under favour, and with Submission, I do not think he may judge of the Laws, or the other (that spoke his private Conception) to interpret the Meaning of the Parliament. And, my Lord, if your Lordship please, I shall make this my humble Appeal to the learned Judges of the Law, That if they will say in this respect, that this is a lawful Judicature, I shall proceed.

‡ John Lisle.

* Plowd. 384.

† *Mr. Prideaux.*

Ld President. You have heard the words of the Act of Parliament read, Authority is given to the Commissioners, or any Seventeen or more of them; [*Which said Commissioners respectively*] that is, for *England* Seventeen, or more of them: and you have heard the Judgment of the Court upon that. That which you speak of in relation to my Lord *Leicester's* Case is true; if a Commission be directed to Commissioners, and no *Quorum* appointed, then all must certify; but by the Act of Parliament, and the Commission made in pursuance of it, the *Quorum* is Seventeen: but here are three *Quorums*.

Dr. Hewet. My Lord, in as much as all the Commissioners are named in that Act, and that Commission is according to the Act, they are all commissioned to sit; and unless all sit, the rest cannot try and examine, &c. And I shall refer it to the Judges of the Laws.

Ld President. We did not call our selves to be your Judges; by being named your Judges by Act of Parliament, we have Power to declare to you what the Law is by that Act of Parliament. I have declared it.

Dr. Hewet. My Lord, if the *Quorum* had been named, then it were somewhat; but it being directed to Seventeen, or more, when more or Seventeen are commissioned, all must sit: I refer it again to the Judges of the Laws.

Ld President. *Dr. Hewet*, what you say now, or what you say hereafter, besides this, you have time to speak to, as to Matter of Law, after Matter of Fact hath been tried; if you plead to Matter of Fact, what you say to the Court as to Matter of Law, we shall be ready to hear it; apply your self to the Court in Matter of Fact. The Court asks you, whether guilty or not?

Dr. Hewet. My Lord, I must first know whether the Court be a lawful Judicature, before I give in my Defence.

Ld President. *Dr. Hewet*, you have offered very much touching the Jurisdiction of the Court, in Conclusion you must acquiesce; I must put you up to plead; you know the Danger, if you do not plead, being required: if you stand mute and do not plead, it is equally as dangerous to you, as if you had confessed the Crimes.

Dr. Hewet. I am so highly sensible of the Privileges of an *Englishman*, that both for the Satisfaction of my own Conscience, and all Persons, I would not willingly give up the Liberties and Privileges of any *English* Freeman to any body that demands it; I am very loth that there should be any just Imputation laid upon me, that I should seek a Disturbance in point of Self-Interest, to divide my self from the Communion of those that are my Fellow-Freemen; and I should (as I have always) abhor to be both a Schismatick from the Church, and singular from the State. My Lord, I am so concerned for the Privileges of an *English* Freeman, and publick Interest, that I should be loth to do any thing towards the giving them up, that might make my Heart ake. I shall desire it may be determined by the Judges.

Ld President. You speak of common Friendship; what is common Friendship, but to be a Friend to the publick Government? If you have been a Friend to the Government and Peace of this Nation, you need not fear to plead to the

Indictment: And therefore I require you to plead to it.

Dr. Hewet. Whenever you shall come to a particular Examination of the Business, it will not appear that I have been an Enemy; I desire, that whereas there are many Niceties in the Laws, I humbly crave the Engagement of your Honours, that there may not be any Advantage taken.

Mr. At. Gen. God forbid.

Dr. Hewet. My Lord, I think I have not spoken any thing unreasonably, or against Law, and therefore humbly crave my former Request.

Mr. At. Gen. If you please, the Doctor knows that there must be a Judgment, in which we must acquiesce: This is that Judicature that calls you before them; you sit by the highest Authority of *England*; an Act of Parliament in the first place, a Commission under the Great Seal in the second place, and a Commission of his Highness, against whom, of which the Doctor is one; I desire he may give an Answer to the Impeachment; that being done, we shall have Liberty on both sides to speak to what is Justice, and Law, and Fact: if you are not guilty, be you assured that this Court will not take your Blood upon them; you have a very fair Court.

Dr. Hewet. This learned Person speaks very fairly; it shall be far from me to question any Act of a lawful Parliament: but under favour, as yet it doth not appear to me, that you have by that Act by which you sit, Power to hear and determine concerning the Matters of which I am charged: I refer it, and appeal again and again to the learned Judges of the Laws, even his Highness's Judges.

Ld President. *Dr. Hewet*, the Court has had much Patience in hearing of you thus long, you having not so much as owned their Authority; if you will not own us, we will own you: therefore I require the Clerk to enter it, that we have required you to plead.

Mr. Phelps Clerk. *John Hewet*, you here stand charged of High Treason against his Highness the Lord Protector and the Commonwealth; the Charge hath been read to you, the Court have demanded whether Guilty or Not guilty; they again demand of you whether Guilty or Not guilty.

Dr. Hewet. My Lord, I shall be very loth to do any thing to save my Life, and forfeit a good Conscience; and I shall not, for my private Interest, give up the Privileges of those that are equal Freemen with my self: I am look'd upon in a double Capacity, as a Clergyman, and as a Commonwealth's Man; I should be very loth to be scandalous in either: And pray be pleased to do that Justice to your selves, as to vindicate the Legality of your Judicature, and then I'll proceed.

Mr. At. Gen. My Lord, you was pleased to tell the Doctor, That you will own him when he doth not own you; but, my Lord, his flying in your Face, and taxing you thus, is not to be endured: I wish he would have that Consideration of himself, that if he doth not own your Authority, you expect to be owned, otherwise he will be supposed to be guilty of all those Crimes that are laid to his Charge; and by not pleading, he doth confess them; that will be an

high Scandal, Mr. Doctor: therefore to vindicate your self, I desire you to answer.

Dr. *Hewet*. This learned Gentleman hath urged it with a great deal of Civility and Respect to me, which I must own, and thankfully acknowledge: but, my Lord, withal, I dare not, for the saving of my self, give up others; so many thousands of others, by my Precedent, that might likewise be involved in the same Condition that I am in: therefore, my Lord, let it appear that it is a lawful Judicature, and I have done.

Mr. *At. Gen.* I beseech Mr. Doctor to consider his Case; he is not brought as a Champion for the People of *England*; as he stands charged, he appears to you to be contrary affected: I humbly beg that he may be put to plead, that so his Innocency may be clear'd.

Dr. *Hewet*. My Lord, I said before that I am no Lawyer, I understand nothing of it, neither desire to be Judge in my own Cause; but I do not desire likewise to be judged by every Person that would sit to judge me; neither would I give up that Right that belongs to an *Englishman*, to every one that demands it: Therefore I desire you to grant this Petition, That you will make appear that you are a lawful Judicature. I would rather die ten thousand times than I will be guilty of giving up my Fellow-Freemen's Liberties and Privileges.

Mr. *At. Gen.* My Lord, some of his own Coat have acknowledged the like Authority before him; but if Mr. Doctor be peremptory in this, that he will not own your Authority, and plead to his Charge, I must do my Duty; that is, humbly to pray the Court, that if he refuse to answer, I must pray their Judgment, and acquaint him with the words of the Act; [*which accordingly were read.*] So that, my Lord, in default of Answer, if Mr. Doctor will not plead to this, my Lord, I must thereupon pray that you will proceed according to the Act, as in Cases of High-Treason, which is very penal. I have no more to say.

Dr. *Hewet*. My Lord, I suppose these learned Gentlemen, who are so learned in the Laws, will be cautious what they do against Law; and I hope they will remember what Condemnation and Execution befel *Tresilian* in the 11th of *Richard* the Second, that did there misadvise the King to do such and such things; that is much like to this Case of mine: And withal, I hope they will remember what befel the Judges in the Case of *Ship-money*, in the time of the late King; and therefore I hope they will be cautious themselves in doing any thing that is contrary to Law.

Ld *President*. Dr. *Hewet*, you have heard the Clause of the Act of Parliament read to you, whereby you may understand, that either we must proceed upon your Answer, or else to Judgment upon your Refusal; if upon your Answer you clear your Innocency, then those Freemen you speak of, may faithfully embrace you: but if you will not answer, we must proceed to Judgment. I am sorry for your Robe-sake, but if you will not answer, you cannot acquit yourself: you thereby confess it: Therefore let me advise you, for your Robe-sake, to follow the best Counsel; that is, to put your self upon that which Prisoners must do. Answer to it, Guilty, or Not guilty?

Dr. *Hewet*. My Lord, I hope it is not the Sense of the whole Court, that they should proceed against me, either to Sentence, or any other way, till first they clear themselves to me.

Mr. *At. Gen.* Pray, who is the Judge? You must clear your self to him.

Ld *President*. If there be any here that are of another Opinion, let him declare himself. Dr. *Hewet*, you lose your self mightily in saying this one thing so often, and we lose our Time: I require you again to plead.

Dr. *Hewet*. My Lord, I cannot speak of that too often, that is so dear and precious to me and every Person.

Mr. *At. Gen.* I can say no more, but pray your Justice.

Ld *President*. Dr. *Hewet*, I am called upon by the Court, because of your Refusal to answer; but I pity you very much, and therefore desire once more the Patience and Favour of the Court, that they would give you leave to answer: Therefore Mr. Doctor, that we may not record your standing mute, and refusing to answer, I shall once more, in favour to you, require you to answer. Clerk, stay your Hand a while.

Dr. *Hewet*. My Lord, both the Court and all these Persons will thus clear me to the whole World, that I have referred my self, and appealed to his Highness's Judges of the Law, to resolve whether this be a lawful Judicature: this Appeal is denied, therefore I must proceed to some other thing, seeing you all deny me that.

Mr. *Phelps*, Clerk. *John Hewet*, D.D. you stand here charged on behalf of his Highness the Lord Protector, of Treason against him and his Commonwealth; you have heard the Charge, the Court hath several times demanded your Answer, and you refuse; they the third time require your Answer, whether Guilty, or Not guilty.

Dr. *Hewet*. Pray, my Lord, is there any Indictment found against me by a Grand Jury, by which I am to be tried? For by the fifth and sixth of *Edward* the Sixth, all Treasons are to be inquired into, and presented by twelve Men: the Commission by which you sit, doth not declare any other way: I beseech you, is there any other Indictment?

Ld *President*. You have a very great Grand Jury, forty Persons, and we have Power upon a special Act of Parliament, to give order for a Charge to be brought in against you; and we have, according to that Power and Authority, given order for this Charge to be brought in against you, and you are to answer to it.

Dr. *Hewet*. My Lord, with Submission, you are not a competent Jury.

Mr. *At. Gen.* My Lord, now it is the second Part to the same Tune; I know there are many others upon the same String when this is resolved. Sir, this is the Grand Jury, the Petty Jury, and your Judge; they require you to give your Answer, whether Guilty, or Not guilty.

Dr. *Hewet*. My Lord, this is likewise denied me, I now humbly crave a Copy of my Charge, Time to answer to it, and Counsel assigned me.

Ld *President*. For the Copy of your Charge, it was never granted to any Prisoner indicted for High-Treason. For Counsel, you are now upon

upon Matter of Fact, whether Guilty or Not guilty.

Mr. At. Gen. I have a Word to inform him. I would not press any thing against him, which in my Judgment I thought not legal; you have given him your Resolution as to the Jurisdiction, there is nothing now to say, but Guilty or Not guilty: he must bring himself to be a Party, or else nothing can be asked.

Dr. Hewet. I think the Prisoner cannot be charged and tried on one and the same Day, no more than a Man can be indicted and tried the same Day, as in *Kelway's Reports*; and this was declared to be Law in the Case of the *Portugal Ambassador's Brother* *.

Mr. At. Gen. You are not upon your Trial, you must plead and join Issue, and then we will consider whether we will try you now or no; yet there is many a Man hath been brought to Prison the same Day, found the same Day, and tried the same Day.

Dr. Hewet. I desire a Copy of my Charge; if not that, I desire Time to speak, and Counsel assigned me, which hath been the Course of former times; for Counsel it hath been usually allowed, as in the Case of *Humphry Stafford* in the time of *Henry the Seventh*, and in the Case of *Lilburne*. *Baron Nicholas* and *Serjeant Maynard* were of Counsel for *Major Rolph*, who endeavour'd to poison the late King: And for Matter of Law, it ought to be allowed, as in my Lord *Coke's* sixth Book of his *Reports*, 14 fol. is of the same Opinion. *Arundel* had Counsel assigned him for Murder, in Matter of Law.

Sol. Ellis. For Matter of Fact, it was never allowed; but if he plead, and any Matter of Law do arise that's doubtful to the Court, then the Court, if they doubt of it, assign Counsel; but the Prisoner must plead first to the Matter of Fact. For a Man to be accused the same Day, and tried the same Day, is no new thing. For Counsel, if any thing arise in Matter of Law, then it may be considered. The *Portugal Ambassador's Brother* came, and was accused and tried the same Day. We shall humbly pray that he may plead Guilty or Not guilty; if any Matter of Law arise, your Lordships may do him Justice.

Dr. Hewet. My Lord, with Submission, this learned Gentleman hath understood me but in part; my Request was for Counsel for Matter of Law in general, as well as particular for Matter of Fact. I humbly conceive that there are several Acts of Parliament that do free me from this Charge, and particularly the great Charter of *England*; for which I humbly crave I may have Counsel assigned me.

Ld President. You are now in Generals; you speak of several Acts of Parliament, and you would have Counsel to plead; Counsel was never allowed in this Case upon such a general Desire: many that stand about you may have a Prejudice to you, and think you are loth to plead; I have called upon you often: if we should once record the Refusal, it would be very penal. I would advise you to plead to the Indictment.

Dr. Hewet. My Lord, since you have denied me Counsel, I shall desire to speak something in my own behalf.

Mr. At. Gen. This is a very ill Precedent to the Justice of *England*; I suppose that you will allow him all Favour, but the Justice of *England* must be preferred against all Persons whatsoever. The Jurisdiction is settled to the Satisfaction of the Doctor himself; if he will bring himself a Party, and ask any thing of you, that must be by pleading: till then he can ask nothing.

Dr. Hewet. My Lord, the Judicature is not yet cleared to me, for the Legality of it; and if you please to give a little Patience, I shall give you the Reasons why.

Mr. At. Gen. I shall desire it may be no more thus.

Ld President. I shall say no more to you, we must make our Authority appear to you either by trying of you, or judging of you: will you be try'd?

Dr. Hewet. My Lord, the Charge depends upon an Act of Parliament which was made about two Years * since; the Members of which Parliament were chosen by the People, yet notwithstanding one hundred and fifty of them were not permitted to sit.

* 17 Septem.
1656.

Mr. At. Gen. My Lord, we must not suffer this; pray, if he will not be otherwise satisfied, I must require your strict Justice. Your words they are seditious; this shews the Spirit of the Man.

Dr. Hewet. I hope you will have Patience to hear me for Vindication of my self; and Satisfaction of my own Conscience and all Persons whatever; and withal, for the clearing of your selves, that you do not bring Blood upon your selves by taking that Power that is not justifiable —

Mr. At. Gen. Truly, my Lord, this is insufferable; Mr. Doctor hath had as much Respect as ever any had. I have attended many, I never saw the like in my time; you have had the Patience to hear him oppose your selves, your Authority, your Persons, and to strike at the Root of all. Mr. Doctor, I would have you to carry your self with more Respect. This shews, that much of what is charged against you, is true: if you will scorn the Court, say it positively.

Dr. Hewet. My Lord, I humbly submit my self to the Laws of the Land; I shall not dispute Acts of Parliament, but I conceive (if you will please to give me a little Patience) an House of Commons is not Authority enough —

Ld President. Mr. Doctor, pray remember that Text, *He that seemeth to be religious, and bridleth not his Tongue, his Religion is vain.* Will you plead or not?

Dr. Hewet. My Lord, whilst I speak for the Laws of the Land, this is not an evil Speech.

Mr. At. Gen. My Lord, if you please, I did receive your Commands to prepare this Charge against this Doctor; in obedience to you I have done it, not willingly against your Person, Mr. Doctor; I have some others to proceed against,

* His Name was Don Pontaleon Sa, he was tried and convicted before *Ld. Ch. Just. Rolle*, for the Murder of *Mr. Greenway*, a Gentleman of *Grays-Inn*, July 6, 1654, and was beheaded July 10.

if you will please that Mr. Doctor may dispatch one way or other. I must pray your final Sentence, if he do not plead immediately.

Dr. Hewet. My Lord, what I petitioned for before, I do again, That seeing you will not please to give me leave to speak either as to the Privileges of *Englishmen*, nor as to the Act, I desire time to speak to the Charge, and Counsel.

Ld President. You have heard that I must require your Answer; you must plead Guilty, or Not guilty.

Dr. Hewet. Hath your Lordship assigned me Counsel in Matter of Fact, when Matters of Law arise?

Ld President. We shall then take the Consideration of it, now is not a time.

Dr. Hewet. My Lord, I am in a great straight, I pray God assist me; and I here appeal to Almighty God, and to all the World, that I do against my Soul and Conscience nothing that shall be to the Prejudice of the Privileges of the Laws of *England*; if there shall be any thing in these Proceedings that shall be to the Disadvantage of others, my Soul be clear of it, the Guilt be upon others; seeing I am necessitated upon this, and cannot have Counsel assigned me for the Judicature, for the Legality of it, I referring my self to the Judges of the Land: I durst refer my self to his Highness's own Counsel, that if they will say that this Particular that I have urged, that this is a lawful Judicature, I will go on.

Ld President. I am required by the Court, before I enter your Refusal, to require your Answer.

Dr. Hewet. I am in a great Dispute, and I pray God direct me what to do in this Case; though I do not at all dispute my own Innocency, which I hope I shall clear; yet I could petition again (though I am tedious to you, that I can never importune enough) to take into your Thoughts your selves and Posterity, and all the People of *England*.

Ld President. I shall desire, because you may see what I say comes from the Act of Parliament, I shall desire the words may be read to him, what is to be done, if he refuse to answer.

Clerk, read the Clause.

[' And for Examination of Witnesses upon Oath (which the said respective Commissioners are hereby authorized to administer) and thereupon, or upon Confession of the Party, or in Default of such Answer, to proceed to Conviction and final Sentence, as in Cases of High-Treason, and Misprision of Treason, according to Justice and the Merits of the Cause; and such final Sentence to execute, or cause to be executed, speedily and impartially. ']

Dr. Hewet. My Lord, this is a printed Paper which is called an Act of *Parliament* —

Ld President. I must take you off, you have been required to answer, often required; and having refused, in the Name of the Court I require

the Clerk to record it; and pray take away your Prisoner.

Dr. Hewet. My Lord —

Court. Take him away, take him away.

Dr. Hewet had prepar'd a *Plea* and *Demurrer* to the Jurisdiction and Proceedings of the Court, and Exceptions to their Judgment, drawn up in Form by Council, which was ready Engross'd, and which he designed to have tender'd the Court, had he not plainly perceiv'd their peremptory Resolution to over-rule him.

The Plea and Demurrer of John Hewet, Doctor of Divinity, to the Jurisdiction and Proceedings of the Commissioners in pursuance of an Act, for the Security of the Lord Protector's Person, &c. and to the Sentence of Death pronounced against him by them.

THIS Defendant saith, That he is by Birth a Freeman of *England*, and that it is the undoubted ancient inseparable Birth-right, Privilege, and Inheritance of every *English* Freeman, both by the Common Laws, Franchises, Great Charters, Statutes, and Usages of this Land, ratified from Age to Age by the Votes, Resolutions, Declarations, Judgments of the High Court of Parliament, and other publick Courts of Justice, the Oaths of the Kings of *England* and their Justices, and by many other solemn publick Confirmations, Protestations, Oaths, Vows and Covenants: (a) That no Freeman of *England* may or ought to be taken or imprisoned, or disseized, or disinherited of his Freehold, Liberties, or Free Customs; or to be outlawed, exiled, or any way destroyed, passed upon, dealt with, or forejudged of Life or Limb, or put to Death, upon any Accusation whatsoever, but by the lawful Judgment of his Peers, or by the Law of the Land; and that he shall not be put to answer without Presentment before the Justices, or thing of Record, or by due Process of the Law, or by Writ Original, according to the old Law of the Land; (b) And that all Trials hereafter to be had, awarded, or made for any Treason, shall be had and used ONLY according to the due Order and Course of the Common Laws of this Realm, and NOT OTHERWISE, upon Inquest and Presentment by the Oaths of Twelve good and lawful Men, upon good and probable Evidence and Witness; And that (c) if any thing be done to the contrary of the Premises, it shall be void in Law, redressed, and holden for Error, and nought: And if any Statute be made to the contrary, that shall be holden for none. And moreover this Defendant saith, that in the Parliament of 2 R. 2. rot. Parl. n. 47, the Commons petitioned the King and Lords, that the Constable and Marshal of *England* (then encroaching upon this Privilege of the Commons, by holding Pleas of Treason and Felony before them after the Course of Martial Law) might from thenceforth surcease to hold Places

(a) Coke's 2 Instit. p. 45, to 57. Magna Charta of King John, H. 3. & E. 1. c. 29. 25 E. 1. c. 1. 28 E. 1. c. 1. 5 E. 3. c. 9. 25 E. 3. n. 26 & c. 4. 28 E. 3. c. 3. 42 E. 3. c. 23. 2 H. 4. rot. Parl. n. 60. The Petition of Right, 3 Caroli.

(b) 25 E. 3. c. 2. 26 H. 8. c. 13. 33 H. 8. c. 20. 35 H. 8. c. 1. 1 Ed. 6. c. 12. 1 & 2 Phil. & Mar. c. 10, 11. 5 E. 6. c. 11. 1 Eliz. c. 6. 5 Eliz. c. 11. 13 Eliz. c. 1. 14 Eliz. c. 1. 18 Eliz. c. 1. 27 Eliz. c. 2. 1 H. 4. c. 14.

(c) 5 E. 1. c. 21. 2. Coke's 2 Instit. p. 526, 527. 28 E. 3. rot. Parl. n. 7, 8, 9, 10, 11, 12, 13. 29 E. 3. rot. Parl. n. 29, 30. E 3. coram rege, rot. 92. Coke's 3 Instit. p. 52. 42 E. 3. c. 1. 3.

of Treason and Felony before them, done within the Realm, and that the same may be determined ONLY before the King's Justices, according to the great Charter; which was then assented to: And that upon the like Petitions of the Commons in the Parliaments of 1 H. 4. and 2 H. 4. Rot. Parl. n. 89. it was assented to, and enacted by the King and Lords, that the King's Liege People (d) should not be put to answer before the Constable or Marshal in Courts of Chivalry, for any thing done within the Realm, but that (as before in the times of his Progenitors) the same might be tried and determined ONLY BEFORE HIS JUSTICES IN HIS COURTS, AS IT OUGHT TO BE ACCORDING TO THE COMMON LAW OF THE REALM, AND IN NO OTHER PLACE OR MANNER. Upon which Considerations many of the King's loyal Lords, Gentlemen and other Subjects in the general Insurrection of the Villains, and other Rebels against the King, in the fifth Year of Richard the second, having inflicted divers Punishments upon the said Villains and Traitors without due process of the Law, and otherwise than the Laws and Usages of the Realm required; though they did it out of no Malice premeditated, but out of meer Loyalty to the King, and to appease and cease the present mischief, and out of ignorance of the said Laws and Usage, in which if they had been learned, yet at that time they ought not to have tarried the process of the Law in those punishments of their good discretion; yet those punishments and executions of them in a summary way being contrary to, and not warranted by the Laws and Usages of the Realm, they were enforced for their future indemnity against the King and his Heirs, and the Heirs, Wives and Friends of those they punished, to petition the King and Parliament, for a general Pardon by Act of Parliament, to secure and indemnify themselves; which was granted them, in 5 R. 2. Parl. 1. ch. 5. else they might have been impeached and punished for the same, as well as King Richard the second himself; who in the Parliament of 1 H. 4. Rot. Parl. n. 44. (wherein he was enforced to resign his Crown, and then deposed for his Mis-government) was amongst other Articles impeached of this in particular by that Parliament, for that against the great Charter (ch. 29.) and his Coronation Oath, he suffered many of his liege People to be maliciously accused, apprehended, imprisoned, and tried before the Constable and Marshal of England in their military Court, for words secretly spoken, or acts privately done, to the scandal of his Royal Person, where they were enforced to acquit themselves by duel; whence the destruction not only of the Nobles and Great Men, but likewise of all and every the Persons of the Commons of the Realm might probably have ensued. And this Defendant further saith, that one Peter Burchet of the Temple, in the thirteenth Year of Queen Elizabeth's Reign, having wilfully stabbed that famous Sea-Captain John Hawkins, for not being of his Opinion in Religion, (Burchet being persuaded in Conscience that it was lawful for him to kill every one who was not of his Opinion) the Queen being much incensed against him for this horrid fact, commanded him to be forthwith tried and executed for it by Martial Law: But her Judges and Council informing her, that he could not be so tried by Law, it being done not in an Army, but in time of Peace, when her Courts of Law and Justice were open; thereupon she desisted from this way of Trial; After which he was tried according

to Law for this, and his murdering his Keeper in the Tower, as Mr. Camden records in his *Annals* of Queen Elizabeth, p. 242, 243. And whereas in the Parliament of the fourth of King James holden at Westminster, there was some kind of motion made; that to extirpate and reform the inveterate evil Customs, Disorders, Feuds, Blood-sheds, Thefts and Spoils, wherewith the worst sort of Inhabitants near the Borders and Limits of both Realms of England and Scotland, were infected and inured; that they might be tried by a summary Proceeding, by way of Martial Law, or by the Laws of the Kingdom into which they fled to purchase their Impunity: This Parliament was so far from approving thereof, that they specially enacted, in this case (even of these worst sort of men) * That in regard of some difference and inequality in the Laws, Trials, and Proceedings in cases of Life, between the Justice of the Realm of England and that of the Realm of Scotland, it appearing to be most convenient for the contentment and satisfaction of all his Majesty's Subjects, to proceed with all possible Severity against such Offenders in their own Country, ACCORDING TO THE LAWS OF THE SAME, WHEREUNTO THEY ARE BORN AND INHERITABLE; and by and before the natural-born Subjects of the same Realm; by whom their Murders, Felonies, Rapes, &c. should be inquired of, heard and determined before his Majesty's Justices of Assize, or Commissioners of Oyer and Terminer, or Goal delivery, by good and lawful Men of the three Counties therein specified, and NONE OTHER. And that at all such Trials the Jury then and there sworn, shall have in their Power and Election, according to their Conscience and Discretion upon their Oaths, to receive and admit only such sufficient good and lawful Witnesses upon their Oaths, either for or against the Party arraigned, as shall not appear to them, or the greater part of them to be unfit and unworthy to be Witnesses in that cause, either in regard of their hatred and malice, or their favour and affection either to the Party prosecuting, or to the Party arraigned, or of their former evil Life and Conversation. Which common, equal, indifferent Justice allowed to the worst Malefactors, as their birth-right and inheritance by this Parliament and Act, this Defendant now only craves, and hopes you cannot in Law or Justice deny him; nor proceed against him by way of Martial Law. And so much the rather, because since this Statute, King Charles in the third Year of his Reign, by the advice of his Council (to suppress the Insolencies of Soldiers and Mariners then billeted in sundry parts of the Realm) having issued out Commissions to sundry Persons of Quality, in time of Peace, to execute Martial Law upon those Soldiers and Mariners, and other dissolute persons (only) joyning with them, for Murther, Robbery, Felony, Mutiny, and other Outrages committed by them, by such summary course and order as is agreeable to Martial Law, and as is used in Armies in time of War; to proceed to the Trial and Condemnation of such Offenders, and then to cause them to be Executed and put to death, according to the Law Martial; By pretext whereof some of the said Soldiers and Subjects were put to death by some of the said Commissioners, when and where, if by the Laws and Statutes of the Land they

(d) Coke's 4 Instit. p. 124, 125.

* 4 Jacob. ch. 1.

had deserved death, by the same Laws and Statutes also they might, and by NO OTHER ought to have been Judged, before the Kings Justices) and executed. Upon Complaint of these Commissions, as illegal, in the Parliament of 3 Caroli, they were, after a full debate by both Houses, voted to be against Law. And in the Petition of Right it self, it was then prayed by the Lords and Commons, assented to by the late beheaded King himself, and enacted by this Law, That hereafter no Commissions of LIKE NATURE may issue forth to any Person or Persons whatsoever, to be executed as aforesaid, lest by colour of them any of his Majesty's Subjects be destroyed or put to death, CONTRARY TO THE LAWS AND FRANCHISE OF THE LAND: which the Lords and Commons then prayed, and the King granted, confirmed by Act of Parliament, AS THEIR RIGHT AND LIBERTY ACCORDING TO THE LAWS: which Act stands yet in its full Force. Upon consideration of which late Excellent Law, the last long Parliament, in the cases of the Lord Connor Magwire and Mac-mobun, and the Court of Kings Bench wherein they were tried by their Special Order, in Michaelmas and Hilary Terms 20 Caroli, were so just, punctual and honourable, in confining themselves to the rules of Law and Justice; that though these were principal Conspirators, and Actors in the late most horrid, barbarous, bloody Treason, Rebellion and Massacre in Ireland, and taken in its prosecution; yet they were so far from trying them by Martial Law in a Council of War, or High Court of Justice, even in a time of open War both in England and Ireland, that they assigned the said Magwire Council, to argue against the very Jurisdiction of the King's Bench itself; whether he, being a Peer of Ireland, could in point of Law or Justice by the Statute of 35 H. 8. ch. 2. or any other Act, be outed of his Trial by his Peers, and tried by a Jury of good and lawful Men of the County of Middlesex for a Treason committed in Ireland, being sent a Prisoner from thence against his will? Which was there (e) publicly argued at the Bar by Counsel pro & contra; and then by the Judges, and over-ruled at last against him, before he was put to plead guilty or not guilty to his Indictment: after which they both were admitted to take both their peremptory and legal challenges to the Juries returned; (f) (according to Law, admitting such Challenges even in cases of High-Treason;) and all just Exceptions to the Witnesses produced; and had a most fair and free Trial; being found guilty by the Jury, before any Judgment passed against them. Which Justice he humbly craves in his Case, of less hainousness and importance than theirs, being a native English free-man, and they only Irish Rebels; because this his inherent Birth-right and Liberty, can (g) neither be forfeited by him for any real or pretended Treason or Offence whatsoever, nor yet be denied or deferred to him (after all the promised Laws, Statutes, Charters, Judgments, Resolutions, Precedents) without the highest Injustice. And he further saith, that to proceed against, try, condemn, execute him in this high Court, without a legal Indictment, Presentment, and Trial by the Oaths of twelve good and lawful

Men, according to the due order and course of the Common Laws of this Realm (and that in Westminster Hall it self, the place of Law and publick Justice, in time of Peace, when and where all other Courts of Justice are open) or in any other form by way of Martial Law, or otherwise than a just Jury of his Equals, is not only illegal, erroneous, and against all Rules of Justice (the Commissioners themselves being both his grand and petty Jury, and his Judges likewise; if not Parties interested, to whom he can take no peremptory nor legal Challenges, which the (b) Law allows him if tried by a Jury in cases of High-Treason at this day;) but also wilful and malicious Murder by the Laws of England, being against Magna Charta, c. 29. and done by such power and strength as he this Defendant cannot defend himself against, as is resolved in Sir Edward Coke's 3 Instit. p. 52. & 224. (printed by special Order of the House of Commons, dated 12 May, 1641.) and long before in Andrew Hornhis Mirrour of Justices, c. 5. p. 296, 297, who records, that our noble King Alfred caused no less than 44 of his Justices to be hanged in one Year as MURDERERS, for condemning and executing some of his People without a legal Indictment and Trial by a sworn Jury; and others of them for offences not capital by the known Laws of the Land, and without clear and pregnant Evidence. And this Defendant likewise saith, that the Commons themselves sitting at Westminster, after the late King's Execution, in their printed Declaration of 17 Martii, 1548, (expressing the grounds of their proceedings against the said King, and for settling the present Government in way of a Free State, to which many in present power and sitting here were assenting and gave their Votes) did thereby faithfully promise and engage to the whole English Nation, That the good old Laws and Customs of England, THE BADGES OF OUR FREEDOM, (the benefit whereof our Ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great Charters of their Liberties) which have continued in all former Changes, and being duly executed, are the most just, free, and equal of any other Laws in the World; shall be duly continued and maintained; the Liberty, Property and Peace of the Subject being so fully preserved by them; adding, that 'If these Laws should be taken away, all Industry must cease, all Misery, Blood and Confusion would follow; and greater Calamities, if possible, than fell upon us by the late King's Mis-government would certainly involve all Persons, under which they must inevitably perish.' And moreover, the General Council of the Officers and Army themselves (whereunto most Officers and Soldiers in present Power and some Commissioners here sitting were Parties) in the Declaration of their Engagements, Remonstrances, Representations, Proposals, Desires, and Resolutions for settling the Parliament in their just Privileges, and the Subjects in their Liberties and Freedoms (printed by their own Orders, and reprinted all together by Order of the Lords in Parliament, 27 September, 1647) pag. 11, 36, 37, 38, 39. (especially in their Declaration and Representation tendered to the Parlia-

(e) See Mr. Prynne's Argument thereof.

(f) 32 H. 6. f. 26. 14 H. 7. f. 19. Brook Challenge, 86, 211, 217. Stamford's Pleas l. 3. c. 7. Coke's 3 Instit. p. 27.

(g) 1 E. 6. c. 12. 1 & 2 Phil. & Mar. c. 10, 11. Coke's 3 Instit. c. 1, 2.

(b) Coke's 3 Instit. f. 27. Brook, Challenge 217.

ment concerning the just and fundamental Rights and Liberties of the Kingdom, 14 May 1647) do profess and declare, 'That they were not a meer mercenary Army, hired to serve any Arbitrary power of State, but called forth and conjured by several Declarations of Parliament, to the defence of their own and the Peoples just Rights and Liberties, and that they took up Arms in Judgment and Conscience to those Ends, and have so continued them, and are resolved, according to the Parliament's just desires in their Declarations, and such Principles as they have received from their frequent Informations, and their own common Sense concerning those fundamental Rights and Liberties, to assert and vindicate the same against all Arbitrary Power, Violence and Oppression, and against all particular Parties and Interests whatsoever; that so all the free-born People of this Nation may sit down in quiet under the glorious administration of Justice and Righteousness, and in full possession of those fundamental Rights and Liberties; without which we can have little hopes (as to human considerations) to enjoy any comfort of Life, or so much as Life it self, but at the pleasure of some Men RULING ACCORDING TO WILL AND POWER. That they desire the establishment of such good Laws, as may duly and readily render to every Man their just Rights and Liberties. And more particularly, in their Proposals to the Commissioners of Parliament, in order to the clearing and securing of the Rights and Liberties of the Kingdom, August 1, 1647, Sect. 10. p. 114. they proposed, That the Rights and Liberties of the Commons of England, MAY BE CLEARED AND VINDICATED FROM ANY OTHER JUDGMENT, SENTENCE, OR PROCEEDING AGAINST THEM, OTHER THAN BY THEIR EQUALS, OR ACCORDING TO THE LAW OF THE LAND. And this Defendant finally saith, that by the *Instrument of Government* it self, 16 December 1653, Artic. 6. and the Oath therein prescribed to, and accordingly taken by his Highness, *Oliver Cromwell Lord Protector*, he is limited and sworn; 'not to alter, suspend, abrogate or repeal the Laws, and to govern these Nations according to the Laws, Statutes and Customs; causing Justice and Law to be equally administered: whereunto he is likewise obliged and sworn again, by his Oath prescribed in the late printed *humble Petition and Advice*.' Neither doth that pretended Act, by which you here sit as Commissioners to try this Defendant (made by no legitimate, nor free Parliament of England, and that when near one hundred and fifty Members thereof were *causlessly* and *forcibly* secluded) authorize you (as he humbly conceiveth) to proceed against him for any Crime therein specified, to Conviction or final Sentence, but only as in Cases of High-Treason, and misprision of Treason, AND ACCORDING TO JUSTICE; and that you cannot do but only by proceeding against him by a lawful Indictment and Trial by a Grand and Petty Jury, according to the great Charter, Laws, and Statutes of the Land, and the late *Petition of Right*, which this new Act cannot repeal or null. All which this Defendant is ready to aver, justify, and make good, when and where this high Commission Court, or his Highness the Lord Protector shall appoint: which being a meer

matter of Law, wherein both the Liberties and Lives of all the Free-born People of England are so universally, highly, and equally concerned, as well as the Liberty and Life of this Defendant, proper only to be debated before, and resolved by the Judges of the Law, or the high Court of Parliament; This Defendant thereupon humbly prayeth; That it may be referred to, openly argued by his learned Counsel, before all the Judges, or a Parliament, and by them determined: and in the mean time humbly demandeth the Judgment of this High Commission; Whether they may, can, or ought in point of Law and Justice, to proceed against, condemn, or execute this Defendant, upon any illegal Accusation or Impeachment whatsoever, here exhibited or read against him, without a legal Indictment, Presentment and Trial by a Jury of his Equals? Or can take any further connivance of the Charge against him, for the premised Authorities and Reasons; which he in all humility referreth to, and imploreth you to take into your saddest Considerations, and that in the Name and dreadful Presence of the Omnipotent, Omnipotent, Sovereign (i) Judge of all the Earth, (k) before whose glorious Tribunal you must all ere long appear, (stript of all Earthly Honours, Pomp, Guards, and Power,) to give a strict account of all your Actions, whether good or evil, and of your Proceedings in this very Cause; when this his Plea and Demurrer will rise up in Judgment against, and condemn you, in case you wilfully prejudice, misjudge, or reject it now, without due and full examination according to Law, Justice, Conscience: And if the Consideration of this terrible Day of Account and just retribution before Christ's own Tribunal, shall not prevail with you to admit of this his Legal Plea and Demurrer, (as being after your Deaths perhaps many Years yet to come, and no ways endangering the loss of your Lives, Lands, Honours or Estates in this present World,) He shall then humbly intreat you for your own future Indemnity (he hopes, without offence) seriously to consider; That in the Parliament of 11 R. 2. c. 1, 5. 21 R. 2. c. 11, 12. Tresilian Chief Justice of the Kings-Bench, Belknappe Chief Justice of the Common-Pleas, John Care, John Holt, Roger Fulthorpe, William de Burgh Judges, and John Lotton the King's Serjeant, were all impeached of High-Treason, condemned, and some of them executed as Traitors and Enemies to the King and Realm, the rest perpetually banished, their Lands and Estates confiscated to the King, and all access of their Wives, Children or others to them during their Exile, prohibited by Judgment and Act of Parliament, only for delivering their Opinions (through menaces and fear of Death at Nottingham Castle) under their Hands and Seals, against the Law of the Land; That the Lords and Commons who procured the Commission in the Parliament of 10 R. 2. for the better Government of the Realm, and moved the King to consent thereto, deserved to be punished as Traitors, by capital pain of Death: That so by colour of these their Opinions, Robert de Veer Duke of Ireland, Nicholas Brambre, Knight, and others of the King's ill Counsellors, might take occasion to destroy and take away the Lives of the Lords who procured and executed that Commission, and others of the King's People, by undue and illegal Indictments and Proceedings, without any lawful Trial by their Peers, as Traitors to the

(i) Gen. xviii. 25.

(k) 2 Cor. v. 10.

King. And the said Sir (1) *Nicholas Brambre* for enforcing the Judges, with others of the King's ill Counsellors, to deliver their Opinions against Law, and for his beheading and executing 22 Prisoners of Newgate, (impeached and indicted of Felony, or suspicion of Felony) at Foul-Hoke in Kent by regal and Tyrannical Power incroached by him, without Warrant, or due process of the Law, against the Great Charter and Usage of the Realm of England, was in the same Parliament condemned for High-Treason, and beheaded at Tower-hill on the same Block, with the same Ax he had prepared to cut off the Heads of others he intended there to execute as his Enemies. And that in the last Parliament of King Charles, the (m) two Chief Justices, *Brampton* and *Finch*, the Chief Baron *Davenport*, and all the rest of the Judges and Barons, except two, were by the whole House of Commons, and some of the Commissioners here sitting, and Counsel pleading against this Defendant, Impeached of High-Treason, dis-judged and put to Fines and Ransoms, for that they had traiterously endeavoured to subvert the fundamental Laws and Government of the Realm of England, and instead thereof to introduce an Arbitrary and Tyrannical Government against Law; which they had declared by traitorous Words, Opinions and Judgments in the case of Ship-money, against Mr. *John Hampden*; Which Judgment and Opinions concerned only the property of the Subjects goods, not the hazard of their Lives, Inheritances and forfeiture of their Estates, as your present Proceedings do, being of a more high and dangerous consequence; In which Parliament, by the like Impeachment and Prosecution, *William Laud* Archbishop of *Canterbury*, and *Thomas* Earl of *Strafford* Lord Deputy of *Ireland*, were condemned and executed by Judgment of Parliament, and some here present, as 'Traitors, guilty of High-Treason, for that they endeavoured traitorously to subvert the Fundamental Laws and established Government of this Realm, and instead thereof to bring in and set up an Arbitrary and Tyrannical Power, against Law. To prove which Charge, their Arbitrary Proceedings contrary to the Laws and great Charters of England, both at the Council Table, in the High-Commission, Star-Chamber, and elsewhere, were given in Evidence against them; and more particularly, the Earl of *Strafford's* proceeding against the Lord *Mount Norris* in *Ireland*, by a Council of War in time of Peace, and condemning him to Death therein without any legal Indictment and Trial by his Peers, against the great Charter and Laws of the Land, though he did not execute him thereupon: And whether your present Proceedings of like nature against this Defendant, in case you reject or over-rule this his Plea and Demurrer, and condemn and execute him by pretext of an illegal Act (made by no free and lawful Parliament of England,) for Offences not treasonable by the known Laws and Statutes of the Land, nor legally proved against him by any one Witness produced in Court before his Face, without consulting the present Judges of the Land (who refuse to join or sit with you in this new illegal way of Trial) will not much more involve you in the Crime and Guilt of the very

self-same High-Treasons, for which they were thus anciently and lately Impeached, Condemned, Executed by Judgment of Parliament, and so expose you to the like capital Censures, Forfeitures, Confiscations of your Real and Personal Estates, as they underwent, in future Parliaments, 'by your endeavouring to subvert all the premised fundamental Laws and established legal Proceedings in the Land, and to introduce and set up a meer Arbitrary and Tyrannical Power contrary to Law, to the endangering not only of the Properties, but Lives, Liberties, and Inheritances of all the Noblemen, Gentlemen, Clergy-Men, and other Freemen of England, by such exorbitant, martial Proceedings, after all these Statutes, Judgments, with the late Remonstrances, Declarations, Leagues, Covenants, and solemn Oaths of the Lord Protector himself and others against them, yea after the many Years Wars and heavy Taxes imposed on the Nation for the maintaining and inviolable preservation of these fundamental Laws, Liberties, and Rights against all Arbitrary Commissions and Proceedings whatsoever; he humbly submits to your own impartial Resolutions and Consciences. And thereupon this Defendant prays his Dismissal from any such further Proceedings against him, without a lawful Jury and Trial by his PEERS. And that you will be pleased, after deliberate consideration of the premises, to reverse and recall that Arbitrary, unrighteous, bloody Sentence of Death, you have newly passed against him, without any lawful Indictment, Presentment, Trial, Confession or Conviction of Treason, which strikes at the Root of the Fundamental Laws, Liberties, Franchises of all English Freemen, and cuts off all their Necks at one stroke, transcending all the Arbitrary, Tyrannical Proceedings of *Strafford*, *Canterbury*, and the late King *Charles* (whom some of your selves have Impeached, censured, condemned, decapitated as the very worst, and greatest of Tyrants) lest it become a most pernicious fatal Precedent to Posterity, to others, or your own destruction, and render you as execrable to all succeeding Generations, as any formerly guilty of the like exorbitant Proceedings.

Just and Legal Exceptions to the Cause and Manner of the Illegal Judgment given against Dr. John Hewet; humbly tendred by him to the Consideration of those Commissioners who denounced it.

THAT it is specially enacted by the Statute of *Westminster* the 1 ch. 12. and accordingly resolved in *Brook Paine* 1, 2, 4, 5, 8, 9, 12, 13, 14, 15, 19, and the Year-Books therein abridged, by *Stamford's Pleas of the Crown*, l. 2. c. 60. *Dyer*, f. 205. a. 300. b. *Coke's 2 Institutes*, p. 177, 178, 179. and 3 *Institutes*, p. 217. That no Man ought by Law to be condemned, or put to Death in case of Treason or Felony, for standing mute, or refusing to Plead, or put himself upon his Trial, or for challenging more than 36 of the Jury peremptorily; but only in these Cases.

(1) Henry de Knyghton de Event. Angliæ l. 5. p. 2718, 2726, 2727, 2728.
(m) Their Impeachments are entred in the Journals of the Lords and Commons House.

1. When and where the person accused and arraigned, is a (a) *Notorious Traitor or Felon, and openly of evil name, and defamed thereof*: But Dr. Hewet is no such Person.

2. When and where the *Treason or Felony* for which he stands accused, is (b) *notorious, evident, certain, or at least very probable, and already found upon Oath against him by the Presentment, or Indictment of an honest lawful Grand Jury of his Equals, of the same County wherein he is arraigned, or confessed by himself*: All which Circumstances and Evidences of Guilt were wanting in Doctor Hewet's Case.

3. When and where the Judges, (c) *for the better satisfaction of their Consciences, and discharge of their Duties, do (AS THEY OUGHT BY LAW,) first openly examine the Evidence and Witnesses, which prove the Person arraigned guilty of the Fact of Treason or Felony for which he stands indicted, before they proceed to give Judgment against him for not pleading, or standing mute*. Which was not done in this Case, there being neither Witnesses nor Evidence produced in open Court to prove him guilty.

4. When and where there is a legal Indictment found against the Party arraigned, which being read openly to him in Court, the Traitor or Felon thereupon, doth either (d) *wilfully or maliciously stand mute, refusing to answer or plead thereunto, (which the (e) Jury there impannelled to try him, are by Law to enquire of, find and return upon Oath:)* Or, *peremptorily challengeth above 35 of his Jury, without any legal Cause or Exceptions*; Or else obstinately (f) *refuseth to put himself upon a legal Trial BY GOD AND HIS COUNTRY, (being a Jury of honest, lawful men of the County then and there present, (g) returned by the Sheriff alone, not Justices or others, for to try him; to whom by Law he may take both his legal and peremptory Challenges)* saying, That he will be tried ONLY BY GOD AND THE BENCH; or, BY GOD AND THE COURT, or JUDGE; or (h) BY GOD AND THE VIRGIN MARY, or HOLY CHURCH: there being no Precedent extant in Records, or Law-books, of any Traitor or Felon hitherto condemned to die, for standing mute, or not pleading, only for refusing to be tried BY GOD AND THE HONOURABLE BENCH, JUDGES, COURT ALONE, without any Indictment or Jury; and for earnestly importuning the Court and his Judges, THAT HE MAY BE TRIED ONLY BY GOD AND HIS COUNTRY, AND ON AN INDICTMENT BY A JURY OF HIS EQUALS ACCORDING TO LAW, casting himself wholly upon such a Trial, after a lawful Presentment and Indictment first found against him by a Jury. The only Reason rendered in and by the forecited Statute and Law-books of all Judgments hitherto given against any Traitor or Felon, for standing mute, and refusing to plead, being this, (i) *'Because he peremptorily refuseth to stand to and be tried by THE LAW OF THE LAND, AND A DUE AND LAWFUL TRIAL BY A JURY OF HIS EQUALS, ACCORDING TO THE COURSE OF THE COMMON LAW, AND THE GREAT CHARTER*. But Dr. John Hewet is now condemned to be executed as a Traitor by the High Court of Justice, 'contrary

'to all former Precedents, Statutes, Law-books, and the only legal Reason in former times of all Judgments rendered against any Persons in such Cases; even for his frequent, earnest, importunate demanding and peremptory casting of himself, upon a due legal 'Trial by God and his Country, and an indifferent Jury of his Equals, according to the common Statute Laws and great Charter of England, after a legal Presentment and Indictment to be first found against him: and for refusing to wave this his legal Trial (to the publick prejudice of all other English Freemen) and 'cast himself wholly and solely upon a new kind of arbitrary Trial, contrary to Law, BY GOD AND THE BENCH, COURT, AND THE COMMISSIONERS themselves, (who would be both his Grand and Petty Jury as well as Judges) 'without and before any legal Presentment, Indictment, or Jury impannelled or return'd to try him. Therefore he humbly conceives this Judgment denounced against him upon this Reason and Ground alone, to be most erroneous, illegal, unjust, repugnant to all former Precedents, and to one this very Week at the Sessions in the Old Bailey by Judgment of some of his Judges at Westminster, and of very dangerous Consequence. Whereupon he humbly prays the suspension and reversal thereof as unjust, and meerly void in Law, by the Statutes of 25 E. 1. cap. 2. & 42 E. 3. c. 1. lest the Execution of him for a Traitor upon this Judgment and Ground, should prove wilful Murder, and a shedding of innocent Blood in the Account both of God and Man.

What therefore the Prophet Jeremiah alledged to the Princes of Judah, in a like Case, when they resolved him at first to be worthy of Death, without a legal Hearing or Trial, Jerem. xxvi. 11, 14, 15. *As for me, behold, I am in your Hands, to do unto me what seemeth good and meet unto you: But know ye for certain, that if ye put me to Death, YE SHALL SURELY BRING INNOCENT BLOOD UPON YOUR SELVES, AND UPON THIS CITY, AND UPON THE INHABITANTS THEREOF*: Whereupon the Princes and People, upon second and better advised Thoughts, altered their former bloody Sentence, saying; *This Man is not worthy to die; for he hath spoken unto us in the Name of the Lord our God. And the Hand of Ahikam was with Jeremiah, that they should not give him into the Hand of the People to put him to Death*; shall be my Allegation to those who have passed this unjust Sentence of Death against me; and if it produce not the like Effect for their Reversal thereof, and my Preservation from its violent bloody Execution, as it did in this Prophet's Case; I shall then earnestly pray to God, that it may not draw down from Heaven that heavy Sentence of Wrath upon them, nor that sad Judgment upon the whole Land of England which this Prophet denounced against Jehoiakim, Jer. xxii. 17, 18, 19. *But thine Eyes and thine Heart are but for thy Covetousness, and for to shed INNOCENT BLOOD, and for Oppression and Violence to do it. Therefore thus saith the Lord concerning Jehoiakim; They shall not lament for him, saying, Ab my Brother, or ab Sister, ab Lord, or ab his Glory: But he*

(a) West. 1. c. 12. Stamford, 1. 2. c. 60. f. 149. b. Coke's 2 Instit. p. 177. 179.

(b) Coke's 2 Instit. p. 177. Stamford, f. 150. a. (c) Stamford, 1. 2. c. 60. f. 150. a. (d) Stamf. 1. 2. c. 60. Coke's 2 Instit. p. 177, 178.

(e) Stamford, f. 150. b. 43 Aff. 30. Fitz. Corone, 225. 8 H. 4. 2. Coke's 2 Instit. p. 178. 21 E. 3. 18.

(f) Coke's 2 Instit. p. 178. (g) 11 H. 4. c. 11. Coke's 3 Instit. p. 32, 33.

(h) 4 E. 4. 11. 7 E. 4. 29. Brook Pain. 14.

(i) W. 1. c. 12. 3 Instit. p. 217. 2 Instit. p. 179. 8 E. 3. Itin. Nort. Fitz. Corone. 359. 14 H. 4. 7. Brook Pain. 14, 15.

shall be buried with the Burial of an Ass, drawn and cast forth beyond the Gates of Jerusalem. And that which the Prophet Joel threatened to Egypt and Edom, Joel iii. 19. Egypt shall be a Desolation, and Edom a desolate Wilderness, for their Violence against the Children of Judah, BECAUSE THEY HAVE SHED INNOCENT BLOOD IN THE LAND. And that against all Rules of Law and Justice, in that they intitle, The High Court of Justice, which will not palliate, but † aggra-

vate the Injustice acted in it, and make it more detestable both to Man and God himself, who avers this for an undoubted Truth;

Gen. ix. 5, 6. Surely your Blood of your Lives will I require; at the Hand of every Beast will I require it, and at the Hand of every Man's Brother will I require the Life of Man. WHO SO SHEDDETH MAN'S BLOOD, BY MAN SHALL HIS BLOOD BE SHED; for in the Image of God made he Man.

LV. *The Trial of JOHN MORDANT * Esq; before the High Court of Justice for High-Treason, the first of June, 1658. 10 Car. II.*



HE Serjeant at Arms was commanded to bring *John Mordant Esq;* to the Bar; who was brought accordingly.

* *John Lisle.*

* *Lord President.* Mr. Attorney, what have you to say against the Prisoner at the Bar?

* *Mr. Prideaux.*

* *Mr. Attorney General.* My Lord, I have prepared a Charge of High-Treason against the Gentleman at the Bar, which I desire may be read.

The Substance of the Impeachment.

Mr. Phelps. *John Mordant Esq;* stand at the Bar, and hear your Charge.

A Charge of High-Treason against John Mordant of Clement Danes, in the County of Middlesex, Esq; as followeth, viz.

THAT *John Mordant*, late of the Parish of *Clement Danes*, in the said County of *Middlesex*, Esq; minding and intending to embroil this Commonwealth in new and intestine Wars and Seditions, on the 30th of *April* now last past, and at divers other Days and Times since the 10th of *October*, 1656, and before the said 30th of *April* last, as a false Traitor and Enemy to *Oliver*, then and yet Lord Protector of the Commonwealth of *England*, *Scotland*, and *Ireland*, and the Dominions thereto belonging, and to this Commonwealth; together with *Henry Bishop*, late of *Parham*, in the County of *Suffex*, Gent. *Hartgil Baron*, and *Francis Mansel*, and divers others, their Complices, at the Parish of *Clement Danes* aforesaid, and at divers other Places, did traitorously, advisedly, and maliciously plot, contrive, and endeavour to stir up and raise War against the said *Oliver*, then and yet Lord Protector of this Commonwealth, and against the Government thereof, as the same was established, and to alter and subvert the same;

and did also then and there, as well before as after the said 30th of *April* last past, and after the 10th of *October*, 1656, traitorously, advisedly, and maliciously declare, publish, and promote *Charles Stuart*, eldest Son of the late King *Charles*, to be King of *England*, *Scotland*, and *Ireland*, &c. and did then and there traitorously, advisedly, and maliciously hold Intelligence and Correspondence with the said *Charles Stuart*. All which said Treason and Treasons he the said *John Mordant*, the said 30th of *April* last, and other the Times and Places aforesaid, and after the said 10th of *October*, 1656, at *Clement Danes*, and other Places, did traitorously declare by Overt-Act, that is to say, by conferring with *J. Stapely Esq;* and *Henry Mallory*, and others, how to effect the same; and did then and there encourage the said *John Stapely* and *Henry Mallory*, and others, thereunto; and did deliver Commissions to several Persons in the Name of, and as from the said *Charles Stuart*, concerning the raising of Forces, and levying War against the said *Oliver*, then and yet Lord Protector, and against this Commonwealth: All which said Treason and Treasons are contrary to the Statute in that Case made and provided. With which said Treason and Treasons, he the said Attorney-General, for and on the behalf of the said *Oliver*, then and yet Lord Protector, and on the behalf of the said Commonwealth, as aforesaid, doth charge and impeach the said *John Mordant*. And the said Attorney General prayeth, That he the said *John Mordant* may be put to answer; and that such Proceedings, Trial, and Judgment may be had against the said *Mordant*, as is agreeable to Law. And the said Attorney General doth aver that the said *John Mordant* is a Person by Name appointed by his Highness and Council to be proceeded against.

Mr. Phelps. *John Mordant Esq;* thou standest here charged with High-Treason against his Highness the Lord Protector and the Common-

† Eccles. iii. 16, 17. Psal. xciv. 20, 21, 23.

* Clar. Hist. Vol. 3. p. 484, &c.

wealth. You have heard the Charge read: The Court demands your positive Answer thereto, whether Guilty, or Not guilty.

Mr. Mordant. My Lord, I desire I may hear the Commission read, by which you sit.

Ld President. You are impeached of High-Treason: We require your Answer.

Mr. Mordant. I desire the Commission may be read, and the Commissioners Names.

Ld President. You are to be tried by the Laws of England, Act of Parliament, and Commission under the Great Seal of England, in pursuance of that Act.

Mr. Mordant. I claim it as my Right; I am ignorant in Law; I desire it may be read.

Ld President. It is not granted to any.

Mr. Mordant. My Lord, will you take away that Liberty, that we shall not know by what Commission we are tried, and who are our Judges? I desire I may not be made the first Precedent.

Ld President. It is visible who are your Judges; they are named by Act of Parliament: We are your Judges.

Mr. Mordant. My Lord, if the Act specify any such Thing that it may not be read, I have done. I desire it may be read, that I may have a legal and just Proceeding.

Ld President. The Act of Parliament doth not require it.

Mr. Mordant. The Act doth not deny it.

Ld President. You shall have all the Privileges that may be: But you must first plead.

Mr. Mordant. My Lord, I demand this, to hear the Commission read.

Mr. At. Gen. My Lord, pray let him know what is done, to warn him, lest he fall into the same Condemnation. There was one but a little before you that demanded the same Thing, and the Court hath ruled it otherwise; and he hath received his Sentence. I tell you of it, that you may beware, and know how to carry your self. If Mr. Mordant will be pleased to answer whether or no guilty of those Crimes, then he shall have a fair Trial, and full Examination: If otherwise, the same Sentence must be required as before; that is, upon Refusal, the Judgment pronounc'd for High-Treason.

Mr. Mordant. My Lord, I humbly crave the Act may be read.

Mr. At. Gen. The Act is publick: The Court are not to give you an account of their Authority, or the Way of their Proceedings. They require your Answer.

Mr. Mordant. My Lord, shall I not know by what Law I am tried, nor by what Act, nor by what Commission?

Ld President. You seem to be a young Gentleman: I wish rather you would plead Not guilty, or make an ingenuous Confession.

Mr. Mordant. My Lord, this is the first Time that I have been before any Court in my Life: I desire that my Reason may be convinced. Either assign me Counsel to argue it with this learned Counsel; and if they convince my Counsel, I shall submit: Or, if this Counsel will say the Law doth debar me the hearing of the Commission and the Act read to me, I shall refer it to the Judges of the Law, and by their Opinions I will stand or fall.

Mr. At. Gen. My Lord President, you have offered that Gentleman very seasonable Advice:

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I wish he may be capable of it. And in these Debates, I wish he doth not lose those Advantages that are really intended for him. For the Court, it is by Act of Parliament; and no Judicature in England can require an Account of their Proceedings.

Mr. Mordant. My Lord, pray give me leave to ask this Question, Whether there is any Precedent for this?

Mr. At. Gen. By way of Advice, I do acquaint you that there is no Judicature in England superior to this, but the Parliament immediately. You are here impeached of a very high Crime, High-Treason; it may be a Strain of Youth: the first Step to Mercy is Confession.

Mr. Mordant. My Lord, I have heard that the Judges of the Land are the best and proper Expositors of the Law: And if they declare that this is the Sense of the Act, I'll submit to the Court. If the Court will allow me Counsel, I shall submit if my Counsel be convinced. I desire to hear the Commission read.

Mr. At. Gen. My Lord, this Gentleman was a Fellow-Prisoner with one that went before him; he walks after the same Steps: I wish he may not run into the same Error. These Things were urged by Dr. Hewet, and the Court hath ruled that their Authority is sufficient; and therefore, my Lord, be pleased that this Gentleman may plead.

Mr. Mordant. I am over-borne both for Jury and Counsel: I desire that my Reason may be convinced. If this Counsel will give it under their Hands that this is Law by the Act of 1656, if you will say under your Hands that this is Law, that I must be excluded of Jury and Counsel, and that I must not know the Commission by which I am tried, I will proceed.

Ld President. I am afraid you have received ill Advice from others: Possibly you know what is become of that Prisoner that spake of Counsel. We cannot assign you Counsel as to Matter of Fact: The Law and Act of Parliament have made us your Judges, and therefore you are to plead.

Mr. Mordant. My Lord, I desire that that Act may be read, to know whether I am to be excluded of Jury and Counsel: I refer it to this Counsel.

Mr. At. Gen. I doubt the Gentleman is in Jest: We are here to attend by Command of his Highness the Lord Protector; these Gentlemen are all sworn by Act of Parliament. It is a little flighting of the Court, to appeal from the Court to the Counsel: But, my Lord, I beseech you he may forbear to say he is over-borne. You shall have Justice done, if you will plead; if not, there was a Precedent but now. If you please to put your self upon the Trial, you shall have a fair Trial.

Mr. Mordant. My Lord, convince me by this Act that I am to lose the Right of Jury; I have not heard any Reason why I must lose it.

Mr. At. Gen. I do tell you the Court hath given Judgment just now in the like Case.

Mr. Mordant. I ask a Precedent for this.

Mr. At. Gen. I tell you a Precedent, Sir Henry Slingsby and Dr. Hewet.

Mr. Mordant. Is it a good Precedent? If any give an ill Precedent, it is reason I should debate it my self.

Mr. At. Gen. I humbly conceive that this Court is your Court, and you ought to plead it.

Mr. Mordant. My Lord, I desire I may be heard: The Words are, That the respective Commissioners, or the major part of them, are to meet, &c. I humbly conceive, without the whole I cannot be tried.

Ld President. All this that you ask of us now, we have declared this Morning already to one who was before you at the Bar: The *Quorum* of this Commission is seventeen, or any of them. We must require you again to plead.

Mr. Mordant. My Lord, I desire a little Patience: The Number of the Commissioners is seventeen: I conceive that must be very much strained in Reason, that they must try, because it relates to the respective Commissioners. Several Persons were allowed Counsel; I humbly desire Counsel.

Ld President. That is when there is Matter of Law. You have alledged nothing: You are now upon Matter of Fact.

Mr. Mordant. My Lord, my Indictment is Matter of Law, and upon that I may safely demand Counsel: I desire to have Counsel as to my Indictment.

Ld President. Your Reason, and my Reason, and all Reason, must submit to the Law: You are now upon Matter of Fact: The single Question is, Guilty, or Not guilty?

Mr. At. Gen. My Advice to you is, That you would put your self upon your Trial.

Mr. Mordant. I am not convinced at all, but forced upon it; and it is a hard Thing: It is reason that my Reason should be convinced. If this Act doth say in any place that I must lose these Privileges, or if the Judges will declare it to be so, I will submit to it. If the Judges will declare that I must be tried thus, God's Will be done; I desire to stand and fall by the Laws.

Mr. Sol. Ellis. I will tell you where his Mistake is: He speaks of former Trials, which we do not deny. But this Gentleman will agree that it is in the power of Parliaments, by Acts of Parliament, to alter those Trials. We conceive that this Act of Parliament hath determined this very Question: For, my Lord, it is, That you shall examine upon Oath, and thereupon proceed to Conviction and final Sentence, not by Jury: And this Act of Parliament hath entrusted you to be both Judge and Jury. All *Englishmen* must submit to what the Parliament hath done: And the Parliament hath determined this Question, that you have power to examine upon Oath, and thereupon to proceed to Conviction, &c. If a Jury was to do it, you were not to proceed to Conviction. This Gentleman says there is no Precedent for it; but we say it was the same in Queen *Elizabeth's* Time: They proceeded to Conviction and final Sentence, when they proceeded against Duke *Hamilton*, Lord *Capel*, and *Holland*. Did not the Parliament approve of what they did in that Case as just, honourable, and lawful? Did not Duke *Hamilton*, did they not all petition to the House? Did not the Parliament order Execution upon some, and cleared others? To say this is without Precedent, when Precedents are so frequent, I wonder that should be said. To that Point of a Jury: I must tell this Gentleman he speaks of a Jury, but hath not put himself upon a Trial. After

he hath pleaded Not guilty, then it must be considered the Manner of the proceeding; but to come before he plead Guilty, or Not guilty, to desire a Jury, this is a little to anticipate your Judgment.

Mr. Mordant. I do not shun to be tried by the Act of Parliament, but refer my self to the Judges, that those Privileges of the Act may not be taken from me.

Mr. At. Gen. The Parliament hath thought fit to go this way, and it is not to be disputed: They that live in this Nation are not to dispute it. If that Gentleman will please to recollect himself, and not, my Lord, thus expostulate and dispute with the Court of Justice, if he please to put himself upon a Trial, if he thinks himself innocent, I think it is best; and if he refuse it, his Sentence is from himself.

Mr. Mordant. I do not, my Lord, dispute the Power of the Court; but I desire my Reason may be convinced, and that I may have Counsel.

Ld President. We are clearly of Opinion, we have not Power in this Case to appoint any other Jury, not to summon a Jury; we our selves have taken an Oth. You would do well to plead.

Mr. Mordant. My Lord, I have but little to say; and that is, That, as that Gentleman said, it was referred to the Court what Jury I shall have, I desire, my Lord, to know whether the Court doth intend to try me by a Jury.

Mr. Sol. Ellis. They do not.

Mr. Mordant. Is the Court Judge and Jury?

Mr. At. Gen. If you will dealingenuously with the Court, I think that is best.

Mr. Mordant. Seeing I am here over-ruled, tho not convinced in my Reason, I shall demur to the Court, and plead Not guilty. I desire a Copy of my Indictment, and Time to plead.

Ld President. It was never done: For any Indictment of High-Treason was never delivered to any Prisoner.

Mr. Mordant. I urge my Lord *Coke* for Authority, for a Copy of my Indictment.

Mr. Phelps. *John Mordant* Esq; you stand here charged of High-Treason; to this Charge you plead Not guilty: Is this your Plea?

Mr. Mordant. Yes. I beg, my Lord, that my Ignorance of the Laws may not prejudice me, not understanding or knowing any thing of the Laws: And this granted me, I shall address to my Justification.

Mr. At. Gen. Do you stand to your Plea, Not guilty?

Mr. Mordant. Yes.

Mr. Lechmere. My Lord, I shall shortly open the Impeachment. The Attorney-General hath exhibited a Charge of High-Treason against *John Mordant* Esq; viz. That he the said *John Mordant* intending to imbroil this Nation in new and intestine Wars, the 30th of *April* last past, and at divers Times since the 10th of *October* 1656, together with *Henry Bishop*, *Hartgil Baron*, &c. at the Parish of *Clement Danes*, in the County of *Middlesex*, did traitorously, advisedly, and maliciously plot, contrive, and endeavour, First, To stir and raise Force, and levy War against his Highness the Lord Protector and the Commonwealth, to subvert and alter the Government of the same. Secondly, That he did traitorously, advisedly, and maliciously declare, publish, and promote *Charles Stuart* to be King of

of *England, Scotland, and Ireland*. Thirdly, That he did traitorously, advisedly, and maliciously hold Intelligence and Correspondence with *Charles Stuart*; and that he did declare these Treasons by Overt-Act, that is to say, by conferring with *John Stapely* and *Henry Mallory* how to effect the same, and did deliver several Commissions from *Charles Stuart* to several Persons; and this contrary to the Statute. To this Charge of High-Treason the Prisoner pleads Not guilty: We are ready, my Lord, to call our Witnesses to prove him guilty of these several Crimes, and with the leave of the Court, we shall call our Witnesses.

Mr. At. Gen. I wish *Mr. Mordant* had done this before, and made himself capable of more shall Favour.

[*Mr. Mordant then desired to have Pen, Ink, and Paper, which was granted him.*]

[*John Stapely and Anthony Stapely were then called.*]

John Stapely sworn.

Mr. At. Gen. We produce this Gentleman (I suppose he is well known to the Prisoner) to prove the Charge: I desire he may declare what he knows. What do you know concerning the Discourses of *Mr. Mordant* with you, touching the bringing in *Charles Stuart*?

John Stapely. I have been in *Mr. Mordant's* Company several Times; and what I can say will not be much. *Mr. Mordant* did once tell me there was such a Design as the bringing in of the King; and he did ask me if I did not know of such a Thing. I told him no. He was pleased to tell me somewhat of it. I asked him if he was engaged in it: He told me he was not.

Mr. At. Gen. What did he tell you concerning his being entrusted by the King therein?

John Stapely. He told me the King wrote to him, to speak to his Friends that they would be ready to assist him when he should come into *England* with Force; which he told me was with 7000 Men. This was the chief of all.

Mr. At. Gen. Did he not say that he had Commissions from the King?

John Stapely. He did not tell me so; but I have heard him say others had had Commissions, two other Gentlemen in *Surrey*.

Mr. At. Gen. Did not he encourage you thereto? What Arguments did he use?

John Stapely. He spoke to me of it several times.

Mr. At. Gen. After what manner?

John Stapely. Only in Commendation of the Thing: I heard him say that if there were a Necessity, *Surrey* Folks would come into *Suffex*, to assist them.

Mr. At. Gen. Who was present at any of these Discourses?

John Stapely. There was none but him and my self.

Mr. At. Gen. At what Place, and at what Time?

John Stapely. Near his own House, at several Times. I have told you the main of the Discourses.

Mr. Mordant. *Mr. Stapely*, about what Time was this?

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John Stapely. Above a Year since.

Mr. Mordant. *Mr. Stapely*, at what Place was the Encouragement made?

John Stapely. I do not know what he means by Encouragement: He only told me of it.

Mr. Mordant. I desire to know when I told you that I had received a Letter to encourage my Friends from beyond-Sea, and who was by?

John Stapely. There was no body by.

Ld President. About what time did he tell you of this Letter?

John Stapely. About half a Year since.

Ld President. Who was by?

John Stapely. No body, my Lord.

Mr. Sol. Ellis. Did he tell you it was the King that wrote to him; and therefore it was just to assist him?

John Stapely. I think I heard him say so; I cannot take my Oath of it.

Ld President. Did he tell you what considerable Persons were concerned?

John Stapely. I have heard him speak of some Persons that were engaged in this Design; Sir *Francis Vincent*, and one *Brown*: He said that Sir *William Waller* spake to him to speak to me.

Ld President. When?

John Stapely. Above a Year since: It was since the Parliament.

Mr. Mordant. My Lord, I do not know Sir *William Waller*.

Anthony Stapely sworn.

Mr. At. Gen. What Discourse have you had with *Mr. Mordant*, touching *Charles Stuart*?

Anthony Stapely. We were about a quarter of a Year ago at the *Half-Moon Tavern* in *Aldersgate-Street*: At that time there was no Discourse about the Business at all. After that he was speaking to me about the Times, Losses of Privileges, great Taxations, &c. wherein I agreed with him, and wished they might be better. I asked him if there was any way to help it. He said, Yea; and said that *Charles Stuart* was intending for *England*; and that would be a fair Opportunity to redress all Grievances. At *Berkshire-House*, there he was pleased to enquire concerning the Affairs of *Suffex*, and in what Preparation they were, in case the King of *Scots* should land. I told him I did not know; I had not been in the Country lately; I did believe that there would not be an Apperance suitable to his Expectation. He told me something concerning *Surrey*; that there was a considerable Strength there, ready to assist us in *Suffex*, and join with us when any such Thing should happen. He did say that he had delivered out four Commissions, three for Horse, and one for Foot; but to whom I know not: I dare not swear it; but it is to the best of my Remembrance.

Mr. At. Gen. What Discourse past between you at the *Half-Moon Tavern* in *Aldersgate-Street* about *March* last?

Anth. Stapely. It was the Day that the Cavalier Party were to depart the City: There was Captain *Mallory*, my self, and this Gentleman, *Mr. Mordant*. And then he spoke again concerning *Suffex*; that the King of *Scots* coming was suddenly expected; and desired to know in what Readiness we were. I told him I could not tell; but I did believe that Things would be

in as great a Forwardness as the Times would permit. It was agreed upon that some of our Country should meet Mr. *Mordant* at *Crawly*, in *Surrey*, upon the Tuesday following.

Mr. At. Gen. What was the End of your Meeting?

Anth. Stapely. It was to consider further how Things might be carried on, as to the Business of *Surrey* and *Suffex*: There was an Expectation of the landing of *Charles Stuart*; and he did say that he heard *Charles Stuart* was in a Readiness. Mr. *Mallory*, my self, and Mr. *Mordant*, were to meet, further to debate of Things. I understood it was for the Business of the King; but it was not positively so expressed. He asked me how Things went on in *Suffex*. I told him I could not satisfy him: Therefore we told him there should some of our Country meet him at *Crawly*, to give him an account. He said there was a considerable Force; but I never heard him speak of any Number of Horse or Foot in *Surrey*.

Mr. Mordant. Mr. *Stapely*, I desire to know when I spoke to you of this.

Anth. Stapely. My Lord, it was—I cannot tell the Days: But it was suddenly after the breaking-up of the Parliament; all the Discourses were since the breaking up of the last Parliament.

Mr. Mordant. I desire to know where I spoke this, and who was by?

Anth. Stapely. As I take it, the first Discourse was at *Long-Acre*; but no body by.

Mr. Mordant. I desire to know the Time when I met him at the *Half-Moon Tavern*?

Anth. Stapely. It was the Day set for the departing of the Cavalier Party out of Town.

Mr. Mordant. I desire to know who was by?

Anth. Stapely. Captain *Mallory*.

Mr. Mordant. I desire to know whether I did meet at the Place appointed?

Anth. Stapely. My Brother and Mr. *Mallory* did not meet him, because my Brother was sent for to *Whitehall*.

Mr. Mordant. I desire to know the Witnesses to all he says?

Anth. Stapely. It was all private; only once at the *Half-Moon Tavern* with Captain *Mallory*.

Mr. At. Gen. My Lord, there was mention made of one Captain *Mallory*, whom we did intend to have as a Witness: He was committed upon this Design, being privy to it. It hath so fallen out that he is lately escaped. I desire that Mr. Serjeant at Arms, Major *Ellison*, *Thomas Tatlock*, and *William Capput*, may be sworn.

All Four sworn.

Mr. At. Gen. We do produce these Witnesses for this End: Captain *Mallory* was a Prisoner, and we did intend to make use of him here; but it hath so fallen out, that his guilty Conscience hath made him to fly. Ask these concerning his being in Custody, and Endeavour of Escape.

Major *Ellison.* My Lord, Captain *Mallory* was in Custody, and a Guard constantly set upon him, which Guard was relieved every twenty-four Hours. The Manner of his Escape I only had by relation. We have used all our Endeavours to have found him since he is escaped: We did that Night send presently to *Southwark*, to Inns there, and laid wait for him; and sent

to Captain *Mallory's* Brother-in-Law, where he formerly lay, examined him, but all in vain. Where we had any Intimation of any Relation of his, we did send to search for him.

Serj. *Dan.* My Lord, upon the twenty-eighth of May last, since the Escape of Captain *Mallory*, I received a Warrant from the Council, commanding me to use all Diligence for apprehending Captain *Mallory*; I have accordingly endeavoured it: Not knowing his Relations, I did not speak to them. I have used all Means I could; but cannot find him.

Tho. Tatlock. My Lord, Captain *Mallory* went away about Nine a-clock at Night: He went away in a black Suit and Cloke.

Will. Capput. All that I know, my Lord, is, That Captain *Mallory* was a Prisoner, and changed his Habit and Hair, went away, and left Money in the Window to pay for his Lodging.

Mr. At. Gen. My Lord, the Intention is to shew you Captain *Mallory* was a Prisoner, is escaped, and what Means have been used for his Apprehension. Officer, pray swear Mr. *Scobell*.

Mr. Scobell sworn.

Mr. At. Gen. My Lord, Mr. *Scobell* was one of the Justices of the Peace that took Captain *Mallory's* Examination upon Oath.

Mr. Scobell. My Lord, Captain *Mallory* gave in Information upon Oath, before my Lord *Goffe* and my self, upon the twenty first of April last; and upon his Oath did inform us, That about the beginning of March last Captain *Anthony Stapely* and himself being at the *Half-Moon Tavern*, *John Mordant Esq;* being upon the Exchange, was sent for to Mr. *Stapely*, and that he came. Thereupon Mr. *Stapely* presented Captain *Mallory* to Mr. *Mordant* as a Gentleman that was interested in *Charles Stuart's* Design, together with Mr. *Stapely*, that was his Brother: He said that by that Brother he meant *John Stapely Esq;* Thereupon he informed us, That Mr. *Mordant* did demand of Captain *Mallory* in what Readiness the Horse that were to be raised in *Suffex* were. Mr. *Mallory* informed us, That to that he returned an Answer, that they were not in so good a Posture as he did believe Mr. *John Stapely* had represented to Mr. *Mordant*, but doubted that it would fall much short. *Mallory* told us, That at that Answer Mr. *Mordant* did much wonder, because he said *Charles Stuart* the King was in a very good Posture; and that there was a daily Expectation of his coming over with Forces; and that thereupon Mr. *Mordant* did desire that there might be a Meeting in some convenient Place between him and Mr. *Stapely*, and some others of that County of *Suffex*, as should be thought fit. My Lord, it was (he said) to this End, That they might confer together, and understand how the Affairs stood in reference to the Counties of *Suffex* and *Surrey*, that they might the better assist each other in the intended Insurrection. He did inform us, my Lord, That accordingly it was agreed there should be a Meeting upon the Tuesday following at *Crawly*; and in order thereunto, he said that Mr. *Anthony Stapely* and himself did speak with Mr. *John Stapely* to have a Meeting accordingly at *Crawly* upon the Tuesday following, and they did agree to it. He said that they should meet with Mr. *Mordant* at *Crawly*; but in the mean time

Mr. John

Mr. *John Stapely* being sent for to *Whitehall*, that Meeting was prevented. My Lord, this is all.

Ld President. Mr. *Mordant*, would you ask Mr. *Scobell* any Question?

Mr. *Scobell.* I suppose that Mr. *Mordant's* asking me any Question will not advantage him, or that my Testimony is disadvantageous to him; For all that I have spoke was the same that *Mallory* declared unto me, and my Lord *Goffe*, as Justices of the Peace.

Mr. *Mordant.* My Lord, I neither know this Gentleman, nor Mr. *Mallory*, upon my Oath.

Mr. *At. Gen.* Mr. *Anthony Stapely*, were you with Captain *Mallory* and Mr. *Mordant* at Dinner together at the *Half-Moon*?

Mr. *Anth. Stapely.* My Lord, Captain *Mallory* was once there; but not at Dinner.

Mr. *Sol. Ellis.* The Attorney-General hath exhibited a Charge of High-Treason against the Prisoner at the Bar, that was, to raise Force against the Government, and publish *Charles Stuart* to be King, and held Correspondence with him.

Mr. *Mordant.* My Lord, you have heard the Witnesses: The first Gentleman, Mr. *John Stapely*, he was pleased to urge against me, that I said *Charles Stuart* writ to me to engage my Friends, but said not that he saw the Letter, or that any one was by. He did not name the Time or Place but at random; but that I said so. Being asked about Commissions, he denies that I told him I either had Commissions, or delivered any. He says I gave him Encouragement to this Engagement, or what he calls it, I know not; but he doth not say what kind of Encouragement it was; he doth not say I promised him Money or Preferment. He says he heard I engaged two other Gentlemen, Sir *Francis Vincent* and Col. *Brown*. He was asked, if any was by at these Discourses; he said none was by. My Lord, this is a single Evidence: he says it was a Year or more since; he says I said I was intrusted by *Charles Stuart* about the latter end of the last Winter. For Mr. *Anthony Stapely*, he urges against me, that at his Lodging I discoursed with him, that the way to help us was to bring in *Charles Stuart*: he says, that I said in *Surrey* was a considerable Strength to join with *Charles Stuart*, which if true might prove troublesome to me; but I have not been in *Surrey* this Year and a half. He says, only to the best of his remembrance, I said I had three or four Commissions, but he says it is to the best of his remembrance, but doth not say he saw the Commissions, and will not swear whether they were for Horse or Foot. He says, at the *Half-Moon* I spake with him and *Mallory*; who that is, I have already spoke to. He says, I did not name the Number of any Forces that were ready: He says, that we agreed to meet on the Tuesday following at *Crawly* with Mr. *Mallory*, but says that I was not there. My Lord, I do not know that place; he says it is in our Country, but it is not: He says it was his Brother *John Stapely* that was to meet me. He says, it was not about any positive thing why I was to meet there, but in general to carry on things about the intended Design. He says not that I said it, but that I said I heard that *Charles Stuart* would land with a considerable Party. He says it was to debate things in general: He said, it was not

said about *Charles Stuart*, that he was not mentioned, but he supposed it to be so. He says positively, that I never spake of any number of Horse or Foot, or any thing of that kind. I asked him, when I first spoke of this; he returned no time, would not say any positive time, but said all was since the breaking up of the Parliament. I asked him who was by; he said nobody, all was private. He says, the time when we were at the *Half-Moon* was near the time that those that served the late King were banished. He says positively I did not meet at the place appointed, and he gives the reason, a very insufficient one, because his Brother was sent for up; that could not hinder me. He waves his own Meeting: he says all was private. I submit it all to this honourable Court.

Mr. *Sol. Ellis.* The Charge is for levying of War to alter the Government, and embroil us again in a new War: to which he pleads Not Guilty. For the Proof of this, we have offered to you Witnesses; I shall take them in order as the Gentleman did at the Bar. *John Stapely* said, Mr. *Mordant* said the King writ to him to encourage and engage his Friends to assist him at his coming; but says not the time when this was done. He says he did not see the Letter, but says Mr. *Mordant* told him he had a Letter, all the Discourses (because he says there was no time) it agrees that they were since the tenth of *October* 1656, and so it is clear within this Act, and within your Jurisdiction. Now see how it was carried on: After he had told him this, how doth he encourage him in his telling him the Justice of the Cause, the Persons engaged therein, and of Sir *William Waller*? Then, my Lord, he told them if the Forces of *Sussex* were not sufficient, that the *Surrey* Forces would come to assist them for the coming in of *Charles Stuart*: this both *John* and *Anthony Stapely*. So that we conceive, under favour, that *John Stapely* and *Anthony Stapely* do agree in most of the Circumstances. *Anthony Stapely* says, that Mr. *Mordant* came to him, tells him there were great Grievances; Ay, says he, but how shall it be remedy'd? Tells him that *Charles Stuart* intended to come to *England* with a great Force, which would redress them. He asked him how the Business was in *Sussex*? He said it was not in so good a posture as he expected: he said that *Surrey* Forces should join with *Sussex*. My Lord, I leave it nakedly to you, if you find this to be true, we submit it to you, and Mr. Attorney-General will pray what his Place requires.

Mr. *At. Gen.* You have heard the Business, this Gentleman hath interposed himself where he was not called; it is a Happiness this Business was discovered. Upon this Evidence I leave it to your Justice, and as you shall judge. I shall say no more.

Mr. *Mordant.* My Lord, I will speak to you very short, it is this: That to all this, though it be urged against me by the ablest Men in the Land, yet there is but one Witness in a manner, and that differing in many Circumstances — [Here he was interrupted.] My Lord, I leave it to you, I remit my Life into your hands, resting and believing your Lordships will deal with me as one of this Nation, an *English* Freeman. I leave it to you, and do submit.

Ld President. Withdraw the Prisoner.

Proclamation to adjourn into the Painted Chamber.

After a little Debate in the Painted Chamber, they adjourned till the Morrow, the second of June.



June 2, 1658.

THE Lords Commissioners met in the Painted Chamber about Ten in the Morning, and there continued till about Four a Clock in the Afternoon, and then adjourned into *Westminster-Hall*; where Proclamation being made, the Names of the Lords Commissioners being read,

Mr. Serjeant was commanded to bring Dr. Hewet, Sir Henry Slingsby, and Mr. Mordant to the Bar.

Which was accordingly done.

Proclamation for Silence was made.

Mr. At. Gen. My Lord, as for Sir H. Slingsby and Mr. Mordant, you have heard the Impeachment read, and their Pleas; I have given in the Evidence, I pray your Judgment as to them: as for the other, you have heard the Impeachment, and no Defence; I pray your Justice.

Ld President. Sir H. Slingsby Kt. thou hast been impeached, on the behalf of the Lord Protector and this Commonwealth, of High-Treason: to which thou hast pleaded Not Guilty, which the Court hath taken into consideration: What hast thou to say further, why this Court should not proceed to Judgment?

Sir H. Slingsby. My Lord, I humbly desire I may be try'd by a Jury, for I must say you are my Enemies, (pardon the Expression;) if not so, why did you sequester me, and sell my whole Estate? And why did you deny me the Act of Oblivion? There is no Man would willingly appeal to his Adversaries; there are some among you that have been instrumental in my Sequestration, and in the selling of my Estate, for which they gave me no reason but this, That I would not compound, when I thought not fit so to do, when there was no Establishment or settled Peace: if I had compounded, I had not been sure whether I might not have compounded over again. My Estate hath been sequestred and sold. Now to be my Judge and Jury—I humbly pray, being a Commoner, I may be try'd by Commoners.

Ld President. Sir H. Slingsby, I am not to hear you as to any of these things, (you have pleaded already) this is not a Time of Pleading, but a Time of Judgment; therefore I must require your Silence, and hear me a few words.

The Lord President's Speech.

SIR Henry Slingsby, I am really and truly afflicted for your sad Condition; but when I consider the Nature of your Offence, with the Circumstances and Aggravations of your Treason committed; when I consider your Person, and that such a Person, as you are, should be instrumental in so detestable a Conspiracy, and when I think of that Judgment that must be given against you; methinks you are one of

the saddest Spectacles that ever I beheld in all my Days: I beseech God that you may seriously lay it to your Heart, with Sorrow and Repentance, and that you may be more sensible of what you have done, than of what you are to suffer.

Sir, was it not a great Aggravation of the Sins of the Egyptians, that when God had declared himself by so many Signs and Wonders on the behalf of the Israelites, that yet notwithstanding they would still pursue Moses and Israel? Was not this a great Aggravation of their Sin?

Who is so great a Stranger in this Nation, as to be ignorant what God hath done amongst us, by a Series of wonderful Providences so many Years together, against that very Party who are still hatching of Treasons and Rebellions amongst us? It grieves my very Soul to think of it, that after so many signal Providences, wherein God seems to declare himself, (as it were by Signs and Wonders) that your Heart should be still harden'd, I may say, more harden'd than the very Hearts of the Egyptians: for they at length did not only see, but confessed that the Lord fought against them; but you, O that you would confess, and give Glory to God. You cannot chuse but see that the Lord fights against you, that the Stars in their Courses fight against you; and yet you will not see, you will not confess, until Destruction overtakes you. This is a sad Lamentation, and I beseech God that you may seriously consider it.

Sir, if the signal and the wonderful Providences of God will not deter you, yet methinks National Considerations should deter you from such a Treason as this is. Charles Stuart is in Confederacy with Spain against England, he is in Confederacy with that great Popish Interest. Is it imaginable that an Englishman, that a Protestant should assist such a Confederacy as this is? Yet that which is not imaginable in itself, is here clearly and evidently proved before us.

Sir Henry Slingsby, there are three Witnesses, Major Waterhouse, Captain Overton, and Lieutenant Thompson; two of them full in Evidence as to every Charge against you, and three of them as to some of the Charges; and besides your own Confession at the Bar, full in proof against you. Did it not clearly appear in proof before us, that you promoted Charles Stuart to be King of England? Did it not clearly appear before us, that you endeavoured to betray the Garrison of Hull to Charles Stuart? Did it not likewise clearly appear before us, that you endeavoured to withdraw the Officers, and some of the Soldiers of that Garrison from their Obedience to his Highness, and to make a Mutiny in that Garrison, and all the Circumstances did clearly appear? Was it not proved before us, that you offered a Commission to Major Waterhouse, and promised him a Commission in the first Place, and a second to Captain Overton, and a Deputation to the third? And what you promised, did you not make it good? Did you not with your own Hand offer a Commission sealed, and said it was from Charles Stuart? And did you not only encourage him, by telling him that he was coming into England with a considerable Force; but did you not promise

also,

also, that upon his Landing, 5000*l.* should be paid to Major *Waterhouse*? All these things were clearly proved before us.

Sir, What said you to this Proof? You confessed upon the matter all, in effect all; but only some things you said by way of Excuse, and I shall truly relate them all. All you did, you told us was but in jest. What, Sir, if those discontented *English* that comply'd with *Spain* in *Queen Elizabeth's* Days in Eighty Eight, had said they had been in Jest; what would you have thought of that, Sir? What if those Jesuited Papists that would have blown up the Parliament-House upon the 5th of *November*, with Barrels of Gunpowder, had said that they had brought in those Barrels in jest; what would you have thought of it? Sir, be not deceived: As a Man sows, so shall he reap; you have sow'd Treason and Rebellion, and you are now come to reap the Fruit of it.

And, Sir, you told me you did not own the Government, you were a Prisoner, and therefore could not be bound by the Laws of that Government. Sir, doth not every *Englishman* owe a natural Allegiance to the Supreme Magistrate of *England*? Is not every *Englishman*, whether in Prison, or out of Prison, bound by the Laws of *England*? Sir, if you own not the Government of *England*, that is an Offence in itself, a great Offence; and would you make an Offence against the Government to be an Excuse or Justification for Treason?

The last thing you said was this, You told us you were trepan'd into it. Sir, did not you yourself of yourself promise a Commission to Major *Waterhouse*? Did you not of yourself offer Five Thousand Pound to be paid as soon as *Charles Stuart* landed upon *English* Ground? I shall name those worthy Gentlemen, for Honour's sake to them, that had a Hand in this Discovery. It was that prudent and faithful Governour of *Hull*, Colonel *Smith*, that had a Hand in it. There was those worthy and faithful Commanders, who were here in Court, Major *Waterhouse*, Captain *Overton*, and Lieutenant *Thompson*: Sir, these faithful and worthy Gentlemen have carried themselves in this Business, like the Man of Understanding, that *Solomon* speaks of.

I have done, only I would say one word to you, because I hear you are a Protestant: I would only ask you this Question, What think you would have become of the Protestant Interest of the Protestants of *England*, *Scotland*, and *Ireland*; if you had had your Will, if *Charles Stuart* had come in? If you had but time (but the Lord knows you have not time) to look over the Records of *England*, to look over the Declarations of Parliament since 1640; if you could remember it, Sir, it would tell you what Family it was that betray'd the Protestants of *France*, when *Rochel* was taken; what Family it was that betrayed the Protestants in *Germany*, and in the *Palatinate*, when a Peace was made with *Spain* without Consent of Parliament. What could you think of that Family that did tolerate Popery for a Match with *Spain*? What then would that Family have done, if it could have gained them *England*, *Scotland*, and *Ireland*?

And now, Sir, but one word more to you as you are an *Englishman*: I beseech you consider

what would have become of this Nation, if you had had your Will; you had brought a new Civil War upon *England* at the least. I cannot think of a new Civil War upon *England*, but I think of Desolation upon Desolation to this poor Nation, &c.

I have but one word to say to Dr. *Hewet*: And Sir, when I look upon you as a Minister, I must confess I do not know how to speak to you, because it has always been my way to speak to Men of your Profession, as to Ministers, I never spake to them but as a Child speaks to his Father; such Reverence and such Regard I bear to their Office. But to speak so to a Minister as a Judge speaks to a Traitor, I must confess I know not how to do it. But, Sir, there must be words spoken to you; though I do not speak them; and not only to you as a Traitor, but a Traitor in the highest Degree; not as a Traitor, (as you are intitled, for endeavouring to levy a new War, and to bring Desolation and a War in this Nation) but such an one as should rather die a Traitor, than own the Authority of the Nation. But, Sir, I know not how to speak to you, and therefore the Record must speak to you; and I myself will not any further.

I have now a word to speak to you, Mr. *Mordant*: God hath appeared in Justice, and God doth appear in Mercy; as the Lord is just to them, so he is exceeding merciful to you: and I may say to you, That God appears to you at this time, as he speaks to Sinners in Jesus Christ; for, Sir, he doth clear Sinners in Christ Jesus, even when they are guilty, and so God cleareth you: I will not say you are guilty, but ask your own Conscience whether you are or no. Sir, bless God as long as you live, and bless my Lord Protector, by whose Authority you are cleared. Sir, I speak no more, but I beseech you to speak to God.

And now let me add this word to those two Gentlemen: Sirs, when I have done speaking, I shall never have done praying for you, as long as you are alive; that is the last thing I must say to you. And now let the Judgment of the Court be read,

Thereupon the Clerk read the Judgment and Sentence of the Court against Sir *H. Slingsby* Kt. which was as follows:

THAT the said Sir *Henry Slingsby*, as a false Traitor to his said Highness the Lord Protector and this Commonwealth, shall be convey'd back again to the Tower of *London*; and from thence through the middle of the City of *London*, directly shall be drawn unto the Gallows of *Tyburn*, and upon the said Gallows there shall be hanged, and being alive, shall be cut down to the Ground, and his Entrails taken out of his Belly, and, he living, be burnt before him; and that his Head shall be cut off, and that his Body shall be divided into four Quarters, &c."

In the next place, the same Judgment and Sentence of the Court was read against Dr. *Hewet*, being Ingross'd in like manner.

This being done, the Judgment of the Court was declared concerning Mr. *Mordant*, which (in

(in short) was, "That upon Consideration of the whole Matter, in reference to the Charge against him, and his Plea thereunto, they did adjudge him *Not Guilty*." And so the Prisoners were dismiss'd.

Proclamation being made, the Court adjourned back to the Painted Chamber, where they order'd the Execution of the Sentence upon Sir *Henry Slingsby* and Dr. *Hewet* to be on Saturday next. And Warrants were issued out to the Sheriffs of *London* to see Execution done accordingly.

Then the Court adjourned itself till Thursday the tenth Instant.

Notwithstanding the former Sentence passed by the High Court, yet his Highness being informed, that Dr. *Hewet*, Prisoner in the Tower of *London*, who stands attainted of High-Treason, before the Commissioners appointed by Act of Parliament, for levying War against his Highness and the Commonwealth, had Judgment to be hanged, drawn and quartered at *Tyburn* this Instant Saturday; his Highness was graciously pleased, upon humble Suit made, to reprieve him till Tuesday the Eighth Instant, and to order, That the Judgment should be remitted, except the cutting off his Head.

The like Favour also was extended to Sir *Henry Slingsby*.

They were both accordingly Executed on *Tower-Hill* the said Eighth of June.

Sir *Henry Slingsby* was first brought about Eleven of the Clock from the Tower to the Scaffold on *Tower-Hill*; whither being come, he fell upon his Knees, and for a short Space pray'd privately.

Then standing up, he did in a short Speech, and with a very low Voice, address himself to Mr. Sheriff *Robinson*, telling him, that what he had to say he would speak to him; which was to this purpose:

That he had receiv'd a Sentence to die, upon account of his endeavouring to betray the Garrison of Hull: But said, All that he did in that Business he was drawn into by others.

That the Officers of that Garrison did believe he had some greater Design in hand, and therefore they would needs pump him to the bottom: But what he spoke to them in private was brought into Evidence against him. He likewise said, That he did no more than any Person would have done that was so brought on.

That he had made many Applications (by his Friends) for a Reprieve, but found his Highness was inexorable.

He did confess, that he did deliver a Commission (as it was charged against him:) But said, that it was an old Commission, and what he meant was well known to himself; but what Constructions others had made of it might appear by his present Condition.

He discovered little Sense of Sorrow, or Fear of Death; but said, *He was ready to submit, or Words to like purpose.*

Then he address'd himself to private Prayer again; and kneeling down to the Block, he pray'd

privately for a short Space: Then laid his Head upon the Block, and at the Sign given, the Executioner sever'd his Head from his Body at one Blow: And his Friends put his Body into a Coffin, and remov'd it into a close Coach prepared near the Place.

As soon as Sir *Henry Slingsby*'s Body was remov'd as aforesaid, Dr. *Hewet* was brought forth to the Scaffold; whither being come (together with Dr. *Wild*, Dr. *Warmestry*, and another Divine) he fell upon his Knees, and prayed privately for the Space of a Quarter of an Hour; after that he pray'd audibly for a good Space.

After which Prayer he address'd himself to the People in the following Words:

I Am now become a publick Spectacle to Men and Angels, and (I hope) God, who is Omniscient, is now beholding me with much Pity, and great Mercy and Compassion; and the more, because I am now come to that End that his own Son came into the World for, to bear Witness to the Truth; he himself said, *For this End was I born, for this Cause came I into the World, that I should bear witness to the Truth: I was brought into the World (the Christian World) for to bear witness to the Truth of the Gospel, as a common Christian; I was brought into the World (the Church) as a Minister of his blessed Word and Sacraments; [Blessed be his Name for that great Honour and Dignity;] and I came into the World to die more immediately for the Testimony of JESUS, which God hath now called me to. I came into this World (this Commonwealth) to be a Member thereof, to bear witness to the Truths of the Customs, the Laws, the Liberties, and Privileges thereof; so I am a Member of the Commonwealth: And methinks it seems to me a strange Thing, that in as much as we all plead for Liberty, and Privileges, and I pleading for the Privileges, the Laws, the Statutes, and the Customs of this Land, yet I should die by those that should stand for the Laws, the Statutes, and Privileges of the Land: And I am here beheld by those that plead for their Liberties, and I hope I am pitied, because I here give up my self willingly and freely to be a State-Martyr for the publick Good; and I had rather die many Deaths myself, than betray my Fellow-Freemen to so many Inconveniencies, that they might be like to suffer, by being subject to the Wills of them that willed me to this Death.*

And it is worthy Remembrance, that Mr. Solicitor having impeached me of Treason to the Commissioners of the Court against his Highness, I did often (when brought before those Commissioners) plead for the Liberties of the People of *England*; tho' I had no Knowledge of the Law, yet I had Instruction from those that were learned in the Law, and had several Law-Cases and Precedents put into my Hand, tho' not by them, and urged several Law-Cases; and made my Appeal: First, for the Judicature that I was to be tried by, Whether it were according to Law? Whether it were according to the Act? And whether it were according to the Words of the said Act? I did appeal to have the said Act argued by learned Lawyers on both Sides, and then to be resolved by his Highness's own Council, which

which was denied me; [This by the by] I pressing the Argument, made a second Appeal, that those Judges, if they would give singly their several Judgments that it was a just and lawful Court of Judicature, I would answer to my Charge. I did make another Appeal to those that were his Highness's Council, and pleaded against me, that if they would deliver it to me under their Hands to be according to Law, I would then go on to plead and answer to the Charge. What was then said further, my Spirits being faint, I shall not say much, but only this, I was taken in three Defaults upon Formality of the Court. It seems it is a Custom in all Courts, (which I did not know before) that if they answer not the third time speaking by the Clerk, that then they are guilty of three Defaults, and proceeded against as mute: [I had no such Knowledge of the Law.] So they found me guilty of those Defaults: And when I would have pleaded, and resolved to begin to plead, I was taken from the Bar. I did the next Day make my Petition to the Court in the Painted Chamber; two Petitions were presented, the same in effect; in the former the Title was mistaken: Yet because the Title was mistaken, and no Answer was given, therefore it was that another Petition was drawn up to the same Effect, with a new Title given, (as I remember) presented by the Sergeant at Arms, and one writ it over in such haste, lest they should be drawn out of the Painted Chamber into the Court, that I had not time to read it over, only I subscribed my Name, and there was in the Front of the Petition a Word left out, but what the Word was I know not; and this was taken so ill, as if I had put an Affront and Contempt on the Court; and it was thought they would have heard me plead; and then, because of that Mistake, they sent Word I should have my Answer when I came into the Court, and my Answer was the Sentence of Condemnation. And therefore, I pray with all my Soul, that God would forgive all those that occasioned the Charge to be drawn against me, to give such unjust things against me: I pray with all my Soul, that God would forgive all those that upon so slender and small Grounds adjudg'd me to die, taking Advantage of such simple Ignorance, as I was in. And I had, at the very Beginning of my Pleading, engag'd their Honours no Advantage should be taken against me to my Prejudice, that in as much as I understood nothing of the Law, and having heard that a Man in the Nicety of the Law might be lost in the Severity thereof, merely for speaking a Word out of simple Ignorance; I made it my Prayer to them, that no Advantage might be taken against me, to the Prejudice of my Person; and there was to me a seeming Consent, for the President told me, there should be no Advantage taken against me, and upon these Considerations I am afraid there was too great Uncharitableness: But I pray God forgive them from the very Bottom of my Soul, and I desire that even those that shed my Blood, may have Bowels of the God of Mercy shed for them.

And now having given you the Occasion of my coming hither, it is fit I should give you somewhat as concerning myself, as I am a Christian, and as I am a Clergy-man: First, as I am a Christian, I thank God I was baptized to the Holy Church, so I was baptized to be a Member of

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the Holy Catholick Church; that is, the Church of *England*, which I dare say, for Purity of Doctrine, and orderly Discipline, till a sad Reformation had spoiled the Face of the Church, and made it a Query, whether it was a Church or no: I say, it was more purely Divine and Apostolical than any other Doctrine or Church in the Christian World, whether National, or Classcal, or Congregational. And I must tell you, That as I am a Member of this Church, so I am a Member of the Holy Catholick Church, and shall give a most just Confession of my Faith, both negatively, and affirmatively. Negatively, I am so a Member of the Holy Catholick Church, that I abhor all Sects, Schisms, Sedition, and Tyranny in Religion. Affirmatively so, that as I hold Communion with, so I love and honour all Christians in the World that love the same Lord JESUS in Sincerity, and call on his Name, agreeing with those Truths that are absolutely necessary, and clearly demonstrated in the Word of God, both in the Old and New Testament, tho in Charity dissenting from some others that are not necessary. And I, as I am thus a Christian, I hope for Salvation, thro the Merits of Christ Jesus; his Blood I rely on, his Merits I trust to, for the Salvation of my own Soul. Tho to this Faith good Works are necessary, not meritorious in us, but only made meritorious by Christ his Death; by his All-sufficiency, by his Satisfaction, and his Righteousness, they become meritorious; but in us they are no other than as defiled Rags. And truly, as I am a Member of the Church, so I told you I was a Member of this Community, and so pleaded for the Liberties and Privileges thereof. I must now answer something I am aspersed withal in the World.

They talk of something of a Plot, and a treasonable Design, and that I had a great Interest in the Knowledge and Practice thereof, and that for the saving my Life I would have discover'd and betray'd I cannot tell what: I hope my Conversation hath not been such here in this City, where I have been a long time very well known, as to make any one imagine I should intermeddle in such an Action, and go so contrary to the Practice of my Profession; and I hope there are none so uncharitable towards me, as to believe I had a Knowledge of that Design.

Here I must come to Particulars for a Plot, of having a Design upon the City of *London*, for the firing of it: I so much tremble at the Thought of the thing that should have been done, as they say, for the carrying on of such a Design, (if my Heart deceive me not) had I known it, I so much abhor the thing, I should have been the first Discoverer of it: Nor ever had I Correspondency or Meetings with such Persons as would have carried on such a Design. It is said likewise, I entertain'd the Earl, the Marquess of *Ormond*; to my Remembrance I never saw the Face of that honourable Person in my Life. It is said, one Lord's Day I did preach at *St. Gregory's*, and the next Lord's Day I was at *Brussels*, or *Bruges*, and kiss'd the King's Hand, and brought I cannot tell what Orders and Instructions from him: This I shall say, for these three Years last past together I have not been sixty Miles from this City of *London*, and I think it is somewhat further to either of those Places than threescore Miles. It is said that I

* *Barrow.* kept Correspondence with one * *Mal-lory* and *Bishop*: They are Persons I have heard of their Names, but never saw their Faces, and to my Knowledge I do not know they know me; nor do I know them at all, but only as I have heard of their Names. And who-soever else hath suggested such things against me, I know not.

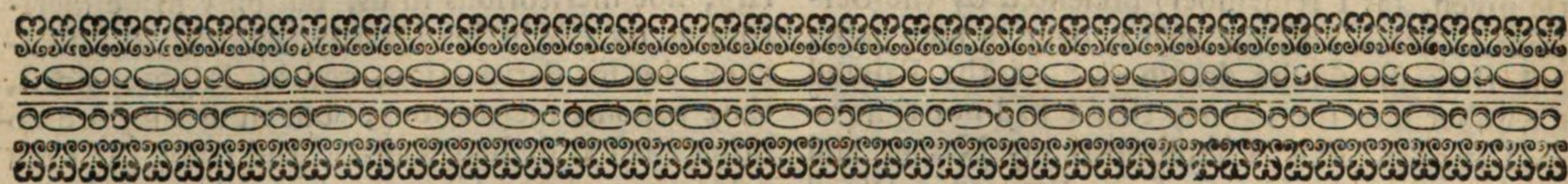
His Highness was pleas'd to tell me, I was like a flaming Torch in the midst of a Sheaf of Corn: He meaning, I being a publick Preacher, was able to set the City on Fire by Sedition and Combustions, and promoting Designs. Here truly I do say, and have it from many of those that are Judges of the High Court, that upon Examination of the Business they have not found me a Meddler at all in these Affairs. And truly I must needs say therefore, that it was a very uncharitable Act in 'em (whoever they were) that brought such Accusations against me, and irritated his Highness against me: I will not say it was Malice, it might be Zeal; but it was rash Zeal which caus'd me to be sentenc'd to this Place: The God of Mercy pardon and forgive them all. And truly, as I am a Member of the Church, and as a Member of the Community where on Behalf I have been speaking, I cannot

but do as our Saviour himself did for his Disci-ples; when he was to be taken from them, he blessed them, and ascended up to Heaven. My Trust is in the Mercy of the Most High, I shall not miscarry; and however my Days are shorten'd by this unexpected Doom, and shall be brought untimely to the Grave, I cannot go without my Prayers for a Blessing upon all the People of this Land, and cannot but bless them all in the Name of God, and beseech God to bless them in all their Ways, and his Blessing be upon them.

After this, he joyned in publick Prayer with Dr. *Wild* and Dr. *Warmestry*, he all the while lying flat upon his Breast.

Then he address'd himself to private Prayer, wherein he continued a certain time.

After this he prepar'd himself for the Block, and with a black Ribbon bound over his Eyes, lying with his Breast over the Block, he prayed again for a short while; then laid his Neck upon the Block, and after some short and private Ejaculations, the Executioner (*having notice that he was ready*) at one Blow sever'd his Head from his Body; which was put into a Coffin, and convey'd away by his Friends.



LVI. *The Trials of Twenty Nine Regicides, at the Old Baily for High-Treason, which began the 9th of October, 1660.* 12 Car. II.



AFTER the Restoration of King Charles the Second, several Persons being Apprehended for the Murder of his Father, the Judges and Counsel for the King Assembled at *Serjeants-Inn* in *Fleet-Street*, viz.

Lord Chief Baron *Bridgman*.

Justice *Foster*.

Justice *Hide*.

Justice *Mallet*.

Sir *Geoffry Palmer*, Attorney-General.

Sir *Heneage Finch*, Solicitor-General.

Sir *Edward Turner*, Attorney to the Duke of *York*.

Mr. *Wadham Windham*. And,

Mr. *John Kelyng*.

At which Meeting the following Points were resolved as preparatory to the Trials of the Murderers of the late King.

1. That it was better to try those Traitors at the Sessions at *Newgate* by Commission of *Goal-Delivery*, than only by Special Commission of *Oyer and Terminer*, because then they might be proceeded against more speedily, and Arraigned and Tried immediately, by the Commission of *Goal-Delivery*, and Cases may be immediately returned at the *Goal-Delivery*. And

accordingly Writs were ordered to be made and sent to the Lieutenant of the *Tower*, in whose Custody the Prisoners then were, to deliver them to the Sheriffs of *London*, and Writs to the Sheriffs of *London* to receive them, that they might be in *Newgate*, which was done accordingly. And because by an Act of Parliament or Convention which sat at the King's coming in, *English* Proceedings were continued, until *Michaelmas* now close at hand, but not yet come; therefore those Writs to the Lieutenant of the *Tower* and Sheriff of *London*, were ordered to be *English*.

2. It was agreed that all the Prisoners should be Arraigned the first Day, before any of them were brought to Trial; and the next Day to proceed to Trial with one or more of them together, as should be thought fit upon the Place.

3. It was resolved that any of the King's Counsel might privately manage the Evidence to the Grand Inquest, in order to the finding of the Bill of Indictment, and agreed it should be done privately; it being usual in all Cases, that the Prosecutors upon Indictments are admitted to manage the Evidence for finding the Bill. And the King's Counsel are the only Prosecutors in the King's Case; for he cannot Prosecute in Person.

4. It

4. It was resolved that the Indictments should be for Compassing the Death of the late King, (the very Compassing and Imagining of the King's Death, being the Treason within the Statute 25 *Ed. 3.*) and then that we might lay as many Overt-Acts as we would, to prove the Compassing of his Death. But it was agreed, that the actual Murder of the King should be precisely laid in the Indictment, with the special Circumstances as it was done; and should be made use of as one of the Overt-Acts, to prove the Compassing of his Death.

5. It was resolved that if any one Overt-Act, tending to the Compassing the King's Death, be laid in the Indictment, That then any other Act which tends to the Compassing of the King's Death may be given in Evidence, together with that which is laid in the Indictment.

6. It was resolved that there need not be two Witnesses to prove every Overt-Act, tending to the Compassing of the King's Death. But one Witness to prove one Overt-Act tending to the Compassing of the King's Death, and another Witness to prove another Act tending to the same End, are sufficient; for Compassing the King's Death, is Treason. And then if two several Witnesses prove two several Acts, tending to the Compassing the King's Death; the Treason is proved by two Witnesses, as the Law in Case of Treason requireth.

7. It was resolved that if several Persons be Indicted together in one Indictment for one Crime, in case some of them be found guilty by one Jury, and afterwards some of the same Jury be returned for Trial of others in the same Indictment; It is no Challenge for those Prisoners to say, that those Jurors have already given their Verdict, and found others guilty who are Indicted in the same Indictment for the same Offence; for though they are all Indicted in the same Indictment for the same Offence, yet in the Law it is a several Indictment against every one of them, and the Crime is several, and one may be guilty and not another; and the Jury are to give their Verdict upon particular Evidence, against every several Person, and therefore the finding one guilty, is no argument or presumption that those Jurors will find another guilty.

8. It was resolved that if several Prisoners be put upon one Jury, and they challenge peremptorily, and sever in their Challenges, that then he who is challenged by one, is to be drawn against all, because the Pannel being joint, one Juror cannot be drawn against one and serve for another. But in such case it was agreed the Pannel might be severed, and that the same Jury might be returned betwixt the King and every one of the Prisoners, and then they are to be Tried severally, and there the Challenge of one Prisoner, is no Challenge to disable the Juror so challenged against another Prisoner. And the Case of Dr. *Ellis's* Servant, *Plow. Com. 100, 101.* was agreed to be good Law, as to the severing of the Pannels in that Case; and accordingly, afterwards upon the Trial of *Harrison* and others, who challenged peremptorily, and severed in their Challenges particular Jurors, the Pannels were severed.

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9. It was resolved that when the Prisoners come to the Bar to be Tried, their Irons ought to be taken off, so that they be not in any Torture while they make their Defence, be their Crime never so great. And accordingly upon the Arraignment and Trial of *Hewlet* and others, who were brought in Irons, the Court commanded their Irons to be taken off.

10. It being agreed, that the Murder of the King should be specially found, with the Circumstances, in the Indictment; and it being not known who did that Villainous Act; it was resolved, that it should be laid that *Quidam ignotus*, with a Visor on his Face, did the Act; and that was well enough; and the other Persons be laid to be present, Aiding and Assisting thereunto.

11. The Compassing the King's Death, being agreed to be laid in the Indictment, to be 29 *Jan. 24 Car. I.* and the Murder on the 30th of the same *Jan.* It was questioned in which King's Reign the 30th *Jan.* should be laid to be, whether in the Reign of *King Charles the First*, or *King Charles the Second*; and the Question grew, because there is no Fraction of the Day; and all the Acts which tended to the King's Murder, until his Head was actually severed from his Body, were in the time of his own Reign, and after his Death in the Reign of *King Charles the Second*. And though it was agreed by all, except Justice *Mallet*, that one and the same Day might in several Respects, and as to several Acts, be said to be intirely in two Kings Reigns, so that in some respects the whole Day may be ascribed to one, and in other respects the whole Day ascribed to the other, according to the Truth in the Matters of Fact which were acted, either in the Life or after the Death of the first King; yet because Justice *Mallet* was earnest that the whole Day was to be ascribed to *King Charles the Second*, therefore it was agreed, that in that place, no Year of any King should be named, but that the Compassing of the King's Death should be laid on the 29th *Jan. 24 Car. I.* And the other Acts tending to his Murder, and the Murder it self, laid to be *Tricesimo Mensis ejusdem Januarii*, without naming any Year of any King, which was agreed to be certain enough.

12. It being agreed, that the Indictment should be for Compassing the King's Death, and one of the Overt-Acts to be the actual Murder of the King: It was resolved the Indictment should conclude *contra pacem nuper Domini Regis Coron' & Dignitat' suas, Necnon contra pacem Domini Regis nunc Coron' & Dignitat' suas.*

13. The Question was put, whether the Recorder of *London* should give the Charge to the Grand Inquest at *Hick's Hall*, where the Indictment was to be found, the Fact being in *Middlesex*; and also whether Judgment at the Sessions House, where the Prisoners were to be Tried, should be given by the Recorder; or whether the Charge and the Indictment should be given by the Chief Judge. And it was agreed that both should be given by the Chief Judge.

The Proceedings began at Hick's Hall, in the County of Middlesex, the 9th of October, 1660.

THE Court being sate, the Commission of Oyer and Terminer, under the Great Seal of England, was first Read. It was directed to the Lords and others hereafter named, viz.

Sir Thomas Aleyne, Knt. and Baronet, Lord Mayor of the City of London.

The Lord Chancellor of England.

The Earl of Southampton, Lord Treasurer of England.

The Duke of Somerset.

The Duke of Albermarle.

The Marquess of Ormond, Steward of His Majesty's Household.

The Earl of Lindsey, Great Chamberlain of England.

The Earl of Manchester, Chamberlain of His Majesty's Household.

The Earl of Dorset.

The Earl of Berkshire.

The Earl of Sandwich.

Viscount Say and Seal.

The Lord Roberts.

The Lord Finch.

Denzill Hollis, Esquire.

Sir Frederick Cornwallis, Knight and Baronet, Treasurer of His Majesty's Household.

Sir Charles Barkly, Knt. Comptroller of His Majesty's Household.

Mr. Secretary Nichols.

Mr. Secretary Morris.

Sir Anthony Ashley Cooper.

Arthur Annesly, Esq;

The Lord Chief Baron.

Mr. Justice Foster.

Mr. Justice Mallet.

Mr. Justice Hide.

Mr. Baron Atkins.

Mr. Justice Twisden.

Mr. Justice Tyrrel.

Mr. Baron Turner.

Sir Harbottle Grimston, Knight and Baronet.

Sir William Wild, Knt. and Baronet, Recorder of London.

Mr. Serjeant Brown.

Mr. Serjeant Hale.

John Howel, Esq;

Sir Geoffry Palmer, His Majesty's Attorney-General.

Sir Heneage Finch, His Majesty's Solicitor-General.

Sir Edward Turner, Attorney to His Highness the Duke of York.

Wadham Windham, Esq;

Edward Shelton, Esq; Clerk of the Crown.

The Grand Jury Sworn were,

Sir William Darcy, Baronet, Foreman.

Sir Robert Bolles, Bart.

Sir Edward Ford, Knt.

Sir Thomas Prestwick.

Sir William Coney, Knt.

Sir Charles Sidley, Bart.

Sir Lewis Kirk, Knight.

Sir Henry Littleton, Bart.

Sir Ralph Bovey, Bart.

Edward Chard, Esquire.

Robert Giddon, Esquire.

John Fotherly, Esquire.

Charles Gibbons, Esq;

Thomas Gere, Esquire.

Richard Cox, Esquire.

Robert Bladwell, Esq;

Henry Mustian, Esquire.

John Markham, Esq;

Edward Buckley, Gent.

Francis Bouchier, Gent.

Edward Lole.

Hart, Crier.

After Proclamation for Silence was made, it pleased Sir Orlando Bridgman, Lord Chief Baron of His Majesty's High Court of Exchequer, to speak to the Jury as followeth.

The Lord Chief Baron's Speech.

Gentlemen,

YOU are the Grand Inquest for the Body of this County of Middlesex: You may per-

ceive by this Commission that hath been read, that we are authoriz'd by the King's Majesty to hear and determine all Treasons, Felonies, and other Offences, within this County: But because this Commission is upon a special Occasion, the Execrable Murther of the Blessed King, that is now a Saint in Heaven, King Charles the First, we shall not trouble you with the Heads of a long Charge. The Ground of this Commission was, and is, from the Act of Oblivion and Indemnity. You shall find in that Act there is an Exception of several Persons, who (for their Execrable Treasons, in Sentencing to Death, and Signing the Warrant for the taking away the Life of our said Sovereign) are left to be proceeded against as Traitors, according to the Laws of England; and are out of that Act wholly excepted and fore-priz'd.

Gentlemen, You see these Persons are to be proceeded with according to the Laws of the Land; and I shall speak nothing to you but what are the Words of the Laws. By the Statute of the Twenty fifth of Edward the Third, (a Statute or Declaration of Treason) it is made High-Treason to compass and imagine the Death of the King. It was the Ancient Laws of the Nation. In no Case else Imagination, or Compassing, without an Actual Effect of it, was Punishable by our Law. *Nihil efficit Conatus nisi sequatur Effectus*; that was the Old Rule of Law: But in the Case of the King, his Life was so Precious, that the Intent was Treason by the Common Law; and declar'd Treason by this Statute. The Reason of it is this; In the Case of the Death of the King, the Head of the Commonwealth that's cut off; and what a Trunk, and inanimate Lump, the Body is when the Head is gone, you all know. For the Life of a single Man, there's the Life of the Offender; there's some Recompence, Life for Life: But for the Death of the King what Recompence can be made? This Compassing and Imagining the cutting off the Head of the King is known by some Overt-Act. Treason it is in the wicked Imagination, though not Treason apparent; but when this Poison swells out of the Heart, and breaks forth into Action, in that Case it's High-Treason.

Then what is an Overt-Act of an Imagination or Compassing of the King's Death? Truly it is any thing which shews what the Imagination is. Words, in many Cases, are Evidences of this Imagination; they are Evidences of the Heart. Secondly, As Words; so if a Man, if Two Men do conspire to levy War against the King, (and, by the way, what I say of the King, is as well of the King Dead, as Living; for, if a Treason be committed in the Life of One King, it is Treason, and Punishable in the Time of the Successor,) then, I say, in case not only of Words, but if they conspire to levy War against the King, there's another Branch of this Statute, the Levying of War is Treason. But, if Men shall go and consult together, and this is to kill the King, to put him to Death, this Consultation is clearly an Overt-Act to prove this Imagination, or Compassing of the King's Death.

But what will you say then, if Men do not only go about to conspire and consult, but take upon them to judge, condemn, nay put to Death, the King? Certainly, this is so much beyond the Imagination and Compassing, as 'tis not only laying

laying the Cockatrice's Egg, but brooding upon it till it hath brought forth a Serpent. I must deliver to you for Plain and True Law, That no Authority, no single Person, no Community of Persons, not the People Collectively, or Representatively, have any coercive Power over the King of England. And I do not speak mine own Sense, but the Words of the Laws unto you. It was the Treason of the Spencers in King Edward the Second's Time, in Calvin's Case, Second Report. The Spencers had an Opinion, that all Homage and Allegiance was due to the King, by Reason of the Crown, as they call'd it. And thereupon (say the Books and Records) they drew out this execrable Inference, (among others,) That if the King did not demean himself according to Right, because he could not be Reform'd by Law, he might *per aspertee*, that is, by sharp Imprisonment; but this was adjudg'd horrid Treason by Two Acts of Parliament.

Gentlemen, Let me tell you what our Law-Books say; for there's the Ground, out of which (and the Statutes together) we must draw all our Conclusions for Matter of Government.

How do they style the King? They call him, *The Lieutenant of God*, and many other Expressions in the Book of *Primo Henrici Septimi*; says that Book there, *the King is immediate from God, and hath no Superior*. The Statutes say, *That the Crown of England is immediately subject to God, and to no other Power*. The King (says our Books) *He is not only Caput Populi, the Head of the People; but Caput Reipublicæ, the Head of the Commonwealth, The Three Estates*. And truly thus our Statutes speak very fully. Common Experience tells you, when we speak of the King, and so the Statutes of Edward the Third, we call the King, *Our Sovereign Lord the King: Sovereign*, that is, *Supreme*. And when the Lords and Commons in Parliament apply themselves to the King, they use this Expression, *Your Lords and Commons, your faithful Subjects, humbly beseech*. I do not speak any Words of my own, but the Words of the Laws. Look upon the Statute, *primo Jacobi*, there's a Recognition, that the Crown of England was lawfully descended on the King and his Progeny.

[The Statute itself was read, to which it is desired the Reader will be referr'd.]

These are the Words of the Act. And this is not the First Precedent; for you shall find it *primo Eliz. cap. 3*. They do acknowledge the Imperial Crown lawfully descended on the Queen, the same Recognition with this. Before that (because we shall shew you we go upon Grounds of Law in what we say) *Stat. 24 Hen. 8. cap. 12*. *Whereas by sundry Old Authentick Histories and Chronicles it is manifestly declared and expressed, that this Realm of England is an Empire, and so hath been accepted in the World, govern'd by One Supreme Head and King, having the Dignity and Royal Estate of the Imperial Crown of the same, &c.*

25 Hen. 8. c. 21. There it is the People speaking of themselves, *That they do recognize no Superior under God, but only the King's Grace*.

Gentlemen, You see, if the King be immediate under God, he derives his Authority from no body else; if the King have an Imperial Power, if the King be Head of the Commonwealth, Head of the Body Politick, if the Body Politick owe him Obedience, truly I think it is an undenied Consequence, he must needs be Superior over them.

Gentlemen, This is no new Thing to talk of an Emperor, or an Imperial Crown. Do not mistake me all this while: It is one Thing to have an Imperial Crown, and another Thing to govern Absolutely.

Gentlemen, The Imperial Crown is a Word that is significative; you shall find in all Statutes *primo Eliz.* and the First of King James, nay, even in the Act of Judicial Proceedings of this Parliament it is called an Imperial Crown. They that take the Oaths of Allegiance and Supremacy, they swear, that they will, to their Power, assist and defend all Jurisdictions, Priviledges, Preeminences, and Authorities, granted or belonging to the King, his Heirs, and Successors, or annex'd to the Imperial Crown of this Realm. What is an Imperial Crown? It is that, which, as to the Coercive Part, is subject to no Man under God. The King of Poland has a Crown; but what is it? At his Coronation it is conditioned with the People, That if he shall not govern them according to such Rules they shall be freed from their Homage and Allegiance; but the Crown of England is, and always was, an Imperial Crown, and so sworn.

Gentlemen, As I told you, even now, the Imperial Crown is a Word significative; that Crown, which, as to the Coercive Part, is not subject to any Human Tribunal, or Judicature, whatsoever. And truly that this is such an Imperial Crown, though I have cited Authorities Ancient enough, you may find them much more Ancient. I remember in the Story of William Rufus (you shall find it in Mathew Paris and Eadmerus) some Question was about Investiture of Bishops, and the like, the King writes his Letter, *That, &c.*

God forbid I should intend any Absolute Government by this. It is one thing to have an Absolute Monarchy, another Thing to have that Government Absolutely without Laws, as to any Coercive Power over the Person of the King; for as to Things or Actions, they will fall under another Consideration, as I will tell you by and by.

Gentlemen, Since this is so, consider the Oath of Supremacy, which most Men have taken, or should take. All Men that enter into the Parliament House, they are expressly enjoined by Statute to take the Oath of Supremacy. What says that Oath? We swear that *the King is the only Supreme Governour within this Realm and Dominions*. He is *Supreme*, and the *only Supreme*; and truly if he be *Supreme*, there is neither *Major* nor *Superior*. I urge this the more, lest any Person, by any Misconstruction or Inference which they might make from something that hath been acted by the Higher Powers, they might draw some dangerous Inferences or Consequences to colour or shadow over those Murtherous and Traiterous Acts, which afterwards they committed. They had no Authority: But as I told you, tho' I do set forth this, and declare this to you, to let you know that the King was immediately subject to God, and so was not Punishable by any Person: yet let me tell you there is that excellent Temperament in our Laws, that for all this the King cannot rule but by his Laws. It preserves the King, and his Person, and the Peoples Rights.

There are Three Things touching which the Law is Conversant, *Personæ, Res, & Actiones*; Persons, Things, and Actions. For the Person of

of the King, he is the Supreme Head, he is not Punishable by any Coercive Power; the Laws provide for that. *The King can do no Wrong*; it is a Rule of Law, it is in our *Law Books* very frequent; 22d of *Edward the Fourth*, Lord Coke, and many others. If he can do no Wrong, he cannot be punish'd for any Wrong. The King, he hath the Infirmities and Weakness of a Man; but he cannot do any Injury, at least not considerable, in Person; he must do it by Ministers, Agents, Instruments. Now the Law, though it provide for the King, yet if any of his Ministers do Wrong, though by his Command, they are Punishable. The King cannot arrest a Man, as he cannot be arrested himself; but if he arrest me by another Man, I have Remedy against this Man, though not against the King; and so he cannot take away my Estate. This as to the Person of the King: He is not to be touched, *Touch not mine Anointed*.

I come to *Things*. If the King claim a Right, the King must sue according to his Laws; the King is subject to the Laws in that Case, his Possessions shall be tried by Juries. If he will Try a Man for his Father's Death, you see he will try them by the Laws. The Law is the Rule and Square of his Actions, and by which he himself is judg'd.

Then for *Actions*, that is, such *Actions* whereby Rights and Titles are prosecuted or recovered; the King cannot judge in Person betwixt Man and Man, he does it by his Judges, and upon Oath; and so in all Cases whatsoever, if the King will have his Right, it must be brought before his Judges. Though this is an *Absolute Monarchy*, yet this is so far from infringing the Peoples Rights, that the People, as to their Properties, Liberties, and Lives, have as great a Privilege as the King. It is not the sharing of Government that is for the Liberty and Benefit of the People; but it is how they may have their Lives, and Liberties, and Estates, safely secured under Government. And you know, when the Fatness of the *Olive* was laid aside, and we were governed by *Brambles*, these Brambles they did not only tear the *Skin*, but tore the *Flesh* to the very Bone.

Gentlemen, I have done in this Particular, to let you see that the Supreme Power being in the King, the King is immediately under God, owing his Power to none but God. It is true (Blessed be God) we have as great Liberties as any People have in *Christendom*, in the World; but let us own them where they are due; we have them by the Concessions of our Princes. Our Princes have granted them; and the King, now; he in them hath granted them likewise.

Gentlemen, I have been a little too long in this, and yet I cannot say it is too long, because it may clear Misunderstanding, so many Poisonous Opinions having gone Abroad. To come a little nearer: If we consider; suppose there were the Highest Authority; but when we shall consider this horrid Murther (truly I cannot almost speak of it, but — *Vox faucibus hæret.*) When we shall consider, that a few Members of the *House of Commons*, those that had taken the Oath of *Supremacy*, and those that had taken the Oath of *Allegiance*, that was to defend the King, and his Heirs, against all Conspiracies and Attempts whatsoever, against his and their Person, their Crowns and Dignities; not only

against the *Pope's* Sentence, as some would pretend, but, as otherwise, against all Attempts and Conspiracies, not only against his Person, Crown, and Royal Dignity, nor *Pope's* Sentence, not only in Order to the Profession of Religion; but Absolutely or otherwise, that is, whatsoever Attempts, by any Power, Authority, or Pretence whatsoever: I say, when a few Members of the *House of Commons*, not an Eighth Part of them, having taken these Oaths, shall assume upon themselves an Authority; an Authority, what to do? Shall assume to themselves an Authority to make Laws, which was never heard before; Authority to make Laws; What Laws? A Law for an *High Court of Justice*, a Law for Lives, to sentence Mens Lives; and whose Life? The Life of their Sovereign: Upon such a King, who, as to them, had not only redressed long before, at the beginning of the *Parliament*, all Grievances that were, and were imaginable, taken away the *Star-Chamber*, *High Commission-Court*, and about *Shipping*; such a King, and after such Concessions that he had made in the Isle of *Wight*; when he had granted so much, that was more than the People would have desired: When these few *Commons*, not only without, but excluding the rest of the *Commons*; not only without, and excluding the rest, but rejecting the *Lords* too, that then sat: When these few *Commons* shall take upon them this Authority, and by colour of this, their King, Sovereign Liege Lord, shall be sentenc'd, put to Death; and that put to Death, even as their King, and sentenc'd as their King; put to Death as their King, and this before his own Door, even before that Place where he used in *Royal Majesty* to hear Embassadors, to have his Honourable Entertainments; that this King shall be thus put to Death at Noon-day, it is such an Aggravation of Villany, that truly I cannot tell what to say. No Story, that ever was, I do not think any *Romance*, any Fabulous Tragedy, can produce the like. Gentlemen, If any Person shall now come, and shroud himself under this pretended Authority, or such a pretended Authority, you must know, that this is so far from an Excuse, that it is an Height of Aggravation. The Court of *Common-Pleas* is the Common Shop for Justice; in that Court an Appeal is brought for Murther, which ought to have been in the *King's Bench*, the Court gives Judgment, the Party is condemned, and executed: In this Case it is Murther in them that executed, because they had no Lawful Authority. I speak this to you, to shew you, that no Man can shroud himself by Colour of any such false or pretended Authority. I have but One Thing more to add to you upon this Head, and that is (which I should have said at first) if Two or more do compass or imagine the King's Death; if some of them go on so far as to Consultation, if others of them go further, they sentence, and execute, put to death: In this Case they are all Guilty; the first Consultation was Treason. I have no more to add, but one Particular, a few Words.

As you will have Bills presented against those for Compassing, Imagining, Adjudging the King, so possibly you may have Bills presented against some of those for Levying War against the King: Levying of War, which is another Branch of the *Statute* of the 25th of *Edward the Third*.

Third. It was but Declarative of the Common Law; it was no new Law. By that Law it was Treason to Levy War against the King. But to Levy War against the King's Authority you must know is Treason too. If Men will take up Arms upon any Publick Pretence; if it be to expulse Aliens; if but to pull out Privy-Counsellors; if it be but against any Particular Laws, to reform Religion, to pull down Enclosures: In all these Cases if Persons have assembled themselves in a Warlike Manner to do any of these Acts, this is Treason, and within that Branch of Levying War against the King. This was adjudg'd in the late King's Cr. Car. 583. Time in *Bensted's* Case, Queen Elizabeth's, Henry the Eighth's, former Times, King James's Time; much more, if Men will go not only to Levy War against the King, but against the Laws, all the Laws, subvert all the Laws, to set up New Laws, Models of their own. If any of these Cases come to be presented to you, you know what the Laws are. To conclude, you are now to enquire of Blood, of Royal Blood, of Sacred Blood, Blood like that of the Saints under the Altar, crying *Quousque Domine? How long, Lord, &c.* This Blood cries for Vengeance, and it will not be appeas'd without a Bloody Sacrifice.

Remember but this, and I have done: I shall not press you upon your Oaths; you are Persons of Honour; you all know the Obligation of an Oath. This I will say, that he that conceals or favours the Guilt of Blood, takes it upon himself, wilfully, knowingly, takes it upon himself; and we know that when the Jews said, *Let his Blood be on us and our Seed*, it continued unto them and their Posterity to this Day.
God save the King. Amen, Amen.

His Lordship's Speech being ended, there was presented to the Grand Jury a Bill of Indictment of High-Treason against the following Persons.

- | | |
|------------------------|------------------------|
| 1 Sir Hardress Waller. | 17 Gilbert Millington. |
| 2 George Fleetwood. | 18 Robert Titchburne. |
| 3 Thomas Harrison. | 19 Owen Roe. |
| 4 Adrian Scroop. | 20 Robert Lilburn. |
| 5 John Carew. | 21 Henry Smith. |
| 6 Thomas Scot. | 22 John Downes. |
| 7 Gregory Clement. | 23 Vincent Potter. |
| 8 John Jones. | 24 Augustine Garland. |
| 9 John Cook. | 25 Simon Meyne. |
| 10 Hugh Peters. | 26 James Temple. |
| 11 Daniel Axtell. | 27 Peter Temple. |
| 12 Francis Hacker. | 28 Thomas Waite. |
| 13 William Hulet. * | 29 Wil. Heveningham. |
| 14 Edmund Harvey. | 30 John Barksted. |
| 15 Isaac Pennington. | 31 John Okey. } † |
| 16 Henry Martin. | 32 Miles Corbet. } |

After which Thomas Lee of the Middle Temple, London, Gentleman, was call'd to give in the Names of his Witnesses. The Names of the Witnesses then and there Sworn follow.

William Clark, Esq;	Hercules Huncks.
James Nutley, Esq;	Dr. William King.
Mr. George Masterfon, Clerk.	Martin Foster.
George Farrington.	John Baker.

* His Indictment was not found till the 15th.

† These three were fled, but being Out-lawed, were afterwards taken in Holland, and tho' they pleaded they were not the same Persons who were Out-lawed, yet they were immediately tried (*Pasche 14. Car. 2.*) and being found the same Persons, received Sentence of Death, and were Executed accordingly. *Kelyng. 13. 2 Sid. 72. 1 Lev. 61. 1 Keb. 244.*

Stephen Kirk.
Richard Nunnely.
John Powel.
John Throckmorton.
John Blackwel.
Ralph Hardwick.
Thomas Walkley, Gent.
Holland Simpson.
Benjamin Francis.
Col. Matthew Thomson.
Mr. Lee.
Robert Ewer.
John King.
Griffith Bodurdo, Esq;
Samuel Boardman.
Robert Carr, Esq;
Richard Young.

Sir Purbeck Temple.
John Rushworth, Esq;
John Gerrard.
John Hearn.
Mr. Coitmore.
Mr. Cunningham.
Mr. Clench.
William Jessop, Esq;
Edward Austin.
Darnel, Esq;
Mr. Brown.
Thomas Tongue.
John Bowler.
Mr. Sharp.
Edward Folley.
Mr. Gouge.
Anthony Mildmay, Esq;

The Grand Jury return'd the Indictment *Billa Vera.* Court adjourn'd to the Old-Baily 10th of October.

The 10th of October, 1660.

SIR John Robinson, Knight, Lieutenant of his Majesty's Tower of London, according to his Warrant receiv'd, delivered to Mr. Sheriff the Prisoners hereafter named, who were (in several Coaches) with a strong Guard of Horse and Foot convey'd to Newgate, and about Nine of the Clock in the Morning delivered to the Keepers of that Prison, and thence brought to the Sessions House in the Old-Baily, London, where the Commissioners of Oyer and Terminer were in Court Assembled, and where their Indictment was publickly read by Edward Shelton, Esq; Clerk of the Crown.

Sessions-house in the Old-Baily, October 10, 1660.

THE Court being Assembled, and Silence Commanded, the Commission of Oyer and Terminer was again read. After which Sir Hardress Waller, Colonel Thomas Harrison, and Mr. William Heveningham, were brought to the Bar and commanded to hold up their Hands; which Sir Hardress Waller and Mr. Heveningham did; but Harrison being commanded to hold up his Hand, answered, *I am here, and said,*
My Lord, if you please I will speak a Word—
Court. Hold up your Hand, and you shall be heard in due Time. Mr. Harrison, the Course is that you must hold up your Hand first. And then he held up his Hand.

The Indictment was read, purporting, That he, together with others, not having the Fear of God before his Eyes, and being instigated by the Devil, did maliciously, treasonably, and feloniously, contrary to his due Allegiance, and bounden Duty, sit upon and condemn our late Sovereign Lord, King Charles the First, of Ever-Blessed Memory; and also did upon the Thirtieth of January, 1648, Sign and Seal a Warrant for the Execution of his late Sacred and Serene Majesty, of Blessed Memory. Where also, &c.

Clerk of the Crown. How sayest thou Sir Hardress Waller? Art thou Guilty of that Treason whereof thou standest Indicted, and for which thou hast now been Arraigned, or Not Guilty?

Sir Hardress Waller. *My Lords, I dare not say, Not Guilty; but since that in a Business of this Nature we have no Council or Advice, and being not able to speak to Matter of Law—*

Lord Chief Baron. I am loth to interrupt you; but this is the Course: You have heard the *Indictment* read, and the Course is, you must plead *Guilty*, or *Not Guilty*. There is no *Medium*, *Guilty*, or *Not Guilty*. It is that which is the Law, and the Case of all Men. Are you *Guilty*? Or *Not Guilty*?

Sir Hard. Waller. *I may confess myself Guilty of some Particulars in that Indictment, but not of all; for so, instead of discharging, I shall wound my Conscience.*

Clerk. Are you *Guilty*, or *Not Guilty*?

Sir Hard. Waller. *If I might have that Liberty to—*

Court. You shall have that Liberty that any Subject of the Nation can have or can challenge. No Man, standing at the Bar in that Condition you are, must make any other Answer to the *Indictment* than *Guilty*, or *Not Guilty*. It's the Common Case of all Men. Your Confession must be Plain and Direct, either *Guilty*, or *Not Guilty*.

Sir Hard. Waller. *My Lord, I desire some Time to consider of it, for it is a great Surprizal.*

Court. You have had Time enough to consider of it; you must follow the Directions of the Court, *Guilty*, or *Not Guilty*? You must not thus discourse of being surprized; for these Discourses are contrary to all *Proceedings* of this Nature.

Clerk. How say you, Sir H. Waller? Are you *Guilty*, or *Not Guilty*?

Sir Hard. Waller. *I dare not say, Not Guilty.*

Clerk. Will you confess then?

Sir Hard. Waller. *I would be glad to be understood—*

Court. Your Plea must be direct, *Guilty*, or *Not Guilty*.

Sir Hard. Waller. *Shall I be heard, my Lord?*

Court. Yes, upon your Trial. There is but Two Ways, Plead *Not Guilty*, or confess it. Sir Hardress Waller, we would not have you to be deceived. If you confess, and say, you are *Guilty*, there is nothing then but Judgment: If you say *Not Guilty*, then you shall be heard with your Evidence. Consider with your self. Plead *Not Guilty*, or confess, and say you are *Guilty*.

Sir Hard. Waller. *My Lord, it puts me upon a great Contest with myself. I shall be very free to open my Heart —*

Court. Sir, you must plead *Guilty*, or *Not Guilty*.

Sir Hard. Waller. *My Lord, my Condition differs from others, I am a Stranger; I have been Thirty Years transplanted into Ireland, which has made me unacquainted with the Affairs of the Law here.*

Court. You must keep to the Course of the Law, either *Guilty*, or *Not Guilty*. There is but one of these two Pleas to be made.

Sir Hard. Waller. *I dare not say Not Guilty.*

Court. There are but these Three Things to be considered. Either you must say *Guilty*, which is *Confession*, and then there remains no more but Judgment; or *Not Guilty*, and then You shall be heard; or Judgment will pass for your standing Mute, which is all one as if you had confessed.

Sir Hard. Waller. *Inasmuch as I have said I dare not say Not Guilty, I must say Guilty.*

Clerk. You say you are *Guilty*? You confess the *Indictment*.

Sir Hardress Waller. * Yes.

Clerk. Thomas Harrison, How sayest thou? Art thou *Guilty* of the Treason whereof thou standest *Indicted*, and art now Arraigned? Or *Not Guilty*?

Tho. Harrison. *My Lords, have I Liberty to speak?*

Court. No more (at this Time) than *Guilty*, or *Not Guilty*. Mr. Harrison, you have heard the Direction before. We can give you but the same Rule. If you plead *Not Guilty*, you shall be heard at large, if *Guilty*, you know what remains.

Tho. Harrison. *Will you give me Leave to give you my Answer in my own Words?*

Lord Chief Bar. There is no Answer but what the Law directs; it is the same with you as with all others, or as I would desire if I were in your Condition. You must plead *Not Guilty*: Or if you confess *Guilty*, there must be Judgment upon your Confession. The same Rule for one must be for another.

Tho. Harrison. *You express your Rule very fair, as well to me as this Gentleman (pointing at Sir Hardress Waller) but I have something to say to your Lordships, which concerns your Lordships as well as myself.*

Court. You must hold, and plead *Guilty*, or *Not Guilty*. If you go otherwise (as I told you before) it will be as if you pleaded not at all, and then Judgment will pass against you. The Law gives the Words, frames your Answer, it is none else but the Laws, *Guilty*, or *Not Guilty*?

Tho. Harrison. *My Lord, I have been kept close Prisoner near these Three Months, that no body might have Access to me. Do you call me to give you a Legal Answer, not knowing of my Trial till Nine of the Clock last Night, and brought away from the Tower, to this Place, at Six of the Clock this Morning?*

Court. You must give your direct Answer, *Guilty*, or *Not Guilty*. You cannot say it is sudden, or unprovided. You spend Time in vain. You trouble the Court. You must plead *Guilty*, or *Not Guilty*. We must not suffer you to make Discourses here. You must plead either *Guilty*, or *Not Guilty*.

Clerk. Are you *Guilty*, or *Not Guilty*?

Thomas Harrison. *I am speaking. Shall I not speak Two Words?*

Court. If you will not put yourself upon your Trial you must expect that Course that the Law directs.

Tho. Harrison. *May it please your Lordships, I am now —*

Clerk. Are you *Guilty*, or *Not Guilty*?

Tho. Harrison. *I desire to be advised by the Law; this is a Special Case.*

Court. The Law allows nothing now, but to plead *Guilty*, or *Not Guilty*.

Court. You must plead to your *Indictment*. If it be Treason it cannot be justified; if it be justifiable, it is not Treason; therefore plead *Guilty*, or *Not Guilty*.

Tho. Harrison. *Give me Advice in this —*

Clerk. Tho. Harrison, are you *Guilty*, or *Not Guilty*?

* He had at first pleaded *Not Guilty*, but was allow'd by the Court to withdraw his Plea, Kelyng. 11.

Thomas Harrison. *I would willingly render an Account of all my Doings —*

Clerk. Are you Guilty? Or Not Guilty?

Court. You have been acquainted with the Legal Proceedings. You never found in all your Experience that any Prisoner at the Bar, for Felony or Treason, was suffered thus to discourse, or to answer otherwise than Guilty, or Not Guilty.

Clerk. Are you Guilty? Or Not Guilty?

Mr. Sol. Gen. *I do beseech your Lordships he may Plead; peradventure he knows his Case so well that he thinks it as cheap to defie the Court, as submit to it.*

Court. We must enter your standing Mute; that's Judgment.

Clerk. Are you Guilty? Or Not Guilty?

Tho. Harrison. *Will you refuse to give me any Satisfaction?*

Court. Are you Guilty? Or Not Guilty?

Tho. Harrison. *Will you give me your Advice?*

Court. We do give you Advice. The Advice is, there is no other Plea, but Guilty, or Not Guilty. You shall be heard when you have put your self upon your Trial.

Clerk. Are you Guilty? Or Not Guilty?

Tho. Harrison. *You do deny me Council, then I do plead Not Guilty.*

Clerk. You plead Not Guilty. Is this your Plea?

Tho. Harrison. *Yes.*

Clerk. How will you be Tried?

Tho. Harrison. *I will be tried according to the Laws of the Lord.*

Clerk. Whether by God and the Countrey?

Lord Chief Baron. *Now I must tell you, if you do not put your self upon your Countrey you have said nothing.*

Clerk. How will you be Tried?

Tho. Harrison. *It is to put my self upon what you please to put me upon.*

Court. If you understand (you are not every Man, you are versed in Proceedings of Law,) you know you must put yourself upon the Trial of God and your Countrey, if you do not, it is as good as if you had said nothing.

Tho. Harrison. *You have been misinformed of me.*

Court. You have pleaded Not Guilty, that which remains is, that you must be Tried by God and the Countrey, otherwise we must Record your standing Mute.

Clerk. How will you be Tried?

Tho. Harrison. *I will be tried according to the ordinary Course.*

Clerk. Whether by God and the Countrey? You must speak the Words.

Tho. Harrison. *They are vain Words —*

Court. We have given you a great deal of Liberty and Scope, which is not usual. It is the Course, and Proceedings of Law, if you will be Tried you must put yourself upon God and the Countrey.

Clerk. How will you be Tried?

Tho. Harrison. *I do offer my self to be tried in your own Way, by God and my Countrey.*

Clerk. God send you a good Deliverance.

Clerk. William Heveningham, hold up your Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and art now Arraigned? Or Not Guilty?

Will. Heveningham, *Not Guilty.*

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Clerk. How will you be tried?

Will. Heveningham. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Sir Hard. Waller then presented his Petition to the Court, directed to the King's Majesty and the Parliament, which was received, but not at this Court read, and then the Three Persons aforesaid were dismissed.

Clerk. Bring to the Bar Isaac Pennington, Esq; Henry Martin, Esq; Gilbert Millington, Gentleman, Robert Tickbourn, Esq; Owen Roe, Esq; and Robert Lilburn, Gentleman; who were called, and appeared at the Bar, and being commanded severally, held up their Hands.

The Indictment was read again as to the former Persons.

Clerk. Isaac Pennington, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and art now Arraigned? Or Not Guilty?

Isaac Pennington. *Not Guilty, my Lord.*

Clerk. How will you be tried?

Isaac Pennington. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Clerk. Henry Marten, How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and art now Arraigned? Or Not Guilty?

Hen. Marten. *I desire the Benefit of the Act of Oblivion. —*

Clerk. Are you Guilty? Or Not Guilty?

Court. You are to understand the Law is this, the same to you and every one; you are to plead Guilty, or Not Guilty. If you will demand the Benefit of the Act of Oblivion, it is a Confession of being Guilty.

Hen. Marten. *I humbly conceive the Act of Indemnity —*

Court. You must plead Guilty, or Not Guilty.

Hen. Marten. *If I plead I lose the Benefit of that Act.*

Court. You are totally excepted out of the Act.

Hen. Marten. *If it were so I would plead. My Name is not in that Act.*

Court. Henry Martin is there.

Mr. Solicitor-Gen. *Surely he hath been kept close Prisoner indeed, if he hath not seen the Act of Indemnity. Shew it him.*

Mr. Shelton opening the Act.

Court. How is it written?

Clerk. It is Henry Martin.

And then the Act was shewed to the said Mr. Marten.

Hen. Marten. Henry Martin. *My Name is not so, * it is Harry Marten.*

Court. The Difference of the Sound is very little. You are known by that Name of Martin.

Hen. Marten. *I humbly conceive all Penal Statutes ought to be understood literally.*

Clerk. Are you Guilty? Or Not Guilty?

Hen. Marten. *I am not Henry Martin.*

Clerk. Are you Guilty? Or Not Guilty?

Court. Be advised; the Effect of this Plea will be Judgment.

Here Mr. Solicitor General cited somewhat Parallel to this in a Case formerly of Baxter,

R r

where

where the Name was *Bagster*, with an S. and adjudged all one, being of the same Sound.

Clerk. Are you *Guilty*? Or *Not Guilty*?

Hen. Marten. *My Lord, I desire Council; there will arise Matter of Law, as well as Fact.*

Court. You are *Indicted* for *Treason*, for a *Malicious, Traitorous Compassing and Imagining* the King's Death; if you have any Thing of *Justification*, plead *Not Guilty*, and you shall be heard; for if it be *Justifiable*, it is not *Treason*. The *Rule* is, either you must plead *Guilty*, and so confess, or *Not Guilty*, and put your self upon your Trial; there is no *Medium*.

Hen. Marten. *May I give any thing in Evidence before Verdict?*

Court. Yes, upon your Trial you may give any Thing in *Evidence* that the Law warrants to be *lawful Evidence*.

Clerk. Are you *Guilty*? Or *Not Guilty*?

Court. Understand one Thing, because I would not have you mistaken; you cannot give in *Evidence* the *Misnomer*, but any thing to the Matter of *Fact*.

Hen. Marten. *I submit, and plead Not Guilty.*

Clerk. How will you be Tried?

Hen Marten. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Clerk. *Gilbert Millington*, Hold up your Hand. How sayest thou? Art thou *Guilty* of the *Treason* whereof thou standest *Indicted*, and art now *Arraigned*? Or *Not Guilty*?

Gilb. Millington. *My Lord, I am an Ancient Man, and Deaf; I humbly crave your Lordship's Pardon to hear me a few Words; I will promise it shall be pertinent enough.*

Mr. Sol. Gen. *Impertinent enough he means.*

Court. You must plead either *Guilty*, and so confess it; or *Not Guilty*, and then you shall be heard any Thing for your *Justification*.

Clerk. Are you *Guilty*? Or *Not Guilty*?

Gilb. Millington. *I desire I may —*

Court. There is nothing you can say but *Guilty*, or *Not Guilty*; all other Discourses turn upon your self.

Clerk. Are you *Guilty*? Or *Not Guilty*?

Gilb. Millington. *You might enlighten me in some Scruples. Does my Pause trouble you much? I should not be long.*

Court. Your particular Case cannot differ from others.

Clerk. Are you *Guilty*? Or *Not Guilty*?

Gilb. Millington. *There are some Things in the Indictment that I can say Not Guilty to, there are others that I must deal ingenuously, and confess them.*

Clerk. Are you *Guilty* in Manner and Form as you are *Indicted*? Or *Not Guilty*?

Gilb. Millington. *Not Guilty.*

Clerk. How will you be Tried?

Gilb. Millington. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Clerk. *Robert Tichbourn*, Hold up your Hand. How sayest thou? Art thou *Guilty* of the *Treason* whereof thou standest *Indicted*, and art now *Arraigned*? Or *Not Guilty*?

Tichbourn. *My Lord, I have been a very close Prisoner, without any Advice; I am altogether unable in Law to speak.*

Court. You know the Course hath been delivered to you by others, I will not trouble you

with it. It is neither long nor short; the Law requires your Answer, *Guilty*? Or *Not Guilty*?

Tichbourn. *Spare me but one Word. If upon the Trial there shall appear to be Matter of Law shall I have the Liberty of Council for it? If I shall be put in my own Case to plead Matter of Law against those Noble Persons who plead on the other Part, I shall but prejudice myself, and therefore I crave Council.*

Court. You must plead *Guilty*, or *Not Guilty*.

Tichbourn. *I have no Reason nor Design to displease you. I am sure I am no ways able to plead with Equalness in Point of Law with those Noble Gentlemen. To the Matter of Fact this is my Plea, in Manner and Form that I stand Indicted I am Not Guilty.*

Clerk. How will you be tried?

Tichbourn. *By God and the Countrey.*

Clerk. God send thee a good Deliverance.

Clerk. *Owen Roe*, Hold up your Hand. How sayest thou? Art thou *Guilty* of the *Treason* whereof thou standest *Indicted*, and art now *Arraigned*? Or *Not Guilty*?

Owen Roe. *My Lord, there hath been so much said already by others, I think I need say no more. In Manner and Form as I am now Indicted I plead Not Guilty.*

Clerk. How will you be Tried?

Owen Roe. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Clerk. *Robert Lilburn*, Hold up your Hand. How sayest thou? Art thou *Guilty* of the *Treason* whereof thou standest *Indicted*, and art now *Arraigned*? Or *Not Guilty*?

Robert Lilburn. *I desire, in regard that being so close a Prisoner for Twenty Days, that no body has been suffered to advise with me —*

Lord Chief Baron. I must interrupt you. You must not mis-spent the Time. Understand the Law. You must Plead *Guilty*, or *Not Guilty*.

Rob. Lilburn. *Will you give me leave to desire Council before I plead, to advise me touching my Plea?*

Clerk. Are you *Guilty*? or *Not Guilty*?

Rob. Lilburn. *I desire Council —*

Court. Take heed, if that be your Answer, You desire Council, and do not Plead, and that be Recorded, Judgment will pass against you. There is nothing to Plead, but *Guilty*, or *Not Guilty*. If *Not Guilty*, what you have to say will be heard.

Rob. Lilburn. *If you over-rule me I must submit.*

Court. Do not let such Language fall from you; it is improper.

The Law gives us a Rule. The Prisoner must plead *Guilty*, or *Not Guilty*.

Rob. Lilburn. *I say then in Manner and Form as I am Indicted I am Not Guilty.*

Clerk. How will you be Tried?

Rob. Lilburn. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Clerk. Bring to the Bar *Adrian Scroop, John Carew, John Jones, Thomas Scot, Gregory Clement, and John Cook.*

Who were brought accordingly, and being commanded, severally held up their Hands at the Bar.

The Indictment was read to the Persons at the Bar as before.

Clerk.

Clerk. *Adrian Scroop*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and art now Arraigned? Or Not Guilty?

Adr. Scroop. My Lord, Not Guilty.

Clerk. How will you be Tried?

Adr. Scroop. By God and the Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *John Carew*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou art Indicted, and art now Arraigned? Or Not Guilty?

John Carew. *There is some special Matter in that Indictment, that ought not to before*—

Clerk. Are you Guilty, or Not guilty?

John Carew. *Saving to our Lord Jesus Christ his Right to the Government of these Kingdoms*—

Court. Are you Guilty, or Not guilty?

John Carew. *I say I am Not guilty.*

Clerk. How will you be Tried?

John Carew. *How would you have me?*

Clerk. Will you be Tried by God and the Countrey?

John Carew. *I, if you will.*

Clerk. You must say the Words. How will you be Tried?

John Carew. By God and the Countrey.

Clerk. God send you a good Deliverance.

Clerk. *John Jones*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and for which thou art now Arraigned? Or Not guilty?

John Jones. Not guilty, my Lord?

Clerk. How will you be Tried?

John Jones. By God and the Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *Thomas Scot*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and for which thou art now Arraigned? Or Not guilty?

Th. Scot. *Truly I cannot call it Treason, and therefore I Plead Not guilty.*

Clerk. How will you be Tried?

Th. Scot. By God and the Countrey.

Clerk. God send you a good Deliverance.

Clerk. *Gregory Clement*, Hold up your Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and for which thou art now Arraigned? Or Not guilty?

Greg. Clement. *My Lord, I cannot excuse my self in many Particulars; but as to my Indictment, as there it is, I plead Not guilty.*

Clerk. How will you be Tried?

Greg. Clement. By God and the Countrey.

Clerk. God send you a good Deliverance.

Clerk. *John Cook*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and for which thou art now Arraigned? Or Not guilty?

John Cook. *I humbly conceive that this is now Time to move for Council for Matter of Law*—

Court. You know too well the manner of the Court. Are you Guilty? Or Not guilty?

John Cook. Not guilty.

Clerk. How will you be Tried?

John Cook. By God and the Countrey.

Clerk. God send you a good Deliverance.

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Clerk. Bring *Edmund Harvey*, *Henry Smith*, *John Downs*, *Vincent Potter*, and *Augustine Garland*, to the Bar.

Who were brought accordingly, and being commanded, severally held up their Hands. The Indictment was Read to them.

Clerk. *Edmund Harvey*, Hold up your Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest Indicted, and for which thou art now Arraigned? Or Not guilty?

Edmund Harvey. Not guilty, my Lord.

Clerk. How will you be Tried?

Edmund Harvey. By God and the Countrey.

Clerk. God send you a good Deliverance.

Clerk. *Henry Smith*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou art Indicted, and for which thou art now Arraigned? Or Not guilty?

Henry Smith. Not guilty, my Lord.

Clerk. How will you be Tried?

Henry Smith. By God and the Countrey.

Clerk. God send you a good Deliverance.

John Downs, *Vincent Potter*, *Augustine Garland*, upon the Question presently pleaded Not guilty, and put themselves on God and the Countrey to be Tried.

Clerk. Set to the Bar *George Fleetwood*, *Simon Meyn*, *James Temple*, *Peter Temple*, *Thomas Wait*, *Hugh Peters*, *Francis Hacker*, and *Daniel Axtel*.

Who being at the Bar, held up their Hands according to Order; afterward the Clerk read the Indictment against the said Persons; which being ended, he proceeded in this Manner.

Clerk. *George Fleetwood*, Hold up thy Hand. What sayest thou? Art thou Guilty of this horrid Treason, whereof thou standest Indicted, and art now Arraigned? Or Not guilty?

George Fleetwood. My Lord, I came in upon His Majesty's Proclamation.

Clerk. Art thou Guilty? Or Not guilty?

George Fleetwood. * I must confess I am Guilty, (and thereupon he delivered a Petition in to the Court, which he said was directed to his Majesty and the Parliament, and the Court did receive it accordingly.)

Clerk. Set him aside.

Clerk. *Simon Meyn*, Hold up thy Hand. What sayest thou? Art thou Guilty of this horrid Treason, whereof thou standest Indicted, and art now Arraigned? Or Not guilty?

Simon Meyn. Not guilty. I came in upon His Majesty's Proclamation, my Lord.

Clerk. How wilt thou be Tried?

Sim. Meyn. By God and the Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *James Temple*, Hold up thy Hand. What sayest thou? Art thou Guilty of this horrid Treason, whereof thou standest Indicted, and art now Arraigned? Or Not guilty?

James Temple. Not guilty.

Clerk. How wilt thou be Tried?

James Temple. By God and the Countrey.

Clerk. God send thee a good Deliverance.

Clerk. *Peter Temple*, Hold up your Hand. How sayest thou? Art thou Guilty of the Treason

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whereof

* He had at first pleaded Not Guilty, but was permitted to withdraw his Plea. Kelyng. 11.

whereof thou standest *Indicted*, and for which thou art now Arraigned? Or Not guilty?

Peter Temple. *Not guilty.*

Clerk. How wilt thou be Tried?

Peter Temple. *By God and the Countrey.*

Clerk. God send thee a good Deliverance.

Clerk. *Thomas Wait*, Hold up your Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest *Indicted*, and for which thou art now Arraigned? Or Not guilty?

Th. Wait. *I desire to be heard a Word or Two—*

Court. There is a Rule of Law which is set to us, and you, that in all these Cases you are to plead Guilty, or Not guilty. When you have pleaded, if Not guilty, you may speak what you will in its proper Time.

Clerk. Are you Guilty? Or Not guilty?

Th. Wait. *I pray let me be heard a Word. I am very unwilling to spend time, knowing you have a great deal of Business. I am very unwilling to deprive myself of my Native Right. I shall speak nothing but that which is Truth.*

Court. Do not Preface then, but speak what you would say.

Th. Wait. *My Lord, my Case is different from the rest.*

Court. Whatsoever the Case be, you have no Plea to us, but Guilty, or Not guilty. We can go no other Way. The Law sets out your Plea.

Th. Wait. *My Lord, I would speak one Word. There was a Great Peer of this Nation Indicted at Northampton, within these Two Years, for killing a Man. The Judges there—*

Court. You must plead Guilty, or Not guilty. Pray who are you that should take this upon you more than all the rest? You must go the ordinary Way; Guilty, or Not guilty: Are you Guilty? or Not guilty? We do not intend to prevent any Thing you have to say, but it must be proper.

Clerk. Are you Guilty? Or Not guilty?

Th. Wait. *I cannot say I am Guilty.*

Court. How then?

Th. Wait. *I am Not Guilty.*

Clerk. How wilt thou be Tried?

Th. Wait. *By God and the Countrey.*

Clerk. God send thee a good Deliverance.

Clerk. *Hugh Peters*, Hold up thy Hand. How sayest thou? Art thou Guilty of the Treason whereof thou standest *Indicted*, and for which thou art now Arraigned? Or Not Guilty?

Hugh Peters. *I would not for Ten Thousand Worlds say I am Guilty. I am Not Guilty.*

Clerk. How will you be Tried?

Hugh Peters. *By the Word of God.* [Here the People laughed.]

Court. You must say, *By God and the Countrey.* Tell him you that stand by him what he should say, if he doth not know.

Clerk. How will you be Tried?

Hugh Peters. *By God and the Countrey.*

Clerk. God send thee a good Deliverance.

Clerk. *Dan. Axtel*, Hold up thy Hand. What sayest thou? Art thou Guilty of the Treason whereof thou standest *Indicted*, and for which thou art now Arraigned? Or Not Guilty?

Dan. Axtel. *May it please your Lordships, I desire to have the Freedom of an Englishman; that which is my Right by Law and Inheritance: I have something to offer in Point of Law.*

Clerk. Art thou Guilty? Or Not Guilty?

Dan. Axtel. *My Lords, give me Leave to speak. For the Matter of the Indictment I conceive is upon the King's Death; that there is a Commission of Oyer and Terminer for you to Sit: But in regard it was in Pursuance of an Act of Parliament, I conceive no Inferior Court ought to judge of it. I desire Council, it being of great and eminent Concernment in Law, That ever any Judges, or any Inferior Court, should judge of the Powers and Privileges of a Parliament; and I pray that Council may be assigned me.*

Clerk. Are you Guilty? Or Not Guilty?

Dan. Axtel. *If the Court over-rule me, and I shall not have my Liberty, as an Englishman—*

Court. The Course of Law is this; No Man can justify Treason. If the Matter which you have to say be Justifiable, it is not Treason; if Treason, it is not Justifiable; therefore you must go to the ordinary Course of the Law. You must plead Guilty, or Not Guilty.

Dan. Axtel. *I can produce many Precedents—*

Court. Are you Guilty? Or Not Guilty? The Language is put into your Mouth. You have no other Words to express your self by at this Time, but Guilty, or Not Guilty.

Dan. Axtel. *Judge Heath had Council assign'd him upon the same Case.*

Court. That is very strange; the same Case? What, was it for killing a King?

Dan. Axtel. *If the Court will over-rule me I cannot help it.*

Mr. Solicitor Gen. It may be this Gentleman may be deceived by a Mistake. It may be he knows not the Law, which your Lordships may be pleas'd to acquaint him with: That to stand Mute in High-Treason is all one as to Confess the Fact, and will have the same Sentence and Condemnation upon them, as if they had confessed it.

Lord Chief Baron. *Then I'll tell you the Law. He that doth refuse to put himself upon his Legal Trial of God and the Countrey, is a Mute in Law; and therefore you must Plead Guilty, or Not Guilty. Let his Language be what it will, he is a Mute in Law.*

Dan Axtel. *I do not refuse it.*

Court. Then say.

Dan. Axtel. *I am Not Guilty.*

Clerk. How will you be Tried?

Dan. Axtel. *By Twelve Lawful Men, according to the Constitutions of the Law.*

Court. That is by God and the Countrey.

Dan. Axtel. *That is not Lawful. God is not locally here.*

Clerk. How wilt thou be Tried? You must say, *By God and the Countrey.*

Dan. Axtel. *By God and the Countrey.*

Clerk. God send you a good Deliverance.

Lord Chief Baron. *Mr. Axtel, have you your Papers again?*

Dan. Axtel. *Yes, my Lord.*

Lord Chief Baron. *When your Indictment is read the Second Time, when you come to your Trial, you may take what Notes you please.*

The Court then adjourned to the same Place till the next Morning Seven of the Clock.

October 11th, 1660.

The Court being Assembled, the Keeper was commanded to set the Prisoners to the Bar.

Thomas Harrison, Adrian Scroop, John Carew, John Jones, Gregory Clement, Thomas Scot, were brought to the Bar accordingly. After which Silence was Commanded.

Court. You that are the Prisoners at the Bar, if you, or any of you, desire Pen, Ink, and Paper, you shall have it; and if you, or any of you, will Challenge any of the Jury, you may when they come to be Sworn, and that before they are Sworn.

Sir Thomas Allen being call'd, was desired to look on the Prisoners, and lay his Hand on the Book: His Oath was then read to him, viz. You shall well and truly Try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoners at the Bar, whom you shall have in Charge, according to your Evidence. So help you God.

Sir Joshua Ash being next call'd, Mr. Scroop excepted against him.

Sir Jeremy Whichcot, Baronet, being next to be Sworn, Mr. Harrison excepted against him.

James Halley, Esquire, being next to be Sworn, Mr. Scot excepted against him.

Court. If you will not agree (speaking to the Prisoners) in your Challenges, we must be forc'd to Try you severally.

Henry Mildmay, Esq; being called next, Mr. Scroop excepted against him.

Court. We must needs Try them severally, therefore set them all aside but Harrison.

Court. Gentlemen, you that are excepted must not depart the Court.

Sir Joshua Ash being again call'd, was excepted against by Mr. Harrison.

Sir Jeremy Whichcot, Bart. } Being called again,
James Halley, Esq; } were severally ex-
Henry Mildmay, Esq; } cepted against by
Christopher Abdy, Esq; } the Prisoner.

Court. Mr. Harrison, You know the Law. You must say, I challenge him.

Mr. Harrison. I shall, Sir.

Ralph Hartley being next called, and being very sick, humbly prayed to be excus'd by the Court, which was granted.

Arthur Newman was called next.

Mr. Harrison. May I not ask of what Quality he is?

Court. No, Sir, you are to Challenge him, or not to Challenge him.

Mr. Harrison. I Challenge him.

Thomas Blith was next called, and also Challenged.

[Here the People seemed to Laugh.]

Mr. Harrison. My Lord, I must make use of my Liberty in this Case.

Court. God forbid.

Then Grover, Robert Clark, and Richard Whalley, were called, and by Mr. Harrison Challenged.

Court. Mr. Harrison, you know how many to Challenge; if you go beyond the Number at your own Peril be it.

Mr. Harrison. My Lord, pray tell me what it is.

Court. You say very well; God forbid but you should know. You may Challenge Five and Thirty Peremptorily, if you go beyond you know the Danger.

Mr. Harrison. My Lord, I do not this to keep you off from the Business.

William Vincent, and Henry Twiford, were then called, and Challenged.

John Lisle was next called.

Mr. Harrison. I do not know him.

Mr. Lisle. Nor I you, Mr. Harrison. He was Sworn.

Thomas Franklin Sworn.

Thomas Winter Challenged.

Richard Nichol Sworn.

Moyce being Sick, prayed Excuse, which was granted accordingly.

Richard Cheyney Challenged.

Allen Parsons Challenged.

Henry Edlin Called.

Mr. Harrison. I Challenge him.

Mr. Harrison. Let him be Sworn.

Court. No, no. (Whereupon he was set aside.)

Mr. Harrison. If I have any Apprehension or Knowledge of them, that's the Thing that leads me to it, as touching this Man, he may be Sworn.

Court. When he is Challenged he cannot be recalled.

Mr. Harrison. I am content.

Samuel Greenhill Sworn.

Thomas Bede Challenged.

John Page Challenged.

Richard Rider Challenged.

Mr. Harrison. Lest I may run into an Hazard, in making use of that Liberty which the Law gives me in this Case, and having not taken Notice of any Persons Challenged, I mean as to the Number, I desire your Officer that takes Notice may acquaint me with the Number.

Court. You shall know it; God forbid the contrary.

Edward Rolph was called next.

Mr. Harrison. Mr. Rolph is his Name? Let him be Sworn.

Francis Beal Challenged.

John Kirk Challenged.

Charles Pitfield Challenged.

John Smith Challenged.

Bell Sworn.

Edward Franklin Challenged.

William Whitcomb Challenged.

Samuel Harris Sworn.

John Collins Challenged.

Thomas Snow Sworn.

William Blunt Challenged.

George Righ Challenged.

John Nichol of Finchley Sworn.

Timothy Taylor Challenged.

Thomas Fruin Challenged.

Richard Abel Challenged.

Thomas Morris Sworn.

Ambrose Scudamore Challenged.

Ralph Halsel Challenged.

George Tirry Challenged.

Court. You have Challenged Thirty Three already.

Mr. Harrison. I pray the Names may be read to me, to see if it be so.

Court. When you come to Thirty Five you shall have the Names Read.

John Galliard Challenged.

Thomas Swallow Challenged.

Court. Now read their Names to him.

Which were read accordingly. In all Thirty-five Challenged.

George Pickering was next called, and Sworn.

Then

Then they were called over who were admitted, viz.

Sir Thomas Allen, John Lisle, Thomas Franklin, Richard Nichol, Samuel Greenhil, Edward Rolph, Bell, Samuel Harris, Thomas Snow, John Nichol, Thomas Morris, George Pickering; and Sworn.

Proclamation was then made.

If any Man can inform my Lords, the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance. And all those bound by Recognizance to appear, let them come forth, and give their Evidence, or else to Forfeit their Recognizance.

George Masterfon, James Nutley, Robert Coytmore, Holland Simpson, and William Jessop, Witnesses, were called.

Court. Gentlemen, that are not of the Jury, pray clear the Passage. The Prisoner is here for Life and Death, let him have Liberty to see the Jury.

Clerk. Thomas Harrison, Hold up thy Hand.

Clerk. Look upon the Prisoner, you that are Sworn. You shall understand that the Prisoner at the Bar stands Indicted by the Name of Thomas Harrison, late of Westminster, in the County of Middlesex, Gentleman, for that he, together with John Lisle, &c. (here the Indictment was read) upon which Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Countrey, which Countrey you are. Now your Charge is to enquire, whether he be Guilty of the High-Treason in Manner and Form as he stands Indicted, or Not Guilty. If you find that he is Guilty, you shall enquire what Goods and Chattels he had at the time of committing the said Treason, or at any Time sithence. If you find that he is Not Guilty, you shall enquire whether he did fly for it; and if you find that he fled for it, you shall enquire of his Goods and Chattels, as if you had found him Guilty: If you find that he is Not Guilty, nor that he did fly, you shall say so, and no more. And take heed to your Evidence.

Mr. Keeling enforced the Charge at large: After whom Sir Heneage Finch, his Majesty's Solicitor-General, in these Words.

MAY it please your Lordships, We bring before your Lordships into Judgment this Day the Murtherers of a King. A Man would think the Laws of God and Men had so fully secured these Sacred Persons, that the Sons of Violence should never approach to hurt them: For (my Lord) the very Thoughts of such an Attempt hath ever been presented by all Laws, in all Ages, in all Nations of the World, as a most unpardonable Treason. My Lord, This is that that brought the Two Eunuchs in the Persian Court to their just Destruction; *Voluerunt insurgere*, says the Text, and yet that was enough to Attaint them. And so (my Lords) it was by the Roman Laws too, as Tacitus observes; *Qui deliberant, desceiverunt*. To Doubt or Hesitate in a Point of Allegiance, is direct Treason and Apostasie. And upon this Ground it is, that the Statute upon which your Lordships are now to proceed hath these express Words; *If a Man doth Compass or Imagine the Death of the King, &c.* Kings, who are God's Vice-gerents upon Earth, have thus far a kind of

Resemblance of the Divine Majesty, that their Subjects stand accountable to them for the very Thoughts of their Hearts. Not that any Man can know the Heart, save God alone; but because when the Wicked Heart breaks out into any open Expressions, by which it may be judged, 'tis the Thoughts of the Heart which makes the Treason; the Overt-Act is but the Evidence of it.

My Lords, This Care and Caution is not so to be understood, as if it were the Single Interest of One Royal Person only. The Law doth wisely judge and foresee, that upon the Life of the King depends the Laws and Liberties, the Estates and Properties, the Wealth and Peace, the Religion, and in Sum, the Glory of the Nation.

My Lords, This Judgment of the Law has been verified by a sad Experience; for when that Blessed King (whose Blood we are now making Inquisition for) was untimely taken away, Religion and Justice both lay buried in the same Grave with him; and there they had slept still, if the Miraculous Return of our Gracious Sovereign had not given them a New Resurrection.

My Lords, My Lord Coke in his Comment upon this Statute has one Conceit, which is somewhat Strange; I am sure it is very New; he seems to think that it would have added to the Perfection of this Law if there had been a Time limited for the Party to be accused. But certainly the Work of this Day has quite confuted that Imagination. For here is a Treason that has so long out-fac'd the Law, and the Justice of this Kingdom, that if there had been any Time of Limitation in the Statute, there would have been no Time nor Place left for Punishment. And if this Treason had but once grown up to an Impunity, it might perhaps have drawn the Guilt of that Innocent Blood, and with it the Vengeance due to it, upon the whole Nation.

The Scope of this Indictment is for the compassing the Death of the King, the rest of the Indictment, as the Usurping Authority over the King's Person, the Assembling, Sitting, Judging, and Killing of the King, are but so many several Overt-Acts to prove the Intention of the Heart. We are not bound (under Favour) to prove every one of these against every particular Person who is Indicted; for he that is in at one, is Guilty in Law of all the rest, as much as if he had struck the Fatal Stroke itself: Nay (under Favour) if we can prove any other Overt-Act besides what is laid in the Indictment, as the encouraging of the Soldiers to cry out, Justice, Justice; or Preaching to them to go on in this Work, as Godly and Religious; or any other Act of all that Catalogue of Villanies, for which the Story will be for ever Infamous; this may be given in Evidence to prove the Compassing and Imagining the King's Death. The Conclusion of this Indictment alledges the Fact done to be to the great Displeasure of Almighty God, and to the great Disgrace of the People of England. A Truth so clear and known, that it can neither be heightened by any Aggravation, or lessened by any Excuse.

As for the Fact itself, with the Manner of it, I shall not need to open it at large, for these Things were not done in a Corner; every true English Heart still keeps within itself a bleeding Register of this Story; only (my Lords) in the Way to our Evidence, with your Lordship's Favour, this I think may be fit to be said.

First,

First, for the Year 1648, (for that was the *Fatal* Year of this King, and beyond that Year we shall not now enquire,) I say whatsoever in the Year 1648 could have been done by a *Parliament* to save the *Life* of a King, was done in this *Case*.

They opened the *Way* to the *Treaty* in spite of the *Army*; and while these Sons of *Zerviah*, who were too hard for them, were engaged in *Service* in the *Remoter* Parts, they hastened the *Treaty* as much as was possible; the *Debates* upon his Majesty's *Concessions* were Voted a good Ground for *Peace*; notwithstanding the *Remonstrances* of the *Army* still flew about their *Ears*, and notwithstanding the *Oppositions* of a fearful and unbelieving Party of the *House of Commons*, whom the *Army* had frightened into an *Awful* and a *Slavish* Dependance upon them. And when nothing else could be done for him, they were so true to the *Obligations* they lay under, that they resolved to fall with him, and did so. For the *Army*, who saw the *Treaty* proceed so fast, made as great haste to break it. They seize upon the Blessed Person of our Sacred King by *Force*, and bring him to *London*; and here they force the *Parliament*, shut out some *Members*, imprison others, and then called this wretched little Company which was left a *Parliament*. By this, and before they had taken upon them the Boldness to dissolve the *House of Peers*, they pass a *Law*, and erect, forsooth! an *High Court of Justice*, as they call it, a *Shambles* of Justice, appoint *Judges*, *Advocates*, *Officers*, and *Ministers*, sit upon the *Life* of the King. Now they *Speak out* and *Expound* their own *Declarations*, and tell us what that was which before they had demanded in obscure *Terms*, when they called for *Justice* against all *Delinquents*. Now they speak plainly what they mean, and call this Blessed King, this Glorious *Saint*, the *Grand Delinquent*:

— *Hæc Acies victum factura Nocentem est.*

My Lords, When they had thus proceeded to appoint their *Judges*, *Officers*, and *Court*, then they call this Person, their only *Liege Lord* and *Sovereign*, to the *Bar*, and by a *Formal Pageantry* of Justice, proceed to *Sit* upon him, *Arraign*, *Try*, *Sentence*, *Condemn*, and *Kill*, (I had almost said *Crucify*;) him, whom they could not but know to be their King; and all this against the clearest *Light*, the sharpest *Checks*, and most thorough *Convictions* of *Conscience*, that ever Men resisted. And yet in this *Moment* of *Time*, such was the *Majesty* and *Innocence* of our Gracious *Sovereign*, that the *People* followed him with *Tears* in their *Eyes*, and *Acclamations* in their *Mouths*, *God Save the King*; even then, when the *Soldiers* were ready to *Fire* upon them who did either look sadly, or speak affectionately. And yet it will appear upon our *Evidence* too, that so few of the very *Common Soldiers* could be brought to approve these *Proceedings*, or to cry out *Justice*, that their *Officers* were fain by *Money*, or *Blows*, or both, to bring a great many to it.

My Lords, The *Actors* in this *Tragedy* were many, very many, so many, that sure their Name is *Legion*, or rather many *Legions*. And certainly (my Lords) when we shall consider the *Thing* that they have done, we cannot but look upon it as a *Villany* which had in it all the *Ingredients* to make it detestable, that it was possible for the *Counsel* of Men, or *Devils* either, to put together. But yet, if any *Thing* can be of a deeper *Dye*

than the *Guilt* of that *Sacred Blood*, wherewith they stand *Polluted*, methinks their *Impudence* should make them more odious than their *Treason*. It was the *Destruction* of *God's Anointed*, in the Name of the *Lord*. It was the *Murder* of a most Blessed and Beloved *Prince*, in the Name of his *People*. Him whom they had taken the transcendent Boldness to imprison, as the Author of the *War*, they put to death, because he would have been the Author of our *Peace*; and that with so much *Scorn* and *Indignity*, that some of them were not ashamed to spit in the *Face* of our *Lord* and *Sovereign*. And when they had thus quenched the *Light* of *Israel*, *Darkness* and *Confusion* did overspread the *Face* of the *Land*; many *Poor Subjects* at *Home*, and some *Protestants* in *Foreign Nations*, at the very *News* of it fell down *Dead*; as if this Excellent King had been in a *Natural* as well as a *Religious* Sense, the *Breath* of our *Nostrils*, the *Anointed* of the *Lord*, who was taken in their *Pits*. The *Judges*, *Officers*, and other immediate *Actors* in this pretended *Court*, were in Number about *Fourscore*, of these some Four or Five and Twenty are *Dead*, and gone to their own *Place*. The *God* of *Recompences* hath taken the Matter so far into his own *Hands*; and who knows but that it might be one dreadful Part of his *Vengeance* that they died in *Peace*? Some Six or Seven of them, who are thought to have sinned with less *Malice*, have their *Lives* spared indeed, but are like to be brought to a severe *Repentance* by future *Penalties*. Some Eighteen or Nineteen have fled from *Justice*, and wander to and fro about the *World* with the Mark of *Cain* upon them, and perpetual *Trembling*, lest every *Eye* that sees them, and every *Hand* that meets them, should fall upon them. Twenty Nine Persons do now expect your *Justice*. Amongst them the first that is brought is the *Prisoner* at the *Bar*, and he deserves to be the First; for if any Person now left alive ought to be styl'd the *Conductor*, *Leader*, and *Captain* of all this *Work*, that's the *Man*. He (my Lord) brought the King up a *Prisoner* from *Windsor*, but how, and in what *Manner*, with how little *Duty*, nay, with how little *Civility*, to a *Common Person*, you will hear in *Time*. He sat upon him, *Sentenced* him, he sign'd the *Warrant* first to call that *Court* together, then the *Bloody Warrant* to cut off his *Sacred Head*. Against him, as against all the rest, our *Evidence* will be of Two *Sorts*; *Witnesses Viva voce*, that shall first prove to your *Lordships* that every Person now in *Question* did sit in that *Court*, when their King stood as a *Prisoner* at the *Bar*. We shall prove that the *Precept* by which this pretended *Court* was summon'd, was not obeyed and executed, till it had had the *Hands* and *Seals* of most of the pretended *Judges*; among the rest the *Hand* of the *Prisoner* at the *Bar* will be found there. We shall prove his *Hand* to the *Bloody Warrant* for severing the *Sacred Head* of our Blessed *Sovereign* from the *Body*, and then some *Circumstances* of his *Malice*, and of his *Deemeanour*. And after we have done with our *Witnesses Viva voce*, if we have *Occasion* to use *Records* of *Parliament*, we shall shew them too; for we have the *Originals*, or *Authentick Copies*. But now we shall proceed to our *Evidence*.

Proclamation was made for *Silence*.

Sir *Edward Turner*. My Lords, *The Service* of this Day doth call to my *Memory* the *Story* of good King

King Amaziah. We read in Holy Writ, that his Father, King Joash, was murdered, and murdered by his own Subjects; but we read further, that when Amaziah had regain'd the Crown, was settled in the Government, he slew those that slew his Father. He did go down into Edom, the Valley of Salt, and there he did slay Ten Thousand. The Work of this Day doth very much resemble that Action. Our Good and Gracious King, his Father of Blessed Memory, and our Father, his Natural, and our Politick Father, to whom our Natural Allegiance was due, was murdered, and by his own Subjects. But, my Lords, this was not a National Crime; and our Good and Gracious Sovereign hath done us that Honour and Right to vindicate us in Foreign Nations; and now he is come Home in Power and Glory, he does continue in the same Mind: That's the Reason we are not now slain by Thousands, but that those Miscreants are gathered up here and there that did commit the Offence, and would have involved the Nation in a common Infamy.

Gentlemen of the Jury, Your Time to enquire of this Matter is precious, more precious than my Words, else I would repeat to you the History of that Tragedy, at least that Summary that was entred in the Black Book, or the Journals of that they then called a Parliament. It shall suffice to tell you, and that most truly, that it was but an handful of Men in respect of the whole Nation, that did contrive and design this damnable and traiterous Plot, to subvert the Laws, and change the Government of this well-govern'd Nation. In Prosecution of which they did cast abroad, and spread forth, Jesuitical Maxims, Damnable and Diabolical Principles, to intoxicate the People; and when their Heads were troubled, they were easily led into Arms, where after some time they grew drunk with Successes; and when they had drunk too much of the Loyal Blood of the People, then they thirsted for the Royal Blood also. I do confess we read in Stories that Kings have before this Time been murdered; some in our Nation, as King Richard the Second, and Edward the Third; and in other Nations. But the Actors of those Murthers were modest to these. They did it in Private, these in the Face of the Sun, and the People; but it was those People, Gentlemen, they had corrupted with Shares in their Robberies and Villanies. They pretended it was in a Way of Justice; but you must know no Justice can be executed upon the Person of the King. Touch not mine Anointed, saith God himself.

My Lords, I do read in the Roman Story, that both amongst them, and other Nations, there was no Law against Parricide. It was not thought that any Man was so Unnatural and Devilish to destroy his Father. But we do find among the Romans such a Fact was committed, and then they were at a Loss to punish it. The Way was this that was found out; the Offender they sewed into a Mail of Leather, so close that no Water could get in; when they had done, they threw him into the Sea; by this denoting, the Offender was not worthy to tread upon the Ground, nor to breathe in the Air, nor to have the Benefit of any of the Four Elements, nor the Use of any of God's Creatures, and so be starved.

Gentlemen, Parricide and Regicide differ not in Nature, but in Degree. Parricide is the killing of the Father of one, or a few, Persons; Regicide the killing the Father of a Country. What Punishment then is suitable to this Offence? Gentlemen, The Prisoner at the Bar is accus'd of this Offence,

and now to be Tried by you: But before we enter upon the Evidence, I must, with the Leave of the Court, inform you, that though the Indictment contains many Circumstances and Gradations in the Treason, yet the Imagining and Compassing the Death of our late Sovereign, is the Treason to which we shall apply our Evidence; this being, both by the Common-Law, and by the Statute of the 25th of Edward the 3d, the Principal Treason to be enquired of. And the other Circumstances in the Indictment are but so many Matters to prove the Overt-Act, the Consultations, the Assuming Power to Try and Condemn the King, the Assault upon him, and the Fatal Blow that was given him, are but so many Demonstrations, and open Acts, proving the first Treasonable Design of the Heart.

It will be enough for you, and so my Lords will tell you, if we prove the Treason itself, which is the Compassing and Imagining the Death of the King, though we fail in some of the Circumstances laid in the Indictment. I do not speak this as if we should fail in any; but it is not necessary to prove them all; if we prove any, you are to find the Prisoner Guilty. I am not willing to hold your Lordships too long in the Porch, but desire to descend into the Body of the Business; and so we shall call our Witnesses, and doubt not but to prove, that this Man at the Bar was the first, and not the least, of these Offenders.

Mr. George Masterfon was called.

Mr. Harrison. When I was before your Lordships Yesterday, I offered something very material, in reference to the Jurisdiction of the Court; but you told me according to the Rule, I must plead Guilty, or Not Guilty; and what I had to offer should be heard in its proper Place. I now desire to know, whether it be proper now to deliver my self, before you proceed to the calling of Witnesses, for I would go the best Way, and would not willingly displease you.

Lord Chief Baron. What was promised you Yesterday God forbid but you should have it. But I think it will be best for you to hear the Evidence, and then what you have to say you shall be fully heard.

Mr. Harrison. I am content.

Whereupon George Masterfon, Stephen Kirk, Francis Hearn, William Clark, Robert Coytmore, and James Nutley, were called, and Sworn.

Council. Mr. Masterfon, whether did the Prisoner at the Bar sit in that which they called the High Court of Justice, to Sentence the King, or no? Pray tell my Lords, and the Jury thereof, and what else you know of the Matter.

Mr. Masterfon. Upon the Oath I have taken, (my Lords, and Gentlemen of the Jury,) I saw the Prisoner, Th. Harrison, sit in that which they called the High Court of Justice, upon the 27th Day of January, in the Year 1648, to Sentence the King.

Council. Was it the Day the Sentence was passed against the King?

Mr. Masterfon. It was the Day of the Sentence, the 27th of Jan. 1648.

Council. Can you say any Thing else?

Mr. Masterfon. I do (Sir) further remember, that when the Clerk of the Court (as he was called) read the Sentence against the King, and said, it was the Sentence of the whole Court, I saw the Prisoner at the Bar, together with others, stand up, to my Apprehension, as assenting to it.

Council.

Council. Was there not Direction that all should stand up as Assenting?

Mr. Masterfon. I do not know that; but when the Sentence was read several of them did stand up, and he among the rest, as Assenting to the Sentence, as the Spectators understood.

Council. *Mr. Clark,* What do you say to the same Question?

Mr. Clark. My Lords, and Gentlemen of the Jury, I remember I saw the Prisoner at the Bar sit several times in the *Court of Justice*, as they called it; particularly on the 23d and 27th of *January, 1648*, as I took Notice of it in a Book.

Council. Was that the Day of the Sentence?

Mr. Clark. Yes, my Lord.

Council. What say you to that of the rising of those Persons in the Court?

Mr. Clark. I remember they all rose, but I did not take particular Notice then of the Prisoner.

Council. *Mr. Kirk,* You hear the Question. Did you see the Prisoner at the Bar in *Westminster-Hall*, sitting upon the Bench in that which they called the *High-Court of Justice*, when the King stood Prisoner at the Bar there?

Mr. Kirk. My Lord, I did see the Prisoner at the Bar sit several Days in that which they called the *High-Court of Justice*. I was there every Day of their Sitting.

Council. Do you remember he was there on the 27th of *Jan. 1648*?

Mr. Kirk. I do, Sir.

Council. Tell the Jury what was the Work there.

Mr. Kirk. It was Sentence. I did take the Names of all those Gentlemen that did appear in the Court on that Day, the 27th of *Jan. 1648*, and among the rest I took a Note of that Gentleman's Name, as being present.

Council. Whereas these Gentlemen (*Mr. Masterfon* and *Mr. Clark*) have declared, that, as Assenting to the Sentence, they all stood up; did you see them stand? And whether by Direction, or no?

Mr. Kirk. As for the Direction, I know nothing of it; but the Members then present in the Court, (after Sentence was read,) as far as my Eyes could perceive, stood up unanimously, I suppose, as Assenting to the Sentence.

Court. *Mr. Nutley,* Did you know the Prisoner at the Bar? Have you seen him sit in *Westminster-Hall* at any Time upon the Bench when the King was brought as a Prisoner to the Bar?

Mr. Nutley. My Lords, and Gentlemen of the Jury, I saw the Prisoner at the Bar several Days sit there, amongst the rest of the Judges, as a Judge, I suppose. To the best of my Remembrance he sat there Four Days together.

Court. Was he there upon the Day of the Sentence?

Mr. Nutley. I did take Notes, my Lord, that Day in the Court, and I find he did sit that Day.

Court. Do you know any Thing more of the Prisoner at the Bar?

Mr. Nutley. Thus much I know concerning the Prisoner at the Bar, my Lord. The first Day they sat in Publick was (as I remember) the 20th of *Jan. 1648*; some few Days afore that, there was a Committee that sat in the *Exchequer-Chamber*, and of that Committee the Prisoner at the Bar was one of the Members. I do remember well it was in the Evening; they were Lighting

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of Candles, they were somewhat private. This Gentleman was there, I saw him; for through the Kindness of *Mr. Phelps*, who was then Clerk to that Committee, I was admitted, pretending first to speak with the said *Mr. Phelps*, and that I had some Business with him, and so (as I said before) I was admitted into the Committee-Chamber: Being there, I did observe some Passages fall from the Prisoner at the Bar; the Words were to this Purpose: He was making a Narrative of some Discourses that passed between his late Majesty and himself in coming between *Windsor* and *London*, or *Hurst Castle*, I know not well whether. My Lord, that Passage that I observed to fall from him in that Discourse was this: He said, That the King, as he sat in the Coach with him, was importunate to know what they intended to do with him.

Mr. Harrison. In the Coach was it?

Mr. Nutley. Yea, Sir, it was in the Coach. He told the rest of the Company (as I said before) that the King asked, *What do they intend to do with me? Whether to Murther me, or no?* And I said to him, *There was no such Intention as to kill him, we have no such thoughts.* But (saith he) *the Lord hath reserved you for a Publick Example of Justice.* There is one Word more, my Lords, and that is this, which I heard from this Prisoner at the Bar. The Reason and End of their Meeting together at that Committee was concerning the Charge. So much I observ'd. It was concerning the Contracting of the *Impeachment*. I observ'd that some found fault with the Length of that, as it was drawn. They were offering some Reasons to Contract it, and I heard this Prisoner at the Bar vent this Expression, *Gentlemen, it will be good for us to Blacken him what we can; pray let us Blacken him:* Or Words to that purpose. I am sure *Blacken* was his Word.

Mr. Windham. *Mr. Nutley,* you speak of an *Impeachment*. Against whom was that *Impeachment*?

Mr. Nutley. It was against his late Majesty the King.

Council. And it was to draw up that *Impeachment* so as to *Blacken* him. Was it so?

Mr. Nutley. Yes, Sir.

Mr. Coytmore Sworn.

Mr. Windham. Did you see the Prisoner at the Bar sitting in that which they call'd the *High-Court of Justice* on the Day when the King was Sentenced, or at any other Time? Pray tell my Lords and the Jury.

Mr. Coytmore. My Lords, and Gentlemen of the Jury, I was in that which they called the *High-Court of Justice* Three or Four Times. I saw this Gentleman either once or twice sitting there.

Council. Do you know any Thing more?

Coytmore. No really: I came only to hear and see what they were doing, and I did there see him, I think, several Days; I am sure once.

Council. Did you see him on the Seven and Twentieth of *January 1648*, sitting there, which was the Day of the Sentence?

Coytmore. I cannot call that to Memory.

Council. Do you know of any Expressions that the King should be an Example of Judgment?

Coytmore. No, my Lords.

Mr. Windham. My Lords, in the next Place we shall shew that Instrument that was made under the Hand and Seal of the Prisoner at the Bar,

S f

Bar, as well as others, for Execution of the King, that *Bloody Warrant*. But first we will ask this Witness another *Question*.

Council. Did you see the Prisoner at the Bar sit on the *Bench* as an ordinary *Spectator*, or as one of the *Judges*?

Coytmore. He was in the *Court*, sitting among the rest of the *Judges*, as one of them.

Mr. Solicitor. My Lords we will prove that this Prisoner at the Bar was one of them that took upon him the conducting of the King, and that the King was in his Custody; and to the *High-Court of Justice* also.

The Lord Newburgh Sworn.

Council. Pray, my Lord, give your self the Trouble to raise your Voice, and to tell my Lords and the Jury what you know of the Prisoner at the Bar; the Part that he acted in bringing up the King.

Lord Newburgh. I was then living at his Majesty's Lodge at Bagshot, when the Prisoner at the Bar brought the King from Hurst-Castle to London. He was the Person that commanded the whole Party; and when the King by the Way went to Dinner, by his Orders there were Centries set at every Door where he was. When the King had dined he carried him to Windsor, and appointed several of his Officers to ride close to the King, as he was riding, lest he should make his Escape from them.

Council. That was an Imprisonment itself, and so a Treason.

Mr. Windbam. My Lords, we shall now produce to you Two *Instruments* which were made, the one for Convening and Summoning the Assembling of that which they called the *High-Court of Justice*, and shew this Prisoner's Hand and Seal to that, and then shew you likewise that which was the Consummating of all, that *Bloody Warrant* for Execution of his late Majesty of Blessed Memory, with the Hand and Seal of the Prisoner at the Bar unto it amongst others.

Mr. Solicitor. My Lords, it will be fit before this to give you an account how we came by these *Instruments*.

Mr. Jessop Sworn.

Council. Shew to Mr. Jessop the *Warrant* for summoning that Court.

Mr. Solicitor. Mr. Jessop, pray tell my Lords and the Jury how you came by that *Instrument* you have in your Hand.

Mr. Jessop. May it please your Lordships, I having the Honour to attend the *House of Commons*, the House was pleased to make an Order that Mr. Scobel should deliver into my Hands all such Books and Records, Papers, and other Things, as did belong to the *House of Commons*; and in Pursuance to that Order I did receive amongst other Things this *Instrument*, as a Thing that had been formerly in his Hands, as Clerk of the *House of Commons*.

Mr. Solicitor. We desire it may be read, my Lords.

Court. Pray first prove his Hand.

Mr. Harrifon. I desire to know what is offered to be read.

Court. It is a *Warrant* that you Sealed amongst other pretended Judges of your *High-Court of Justice* (as you call'd it) for Trial of the King, and for summoning that Court.

Council. Mr. Kirk, have you seen the Hand-writing of the Prisoner at any Time?

Mr. Kirk. I have very often seen it, and am well acquainted with it, and so far as it is possible a Man can testify touching the Hand of another Person, I do verily believe this to be his Hand.

Council. How came you to be acquainted with his Hand?

Mr. Kirk. As he was a Member of the *House of Commons*, and my Employment having relation thereto, I have seen him set his Hand several Times.

Mr. Farrington Sworn.

Council. Do you believe that this is the Hand-writing of the Prisoner at the Bar? [*The Instrument being shewed him.*]

Mr. Farrington. I did not see him write it, my Lords, but I believe it to be his, for I have often seen his Hand-writing. It is his Hand so far as possibly a Man can know any Person's Hand that did not see him write.

Mr. Harrifon. I desire to see the *Instrument*. Which being shew'd to him, he said, I believe it is my own Hand.

Council. That's the *Warrant* for Summoning that Court that he owns his Hand to.

Court. Shew him the other *Instrument*.

That being for Execution of the Sentence; it being shew'd him.

Mr. Harrifon. I do think this is my Hand too.

Council. If you think it the Jury will not doubt it. That's the *Bloody Warrant* for Execution; and we desire they may be both read.

Mr. Harrifon. My Lords, do these Learned Gentlemen offer these as being any Records?

Council. No, but as your own Hand-writing.

Mr. Harrifon. If you do not read it as a Record, I hope your Lordships will not admit of any thing of that kind against me.

Council. He knows that a Letter under his Hand and Seal may be read in a Court. We do not offer it as a Record, but prove it by Witnesses that it is your Hand-writing.

Court. You have confessed these to be your Hands. Whether they are Records, or no; whether Papers, or Letters, they may be read against you. You Sign'd the *Warrant* for Convening together those which you call'd the *High-Court of Justice*, and you Sign'd the other *Warrant* for putting the King to Death. You do confess these Two Things. We do not see what further Use may be made of them.

Court. You might observe how the *Indictment* was for the Imagining, Compassing, and Contriving the King's Death. To prove that, there must be some Overt-Act; and a Letter under the Party's Hand is a sufficient Overt-Act to prove such Imagination; to that End these are used.

Mr. Harrifon. I do not come to be denying any Thing that in my own Judgment and Conscience I have done or committed, but rather to be bringing it forth to the Light.

Court. Sir, you must understand this by the way, this you must take along with you, that these are read, not as any Thing of Authority in themselves, or as us'd to any other Purpose, but as an Evidence of the Fact against you: Take that along with you.

(*The Two Bloody Warrants for Trial, and for Execution of his Majesty, were here read, the latter of which is as followeth.*)

*At the High-Court of Justice for the
Trying and Judging of Charles
Stuart, King of England, Jan 29,
1648.*

WHereas *Charles Stuart*, King of England, is and standeth Convicted, Attainted, and Condemned, of High-Treason, and other High Crimes; and Sentence upon *Saturday* last was pronounced against him by this Court, to be put to Death, by the Severing his Head from his Body, of which Sentence Execution yet remaineth to be done: These are therefore to will and require you to see the said Sentence executed in the open Street before *White-hall* upon the Morrow, being the 30th Day of this Instant Month of *January*, between the Hours of Ten in the Morning and Five in the Afternoon of the same Day, with full Effect; and for so doing this shall be your sufficient Warrant. And these are to require all Officers and Soldiers, and other the good People of this Nation of *England*, to be assistant unto you in this Service. Given under our Hands and Seals.

To Colonel *Francis Hacker*, Colonel *Huncks*, and Lieutenant-Colonel *Phayre*, and every of them.

Sealed and Subscribed by

<i>John Bradshaw</i> , Lord President.	<i>Hum. Edwards</i> .
<i>Jo. Hewson</i> .	<i>Dan. Blagrave</i> .
<i>Per. Pelham</i> .	<i>Owen Roe</i> .
<i>John Danvers</i> .	<i>Will. Puefroy</i> .
<i>Mich. Livesay</i> .	<i>Thomas Maleverer</i> .
<i>Jo. Bourchier</i> .	<i>Jo. Blakestone</i> .
<i>Hen. Ireton</i> .	<i>Jo. Hutchinson</i> .
<i>Thomas Grey</i> .	<i>Will. Goff</i> .
<i>Oliver Cromwel</i> .	<i>Adrian Scroop</i> .
<i>Edward Whalley</i> .	<i>James Temple</i> .
<i>John Okey</i> .	<i>Aug. Garland</i> .
<i>Thomas Pride</i> .	<i>Edmund Ludlow</i> .
<i>Hen. Smith</i> .	<i>Hen. Marten</i> .
<i>Peter Temple</i> .	<i>Vincent Potter</i> .
<i>Tho. Harrison</i> .	<i>Will. Constable</i> .
<i>Isaac Ewer</i> .	<i>Rich. Ingoldsby</i> .
<i>Val. Wauton</i> .	<i>Will. Cawley</i> .
<i>Simon Meyn</i> .	<i>Job. Barksstead</i> .
<i>Tho. Horton</i> .	<i>Anth. Stapeley</i> .
<i>Jo. Jones</i> .	<i>Greg. Norton</i> .
<i>Jo. Moor</i> .	<i>Tho. Challoner</i> .
<i>Hardress Waller</i> .	<i>Tho. Wogan</i> .
<i>Gilbert Millington</i> .	<i>Jo. Ven</i> .
<i>Geo. Fleetwood</i> .	<i>Greg. Clement</i> .
<i>Jo. Alured</i> .	<i>Jo. Downs</i> .
<i>Rob. Lilburn</i> .	<i>Tho. Wayt</i> .
<i>Wil. Say</i> .	<i>Tho. Scot</i> .
<i>Rich. Dean</i> .	<i>Jo. Carew</i> .
<i>Rob. Tichbourn</i> .	<i>Miles Corbet</i> .

Mr. Windham. Gentlemen of the Jury, We have done our Evidence; and you must know, Gentlemen, that the Principal Point of the Indictment is for *Compassing*, *Imagining*, and *Contriving* the Death of his late Majesty of Glorious Memory. There lyes the Treason; so says the Statute of the 25th Ed. III. It hath nothing of *Killing* the King there, but of *Imagining* and *Compassing*

the Death of the King. The going about it, that's the Treason, as hath been learnedly opened to you; the rest are but *Overt-Acts*: If there be such an *Imagination* or *Compassing* the Death of the King once declared, though no Fruit at all follow, it is Treason. Here certainly you have a very full Evidence given. We shew you a *Consultation*, this is one *Overt-Act*, which would do the Work if there were nothing else. I must tell you (and that with Submission to my Lords, the *Justices*) if they had *advised*, and gone no further, that had been Treason in the Letter of the Law. They conven'd and met together, and suppose then they had absolved and acquitted him, do you think they had absolved themselves from Treason? With Reverence be it spoken, if they had *acquitted* him, they had been Guilty of Treason. *Assuming a Power* to put the King to Death is an *Overt-Act* declaring such an *Imagination*. You see this Prisoner was no ordinary Actor in it; his Hand is in at all Games. Taking of him, Imprisoning of him, bringing him to *London*, and Setting Guards on him. You see also his Malice, *let us Blacken him*; for they knew his *Innocency* would shine forth, unless it was *Blackened* by their Imputations. He Sate many Times, as you hear, and *Sentenced him*, and assented to that Sentence by standing up, and likewise by concluding the *Catastrophe* of that sad beginning of Sufferings, his making a Warrant for his *Execution*; and accordingly you know what did follow: I think a clearer Evidence of a *Fact* can never be given than is for these Things.

[Here the Spectators Humm'd.]

Lord Chief Baron. Gentlemen, this *Humming* is not at all becoming the Gravity of this Court. Let there be Free Speaking by the Prisoner and Council. It is more fitting for a *Stage-Play* than for a Court of Justice.

Mr. Harrison. It is now Time, my Lords, to offer what I have to say. Have these Learned Gentlemen offered what they will say?

Council. We have no more till he hath given us Occasion; not for Evidence of the *Fact*.

Mr. Harrison. My Lords, the Matter that hath been offer'd to you, as it was touch'd, was not a Thing done in a Corner. I believe the Sound of it hath been in most Nations. I believe the Hearts of some have felt the Terrors of that Presence of God that was with his Servants in those Days, (however it seemeth good to him to suffer this Turn to come on us,) and are Witnesses that the Things were not done in a Corner. I have desired, as in the Sight of him that searcheth all Hearts, whilst this hath been done, to wait, and receive from him Convictions upon my own Conscience, tho I have sought it with Tears many a Time, and Prayers over and over, to that God to whom you and all Nations are less than a Drop of Water of the Bucket; and to this Moment I have receiv'd rather Assurance of it, and that the Things that have been done, as astonishing on one Hand, I do believe e'er it be long it will be made known from Heaven, there was more from God than Men are aware of. I do profess that I would not offer of myself the least Injury to the poorest Man or Woman that goes upon the Earth. That I have humbly to offer is this to your Lordships; you know what a Contest hath been in these Nations for many Years. Divers of those that

fit upon the *Bench* were formerly as Active —

Court. Pray Mr. Harrison do not thus reflect on the Court. This is not the Business.

Mr. Harrison. I follow'd not my own Judgment; I did what I did as out of Conscience to the Lord; for when I found those that were as the Apple of mine Eye to turn aside, I did loath them, and suffer'd Imprisonment many Years. Rather than to turn as many did, that did put their Hands to this Plough, I chose rather to be separated from Wife and Family than to have Compliance with them, tho it was said, *Sit at my Right-hand*, and such kind Expressions. Thus I have given a little poor Testimony that I have not been doing Things in a Corner, or from myself. May be I might be a little mistaken, but I did it all according to the best of my Understanding, desiring to make the Revealed Will of God in his *Holy Scriptures* as a Guide to me. I humbly conceive that what was done, was done in the Name of the *Parliament of England*, that what was done was done by their Power and Authority; and I do humbly conceive it is my Duty to offer unto you in the Beginning that this Court, or any Court below the *High-Court of Parliament*, hath no Jurisdiction of their Actions. Here are many Learned in the Law, and to shorten the Work, I desire I may have the Help of *Council* Learned in the Laws, that may in this Matter give me a little Assistance, to offer those Grounds that the Law of the Land doth offer. I say what was done was done by the Authority of the *Parliament*, which was then the *Supreme Authority*, and that those that have acted under them are not to be questioned by any Power less than them. And for that I conceive there is much out of the Laws to be shewed to you, and many *Precedents* also in the Case. Much is to be offered to you in that; according to the Laws of the Nations that was a due *Parliament*. Those *Commissions* were issued forth, and what was done was done by their Power; and whereas it hath been said we did assume and usurp an Authority, I say this was done rather in the Fear of the Lord.

Court. Away with him. Know where you are, Sir; you are in the Assembly of *Christians*; will you make God the Author of your Treasons and Murthers? Take heed where you are. *Christians* must not hear this. We will allow you to say for your own Defence what you can; and we have with a great deal of Patience suffer'd you to fall out, wherein you have not gone about so much for Extenuation of your Crimes, as to justify them, to fall upon others, and to Blaspheme God, and commit a New Treason: For your having of *Council*, this is the Reason for allowing of *Council*, when a Man would Plead any Thing, because he would Plead it in *Formality*, *Council* is allowed. But you must first say in what the Matter shall be, and then you shall have the Court's Answer.

Lord Finch. Tho my Lords here have been pleased to give you a great Latitude, this must not be suffered, that you should run into these damnable Excursions, to make God the Author of this damnable Treason committed.

Mr. Harrison. I have Two Things to offer to you, to say for my Defence in Matter of Law. One is, That this that hath been done was done by a *Parliament of England*, by the *Commons of England* Assembled in *Parliament*; and that be-

ing so, whatever was done by their Commands or their Authority, is not questionable by your *Lordships*, as being (as I humbly conceive) a Power Inferior to that of an *High-Court of Parliament*; that's One. A Second is this, That what therefore any did in Obedience to that Power and Authority, they are not to be questioned for it; otherwise we are in a most miserable Condition, bound to obey them that are in Authority, and yet to be punished if obeyed. We are not to judge what is Lawful, or what is unlawful. My Lords, upon these Two Points I do desire that those that are Learned in the Laws may speak to on my Behalf. It concerns all my Countrey-men. There are Cases alike to this, you know, in King *Richard the Second's* Time, wherein some Question had been of what had been done by a *Parliament*; and what followed upon it I need not urge in it. I hope it will seem good to you that *Council* may be assigned, for it concerns all my Countrey-men.

Council. You are mistaken if you appeal to your Countrey-men; they will cry you out, and shame you.

Mr. Harrison. May be so, my Lords, some will, but I am sure others will not.

Mr. Solicitor Gen. These Two Points, my Lords, are but One, and they are a New Treason at the Bar, for which he deserves to Die, if there were no other *Indictment*. It is the Malice of his Heart to the Dignity and Crown of *England*. I say this is not Matter for which *Council* can be assigned. *Council* cannot put into Form that which is not Matter Pleadable itself. It is so far from being true, that this was the Act of the *Supreme Parliament* of the People of *England*, that there was nothing receiv'd with more Heart-bleeding than this Bloody Business. But that the World may not be abused by the Insinuations of a Man, who acts as if he had a Spirit, and in truth is possess'd, I will say, that the Lords and Commons are not a *Parliament*; that the King and Lords cannot do any Thing without the Commons; nor the King and Commons without the Lords; nor the Lords and Commons without the King, especially against the King. If they do, they must answer it with their Head; for the King is not accountable to any Coercive Power. And for the Prisoner to justify his Act, as if it were the Act of the Commons of *England*, he is very much to be reproved: Shall he pretend that One House, nay, the Eighth part of a House, (for so it was,) can condemn a King, when both Houses cannot condemn One Man in spight of the King? I desire, my Lords, it may pass with a due Reproach, and a Sentence upon it.

Lord Chief Baron. It is true, your Questions are but One Point. You pretend the *Parliament's* Authority, and when you come to speak of it, you say the Commons of *England*. They were but One House of *Parliament*. The *Parliament*, what is that? It is the King, the Lords, and the Commons. I would fain know of you where ever you read, by the Light you say you have in your Conscience, that the Commons of *England* were a *Parliament* of *England*, that the Commons in *Parliament* us'd a Legislative Power alone. Do you call that a *Parliament* that sat when the House was Purged, as they call it, and was so much under the Awe of the Army, who were then but Forty, or Forty-five at most? Then

Then you say it was done by Authority of them. You must know where there is such an Authority, (which indeed is no Authority,) he that confirms such an Authority, he commits a double Offence; therefore consider what your *Plea* is. If your *Plea* were doubtful, we should, and ought, and would, our selves be of *Council* for you. That which you speak concerning *Conviction of your own Conscience*, remember that it is said in *Scripture*, that *they shall think they did God good Service when they slay you*, as it is in *St. John*. He hath a great deal of Charity that thinks that what you did was out of a Conscientious *Principle*; it was against the Light of Noon-day and common Practice. You make yourself a *Solicitor* in the Business. *Let us Blacken him as much as we can*. I have not touched at all upon the *Evidence*, I will not urge it now. I say you justify it upon *Convictions of Conscience*, and pretend it upon Authority; a Thing never known or seen under the Sun, that the *Commons*, nay a few *Commons* alone, should take upon them, and call themselves the *Parliament of England*. We have been cheated enough by Names and Words; there is no Colour for what you say. I do think and hope my Brethren will speak to this *Case*, that none of us do own that Convention, whatsoever it be, to be the *Parliament of England*. There was another Aggravation; at this Time that this pretended Authority usurped that Power, the *Lords* were then sitting. You had not taken this usurp'd Power to dissolve those *Lords*. No; you did this Act in Despight of the *Lords*; you had sent up an *Ordinance* to the *Lords*, and they rejected it, and thereupon these *Members* took it upon themselves: Amongst those there were some *Negatives*, and those *Members* were under the Awe and Power of your Forces at that Time. What you plead, the *Court* are of Opinion tends to the Subversion of the Laws; for you to usurp Power over the People without their Consents, to call this the People, we never knew the like before; but the *Parliament of England* was the *King, Lords and Commons*. For you to speak of this Power, and justify this Power, is an Aggravation, adding one Sin and Treason to another. We shall tell you, that neither both *Houses of Parliament*, if they had been there, not any single Person, Community, not the People, either collectively, or representatively, had any Colour to have any Coercive Power over their King. And this *Plea* which you have spoken of, it ought to be over-ruled, and not to stand good.

Mr. *Annesley*. I do the more willingly speak to this Business, because I was one of those that should have made up that *Parliament* that this Prisoner pretends to. I was one of that *Corrupt Majority* (as they call'd it) that were put out of the *House*. He cannot forget that at that Time there were *Guards* upon both *Houses of Parliament* to attend them, that were of their own Appointment; and that those *Guards* were forcibly removed by the Prisoner at the Bar, and his Fellows, and other *Guards* put there, who instead of being a Defence unto them when those *Commons* stood at the Door, were by them threatned. Yet the *Lords and Commons of England in Parliament Assembled*, a full *House of Commons*, did resolve, notwithstanding what was aforesaid, that the Treaty in the *Isle of Wight* was a Ground for Peace. Afterwards the major part of the *House*

of *Commons* having resolved on this, sent it up to the *Lords*; that very Day when they were Adjourned there were *Forces* drawn down to the *House of Commons Door*, and none suffered to come into the *House* but those that they pleased. All those that had a Mind for Peace, that minded their Duty, and Trust, and Allegiance to their King, were seized on by this Gentleman and his Fellows. When this was done, what did he and those Fellows do? They sat and put a Check upon all those that should come in. None must come in but those that would renounce their Allegiance and Duty to their King and the People, for whom they served, and then declar'd against that Vote which had been passed upon Debate of Twelve or Fourteen Hours; and then to call this an *House of Commons*, nay, the *Supreme Authority of the Nation*, he knows is against the Laws of the Land. For the *House of Commons* alone cannot so much as give an Oath. It hath not Power of *Judicature* of Life and Death: This he knows well to be according to the Laws of *England*. He knows that no Authority less than an *Act of Parliament* can make a Law; and he knows an *Act of Parliament* must be passed by the *King, Lords, and Commons*. I wonder much to hear a Justification in this kind by one that knows the Laws of *England* so well. There will none of the *Court* allow that that was a *Parliament*: The Majority of the *House* did all disavow it. These Things have been already discoursed of; I shall only say, that he knowing the Laws so well, I hope he shall suffer for Transgression thereof.

Mr. *Hollis*. You do very well know that this that you did, this horrid, detestable Act which you committed, could never be perfected by you till you had broken the *Parliament*. That *House of Commons*, which you say gave you Authority, you know what yourself made of it when you pulled out the *Speaker*; therefore do not make the *Parliament* to be the Author of your Black Crimes. It was innocent of it. You know your self what Esteem you had of it, when you broke and tore it in sunder, when you scattered, and made them hide themselves, to preserve them from your Fury and Violence: Do not make the *Parliament* to be the Author of your Crimes? The *Parliament* are the Three *Estates*: It must not be admitted that one *House*, Part of the *Parliament*, should be called the *Supreme Authority*. You know what that *Rump* that you left did, what Laws they made. Did you go home to advise with your Countrey that chose you for that Place? You know that no *Act of Parliament* is binding but what is Acted by *King, Lords, and Commons*: And now as you would make God the Author of your Offence, so likewise you would make the People Guilty of your Opinion; but your *Plea* is over-ruled.

To which the *Court* assented.

Mr. *Harrison*. I was mistaken a little. Whereas it was said the Points were one, I do humbly conceive they were not so. I say what was done, was done in Obedience to the Authority. If it were but an Order of the *House of Commons*, thus under a Force, yet this *Court* is not Judge of that Force. I say if it was done by One Estate of *Parliament*, it is not to be questioned.

Court. It was not done by One Estate, they were but a Part, nay, but an Eighth Part.

Denz. *Hollis*. It was not an *House of Commons*; They

They kept up a Company by the Power of the Sword: Do not abuse the People, in saying it was done by the *Supreme Power*.

Council. My Lord, if it were an *House of Commons*, neither *House of Commons*, nor *House of Lords*, nor *House of Lords and Commons* together; no Authority upon Earth can give Authority for murdering the King; this that he alledgeth is *Treason*; my Lord, this that is said is a clear *Evidence* of that which is charged; there is only this more in it, he hath done it, and if he were to do it again he would do it.

Lord Chief Baron. It is clear as the Noon-day, that this was not the *House of Commons*. Suppose it had been an *House of Commons* and full, and suppose (which far be it from me to suppose) they should have agreed upon such a Murtherous *Act*; for the *House of Commons* to do such an *Act*, it was void in itself; nay, any Authority without the *House of Lords* and *King* is void. You plead to the *Jurisdiction* of the Court, whether we should judge it, or no. Yes, I tell you, and proper too: We shall not speak what Power we have; the *Judges* have Power after *Laws* are made to go upon the *Interpretation* of them. We are not to judge of those Things that the *Parliament* do. But when the *Parliament* is purged, (as you call it,) for the *Commons* alone to act, for you to say that this is the *Authority of Parliament*, it is that which every Man will say *intrenches highly upon his Liberty and Privilege*: And what you have said to your Justification, what doth it tend to but as much as this, *I did it, justify it, and would do it again*; which is a New *Treason*. The greatest Right that ever the *House of Commons* did claim is but over the *Commons*. Do they claim a particular Right over the *Lords*? Nay, over the *King*? Make it out if you can, but it cannot possibly be made out. What you have said doth aggravate your Crimes: It is such an *Improvement* of your *Treason* that all *Evidences* come short of it: *King, Lords, and Commons*, is the Ground of the *English Law*, without that no *Act of Parliament* binds.

Justice Mallet. I have been a *Parliament-Man* as long as any Man here present, and I did never know or hear that the *House of Commons* had *Jurisdiction* over any, saving their own *Members*, which is as much as I will say concerning the *Parliament*. I have heard a Story of a Mute, that was born Mute, whose Father was slain by a Stranger, a Man unknown. After Twenty Years, or thereabouts, this Mute Man fortun'd to see the Murtherer of his Father, and these were his Words, *Oh! here is he that slew my Father*. Sir, the King is the Father of the Countrey, *Pater Patrie*, so saith Sir Edward Coke. He is *Caput Reipublice*, the Head of the Commonwealth. Sir, what have you done? Here you have cut off the Head of the whole Commonwealth, and taken away him that was our Father, the Governour of the whole Countrey. This you shall find Printed and Published in a Book of the greatest Lawyer, Sir Edward Coke. I shall not need, my Lord, to say more of this Business. I do hold the Prisoner's *Plea* vain and unreasonable, and to be rejected.

Justice Hide. I shall not trouble you with many Words. I am sorry that any Man should have the Face and Boldness to deliver such Words as you have. You, and all, must know, that the King is above the Two Houses. They must propose

their Laws to him: The *Laws* are made by him, and not by them; by their Consenting, but they are his Laws. That which you speak as to the *Jurisdiction*, you are here *Indicted* for High-Treason, for you to come to talk of *Justification* of this by Pretence of Authority, your *Plea* is naught, illegal, and wicked, and ought not to be allowed. As to having of *Council*, the Court understand what you are upon; *Council* is not to be allowed in that *Case*, and therefore your *Plea* must be over-ruled.

Mr. Justice Twisden. I shall agree with that which many have already said; only this, you have eas'd the *Jury*, you have confessed the Fact. I am of the same Opinion, that you can have no *Council*, therefore I over-rule your *Plea*, if it had been put in never so good *Form and Manner*.

Earl of Manchester. I beseech you, my Lords, let us go some other Way to work —

Sir William Wild. That which is before us, is whether it be a Matter of *Law* or *Fact*: For the Matter of *Law*, your Lordships have declar'd what 'it is, his Justification is as high a *Treason* as the former. For Matter of *Fact*, he hath confess'd it. I beseech you, my Lord, direct the *Jury* for their *Verdict*. This Gentleman hath forgot their Barbarousness; they would not hear their King.

Court. No *Council* can be allowed to Justifie a *Treason*; that this is a *Treason*, you are *Indicted* by an *Act* of the 25th of *Edw. III.* That which you speak of the *House of Commons*, is but part of the *House of Commons*; they never did, nor had any Power, to make a *Law*, but by *King, Lords, and Commons*; and therefore your *Plea* is naught, and all the Court here is of the same Opinion; if they were not they would say so, therefore what you have said is over-ruled by the Court. Have you any Thing else to offer?

Mr. Harrison. Notwithstanding the Judgment of so many Learned ones, that the Kings of England are no ways accountable to the Parliament, the Lords and Commons in the Beginning of this War having declared the King's beginning War upon them; the God of Gods —

Court. Do you render yourself so desperate, that you care not what Language you let fall? It must not be suffered.

Mr. Harrison. I would not willingly speak to offend any Man; but I know God is no Respector of Persons. His setting up his Standard against the People —

Court. Truly, Mr. Harrison, this must not be suffered: This doth not at all belong to you.

Mr. Harrison. Under Favour this doth belong to me. I would have abhorr'd to have brought him to Account, had not the Blood of Englishmen, that had been shed —

Council. Methinks he should be sent to *Bedlam*, till he comes to the Gallows to render an Account of this. This must not be suffered. It is in a Manner a New *Impeachment* of this King, to justifie their Treasons against his late Majesty.

Mr. Solicitor-General. My Lords, I pray that the *Jury* may go together upon the *Evidence*.

Sir Edw. Turner. My Lords, this Man hath the Plague all over him; it is Pity any should stand near him, for he will infect them. Let us say to him as they used to write over an House infected, *The Lord have Mercy upon him*, and so let the Officer take him away.

Lord

Lord Chief Baron. Mr. Harrison, we are ready to hear you again; but to hear such Stuff, it cannot be suffered. You have spoken that which is as high a Degree of Blasphemy, next to that against God, as I have heard. You have made very ill use of these Favours that have been allowed you to speak; your own Conscience cannot but tell you the Contradiction of your Actions against this that you have heard as the Opinion of the Court. To extenuate your Crimes you may go on, but you must not go as before.

Mr. Harrison. I must not speak so as to be pleasing to Men; but if I must not have Liberty as an Englishman —

Court. Pray do not reflect thus; you have had Liberty, and more than any Prisoner in your Condition can expect; and I wish you had made a good Use of it. Keep to the Business, say what you will.

Mr. Harrison. My Lords, thus; There was a Discourse by one of the Witnesses that I was at the Committee preparing the Charge, and that I should say, Let us Blacken him. The Thing is utterly untrue; I abhorred the doing of any Thing touching the Blackening of the King. There was a little Discourse between the King and myself. The King had told me that he had heard that I should come privately to the Isle of Wight to offer some Injury to him; but I told him I abhorred the Thoughts of it. And whereas it is said that my Carriage was hard to him when I brought him to London, it was not I that brought him to London, I was commanded by the General to fetch him from Hurst-Castle. I do not remember any hard Carriage towards him.

Court. Mr. Harrison, You have said that you deny that of Blackening, which the Witness hath Sworn; and somewhat else touching the King in his Way to London, that the Witness hath Sworn to also. The Jury must consider of it, both of their Oaths and your Contradictions. If you have nothing more to say, which tends to your Justification, we must direct the Jury. The end of your Speech is nothing but to infect the People.

Mr. Harrison. You are uncharitable in that.

Justice Foster. My Lords, This ought not to come from the Bar to the Bench; if you salley out thus about your Conscience; if your Conscience should be a darkened Conscience, that must not be the Rule of other Men's Actions. What you speak of that Nature is nothing to the Business. If you have any thing to say, by Way of Excuse for yourself for Matter of Fact, you may speak: But if you will go on as before, it must not be suffered.

Mr. Harrison. The Things that have been done, have been done upon the Stage, in the Sight of the Sun —

Court. All this is a Continuance of the Justification and Confession of the Fact. We need no other Evidence.

Council. He hath confessed his Fact, my Lords. The Matter itself is Treason upon Treason; therefore we pray Direction to the Jury.

Lord Chief Baron. Mr. Harrison, I must give Direction to the Jury, if you will not go further touching the Fact.

Mr. Harrison. My Lords, I say what I did was by the Supreme Authority. I have said it before, and appeal to your own Consciences, that this Court cannot call me to Question.

Lord Chief Baron. Mr. Harrison, you have appealed to our Consciences. We shall do that, which, by the Blessing of God, shall be just; for which we shall answer before the Tribunal of God. Pray take heed of an Obdurate, Hard Heart, and a Seared Conscience.

Mr. Harrison. My Lords, I have been kept six Months a Close Prisoner, and could not prepare myself for this Trial by Council. I have got here some Acts of Parliament of that House of Commons, which your Lordships will not own; and the Proceedings of that House, whose Authority I did own.

Lord Chief Baron. This you have said already. If you shew never so many of that Nature they will not help you: You have heard the Opinion of the Court touching that Authority. They all unanimously concur in it.

Gentlemen of the Jury. You see that this Prisoner at the Bar is Indicted for Compassing, Imagining, and Contriving the Death of our late Sovereign Lord, King Charles the First, of Blessed Memory. In this Indictment there are several Things given but as Evidences of it; they are but the Overt-Acts of it. The one is, first, that they did meet and consult together about the putting the King to Death; and that alone, if nothing else had been proved in the Case, was enough for you to find the Indictment; for the Imagination alone is Treason by the Law. But because the Compassing and Imagining the Death of the King is secret in the Heart, and no Man knows it but God Almighty, I say, That the Imagination is Treason; yet it is not such as the Law can lay hold of, unless it appears by some Overt-Act. Then the first Overt-Act is their Meeting, Consulting, and Proposing to put the King to Death. The Second is more open; namely, their Sitting together, and Assuming an Authority to put the King to Death. The Third is Sentencing the King. And I must tell you that any one of these Acts prove the Indictment. If you find him Guilty but of any one of them, either Consulting, Proposing, Sitting, or Sentencing (though there is full Proof for all,) yet notwithstanding you ought to find the Indictment. You have heard what the Witnesses have said, and the Prisoner's own Confession. Witnesses have Sworn their Sitting together; and that he was one: One swears he sat Four times, another Twice; some several Times. There are several Witnesses for this, as Mr. Masterfon, Mr. Clark, Mr. Kirk, and Mr. Nutley. And then you have another Thing too, which truly the Prisoner did not speak of. Witness was given against him, that he was the Person that Conducted the King; this was before that which he would have to be done by a Legislative Power, and that is another Overt-Act. If a Man will go about to Imprison the King, the Law knows what is the sad Effect of such Imprisonment. That hath often been adjudged to be an Evidence of Imagining and Compassing the Death of the King. That Man, the Prisoner at the Bar, it hath been proved to you did Imprison the King; and it appears by his own Hand to the Warrant for summoning of that Traiterous Assembly, The High-Court of Justice, as they called it. And also it appears by his Hand to the Warrant for Execution; that Bloody Warrant. He hath been so far from denying, that he hath justified these Actions. The Evidence is so clear and pregnant as nothing more. I think you need not go out.

The Jury went together at the Bar, and presently unanimously agreed on their Verdict; whereupon they were demanded by the Clerk:

Clerk. Are you agreed upon your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man. (Which was Sir Tho. Allen.)

Clerk. Thomas Harrison, Hold up thy Hand. Gentlemen of the Jury, look upon the Prisoner. How say ye? Is he Guilty of the Treason whereof he stands Indicted, and hath been Arraigned? Or Not Guilty?

Fore-man. Guilty.

Then the Keeper was charged to look to the Prisoner.

Clerk. What Goods and Chattels had he at the Time of Committing this Treason, or at any Time since?

Fore-man. None to our Knowledge.

Which Verdict being repeated to the Jury by Mr. Clerk of the Crown, the Jury owned it unanimously.

Mr. Solicitor-Gen. My Lords, upon this Verdict that hath been given against the Prisoner at the Bar I humbly move that we may have Judgment given.

Your Sessions will be long, and your Work will be great; his Demeanour hath been such that he doth not deserve a Reprieve for so many Days that you are like to spend in this Session.

Court. Mr. Harrison, they desire Judgment upon the Verdict. What do you say for yourself why Judgment should not pass against you?

Clerk. Thomas Harrison, hold up thy Hand. What hast thou to say for thy self why Judgment should not pass against thee, to Die according to Law?

Mr. Harrison. I have nothing further to say, because the Court have not seen meet to hear what was in my Heart to speak, I submit to it.

The Crier made Proclamation for Silence whilst Judgment was in giving.

Lord Chief Baron. You that are the Prisoner at the Bar, you are to pass the Sentence of Death, which Sentence is this. The Judgment of this Court is, and the Court doth award, That you be led back to the Place from whence you came, and from thence to be drawn upon an Hurdle to the Place of Execution, and there you shall be Hanged by the Neck, and being Alive shall be cut down, and your Privy Members to be cut off, your Entrails to be taken out of your Body, and (you living) the same to be Burnt before your Eyes, and your Head to be cut off, your Body to be divided into Four Quarters, and Head and Quarters to be disposed of at the Pleasure of the King's Majesty, and the Lord have Mercy upon your Soul.

And then Proclamation was made for Adjournment of the Court to this Place till Seven of the Clock to-morrow Morning; and all Jury-Men and Witnesses were Commanded to be at the said Place and Time upon Forfeiture of an Hundred Pounds apiece.

Prisoners brought to the Bar, viz.

John Jones, Adrian Scroop, Thomas Scot, Gregory Clement, John Carew.

Crier. Sir Thomas Allen.

Clerk. Sir Tho. Allen, lay your Hand on the Book, look upon the Prisoner at the Bar.

Scroop. I challenge him, my Lord.

Ld Chief Baron. That you may not mistake, if you challenge in this manner, and do not join in your Challenges, we must Try you severally one after another; I must tell you the Course of the Law, if one challenge one, and another challenge another, we must sever, and go to Trial one by one. Call the next.

Clerk. Sir Henry Wroth.

Scroop. I challenge him.

Lord Chief Baron. Then we must go on severally. Set all aside but Mr. Scroop. Mr. Scroop, you may challenge particularly whom you will till you come to Thirty-five, if you go beyond that Number you will lose the Benefit of the Law.

Scroop. I desire, my Lord, that whosoever was challenged Yesterday may not be called again.

Court. No, that cannot be, that is nothing to you. The Court thereupon proceeded, and called —

Challenged, John Lisle, Nick. Raynton, Thomas Wynter, Thomas Frankelyn, Randal Nichol, Jo. Kirke, Ambrose Scudamore, George Tirrey, who were all challenged.

Jury. Thomas Willet, Hen. Marsh, Charles Pitfield, Christopher Abdy, Richard Cheny, Tho. Bid, Jo. Smith, Richard Abel, Ralph Halsal, Jo. Gallyard, Tho. Swallow, Sam. Starnel, were admitted and sworn on the Jury.

Clerk. Cryer, make Proclamation. If any Man can inform my Lords, the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken between our Sovereign Lord the King, and the Prisoner at the Bar, let them come forth and they shall be heard, for now the Prisoner stands at the Bar upon his Delivery; and all others bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they shall forfeit their Recognizance.

Clerk. Adrian Scroop, Hold up thy Hand; you Gentlemen that are Sworn, look upon the Prisoner, and hearken to his Charge; you shall understand, &c. upon this Indictment he hath pleaded Not guilty.

Mr. Sol. Gen. May it please your Lordships, and you Gentlemen of the Jury, this Prisoner at the Bar stands Indicted for Compassing and Imagining the Death of the late King of Blessed Memory. The Indictment sets out, that to that End and Purpose the Prisoner at the Bar did, with others, assemble and sit together at Westminster-Hall, consulting upon him, and Usurped an Authority to proceed against the Life of our said late Sovereign, and in Pursuance of that our late Sovereign was brought to his Death. These Things are alledged in the Indictment as several Overt-Acts, to shew the Treason of his Heart, which was the Compassing and Imagining the Death of the King; Compassing and Imagining are the Words of the Statute, the rest of the Indictment is but as so many Overt-Acts, Evidences and Manifestations of that corrupt and wicked Heart of his, by which he first thought such a Thought against his Sovereign. The Manner of our

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The Proclamation for Silence.
The Jury called.

our Evidence shall be this: Before they could come to accomplish this damnable Design, it was necessary to meet in a Traitorous Assembly, which they called the *High-Court of Justice*, that under the Pageantry and Mockery of that, they might pretend to Murder him by a Sentence; and before that Assembly could come to sit, there was a Precept set forth very formally to summon them to sit. This Prisoner at the Bar is one of those Persons, who under his Hand and Seal did summon that Court to sit upon the Life of our late Sovereign. When the Court, in Obedience to that Summons (as they called it) did meet, they sat several times, and he among them; they did proceed with a wonderful Impudence (as they had begun) to pronounce Sentence of Death upon our late Sovereign; my Lords, this Prisoner at the Bar was amongst them, and was at that Court, and gave the Sentence. When they had done, that they might compleat their Villany, they made a Bloody Warrant for Severing the Head of his late Majesty from his Body, and the Hand of the Prisoner is to that Warrant also; and this is the Scope of our Indictment.

Scroop. *My Lords, may I have Liberty to speak?*

Court. If you do confess that which is opened in Evidence against you, we shall not need to examine any Witnesses.

Scroop. *Examine what you think fit. If I understand that worthy Gentleman that spake last, he said that my Hand was to the Warrant for Execution; my Lord, if I can see my Hand I can tell, and I will not deny my Hand.*

Court. Shew it him: Which was done accordingly.

Scroop. *My Lords, I will not deny but that it is my Hand, but it is not my Seal.*

Council. Crier, call Mr. Masterfon, Mr. Kirke, Mr. Clark, Mr. Carr; who were all Sworn.

Mr. Masterfon, pray tell my Lords and the Jury whether you did see the Prisoner at the Bar in that which they called the *High-Court of Justice*, sitting as a Judge upon the late King.

Mr. Masterfon. My Lords, and Gentlemen of the Jury, I saw upon the 22d or 23d of Jan. in the Year 1648, the Prisoner at the Bar sitting upon the Bench as one of the Judges in that which they called the *High-Court of Justice*, the King standing a Prisoner at the Bar; I say either the 22d or 23d. But I say particularly upon the 27th of Jan. 1648, in which the Sentence was passed upon the late King, I saw the Prisoner at the Bar sitting upon the Bench, in that which they called the *High-Court of Justice*.

Council. How did he demean himself when the Sentence was read?

Mr. Masterfon. When the Sentence was read it was by the President (as he was called) of that Court, said to be the Sentence and Judgment of the whole Court, upon which the Prisoner at the Bar rose up, as to my Apprehension, testifying his Assent. All their Assents were taken so, and no otherwise, to us that were as Spectators,

Scroop. *I beseech your Lordships that I may speak without Offence, and answer to this.*

Court. Mr. Scroop, you may please to have Paper, and Pens, and Ink, to take Notes, or to ask any Questions.

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Scroop. *My Lords, give me Leave to ask him this Question; Whereabouts did he see me sit in the Court?*

Court. Mr. Masterfon, you hear the Question, pray answer to it.

Mr. Masterfon. My Lords, I cannot particularly say where he sat, but I saw him in the Court, and to the best of my Remembrance it was on the Second Seat on the Left-hand of Bradshaw.

Scroop. *I would not give Offence to the Court in any Kind; I am now pleading for my Life. I desire to take a little Liberty to ask this Gentleman if ever he and I were in Company together, that he knows me so well.*

Mr. Masterfon. For my part I do not remember I saw his Face before the sitting of that Court: If this Gentleman ask me if I were ever in his Company, I know not how I may construe the Word Company; but I am sure I never eat nor drank with him; I have seen him very many Times at Committees, more than twenty Times since that Business.

Mr. Clark called.

Council. Mr. Clark, you have heard the Question, did you ever see the Prisoner at the Bar in that which they called the *High-Court of Justice*?

Mr. Clark. I do remember in the Year 1648 I saw the Prisoner sitting in that which they call the *High-Court of Justice* upon the Trial of the King.

Scroop. *My Lords, you may desire in examining Witnesses touching my Sitting.*

Court. Do you acknowledge you did sit in that which they called the *High-Court of Justice*?

Scroop. *Yes, I see it proved, and I see a Gentleman here in my Eyes that I know very well. I will not deny it.*

Court. Did you sit upon the Sentence-Day, that is the Evidence, which was the 27th of January? You are not bound to answer me, but if you will not we must prove it. Do you confess that?

Scroop. *I do not confess that I stood up as assenting to the Sentence.*

Mr. Clark called.

Council. Mr. Clark, what say you to that?

Clark. I did not take particular Notice of him that Day, that he stood up; but the Whole Court stood up, to my Apprehension; but I took Notice that he was there then present.

Council. Mr. Clark, do you remember that you saw any of them sit?

Clark. I did not take Notice of any that sat then, but all stood up, to my Thoughts.

Mr. Carr called.

Council. Mr. Carr, Tell my Lords and the Jury whether you did see the Prisoner at the Bar sitting in that which they called the *High-Court of Justice*.

Carr. My Lords and Gentlemen of the Jury, the 22d, 23d, and 27th of January 1648, I was present when the Names of that they called the *High-Court of Justice* were called, and amongst others that were Judges of that Court, as was printed in a Paper which I then had in my Hand, I found the Name of Mr. A. Scroop, who I saw did there sit and appear.

Mr. Carr looked in that Paper when he gave his Evidence.

Scroop. *I hope you will not take any Evidence from a printed List.*

Council. The Manner of his Evidence is, he saith this, That he had this printed Paper in his Hand when the Names of that Court were called, and marking the Persons in that Paper who were present, and that you were One of them who did appear.

Scroop. *My Lord, I shall not dispute, in Regard of my Want of Skill in the Law, the Lawfulness of bringing in any Paper in Evidence into the Court, I shall not dispute against your Lordships; but by your Favour I do suppose there is no Witness ought to use any Paper, or look upon any Paper when he gives Evidence; but I shall submit it to your Lordships.*

Mr. Sol. Gen. Ask him the Question without his Paper; but yet nothing is more usual than for a Witness to make Use of a Paper to help his Memory.

Scroop. *The Gentleman that spake last I cannot hear him.*

Mr. Sol. Gen. We do not need his Paper in this Case, he will tell it without a Paper. Mr. Carr, speak without a Paper.

Carr. My Lords, upon the calling of those that were Judges in that Court which they called the High-Court of Justice then sitting, this Gentleman the Prisoner at the Bar did answer to his Name then called.

Scroop. *Did you see me?*

Carr. I heard you answer, and saw you.

Scroop. *I pray he may be ask'd whereabouts I sate in that Court.*

Council. Mr. Carr, you hear the Question, answer to it.

Carr. I am not able particularly to tell now, it being many Years since.

Scroop. *My Lord, observe of what Value this Evidence is; I am sure I never was in his Company, I do not know that ever he saw me in his Life: I beseech you give me Leave to plead for myself in all Humbleness and Modesty, my Lord.*

Lord Chief Baron. Notice is taken of it, Mr. Scroop, God forbid you should be debarr'd of it.

Scroop. *I say he comes with Evidence of a Paper, he heard my Name call'd, and marked it: It is strange that a Gentleman whom I never saw, I know not his Name, nor do I not think he knew my Name if he had met me.*

Lord Chief Baron. I told you that was laid aside, and you heard him speak *Viva voce* without a Paper.

Council. Mr. Kirk, did you see the Prisoner at the Bar in that Court which they called the High-Court of Justice for Trial of the late King?

Kirk. My Lords and Gentlemen of the Jury, I did see the Prisoner there, and I did wonder to see him there, which was the Reason I took the more special Notice of his being there.

Scroop. *Pray, my Lord, let me intreat one Thing before he speaks, That your Lordships will be pleas'd to speak to him to give in his Evidence without any Speech.*

Council. How can that be? Can he give Evidence without speaking?

Scroop. *I beseech you, my Lords, give me Leave to say this, Let him give in his Evidence in plain Words without any Speech.*

Lord Chief Baron. Mr. Scroop, he must be excused, there are Circumstances inducing which are as much as the Principal; this that he hath

said is very material; saith he, *I did see the Prisoner at the Bar there; I did not expect it, and wondered at it, and therefore took the more Notice*—Let him go on, ask him what Question you will.

Scroop. *My Lord, I submit.*

Lord Chief Baron. Mr. Kirk, you must speak the Truth, and the whole Truth; go on.

Kirk. I say as I said before, I saw this Gentleman sitting in that which they called the High-Court of Justice, and I did therefore wonder at it, because I did not expect him there. I came to know him formerly as he was called Captain Scroop.

Council. Go on.

Kirk. And, as I said before, I saw this Person; this Prisoner at the Bar, sit amongst the rest of those Persons, Judges, as they called themselves; of the High-Court of Justice for the Trial of the King; I did more particularly take Notice of this Person, because I did not expect him there: I knew him formerly upon this Report, being an Eminent Man, by the Name of Captain Scroop, and at that Time was an Associate of one Captain Vivers, and Captain Wingham; I had not seen him some Years before this Business, and seeing of him there, I did the more particularly take Notice of him.

Scroop. *Have you done, Sir? I beseech your Lordship ask him what Employment he had there himself when he saw me there.*

Kirk. My Lord, I was there to hear the Trial.

Lord Chief Baron. Mr. Scroop, I am not willing you should have any Thing of Interruption unless you reflect upon any Person that concerns not you, Mr. Scroop, do not think it will be for your Advantage, nor is it proper for you to ask.

Scroop. *In all Humbleness I do speak it to your Lordships, that your Lordship will please to consider, that if he had any Employment in that Business himself how unfit a Witness he is against me.*

Court. Much fitter.

Scroop. *If it be so I have done.*

Kirk. My Lord, I was there only as a Spectator, I went only there to see and hear what was there to be seen and heard; I stood there and took Notes in Characters of the Proceedings, and several others with my self did the like, and we compared them together; that was all my Business at that Time, and I saw him sit there the 27th Day of Jan. 1648, which was the Day of Sentence against the King.

Scroop. *Whereabouts did you see me sit there?*

Kirk. It is not, I think, imaginable that any Person should be able after so many Years possibly to say where any Person sate; but to the best of my Remembrance you sate upon the Second Bench next the President. But I dare not be positive in that, I dare not justify it upon my Oath, it is but my Remembrance.

[Here Mr. Scroop talked to one that stood near him.]

Lord Chief Baron. We must desire that of you, Mr. Scroop, that you will not speak to any here but what the Court may hear.

Scroop. *I shall observe your Commands.*

Mr. Coymore Sworn.

Council. Did you see the Prisoner at the Bar sitting in that which they called the High-Court of Justice as a Judge upon the King?

Coymore. I did see him.

Council. When? What Day?

Coymore.

Coyt. I cannot name the Day; I was there Three Days of their Sitting, there I saw him once or twice; once I am sure.

Scroop. *What Day?*

Coyt. I cannot remember.

Council. Did he sit there as a Judge upon the King?

Coyt. He sate among the rest as a Judge.

Scroop. Give me Leave to ask him whereabouts he saw me sit.

Council. Where did you see him sit?

Coyt. I cannot remember the Place, he was among them; I saw him either One or Two Days; there was a great Company of them together.

Council. Mr. Nutley, did you see the Prisoner at the Bar sitting in that which they called the High-Court of Justice?

Nut. If it please your Lordships, I was there in the Court those Four several Days that they sate in Judgment. I heard the Prisoner at the Bar called by his Name. I did take Notice he was there, truly I think he was there twice or thrice to my Remembrance.

Council. Can you tell what Day, whether the 27th of Jan. 1648?

Nut. I cannot say positively, but to the best of my Remembrance he was there; that was the last Day when Judgment was given.

Mr. Baker Sworn.

Council. Mr. Baker, what say you? Did you see the Prisoner at the Bar sitting in that which they called the High-Court of Justice?

Baker. Yes, I did see Col. Scroop on Tuesday the 23d of Jan. 1648, very particularly stand up and answer to his Name.

Council. Mr. Coytmore, are you acquainted with Col. Scroop's Hand?

Coyt. I have had several Letters from him.

Council. Mr. Scroop, have you a mind to see the Warrant for summoning the Court?

Scroop. I desire to see it; I do not remember I set my Hand to it.

Court. Shew it him. [It being shewed him,]

Scroop. I cannot say it is my Hand.

Council. It is too true; we shall prove it to you.

Court. Shew it to Mr. Coytmore.

Scroop. Be pleas'd to let me see it once more: Which was again shewed him: Truly, my Lord, I will save him the Labour.

Council. You do acknowledge it was your Hand?

Scroop. I'll save him the Labour; for I confess I do not love Men should be put to their Oaths more than needs.

[Here likewise the Warrant for Execution was read.]

Council. My Lords, we shall conclude our Evidence with Major-General Brown, the Lord Mayor Elect.

The Lord Mayor Elect Sworn.

Council. My Lord, be pleased to tell my Lords what Discourse hath lately passed between the Prisoner at the Bar and you concerning the Death of the King.

Lord Elect. My Lords, upon some Occasion I was accidentally at the Chamber of the Speaker, there I met this Gentleman, whom indeed I knew not; he told me who he was; and when I understood who he was, I said to him (or Words to this Purpose, I cannot tell the Words) because

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I would not distaste him, and say You have done this, therefore I put it thus, We have done this, What a sad Case have we, said I, brought this Kingdom unto? Why, saith he? You see, said I, how it is ruined now the King is murdered, &c. Saith he, some are of one Opinion, and some of another. Sir, said I, do you think it was well done to murder the King? Saith he, I will not make you my Confessor, Sir; it was much to this Purpose.

Council. When was this spoken?

Lord Elect. Truly I do not know the Day, but it was that Day that Sir H. M. rendered himself to the Speaker; it was since the Coming in of the King.

Mr. Sol. Gen. Neither Time, nor the Hand of God appearing in this Business, nor the Condition he was in, was ever able to bring this Gentleman to be sorry for his Offence; but we do not give it as any Evidence of his Crimes: You have heard the Prisoner confess the Two Warrants: You have heard by several Witnesses produced that he did sit in that which they called the High-Court of Justice, by Three that he sat particularly on that Day they called the Day of their Judgment; you have heard how little Penitence he hath had, by his Declaration to the Lord Mayor Elect.

Scroop. I hope now that you have heard the Evidence against me, that you will give me Leave to make some Defence for my self.

Lord Chief Baron. God forbid otherwise but that you should have free Liberty.

Scroop. Truly, my Lords, though my Breeding hath not been in the Way of the Laws, and therefore I have a great Disadvantage when there be such Learned Gentlemen as these are to plead against me, I must confess to you I have something for Matter of Law to plead for the Justification of the Fact, tho' I would not undertake to justify the Person; this I humbly intreat, if it may be granted, that I may have some Time given me, and some Council, that I may answer Matter of Law.

Lord Chief Baron. Mr. Scroop, if you have any Thing of matter of Law for which you would have Council, you must alledge that Matter first; the Use of Council is only to put in Certainty what you have of Matter of Law, and then the Court and Judges must judge of it. If you have Matter of Law, you must tell what it is; if it be Matter that there is Cause to over-rule it, there is no Cause of making further Use of Council. If One be Indicted for Murder, when he comes to Trial he will say, I have Matter of Law to plead; What is that? That Murder is no Felony: Do you think Council will be admitted in this? If you do alledge what this Matter is wherein you desire Council, you shall have your Answer.

Scroop. My Lords, as well as I am able to do it I shall do it; my Lord, I was not in the Parliament; take Notice of that; and that which was done in the High-Court of Justice, it was done by a Commission from the Parliament. My Lord, it was that Authority, which was then, I will not say it was so, because I would not give Offence; it was that Authority which was then accounted the Supreme Authority of the Nation; and that Authority, my Lord, that a great many of the Generality of the Nation submitted to. My Lord, I having received a Command from that Authority, what I did was in Obedience

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dience to that Authority: My Lord, I have not had Time to consider of these Things, because I have been for these Six Weeks Time shut up a close Prisoner, and that I could neither come at Council nor any Thing else, nor to get any Thing to prepare for it; therefore I desire your Lordships to do me the Favour, if you see any Weight in it, to let me have Time and Council assigned me.

Lord Chief Baron. Have you done, Sir?

Scroop. Yes.

Lord Chief Baron. Then I take it this is the Effect of what you have said; if I have not taken it aright tell me so: You say you justify the Fact, though not your Person; that you were not of the Parliament; that what was done was by Commission from the Parliament: Be pleased not to mistake me, for I say you said this: That that which I have to plead in Justification of it, I do not say that I justify myself, but that which I have to say is for Justification of the Fact: I was first no Contriver of the Business; and then, secondly, I did it by Vertue of the Command, and in Obedience to the Authority, of the Parliament: That that Authority was then accounted the Supreme Authority of the Nations, and that the Generality of the Nations did submit to their Authority; I think I have repeated all you have said. Then, Mr. *Scroop*, you must know this, that there is no Cause at all why Council should be given for what you speak; I profess it rather tends to the Aggravation than Extenuation of what you did. First, you say you did it by Authority of Parliament, I am afraid you have been mistaken as well as others; by the Word Parliament, what doth that mean? I am sure you, and every one, knows, that there was not one Precedent ever heard of till this, that the House of Commons should take upon them the Legislative Power, and make such an Act as this was; there was no Colour for it. Then for Men upon their own Heads, never heard of before, and against the Liberty and Freedom of the People, that they should call it the Parliament, when there was but 46 sate, whereas there was above 240 excluded; and how you can call this a House of Commons is a great wonder to me; but I tell you this, take it for granted, that if they were the most perfect House of Commons that could be, did ever the House of Commons, before this single Act, take upon them the Legislative Power without the Lords? The Acts are begun in the Commons House; when they have done, if the Lords do not pass it, it is Abortive; if it be done by both Houses there ought to be a Royal Assent: But the Lords had rejected this Act; then they must take upon them, these 46 Men, whereof I do believe there was not above 25 or 26 Men that did Vote this, and this must be called the Parliament, the Commons of England. I would fain know whether any Man hath heard that the House of Commons took upon them the Legislative Power before this Act; but this hath been over-ruled in the like Case, and I shall say no more to it. What is the Oath of Allegiance? Is it not that you would defend the King, his Crown, Rights, and Liberties, against all Persons whatsoever? It was not only against the Pope (as some would have it) but the Word is, *or otherwise*: They broke the Oath of Supremacy, which was, *That the King was Supreme Governour of these Nations*. They swore

that they would maintain and keep all Privileges, Immunities, Preheminces, annexed to the Imperial Crown of this Realm; there is Difference between some Crowns and Imperial Crowns: An Imperial Crown, it was that which was not to be touched in the Person: We do not speak any Thing of the Absolute Power of the King, for you see he cannot judge concerning the Death of his Father, but by *Laws*. When you swore this Allegiance, all those Members to break this at once, this would be so far from having any Colour of Authority, that he that justifies it, justifies it against the Light of the Conscience and Laws. You say you did it by Commandment from them; he that doth a Command by such an Authority, it is his Guilt; Our *Law-Books* say, That if a Court at Common-Law exceed their Jurisdiction, in that Case he that obeys that Command is punishable. In the Court of Common-Pleas, if there be an Appeal there for Murther, it is only proper to the Upper Bench; and therefore if the Party be Condemned, Sentenced, and Executed thereupon, the Executioner in that Case is Guilty of Murther for obeying that Authority, which was indeed no Authority: And therefore whereas you would go about to justify the Fact, because you did it by Command of that Authority, that is an Aggravation: That when Men shall assume an Authority which is a Devil at the Noon-day, appearing without Vizors; I say shall assume an Authority never heard of before; if Men will countenance their Acts by obeying of them, it is an Aggravation: We have already declared this in the Case of the Prisoner Yesterday; we are all satisfied in the Law in that Case: It is so clear a Point in Law, that my Brethren here and we did over-rule it Yesterday in the like Case, and so we must now; and I hope that all do concur in this Opinion that hath been delivered.

Lord Finch. I hope all do concur in this Opinion delivered by my Lord Chief Baron. You shelter yourself under a Command of the House of Commons; but let me tell you, and all the World, That if the House of Commons (let it have been never so compleat) had given a Command, it had been a Thing no Ways justifiable; the Justification is an Aggravation.

Scroop. My Lord, I do see that every Thing I speak, though it be for clearing of myself from your Ill Opinion, I see it is taken in an Ill Sense; (I humbly beseech Pardon for the Expression;) if I err I will crave your Lordship's Pardon; but, my Lord, I say this, If I have been mis-led, I am not a single Person that have been mis-led. My Lord, I could say, (but I think it doth not become me to say so,) That I see a great many Faces at this Time that were mis-led as well as myself, but that I will not insist upon: I say this, That I hope an Error in Judgment shall not be accounted Malice or an Error of the Will: Truly (my Lord) I never went to the Work with a Malicious Heart; I humbly desire your Lordships to take Notice of it, That I never bore any Malice at all against his late Majesty.

Lord Chief Baron. Mr. *Scroop*, have you done?

Scroop. My Lord, I do beseech your Lordships to take Notice, that an Error in Judgment is not an Error in the Will.

Lord Chief Baron. Mr. *Scroop*, I am very glad to hear you say so; but let me tell you what the Law saith; the Law in this Case creates the Malice.

Malice. If a Man do an Act of this Nature, that may be some Kind of Excuse to God, but towards Man you are to look to the Fact, the Law implies the Malice. If there be any Thing you will say in the Extenuation of your Offence, we will be very glad to hear that may tend to your Help.

Scroop. *My Lord, there is one Evidence comes in against me that I must confess I am very sorry to see; and, my Lord, there was a saying, and it is by my Lord Mayor Elect: Truly he is a Worthy Gentleman, but I desire the Lord may forgive that which he hath spoken: Truly, my Lord, I did never intend any Thing in this, neither can I directly remember that I spake those Words directly, as my Lord Mayor Elect doth speak: I do believe my Lord Mayor cannot very well remember them himself; for he saith, so far as he can remember; I must confess that when I was there, and had appeared according to the Proclamation, that such Discourse somewhat like it was raised, not of my procuring; I did not procure the Discourse; I never intended the Justification of the Fact; but it was my ill Success that I should meet with that worthy Gentlemen to have so much Discourse with him.*

Lord Chief Baron. Mr. Scroop, my Lord Mayor Elect saith no more than this, so far as he remembers, and the Words that you should say were these, *That some are of one Opinion, and some are of another.*

Scroop. *Upon the Death of the King, (my Lord,) I must confess to you, that somewhat I said to him, but I cannot own that I said those Words. My Lords, He is a worthy Person, I do not desire to speak any Thing to degenerate in the least kind from him; it is but his Yea, and my No; there was no Body there.*

Lord Chief Baron. Have you any Thing more to say for yourself?

Scroop. *My Lord, if your Lordship do over-rule it so that I may not have Council, I have little more to say.*

Lord Chief Baron. You have heard the Sense of the Court in that particular, you cannot have Counsel allowed you as to the Matter you have pleaded.

Scroop. *I have done, but only this, my Lords, I know not whether it be seasonable to mention it; I came in upon the Proclamation; and, my Lords, by Means of these unhappy Words that have been reported of me in the House of Commons, whereas before I was no excepted Person, I came to be excepted, and upon the very last Day of passing that Act, never was excepted before the very last Day: I beseech you take Notice of this.*

Lord Chief Baron. Mr. Scroop, That is a Thing that is not before us, but there will be a proper Time to consider of it in another Place; that is nothing to the Trial; have you any more to say, Sir?

Scroop. *No, my Lord; Will your Lordship please to let me speak a Word to the Jury?*

Lord Chief Baron. If you speak to the Court the Jury will hear it.

Scroop. *Truly, my Lord, this I do perceive, that I am under a very great Prejudice as to this Fact. It hath been the Case of many Gentlemen besides myself; I desire that these Gentlemen would take my Case into Consideration, as they would their own, and I desire that the Lord would give them Direction that they may do that which is according to Justice and Mercy; that is all that I have to say, my Lords.*

Lord Chief Baron. You Gentlemen that are sworn of this Jury, you see the Prisoner Mr. Scroop hath been Indicted for Imagining and Contriving the Death of his late Majesty, of Blessed Memory, King Charles the First. You see there are several Things in this Indictment; the Charge is the Imagining and Compassing the Death of the King. In the Indictment there are several Matters of Fact to prove this Imagination. The Imagination is the Treason, the Matters of Fact to prove it are but the Evidences of that Imagination; if any one of them be proved to you it is sufficient; the one is Consulting and Meeting together how to put him to Death, the other Sitting and Assuming Authority to bring him to Trial. Then you have a Sentence by the Court to put the King to Death thereupon; afterwards he was put to Death: Any one of these Matters are Evidence enough for you to prove the Indictment; for though the Indictment concludes that so they did *Imagine* and *Compass* the Death of the King, and that the King was put to Death in Manner and Form as aforesaid; the Manner and Form aforesaid goes to this, to the Imagination of the Heart; for the Law did not think any one would put the King to Death, they thought it so a Crime, they thought it not convenient to bring it into the Statute. But the *Compassing* and *Imagining* the Death of the King is made Treason: Then to apply it, this Fact, to the Gentleman, it appears to you here by the Proofs against him. Here is Mr. Masterfon, he swears he saw him sit in that pretended Court, there was your Evidence of the first, the first was their *Meeting together*; and of the Second too, they did *assume Authority* upon them; and he swears further to the *Sentencing*, That the Prisoner was there. Here were the Three *Overt-Acts* all proved. He confesses he did Sign the *Warrant* for putting the King to Death: This, without any Witness at all, was a sufficient Proof, a Proof of Proofs. The other Witnesses, you hear what they say; you hear Mr. Kirke, Mr. Clark, Mr. Nutley, swear all to his Sitting there. It is true, when this comes to the Particulars where he sat, you must remember it was Twelve Years ago; when a Man sees a mixt Number of about Eighty Persons, it is impossible a Man should be able to answer this Particular after Twelve Years, where such a one sat; but you may see by his Sentencing what he did. They all witness they saw him positively; and one tells you, *He wondered he saw him there*; and indeed it might be a Wonder; for Mr. Scroop (to give him his Right) was not a Person as some of the rest, but he was unhappily engaged in that Bloody Business, I hope mistakenly; but when it comes to so High a Crime as this, Men must not excuse themselves by Ignorance or misguided Conscience. As to God, for this *Horrid Murder of the King*, somewhat may be, but there is no Excuse or Extenuation before Man; there may be, I say, before the Lord. You see the Proof is full against this Gentleman, as full as may be; Witnesses saw him Sit, and he himself confessed he Signed the *Warrants*. I have no more to say to you, but, Gentlemen, you see what it is; I think for Matter of Fact you need not go from the Bar; but I leave it to you.

Scroop. *My Lord—*

Lord

Lord Chief Baron. Mr. Scroop, If you have any Thing to say when the Jury have brought in their Verdict, if you will say any Thing for Matter of Mercy, the Court will hear you.

Scroop. I thank your Lordship.

The Jury went together, and presently settled themselves in their Places.

Clerk. *Adrian Scroop,* Hold up thy Hand. Look upon the Prisoner. How say you? Is he Guilty of the Treason whereof he stands Indicted, and hath been Arraigned, or Not Guilty?

Jury. Guilty.

Clerk. What Goods and Chattels, &c.

Jury. None that we know.

Lord Chief Baron. If you will say any Thing the Court will hear you.

Scroop. I have no more, my Lord, but refer my self to this Honourable Court.

Clerk. Set *John Carew, Tho. Scot, John Jones,* and *Gregory Clement* to the Bar; who were set accordingly; and being Commanded, they severally held up their Hands.

Clerk. These Men that were last called, &c.

Sir Thomas Allen, Lay your Hand on the Book: Look, &c.

Carew. I Challenge him.

Lord Chief Baron. Are you all agreed as to your Challenges?

Prisoner. No, my Lord.

Lord Chief Baron. Then we must do as before, sever you, and go to Trial severally: Take the Three away, and let Mr. Carew stand at the Bar.

Challenged, *Charles Pitfeld, Wille, Will. Smiths, Rich. Rider, Edward Rolph, James Shercroft, Thomas Uffman, Francis Beal, Will. Whitcombe, Samuel Harris, Jo. Nicol of Finchely, George Righth, Thomas Fruen, Ab. Newman, Thomas Blithe, Will. Vincent, James Hawley, Chr. Abdy, Tho. Bide, John Smith, Abr. Scudamore, Ralph Halsel, John Galliard.* In all 23.

Jury Sworn, Robert Clarke, Thomas Grover, Richard Whaley, Samuel Greenhil, Nicholas Raynton, Thomas Winter, Richard Cheney, John Kerk, Rich. Abel, Tho. Morris, George Tirrey, Tho. Swallow; in all 12.

If any Man can inform my Lords the King's Justices, &c.

Clerk. *John Carew,* Hold up thy Hand.

You that are Sworn look upon the Prisoner: You shall understand, &c.

Sir Edward Turner. May it please your Lordships, our Hue and Cry still proceeds against the Murtherers of our late Sovereign Lord King *Charles the First* of Blessed Memory, and this Gentleman the Prisoner at the Bar is apprehended as one among others for shedding that Precious Blood. Gentlemen of the Jury, he stands Indicted before you; for that he (I cannot express it better) not having the Fear of God before his Eyes, but being seduced by the Instigation of the Devil, he did Imagine and Compass the Death of his said late Majesty. In Prosecution of this, Gentlemen, there be several Things that are mentioned in the Indictment, which are the open Acts to discover to you these Secret and Private Imaginations. He did meet and consult with divers Persons touching the Death of the King, that did Usurp and take upon them to exercise a Power and Jurisdiction to Try the King; and finally, most horribly put him to Death. The Treason by the Statute of 25 *Edw.*

3. and which you are to enquire of, is, the Imagination and Compassing the Death of the King, the rest of the Indictment are but Particulars to prove that he did so Imagine and Compass the Death of the King. If we shall prove these, or any of these Facts, you have then sufficient to convict him. There was a Thing they called a High-Court of Justice, that was set up, wherein they did intend to Try our late Sovereign Lord, and a Precept made, and that under the Hand and Seal of the Prisoner at the Bar, amongst others, for summoning and convening that Bloody Court, where (among the rest of the Miscreants) the Prisoner at the Bar did sit, and had Confidence, nay, Impudence, to pronounce Judgment against his Sovereign. In this he rested not, but he, among them, set his Hand and Seal to that Bloody Roll or Warrant for putting him to Death, which accordingly was done, and to these several open Acts we shall call our Witnesses, and so proceed.

M. Masterfon, M. Clark, and M. Kirk, sworn.

Council. Mr. Masterfon, look upon the Prisoner, did you see him sit in that they called the High Court of Justice?

Lord Chief Baron. Mr. Carew, if you will have Pen, Ink, and Paper, you may have it, pray call for it.

Carew. I have no need of it.

Council. Mr. Masterfon, did you see, &c.

Masterfon. My Lords, and Gentlemen of the Jury, I was present at that Assembly, which they called the High-Court of Justice for Trial of the King, upon the 22d, 23d, and 27th Days of *January* 1648, and there I saw the King stand a Prisoner at the Bar. I saw this Gentleman, the Prisoner at the Bar, sit upon the Bench in that Court, as one of his Majesty's Judges; particularly upon the 27th Day of *January*, which was the Day of Sentence, I saw him sitting there.

Council. Mr. Clark, You hear the Question; Do you remember that you saw the Prisoner at the Bar sitting in that which they called the High-Court of Justice?

Mr. Clark. I remember I saw the Prisoner at the Bar sitting in that which they called the High-Court of Justice for the Trial of the late King, and particularly I took Notice upon the 23d and 27th of *January* 1648, that he was present.

Council. What was done upon that 27th Day?

Mr. Clark. The 27th Day the late King was Sentenced to Death.

Jury. What is your Name, Sir?

Council. His Name is *William Clark.*

Council. Mr. Kirk, What say you to the former Question touching the Prisoner, his being at that which they called the High-Court of Justice?

Mr. Kirk. My Lords, and Gentlemen of the Jury, I was present at the Trial of his late Majesty of Blessed Memory, I saw that Gentleman, the Prisoner at the Bar, several Days there, particularly the Day of the Sentence, which was the 27th Day of *January* 1648; when the Sentence was passed he rose up, assenting to it. [Then the Warrant for summoning that pretended Court was shewed to Mr. Kirk.]

Council. Do you believe that Hand to be the Hand of Mr. Jo. Crew, Prisoner at the Bar?

Kirk. My Lords, I do believe it to be his Hand; I have seen his Hand to several Orders, and

and being very well acquainted with his Hand-writing, I believe it to be his Hand as much as any Man can possibly know another Man's Hand.

[Then the Warrant for Execution of the King was likewise shewn him.]

Council. Is that the Hand also of the Prisoner at the Bar?

Kirk. It is the same Hand, my Lord.

Court. Was Mr. Carew a Member of the Long Parliament?

Kirk. Yes, my Lord.

Council. Had you Occasion to be acquainted with his Hand?

Kirk. My Lord, I have seen him set his Hand several times to Orders and other Papers.

Mr. Farrington Sworn.

Council. Do you know [the Warrants being shewn him,] those Hands to be the Writing of the Prisoner at the Bar?

Far. My Lords, really I believe these are his Hand.

Court. Are you acquainted with his Hand?

Farrington. Yes, my Lord, and I do believe these to be his Hand-writing. I did not see him write them, but so far as possibly a Man can know another's Writing I do believe these to be his.

Court. If you will ask to see them, you may see them, Mr. Carew.

Carew. Please you to go on. Here they were both read.

Council. May it please your Lordships, we shall not need to trouble the Jury any farther, we have proved that the Prisoner did Sign that Warrant for summoning that Court of Injustice, that he sat there and sentenced the King to Death among others, and that he signed the Warrant for Execution.

Lord Chief Baron. Mr. Carew, you have heard the Evidence; you may please to speak what you think fit for your self.

Carew. My Lords, the Crimes that are here laid to my Charge in this Indictment are Treason and Murther.

Lord Chief Baron. I would not have you to be mis-informed, it is Treason only, but it carries the other in with it, Murther.

Carew. Because you say it carries the other inclusively.

Lord Chief Baron. It doth, the Charge is the Compassing and Imagining the Death of the King, the other is but Evidence.

Carew. Then the Thing that I stand upon before the Lord, and before you all, I say before the Lord, before whom we must all stand, and give an Account of this Action, which is a very great and weighty one: And whereas it is charged there, (for I shall not trouble you with many Words as to the Particulars, or as to the Proofs, but I shall ingenuously acknowledge what the Truth is, and how far I can believe it;) and therefore I say as to the Beginning of what was charged by the Council, and according to the Course of the Indictment, that what was done in those Things, that it was not having the Fear of God before mine Eyes, but being moved by the Devil, and that it was done with a Traitorous, Malicious, and Devilish Heart, and all those Things mentioned in the Indictment: As for that I can say in the Presence of the Lord, who is the Searcher of all Hearts, that what I did was in his

Fear, and I did it in Obedience to his Holy and Righteous Laws.

[Here the People humm'd]

Lord Chief Baron. Go on. He stands for his Life, let him have Liberty.

Carew. It is Part of my Charge not to have the Fear of God, &c. I did such and such Things. I hope I may have Liberty.

Lord Chief Baron. Go on, you shall not be interrupted.

Carew. I say that I did it in the Fear of the Lord, and I will begin with that, and confess ingenuously the Truth of it. When this came into Question, there was an Ordinance brought in to Try the King, where my Name was not as one of the Judges. There was another afterwards, an Act which I shall mention upon what Ground by and by, what that was, and that Act was brought in and committed, and Names brought in, and my Name was not brought in, and so afterwards my Name was put in, and seeing it I did strike it out: After the Committee was up, I told them I did desire to be excused in such a Business. I have told you, how, wherein, and the Ground that I did it, which I shall leave with the Lord, in whose Hand your and my Breath, and all our Breaths, are; and therefore when it was so, I did, because of the Weight of it, as being a very great and special Thing, and so I was very unwilling, because of there being enow, which I thought had more Experience every Way for so great a Concernment as that was to be employed rather than I; yet being satisfied with that Authority that did it, this is to shew you how that I had the Fear of the Lord, and did weigh the Things: After that, when the Bill was brought into the House, my Name was put in there with several others, so I came to be in; and what I did was upon these two Accounts: First in Obedience (as I told you) to the Lord, which was the chief Thing, and in Obedience to that which was then the Supreme Authority of this Nation; and therefore I shall mention these Grounds very briefly, because indeed the Things that are controverted here at this Time, they have been controverted in the Face of the whole World in several Nations; and the Lord hath given an Answer upon solemn Appeals to these Things; I shall therefore mention them very briefly; because they have been so publick. The Declarations and Remonstrances that have passed between the King and Parliament concerning the beginning of the Wars —

Lord Chief Baron. Mr. Carew, I would be very loth to interrupt you, but I see what Course is taken, and the Peoples Eyes are upon you: You seek Delays, and against the Course of Prisoners: You say you will confess, but you don't confess the Fact, after you have spent all this Time; and all the Witnesses are heard for this that you speak of now; if you go about to justify as in the Fear of the Lord, or any Thing of that Nature, that we cannot allow of; but we do allow you to speak and give the Heads of what you will say as to the Matter of Fact; but to hear you make Discourses and Debates which are a Justification of a horrid and notorious Treason, we cannot hear it; we ought not to hear the maintaining of open Treason; cannot hear you to speak that upon your opening, which is Treason: We are willing that you open the Heads what you have to say; we are upon our Consciences, and to appear before God for what we do, and so are you too; but remember,

member, the Devil sometimes appears in the Habit of an Angel of Light. If you will couch your Matter in a few Words, the Court affords you Liberty, which is indeed beyond the strict Rules of Law.

Carew. *You say you sit here by the Laws of the Land, and are sworn to maintain the Laws. We ought not, that we should plead to this Indictment, for what we did was by an Act of Parliament.*

Court. Pray Sir, this must not be let fall without Reproof, or rather Punishment.

Carew. *I believe there is no Precedent for it.*

Court. Sir, we know the Act of Parliament as well as you, and most of the Standers-by: You go upon a false Ground, there was no such Act of the Supreme Authority as you pretend to; these are but Phantasms of your own Brain, and must not be suffered; these Things have been controverted and decided many a time again and again.

Carew. *I desire to have Time to speak how it was begun and carried on, or else how shall I be able to make my Defence, or to tell you what are the Heads I will insist upon? I shall declare the Grounds upon which the Parliament did proceed.*

Lord Chief Baron. Mr. Carew, If that be your Ground, the Parliament did it, the House of Commons did it, I have something to offer (not to interrupt you) to the then Commons——

Carew. *In my humble Opinion for the maintaining of this, it was by Authority, the Supreme Authority, by which it was done.*

Lord Chief Baron. Did you Sign this Warrant for the Summoning and Warning of that Court? And did you Sign the Warrant for Executing the late King?

Carew. *I desire I may go on with my Defence.*

Lord Chief Baron. We would not have you be mistaken: You seem to confess the Act, and now you justify it; you cannot speak any Thing for your Justification till you confess the Fact.

Carew. *I shall speak to that in its Time.*

Lord Chief Baron. You must speak to that first, that is Matter of Fact, whereupon the Jury are to go.

Carew. *There is Matter of Law.*

Court. You must speak to Matter of Fact first.

Carew. *I say this is that I was about to say, That the Supreme Authority——*

Court. You must speak to the Fact first, Whether you did Compass, &c. the King's Death, or not? That is the first Ground; if you did not, there's an End of the Business: It is proved against you that you did it; if you come to justify it, it must be when you have first agreed the Matter of Fact.

Carew. *I desire I may have Liberty to proceed, either for Matter of Fact, or Law, as I list.*

Court. No, no, you must first speak to the Fact; you may be after heard. You know in all Cases they must begin with the Fact, either denying or extenuating; for Matter of Law in this Case must arise from the Fact.

Carew. *But I humbly conceive there is a Matter of Law in this Case, and it is Matter of Law that is above the Jurisdiction of this Inferior Court.*

Mr. Sol. Finch. I pray that he may be held to the Issue, Guilty, or Not guilty: If he deny the Fact, let us rely upon our Evidence, and he upon his; he cannot come to Law till he hath confessed the Fact. The Question is, whether you did,

or not? There is the Fact; if you have any Thing to justify, that follows.

Carew. *I was upon that, and going on to shew the Reasons and Grounds of it.*

Court. First you must confess it, if you will shew the Reasons why you did it.

Carew. *I told you there was some Things I did.*

Court. What are those some?

Carew. *I do acknowledge that I was there at the Court.*

Council. Did you Sign the Warrants for Summoning that Court, and for Execution of the King?

Carew. *Yes, I did Sign them both.*

Council. Then say what you will.

Lord Chief Baron. Now go on.

Carew. *In the Year 1640 there was a Parliament called according to the Laws and Constitutions of this Nation, and after that there was some Difference between the King and the Parliament, the Two Houses of Parliament, Lords and Commons, and thereupon the King did withdraw from the Two Houses of Parliament, as appears by their own Declaration, The Great Remonstrance, Printed in 1642; and thereupon the Lords and Commons did declare——*

Lord Chief Baron. Mr. Carew, the Court are of Opinion not to suffer you to go on in this; they say it tends not only to justify your Act, but you cast in Bones here to make some Difference. You talk of the Lords and Commons; you have nothing to do with that Business; your Authority that you pretend to was an Act of Parliament (as they called themselves) and that where there was but 46 Commons in the House, and but 26 Voted it.

Carew. *I say, that the Lords and Commons by their Declaration——*

Mr. Justice Foster. Hold your Hand a while, Sir, not so fast; you go to raise up those Differences which I hope are asleep; New Troubles, to revive those Things which by the Grace of God are extinct, you are not to be suffered in this; it is not the singling out of a few Persons that makes a Parliament. We see as before, so still, it is your Course to Blow the Trumpet of Sedition. Did you ever hear, or can you produce, Instances of an Act of Parliament made by the House of Commons alone? though this was not the House of Commons, as you heard before.

Carew. *Neither was there ever such a War, or such a Precedent.*

Court. Nor we hope never will be: Pray remember, you were returned to serve in the House; what was that Writ that Summoned your Appearance? You had no Manner of Ground in the World to go that Way that you did.

Council. We pray that the Prisoner at the Bar give us Patience a little to repeat that to him which your Lordships have been so often troubled with declaring; this is not the First or Second Time that in this Publick Assembly it hath been said, That neither the Lords nor the Commons, jointly nor severally, have any Power at all to proceed upon the Person of the King; that it is not in their Power to condemn any Man in England without the good Pleasure of the King, much less the King himself; and that this is the great Liberty of the People of England that it should be so; and it was the First Breach

Breach and Invasion of our Liberty that that First Parliament made, and which you justify in the Name of the Lord. In this Case to throw us upon Debates of the War, and to talk here of the Causes and Reasons of that Quarrel which ended in such a Tragedy; for this Person to come here with this Confidence, and to justify it, but that he knows he cannot be in a worse Condition, one would wonder it should fall from any Man that hath any regard of himself. It is all one to them that Perish, whether they fall by one Sin, or Multitudes: He makes no Scruple to multiply Treasons. I do beseech your Lordship he may not offer as he hath begun, but that the Jury may proceed.

Court. All the Court are of the same Opinion, not to hear any thing like the former Discourses.

Carew. *I desire I may be heard; I have not compassed the Death of the late King, Contrived the Death of the King; what I did I did by Authority.*

Court. This is not to be heard; you have heard what hath been said to you, there could be no such Authority, neither was, nor could be; but you would by a Wire-lace bring it in by this. You have confessed the Fact, which must be left to the Jury.

L. Ansley. I think you were present in the House of Commons when that Vote passed for Agreement with the King in the Treaty at the *Isle of Wight*. You know the King having condescended to most of the Desires of his Parliament, there was a Debate in the House, and a Conclusion that they were Grounds for Peace. You know the Lords and Commons did resolve to agree with their King; when that was done, that would not satisfy you, and other Members of the House; then you go and contrive New Ways; you contrive a New-fashioned Parliament, the driving away many Members by Power, which you could not do by the Law of the Land: Nay, the Parliament had declared against: That which you pretend is by Authority, is no Authority; for a few of you set up an Arbitrary Parliament of a few of yourselves, when you had driven away the rest: This Kind of Parliament gives you the Authority you pretend to. You were saying that the Parliament was called at first, the Lords and Commons, by the King, according to the Ancient Constitutions of the Laws: Did such a Parliament give you such Authority as you pretend to, an Act of Parliament, as you call it, which was but an Order of some of the Commons, and but a few of them; you can have no Manner of Justification, and therefore your Plea must be over-ruled, as Yesterday it was in the like Case. You are Indicted upon a clear Act of Parliament of 25 *Edward III.* and you defend your self upon Pretence of an Act of Parliament, which hath been over-ruled as no Act.

Carew. *I am a Stranger to many of these Things which you have offered, and this is strange, you give Evidence sitting as a Judge.*

Lord Chief Baron. You are mistaken, it is not Evidence; he shews you what Authority that was, an Authority of 26 Members: How is this Evidence? Mr. *Carew*, if you have any Thing more of Fact go on: If you have nothing, but according to this kind of Discourse, I am commanded to direct the Jury.

Carew. *I am very willing to leave it with the*
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Lord, if you will stop me that I cannot open the true Nature of those Things that did give me ground of Satisfaction in my Conscience that I did it from the Lord.

Mr. Sol. Gen. I do pray, for the Honour of God, and our King, that he may not be suffered to go on in this manner. You have been suffered to speak; you have said but little, only Sedition; you pretend a Conscience, and the Fear of the Lord, when all the World knows you did it against the Law of the Lord, your own Conscience, the Light of Nature, and the Laws of the Land, against the Oaths you have taken of Allegiance and Supremacy.

Carew. *Gentlemen of the Jury, I say I shall leave it with you. This Authority I speak of is right, which was the Supreme Power; it is well known what they were.*

Council. It is so indeed, many have known what they were.

Lord Chief Baron. Mr. *Carew*, You have been heard what, and beyond what, was fit to say in your own Defence; that which you have said, the Heads of it you see the whole Court hath over-ruled. To suffer you to expatiate against God, and the King, by Blasphemy, is not to be endured; it is suffering Poison to go about to infect the People; but they know now too well the Old Saying, *In Nomine Domini, in the Name of the Lord*, all Mischiefs have been done; that hath been an Old Rule. I must now give Directions to the Jury.

Lord Chief Baron. Gentlemen of the Jury —

Carew. *I have desired to speak the Words of Truth and Soberness, but have been hindered.*

Lord Chief Baron. Gentlemen of the Jury, you see the Prisoner here at the Bar hath been Indicted of Treason, and this was for Compassing and Imagining the Death of our Sovereign Lord, King *Charles* the First of Blessed Memory. This Indictment sets forth several *Overt-Acts* to prove this Imagination, for otherwise it is Secret in the Heart; the Fact itself, the Treason itself, is the Imagination of the Heart: The *Overt-Acts* that are laid down in the Indictment to prove this, *That they did consult and meet together how to put the King to Death, That they did sit upon him: And Thirdly, That they did Sentence him to Death, and afterwards he Died.* You heard what is proved against the Gentleman, the Prisoner at the Bar, by several Witnesses, his own Confession, That he signed the Warrant for Summoning and Convening that Court together, whereby the King was to be brought to his Trial; and that he sate at his Sentence, and issued the Warrant for his Execution: You saw that this Gentleman did the Fact, did Compass and Imagine the King's Death. That which you are to try is this Issue, being Indicted for *High-Treason*, and pleading *Not guilty*; whether this Gentleman that went so far, Sate upon him, Condemned him, Signed the Warrant for his Execution, did not Compass and Imagine the King's Death? I think you need not stir from the Bar where you are, but I leave that to you.

After a very small Time of Consultation by the Jury amongst themselves at the Bar, they agreed in a Verdict.

Silence was Commanded.

Clerk. *John Carew*, Hold up thy Hand. Gentlemen of the Jury, look upon the Prisoner:
U u How

How say you? Is he Guilty of the horrid Treason whereof he stands Indicted, or Not guilty?

Fore-man. Guilty.

Clerk. What Goods and Chattels, &c.

Jury. None that we know of.

Mr. Scot's Trial, on Friday October 12, 1660, at the Sessions-House aforesaid.

Clerk. Set *Thomas Scot* to the Bar, (which was accordingly done.) *Thomas Scot*, Hold up thy Hand. These Men that have been of the last Jury are to Try, &c. If you will Challenge all, or any of them, you must Challenge them before they are Sworn.

Scot. I desire that those Men who have been of the former Jury may not be named. I know my Liberty of excepting against my Number.

Lord Chief Baron. Mr. Scot, That which you do desire is a Thing not right; the Offence with one is not the same with others: I speak not but that the Court will do you all Right; the Court will grant it, if you will wave your Challenges; but if you mean those that have been by others Challenged, it is against Law.

Scot. I am willing to bring my self upon my Trial, and I will take the ordinary Way of Excepting and Challenging.

Sir Hen. Worth, Sir Jer. Whicbroke, James Hawley, Rich. Rider, Fra. Beale, Chr. Abdy, Nicho. Raynton, Tho. Winter, John Kirke, Rich. Abel, Sir Tho. Aleyn, Abr. Scudamore, Ralph Hallsall, George Tirrey, Tho. Swallowe, Charles Pickerne, Arthur Newman, Tho. Blithe, William Vincent, Rich. Whaley, were called and challenged.

Thomas Grover, Edw. Rolfe, Tho. Ufman, William Whitcombe, Rich. Cheney, Tho. Bide, Charles Pitfield, John Smith, Tho. Morris, Tho. Fruen, Henry Twyford, Samuel Starnel, were the Jury Sworn.

Clerk. Crier, make Proclamation.

Cryer. O Yes, if any Man can inform my Lords the King's Justices, &c.

Clerk. *Tho. Scot*, Hold up thy Hand. You that are sworn of this Jury you shall understand that the Prisoner at the Bar stands Indicted by the Name of *Tho. Scot*, late of *Westminster*, in the County of *Middlesex*, Gent. For that he, together with *John Lisle*, &c. [Here the Indictment was read.] Unto which Indictment he hath been arraigned, and thereunto hath pleaded Not guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Now your Charge is to enquire whether, &c.

Mr. Sol. Gen. You that are sworn of this Jury, this Inquisition for Blood, Royal Blood, goes on against the Prisoner at the Bar; he stands Indicted for Compassing, Imagining, and Contriving the Death of the late King, of Blessed Memory: It is laid to his Charge in the Indictment, that he did Assemble at *Westminster*, and that he, with other Persons, usurped the Authority of Sitting and Sentencing to Death his said late Majesty, and that in Consequence and Pursuance of

that the King came to his Death: The Treason he stands charged with is the Compassing and Imagining the King's Death; the other Parts of the Indictment are but Overt-Acts, that do but Evidence and Prove the Corruption of his Heart. If we prove but some of these Overt-Acts, then you must find him Guilty. Our Evidence against this Gentleman will be thus: We shall call Witnesses to prove his Sitting in the Court, Sentencing his King, while his King stood a Prisoner at the Bar; the Warrant for Execution of the King, directed to certain Persons to see Execution done accordingly, was under Hands and Seals, and among those Hands and Seals the Hand and Seal of the Prisoner at the Bar is one: And then we shall produce to your Lordships Witnesses to shew you with what a hard and impenitent Heart this hath been Committed; for he so gloried in the Act, that he desired it might be writ upon his Tomb —

Mr. Nutley, Mr. Kirke, Mr. Masterfon, and Mr. Clark, sworn.

Council. Mr. Masterfon, be pleased to tell my Lords and the Jury if you have seen the Prisoner at the Bar sit in that which they called the *High-Court of Justice*.

Mr. Masterfon. My Lords, and Gentlemen of the Jury, I saw the Prisoner at the Bar present at the *High-Court of Justice* (as they call'd it) for the Trial of the late King some Days; that is to say, either upon the 22d or 23d Day of *January* 1648, but particularly upon the 27th Day of that Month in the said Year, when the Sentence of Death was pronounced against his late Majesty, I saw the Prisoner at the Bar present.

Council. As one of the Judges, do you mean?

Mr. Masterfon. As one of the Judges sitting upon the Bench.

Scot. Do you know whereabouts I sate?

Mr. Masterfon. I cannot satisfy you in that, but I saw you sitting upon one of the Benches.

Council. Mr. Clark, you hear the Question, pray answer what you know touching it.

Mr. Clark. My Lords, and you Gentlemen of the Jury, I was present in the Year 1648, when his late Majesty stood a Prisoner at the Bar in that which they called the *High-Court of Justice*, and among other Persons there present in that Business, I observed Mr. Scot, the Prisoner at the Bar, to sit as one of the Judges, and particularly upon the 23d and 27th Days of *January* in the said Year, upon which last Day the Court pronounced Judgment upon the late King.

Council. Did he stand up as assenting to the Sentence?

Mr. Clark. They all stood up, to my Apprehension, I know not particularly whether the Prisoner at the Bar did.

Council. Mr. Kirke, tell my Lords and the Jury your Knowledge in this Business touching the Prisoner at the Bar.

Mr. Kirke. I was present at the Trial of his late Majesty several Days; among the rest of the Persons that sate in the Court as Judges, I saw the Prisoner at the Bar, and particularly upon the Day of the Sentence, the 27th of *January* 1648, the Court stood up unanimously as assenting.

Council. Shew him the Warrant for Execution.

Kirke. This is his Hand.

Council

Council. Have you seen his Hand often?

Kirke. Yes, Sir, and am well acquainted with it.

George Farrington Sworn.

Council. Shew Mr. Farrington the Warrant; do you know that to be Mr. Scot's Hand-writing?

Mr. Farrington. I did not see him write it, but I do verily believe it to be his; I have often seen his Hand-writing.

Council. Mr. Nutley, do you know Mr. Scot's Hand-writing? Is that Mr. Scot's Writing? [*The Warrant shewn him.*]

Mr. Nutley. I do verily believe it is.

Council. Have you been acquainted with the Writing of his Name?

Mr. Nutley. I have seen him write his Name, and do verily believe it to be his Hand.

Council. Clerk, read the Warrant. *He read it accordingly.*

Council. That which remains of our Evidence is to prove his boasting of this Villany; we shall desire you to hear Sir *Theophilus Biddolph*.

Sir Theophilus Biddolph Sworn.

Council. Pray tell my Lords and the Jury what you have heard the Prisoner say touching this Business of putting the King to Death.

Sir Theophilus Biddolph. I did hear him confess that he did sit as one of the Judges of the late King; and that he was so far from repenting of the Act, that he did desire when he died that a Tomb-stone might be laid over him with this Inscription, *Here lies Thomas Scot, who adjudged to Death the late King.*

Council. Where did he say this?

Sir Theo. Biddolph. In the Parliament-House.

Colonel Copley, Esq; Sworn.

Council. Pray, Mr. Copley, tell my Lords what you know of this Business.

Mr. Copley. My Lord, I was one of the Secluded Members; when we were called to sit in the House again, the Prisoner at the Bar, Mr. *Thomas Scot*, (I think it was the last Day we sate,) there being some speaking of the horridness of the Fact, he made a long Harangue about that horrid Act; and he said, *He hoped he should never repent of it*, and desired that when he died it might be written upon his Tomb-stone, *Here lies Thomas Scot, who adjudged to Death the late King.*

Council. We have done with our Evidence.

Court. Sir *Theophilus Biddolph*, When was it you heard him speak those Words?

Sir Theo. Biddolph. To my best Remembrance it was in *Richard's* Parliament; it was about *January* or *February* was Twelve Months.

Council. Were not you a Member for the City of *London* in that Parliament?

Sir T. Biddolph. Yes.

Council. Mr. Copley, When was it that you heard it?

Mr. Copley. It was in *April* last.

Mr. Sol. Gen. It was a settled Persuasion of his Heart, and he thought it fit to be gloried in.

The Lord Mayor Eleēt Sworn.

Council. Pray, my Lord, tell my Lords what you know concerning the Prisoner at the Bar.

Lord Mayor Eleēt. My Lords, I was one of those Secluded Members that were returned again a little before the coming in of his Majesty: Upon the last Day of our Sitting, Mr. *Scot* seeing the House must break, said, *Their Heads must*

be laid to the Block if there was a new Parliament, for said you, [looking on Mr. *Scot*,] *I confess I had a Hand in putting the King to Death, and I desire all the World may take Notice of it, and I desire when I die it may be written on my Tomb. I do not repent of any Thing I have done; if it were to do I could do it again.*

Mr. Sol. Gen. Do it again! He follows his Blows Home.

William Lentball, Esq; Sworn.

Council. Mr. *Lentball*, pray be pleased to tell my Lords, and the Jury, what you do remember of any Discourse of Mr. *Tho. Scot*, (the Prisoner at the Bar,) tending to the glorying in this Act, or any Thing in Justification of that Act.

Mr. Lentb. My Lords, the last Day it was, the last Instant of Time, we were resolving of breaking the House, there was some Opposition in it, not very much: The general Consent of the House was to dissolve it; I must confess at that Time I did hear Mr. *Scot* much justify that Act of the Death of the King, (which truly I was much offended at,) I confess to you upon my Oath touching his Speech of the Inscription upon his Tomb I did not hear that: Justifying the Death of the King he made a long Harangue about, and he sate at the upper end of the Gallery; but these Words, *Of having it written upon his Tomb, and to have all the World take Notice of it*, I do not remember.

Council. My Lords, my Lord Mayor Eleēt omitted something; pray let him speak to it.

Lord Mayor Eleēt. My Lords, the Conclusion of his Speech ended thus; *Being it is your Pleasure to have it so* (the House Dissolved), *I know not how to hinder it; but when that is done, I know not where to hide this hated HEAD of mine.*

Council. We desire to hear what the Prisoner will say for himself.

Scot. *I have no Certainty from the Witnesses that I was there, but in a Wandring Way, they know not where I sate, nor my Posture.*

Mr. Baker Sworn.

Council. We do not call this Witness as Material, for we must insist upon it quite through, that after twelve Years Time it is not possible a Witness should remember where every particular Person sate. Pray hear this Witness.

Mr. Baker. I do perfectly remember that Mr. *Scot* sate Two Rows above Mr. *Bradshaw* on his Left Hand in that which they called the *High-Court of Justice*.

Scot. *As to the Warrant you speak of, I know not what it signifies, I desire to know what the Nature of it is.*

Council. The Warrant hath been read; it is not produced against him as a Record, for then it needed not be proved: But it is produced against him as an Evidence in Writing under his own Hand, that he was consenting to the Death of the King.

Scot. *They may very much mistake my Hand; you speak of Words that I should utter in Parliament, I do humbly insist upon it that I am not to answer, nor they alledge, any Thing of that Nature: It is a high Breach of Privilege.*

Council. There is no Privilege of Parliament for Treason. First, some of the Words were spoken in *Richard's* Parliament, and that you do not own to be a Parliament; then another Thing (a known Rule in Law) there is no Privilege of Parliament for Treason.

Scot. *I have heard the Rule, but do not so well understand it, of that spoken in Richard's Parliament; it will be a Nice Thing for me to distinguish between that and another Parliament; but this I think, that Convention of the People ought to have the Privilege of the Parliament, as well as any other. I humbly conceive it was Testimony ought not to be given to you; whatever I say in Parliament, the Privilege extends to no more than this, that I may be lawfully secured till the Parliament hath been acquainted with it, but not finally concluded till the Parliament have heard it.*

Lord Chief Baron. You are Indicted for *Compassing and Imagining* the Death of the King: I would have you understand, that in case a Man should commit an Act of Treason, be it in what Place soever, there is no Place of Sanctuary for Treason: In case of Felony, if a Man be Indicted for Felony in the Parliament-House, during the Time of Parliament, this is not to be tried in Parliament, but according to the Rule of Common Law; so in case of Treason, the House of Commons in Parliament doth not try Treasons: That Distinction which you make is nothing.

Scot. *I humbly conceive there is such a Privilege, that no Man shall ever be called to Account for any thing spoken in Parliament, if he be not called to Account by the House before any other Member be suffered to speak.*

Lord Chief Baron. That is, the House will not determine; but that doth not extend to your Case, you are not charged here criminally for speaking those Words that have been testified against you, but for *Compassing and Imagining* the King's Death, of which there are other Evidences, and this but an Evidence to prove that.

Scot. *My Lord, I never did say these Words with that Aggravation which is put upon them, I have a great deal of hard Measure; as to say, I hope I shall never repent, I take God to Witness I have often, because it was spoken well of by some, and ill by others, I have by Prayers and Tears often sought the Lord, that if there were Iniquity in it he would shew it me; I do affirm I did not say so.*

Mr. Baker. My Lord, I omitted something, which was this; I had occasion to speak with Mr. Scot whilst Richard's Parliament was Sitting, and among other Discourse insisting upon some Things that Richard had done, saith he, *I have cut off one Tyrant's Head, and I hope to cut off another.*

Scot. *My Lord, this is but a single Witness.*

Mr. Sol. Gen. I suppose he meant Richard, for he was a Tyrant.

Lord Chief Baron. Speak on, Mr. Scot, whatever you have to say.

Scot. *If that be laid aside as an Impertinency, I have the less to say.*

Lord Chief Baron. The next Thing you have to do is to answer to the Fact, whether you did it, or did it not.

Scot. *I say this, whatever I did, be it more or less, I did it by the Command and Authority of a Parliamentary Power; I did sit as one of the Judges of the King, and that doth justify me, whatever the Nature of the Fact was.*

Lord Chief Baron. We have had these Things alledged before us again and again: The Court are clearly satisfied in themselves that this Act could not be done by any Parliamentary Power whatsoever. I must tell you what hath been delivered, that there is no Power on Earth that

hath any Coercive Power over the King, neither Single Persons nor a Community, neither the People Collectively nor Representatively. In the next Place, that which you offer to be done as by Authority of Parliament, it was done by a few Members of the House of Commons; there were but 46 there at that Time, and of those 46, not above 26 that voted it; at that Time the House of Lords was sitting, who had rejected it, and without them there was no Parliament; there was a Force upon the Parliament, there was excluded Seven Parts of Eight: Supposing you were a full House of Commons, and that without Exception, there was not Authority enough; and it is known to you, (no Man better,) that there never was a House of Commons, before this Time that this Foul Act was made for erecting that High-Court of Justice, (as you call'd it,) assumed that Authority of making a Law; you cannot pretend to Act by Authority of Parliament; and because you would excuse it, you did it by Authority of Parliament, whether it were Good or no: If any Man do that which is unlawful by an unlawful Authority, the assuming to do it by that Authority is an Aggravation, not an Extenuation, of the Fact: It was over-ruled; I think my Lords will tell you, That they do not allow of that Authority at all, either to be for Justification or Plea.

Scot. *My Lords, I humbly pray leave to say, that without Offence to the Court, (every Person whereof I honour,) this Court hath not Cognizance to declare whether it were a Parliament or no.*

Lord Chief Baron. That was objected too; and we must acquaint you, That first of all it is no Derogation to Parliaments, that what is a Statute should be adjudged by the Common Laws. We have often brought it into Question, whether such and such a Thing was an Act of Parliament, or not; any Man may pretend to an Authority of Parliament: If Forty Men should meet at *Shooters-Hill*, as the *Little Convention* did at *Westminster*, and say, *We do declare our selves a Parliament of England*; because they do so, shall not this be judged what is a Statute, and what not? It is every Day's Practice, we do judge upon it; the Fact is so known to every Body, they did assume to themselves a *Royal Authority*; it hath been over-ruled already; it hath been the Mistake of many; the vulgar Acceptation of the Word Parliament. A Parliament consists of the King, Lords, and Commons; it is not the House of Commons alone, and so it is not by Authority of Parliament: It is not, unless it be by that Authority which makes up the Parliament: You cannot give one Instance that ever the House of Commons did assume the King's Authority.

Scot. *I can many, where there was nothing but a House of Commons.*

Court. When was that?

Scot. *In the Saxons Time.*

Court. You say it was in the *Saxons Time*; you do not come to any Time within 600 Years; you speak of those Times wherein Things were obscure.

Scot. *I know not but that it might be as lawful for them to make Laws as this late Parliament, being called by the Keepers of the Liberties of England: My Lords, I have no Seditious Design, but to submit to the Providence of God.*

Court.

Court. This is Notorious to every Man; this we have already heard and over-ruled.

L. Finch. That that I hope is this, That Mr. Scot will contradict that which he hath said before; that is, that he hopes he should not Repent, I hope he doth desire to Repent. Mr. Scot, for this we must over-rule it, as we have done before; there is nothing at all to be pleaded to the Jurisdiction, and this Point hath been determined before.

Scot. *The Parliament in former Times consisted not so much of King, Lords and Commons, but King and Parliament. In the beginning of the Parliament in 1641, the Bishops were one of the Three Estates; if it be not properly to be called a Parliament, a Legislative Power, though it be not a Parliament, it is binding: If Two Estates may take away the Third, if the Second do not continue to execute their Trust, he that is in Occupancy may have a Title to the whole: I do affirm I have a Parliamentary Authority, a Legislative Power, to justify me.*

Lord Chief Baron. Mr. Scot, what you speak concerning the Lords Spiritual is nothing to your Case, be it either one Way or other, it was done by an Act of Parliament, with Consent of the King, Lords, and Commons; though you will bring it down to make these Commons have a Legislative Power, I told you it was over-ruled before. We have suffered you to expatiate into that which was a Thing not intended by many of my Lords, that you should have any such Power to expatiate into that which is nothing but indeed to make a new Government, which is the highest Treason next to the Murthering of the King, in the World; to subvert the Laws, and to make a few of the Commons, nay, if they had been the whole, to make them to have the Legislative Power. Mr. Scot, if you have any Thing in Extenuation of the Fact we shall hear you, further we cannot.

L. Finch. If you speak to this purpose again, for my part I will profess myself I dare not hear further of it; it is so Poisonous Blasphemous a Doctrine, contrary to the Laws, if you go upon this Point, I shall (and I hope my Lords will be of that Opinion too) desire the Jury may be directed.

Scot. *I thought, my Lord, you would rather be my Council; it is not my single Opinion, I am not alone in this Case, therefore I think I may justify myself in it; it was the Judgment of many of the Secluded Members to own us to be a Parliament.*

Lord Annesley. What you said last doth occasion my Rising; you seem to deliver my Opinion, who you know could never agree to what you have alledged; truly I have been heartily sorry to hear the Defence you have made to-day, because you know I have had Letters from you of another Nature; I was very confident to have heard you an Humble Penitent this Day, instead of Justifying yourself: As to that which you say of the Secluded Members owning you to be a Parliament, they were so far from it, that you know for how many Years they lay under Sufferings and Obscurity because they could not acknowledge that an Authority which was not so: You cannot forget the Declaration of both Houses that was published upon a Jealousie that the People had, they would change the Government of King, Lords and Commons; it was far from their Thoughts, it was called in

that Declaration, *A Black Scandal cast upon them:* This Declaration you know was by Order of both Houses affixed in all Churches of England, that People might take Notice what they held to be the Fundamental Government of this Kingdom, *King, Lords, and Commons:* After this for you to set up another Government, and under them to act such Things that one would think should hardly enter into the Heart of any Man. You know very well all along they declared themselves Faithful Subjects to the King, and so would have lived and died; and you might have had your Share of the Happiness of that Peace, if you could have had an Inclination to submit to that which both Houses had resolved. When you and others could not bring your Hearts to stoop to your Fellow Subjects, when you could not submit to that equal Rule to take your Share with them, when Pride carried some so high, then was the beginning of your Fall and others; and none could expect other than what is now come to pass, that they should come to that Shame and Sorrow that this Day hath brought upon you: I could have wished to have heard nothing but an humble Confession of the Fault that hath been clearly proved, and no Justification of it: You have sworn, among others, to preserve the Laws and People of this Kingdom; but you drove away not only the House of Lords, but most of the Commons, and then to give the Name of a Parliament to the Remainder, this is a great Aggravation of your Treason. I think we of the Secluded Members could not have discharged our Duty to God and the Kingdom if we had not then appeared in Parliament to have Dissolved that Parliament, and so by our joint Assent put an End to all your Pretences, which if we had not done, we had not so soon come to our Happiness, nor you to your Miseries.

Lord Chief Baron. The Court hath told you before their Opinions in the Thing, and no further Debate is to be allowed in this, the Justification of it doth comprehend Treason; we ourselves are not by Law to allow the Hearing of it. If you have nothing to say for yourself I must give Direction to the Jury.

Scot. *I humbly crave Leave to move the Jury that they bethink themselves, and consider of it rather as a special Verdict, than of a definitive one. I think there is Cause of a Special Verdict.*

Court. If there was need of a Special Verdict, (we are upon our Oaths,) I should give Direction to the Jury. What we do, we do upon our Oaths, and must answer it before God Almighty. The Court hath delivered their Opinions before, that in this Case the pretended Authority under which you did derive that Power which you did execute, that it is no Authority, it is void in Law, it is a Foundation (if it were true) of subverting all Laws, and indeed of all Religion, a Power that you assume to yourselves of Judging and Condemning your King, that you would countenance such an Authority is a great Aggravation of the Fault. They are Judges whether you did Imagine or Compass the King's Death, that is all the Jurors have to do, Gentlemen of the Jury —

Scot. *I would know what particular Law I have transgressed in this Thing.*

Court. The Law of God and Man, 25 Edw. III.

Scot. *I humbly conceive that reaches not to this Case.* *Court.*

Court. To satisfy you in that, the very Words of the Statute are, *If any Man do Compass or Imagine the King's Death it is Treason*; the Indictment is, That you did Imagine and Compass the Death of the King; If the Fact be proved against you, you are within the Statute.

Scot. You will not say the King shall be a Traitor if he shall Compass the Death of the Queen.

Court. The Queen is a Subject.

Scot. I am not yet convinced.

Lord Chief Baron. Gentlemen of the Jury —

Scot. I do plead and claim that I am within the Compass of several Pardons, and desire Council in that Particular; I do come within the Compass of his Majesty's Pardon.

Lord Chief Baron. If you had not gone on to Matter of Justification you might have been more heard to this of Pardon; but after a Justification then to come for a Pardon, which implies a Confession of Guilt, they are Contradictory; I must tell you we are now upon Point of Law. That Proclamation I doubt not but his Majesty will inviolably make good; but we are not to Judge of that, it is nothing to a Legal Proceeding: You are now in a Court of Law, it is not to be pleaded in a Court of Law; the King's Pardon in Law must be under his Broad Seal: How far you are under that Proclamation Care will be taken, and what is fitting to be done will be done; but it is nothing in the Matter of the Charge to this Jury.

Scot. I desire Council touching the Statute 23 Edw. III.

Court. You should have done it before you had confessed the Fact.

Scot. I may do it in Arrest of Judgment.

Lord Chief Baron. Mr. Scot, for that of the King's Proclamation, if you be within the Benefit and Compass of it, according to his Royal Word and Honour in it, you will have the Benefit of it, but it is not a Plea in Law, but it must be a Pardon under Seal; whatsoever concerns that Proclamation will be considered, it is nothing to the Matter whereupon the Jury are to go.

Lord Chief Baron. Gentlemen of the Jury, you see the Prisoner, *Tho. Scot*, stands Indicted for Compassing and Imagining the Death of our Dread Sovereign King *Charles the First*, of most Glorious and Blessed Memory: He is Indicted for Compassing and Imagining his Death, there is the Treason; and what is set afterwards in this Indictment is only to manifest this Compassing and Imagining, because that being in the Heart alone, without some Overt-Act no Body can prove it: There are several Overt-Acts laid in the Indictment; one is, A Traiterous Consulting and Meeting together how to put the King to Death: Then a sitting upon the King as a Prisoner, being before them about his Life and Death: The Third is Sentencing to Death; that which followed is, that he was Murdered: If any of these Acts should be proved the Indictment is proved; for the Proof, there are several Witnesses have fully proved that he did sit there several Times, particularly upon *Jan. 27*, which was the Day of the Sentence; that he did sit there all of them agree to that; it is true, as to the Circumstances where he sate, one Gentleman saith he sate in the Second Row, on the Left Hand of *Bradshaw*; you will remember it is 12 Years ago, how any Man upon

the View, and after so long a Distance of Time, should be able to remember in what Posture one Man was from the rest, I think neither you nor I can remember: Here is one proves to you that he did Sign the Warrant for Executing the King; he saith, *How can another know his Hand?* You see what the Witnesses say, they knew it; a Man can prove nothing more of another Man's Hand than that, unless they see it written; there is nothing to put upon you but his Words: You see what Words are Aggravated against Mr. Scot; whereas he saith, it is a Breach of the Privileges of Parliament; if it were so, it is nothing to this Fact; though another Man should break the Privileges of Parliament, it is nothing to you; but besides, it is not a Breach of the Privilege of Parliament. You have heard the Witnesses what they have said against him. Mr. *Lenthall* swears that he did speak at large fully in owning that Business of the King's Death, the rest swear positively to the same Effect, and that at several Times; what was that? He gloried in it, defended it, and said, *He could wish it were Engraven on his Tomb-Stone*; he hath denied this that the Witnesses have proved: That which is left to you is, whether the Prisoner at the Bar is Guilty of Compassing and Imagining the King's Death; and so go together — After a little Consultation together they settled in their Places again.

Clerk. *Tho. Scot*, Hold up thy Hand. Look upon the Prisoner at the Bar; how say you, is he Guilty of the Treason whereof he stands Indicted? Or Not Guilty?

Jury. Guilty.

Clerk. Look to him, Keeper.

Clerk. You say the Prisoner is Guilty, &c. and so you say all?

Jury. Yes.

Clerk. Set Mr. Scot aside.

Clerk. Set *John Jones* and *Gregory Clement* to the Bar.

Which was done accordingly.

Thereupon the said *Gregory Clement* preferred his Petition to the Court.

Indictment read against them both.

Lord Chief Baron. If you do confess your Offence your Petition will be read.

Clem. I do, my Lord.

Lord Chief Baron. Mr. *Clement*, if you do confess (that you may understand it) you must when you are called, and when the Jury are to be charged; you must say, (if you will have it go by Way of Confession,) that you wave your former Plea, and confess the Fact.

Clerk. *Gregory Clement*, you have been Indicted of High Treason, for Compassing and Imagining the Death of his late Majesty, and you have pleaded Not Guilty; are you contented to wave that Plea, and confess it?

Clem. I do confess myself to be Guilty, my Lord.

Clerk. Set him aside.

Clerk. *John Jones*, hold up thy Hand. These Men that were last called, &c. if you will Challenge all, or any of them, you must Challenge them when they come to the Book, and before they are Sworn.

Jones. I confess I sate amongst them some Days, but not maliciously contrived the Death of the King.

Council. He is troubled at the Form, he confesseth the Matter, that he was there sitting in the High-Court of Justice. If he will not confess

feels it, he knows we can prove his Hand and Seal to that Bloody Warrant. He is troubled that he is said to have Traiterously and Maliciously contrived the King's Death: He that doth these Acts towards it is by Law responsible as to the Malice.

Jury Sworn.

Sir Tho. Allen, Sir Henry Wroth, Sir Jer. Whitchcott, James Hawley, Henry Mildmay, Christ. Abdy, Nich. Raynton, Richard Cheney, Tho. Byde, Charles Pitfield, Abraham Scudamore, Charles Pickerne, in all Twelve.

Clerk. Crier, make Proclamation.

Crier. If any Man can inform, &c.

Clerk. John Jones, Hold up thy Hand. Look upon the Prisoner, &c.

Mr. Sol. Gen. My Lords, and Gentlemen of the Jury, I must open to you, as to other Juries, that the short Point of this long Indictment is but this, that the Prisoner at the Bar did Imagine and Compass the Death of the King, which is your Issue to Try. We shall prove it by those Overt-Acts which the Law doth require. To prove the Sitting, Sentencing, and Signing the Warrant for Execution by the Prisoner at the Bar.

Council. Call Mr. Clark, and Mr. Carr, and Holl. Sympson, who were sworn.

Mr. Sympson, did you see the Prisoner at the Bar sitting in that which they called the High-Court of Justice?

Sympson. I did see Mr. Jones sit divers Times, both there, and in the Painted Chamber.

Jones. I do confess I sate divers times.

Council. Did he Sit the Day of Sentence?

Sympson. I cannot say it.

Council. Mr. Clark, you hear the Question, pray answer my Lord.

Clark. My Lord, and Gentlemen of the Jury, I was there the 27th of January 1648. I saw Colonel Jones there several Days before, but I did not see him that Day; his Name was called, but I do not know whether he was Present.

Council. Mr. Carr, did you see him sit on the 27th Day, which was the Day of Sentence?

Carr. My Lords, he answered to his Name some Days, I am not able to tell what Day.

Mr. Nutley sworn.

Council. Can you tell whether the Prisoner at the Bar was present in that which they called the High-Court of Justice?

Nutley. The Prisoner at the Bar was several times in the Court which was called the High-Court of Justice; truly I cannot say whether he was there the 27th Day, the Day of the Sentence.

The Warrant for Summoning the Court being shewed:

Council. Is that Mr. Jones's Hand (the Prisoner at the Bar) set to that Warrant?

Nutley. I have been acquainted with his Hand, I do believe it is.

The Warrant for Execution also shewed.

Council. Is that the same Hand-writing?

Nutley. Yes, I believe it is; he hath written several Letters to me.

Mr. Hartlib sworn.

Court. Mr. Hartlib, do you know Mr. Jones's Hand?

Hartlib. I never did see him write, but I have seen several Letters out of Ireland, and other Papers which have been supposed to be his Hand-writing; this seems to be like that which was reputed to be his Hand.

Council. Mr. Clark, do you know Mr. Jones's Hand-writing?

Clark. I have seen several Letters of Col. Jones's, and these are like his Hand-writing; I do believe they are his Hand-writing.

Mr. Jones looks upon them both, and confesses they are like his Hand-writing.

Council. We have given our Evidence: What do you say for yourself before Charge be given to the Jury?

Jones. I have little to say, your Lordships have already heard what is to be said in this Case; I have nothing to say to the Point; I am not fit to Plead any Thing, especially in Matter of Law; I must wholly put myself upon the Lord, and this Honourable Court and Jury.

Lord Chief Baron. Gentlemen of the Jury, here is this Prisoner, John Jones, stands Indicted, for that he, with others, did Compass and Imagine the King's Death, that is the Substance of the Indictment. The Indictment sets forth several Acts, each proving the Compassing and Imagining the King's Death: One of them is, that he did consult and meet together, and propound how the King should be put to Death: The Second is, they did assume a Power to Judge the King: The Third is, that they did actually sit upon him: And the last of them is, that they sentenced the King, and afterwards the King was murdered. The whole Substance is, whether he did Compass and Imagine the King's Death. If any one of these Particulars that are alledged for the Overt-Acts be proved, you are to find the Indictment. He hath confessed very Ingenuously, that he did sit upon the King, that he did sit in that Court, and so there is an Overt-Act proved; if nothing else, you ought to find him guilty of this Treason. There is further Evidence (though not any Evidence of his sitting the last day of the Sentence,) you have had Three comparing Similitudes of Hands to prove that he did Sign that Sentence, that horrid Instrument, whereby the King was ordered to be put to Death; one of them having received Letters from Ireland, and others acquainted with his Hand, say, that it is like his Hand; he hath so confessed the Likeness of his Hand, but he saith he doth not remember he Signed it. As to you of the Jury, there is no more to be considered, if any one of the Acts do appear true to you, that is sufficient to find him guilty, (though he were not guilty of all;) but that he did Compass and Imagine the King's Death is clear, in Sitting and Signing the Warrant; for the other, whether you shall find that he did Sentence the King, that must be left to you. Whatsoever it is, still it is the same; if any one be proved you ought to find him guilty of the Indictment, which is the Compassing and Imagining the King's Death. I think you need not stir from the Bar, for he hath confessed it.

The Jury went together, and after a little Consultation returned to their Places.

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. John Jones, Hold up thy Hand. Look upon the Prisoner at the Bar. How say ye, is he Guilty, &c.

Fore-man. Guilty.

Clerk.

Clerk. Look to him, Keeper.

Clerk. You say the Prisoner at the Bar is Guilty, &c. and so you say all?

Jury. Yes.

Clerk. Set all that have been Tried this Day to the Bar.

Lord Chief Baron. Mr. Scot, I must speak a Word to you; you made mention of the King's Proclamation for Pardon, and you did desire the Benefit of it. As I told you before, so now again, that it was not proper for us upon that Proclamation to give any Allowance by Way of Plea, because the Pardon ought to be under the Broad Seal; but God forbid but just and due Consideration should be had of it with Honour, so far as you are comprehended within it; though Judgment shall pass, no Warrant for Execution shall go out against you till Consideration be had, how far you are within the Compass of that Proclamation; and the like to you, Mr. Scroop.

Clerk. *Adrian Scroop*, Hold up thy Hand. Thou hast been Indicted of High-Treason, and hast thereof been found Guilty: What canst thou say for thy self why Judgment should not pass for thee to Die according to Law?

Scroop. *I do humbly submit to his Majesty's Mercy.*

Clerk. *John Carew*, Hold up thy Hand. Thou art in the like Condition with the former, what canst thou say, &c.

Carew. *I commit my Cause unto the Lord.*

Clerk. *Thomas Scot*, Hold up thy Hand. Thou art in the like Condition with the former, what canst thou say, &c.

Scot. *I shall only say, I do only cast my self upon His Majesty, and pray Mercy.*

Clerk. *John Jones*, Hold up thy Hand. Thou art in the like Condition with the former, what hast thou to say, &c.

Jones. *I pray his Majesty's Clemency.*

Clerk. *Gregory Clement*, Hold up thy Hand. Thou standest Indicted of High-Treason, and thereunto hast pleaded Guilty, what canst thou say, &c.

Clement. *I pray Mercy from the King.*

Lord Chief Baron. You that are Prisoners at the Bar, ye see the Sentence of Death is to pass against you; and for ought you know, or we know yet, may be nearer than you are aware: How soon it will be executed we know not; when you have reflected upon your own Consciences, many of you could not chuse but look there, and see, as in a Glass, the Foulness of this horrid Offence: It is the Murder of our most Gracious Sovereign King Charles the First of Blessed Memory; a Prince whom we (such of us as had the Honour personally to attend him) knew was of such Parts and Virtues, if he had been a Private Man more could not have been desired; truly what he did as a King, his Clemency, how it appeared at first in this Prince's time: If you look what Peace and Prosperity we enjoyed in his Days, we will not find it in other Kings Times; you had not a Nobleman put to Death, save One, and that for an Offence which must not be named; a Prince that had granted so much: You may remember what was granted before the Beginning of these Wars; Grievances complained of, Star-Chamber, High-Commission Court, Ship-money, the Claim of Stannery, &c. all these were taken away: What Concessions he made after in the Isle of Wight; how

much he wooed and courted the People for Peace. I urge this unto you only that you would lay it to your Hearts, that you would consider what it is to Kill a King, and to Kill such a King. If any of you shall say, that we had no Hand in the actual Murther of the King, remember that they that brought him to the Bar, were all one as if they had brought him to the Block; as St. Paul confessed, though he held but the Cloths, he killed the Martyr Stephen. You are shortly to appear before God's Tribunal, and I beseech God Almighty that he will give you, and us all, those Hearts, that we may look into ourselves; no Fig-leaves will serve the Turn; whatsoever you have said now as Prisoners, or allowed to say for your own Preservation in Point of Fact; notwithstanding it will not serve before God Almighty: All Things are naked before him. Lay it to your Hearts; God Almighty, though you have committed these foul and horrid Sins, yet he can Pardon you, as he pardoned that Murther of David: I speak it to you, that you may lay it to your Hearts. I am heartily sorry, in Respect you are Persons of great Civility, and (those that I know) of very good Parts; and this I must say, That you will consider with yourselves, if any of you have been led away, though it were with his own Conscience, if any of you did it, as you conceived, in Conscience, remember that our Saviour saith, *the Time shall come when they will persecute you, and kill you, and think they do God good Service.* I have the Judgment of Charity, possibly some of you did it in this Kind, and this is less than doing it wilfully; others might do it by a mis-guided Conscience; there is a Spiritual Pride; Men may over-run themselves by their own Holiness, and they may go by pretended Revelations: Men may say I have prayed about such a Thing. (I do not speak it with Reproach to any.) If a Man should commit a Robbery, or Murther, meerly because he will, and should come and say, I have prayed against it, and cannot understand it to be a Sin, as one in *Shropshire* did, and yet notwithstanding killed his own Father and Mother; try your own Spirits, you must not think that every Fancy and Imagination is Conscience; Men may have a strange Fancy and Presumption, and that they may call Conscience: Take heed, there is a Spiritual Pride; the Devil doth many times appear like an Angel of Light; do not rest upon that Self-confidence: Examine your Hearts, consider the Fact by the Word of God; that is the Rule, the Law is to be applied to it, *Eccles. viii. Where the Word of a King is, there is Power; and who can say unto him, What dost thou?* That is to shew the Power of Kings in Scripture: Remember withal that of David in *Psalms li.* that Penitential Psalm, when he had committed that horrid Sin against Uriah; remember what he said being a King, *Tibi soli peccavi, against thee only have I sinned.* Truly it being in such a Case, I speak it as before God Almighty, according to my Duty and Conscience, I wish most heartily as to your Persons; I pray God to give you that Grace that you may seriously consider it, and lay it to Heart, and to have Mercy upon you, and to forgive you, and this is all that I have to say; and now not I, but the Sentence of the Law, the Judgment which I have to give against you, is this, *You Prisoners at the Bar, the Judgment of the Court is, and the Court doth a-*

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ward, that you be led back, &c. and the Lord have Mercy on your Souls.

Clerk. Crier, make Proclamation.

Crier. O Yes, &c. All manner of Persons, &c. Jurors and Witnesses, to appear to Morrow Morning at Seven of the Clock, at this Place; so God save his Majesty.

Sessions-House in the Old-Baily, October the 13th, 1660.

The Court being Assembled, Proclamation was made.

Clerk of the Court. Set Cook, Peters, Hacker, and Axtel, to the Bar: They being brought, the Keeper was afterwards ordered to take back all, except Mr. Cook.

Clerk. John Cook, hold up thy Hand, &c.

Jury. Sir J. Whitcot, James Hawley, Jo. Nichol of Henden, Tho. Nichol, F. Thorn, Edw. Wilford, Will. Gumbleton, Jo. Shelbury, Tho. Jenney, Tho. Willet, Sir H. Wroth, Richard Cheney, of the Jury called and sworn.

Mr. Cook. May it please your Lordship, I do not know any of these Persons. I beseech your Lordship, that in regard the Safety of my Life depends upon the Indifferency of these Persons, that your Lordship may demand of the Sheriff to know whether he hath not heard them say, or any of them, that they are pre-ingaged; I hope they are not, and thereupon I have not Challenged any.

Lord Chief Baron. Sir, the Officer reads their Names out of his Papers, I suppose he doth not pick and chuse them; I would not have him; and I am sure he will not do you any Wrong in that Particular.

Cook. My Lord, I am satisfied.

Clerk. If any Man can inform, &c.

Clerk. J. Cook, Hold up thy Hand.

Cook. My Lords, I desire Pen, Ink and Paper.

Lord Chief Baron. Give it him.

Clerk. J. Cook, Hold up thy Hand. You that are Sworn look upon the Prisoner; you shall understand, &c. [Here the Indictment was read as before.]

Mr. Sol. Gen. May it please your Lordships, and you Gentlemen that are Sworn of this Jury, the Prisoner at the Bar stands Indicted for High-Treason, for Compassing and Imagining the Death of the late King of Blessed Memory: The Indictment sets forth, That he, together with others, did assemble at Westminster-Hall, and sets forth many other Particulars of Sitting, Sentencing, and of the consequent Death and Murder of the King. The Matter and Charge of the Indictment is, for Compassing and Imagining the Death of the King, the rest of the Circumstances of the Indictment are but alledged as Overt-Acts to prove the Imagination, which only is the Treason. This Prisoner at the Bar stands here Indicted for this Treason of Compassing and Imagining the late King's Death. My Lord, his Part and Portion in this Matter will be different from those that have been Tried before you; they sat as Judges to Sentence the King, and he, my Lord, stood as a wicked Instrument of that Matter at the Bar, and there he doth with his own Hand subscribe and exhibit a Charge of High-Treason, a Scandalous Libel, a

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gainst our Sovereign, to that pretended Court to be read against him, as an Accusation in the Name of all the People of England; when he had done that, he makes large Discourses and Aggravations to prove (if it had been possible) Innocency itself to be Treason. When he had done, he would not suffer his Majesty to speak in his Defence, but still took him up, and said, that he did spin out Delays, and desired that the Charge might be taken as if he had confessed it: He pressed the Court that Judgment might be given against the King; he was the Man that did demand that wicked Judgment before the Court pronounced it; and he was the Man that did against his own Conscience, after he had acknowledged that he was a Wise and Gracious King, yet, says he, *That he must die, and Monarchy with him*; there in truth was the Treason and the Cause of that Fatal Blow that fell upon the King. This was his Part to carry on; how he did it as a wicked Counsellor we shall prove to you, and the Wages and Reward of the Iniquity that he did receive.

James Nutley Sworn.

Council. Pray tell the Circumstances of the Prisoner's Proceedings at Westminster-Hall, when he did exhibit a Charge against the King.

Mr. Nutley. My Lords, the first Day of bringing his Majesty to his Trial was Saturday, Jan. 20, 1648. Before they sat in publick, they that were of the Committee of that which they called the High-Court of Justice, did meet in the Painted Chamber, which was in the Forenoon of that Day. Being there, I did observe that there was one Price a Scrivener that was writing of a Charge; I stood at a great distance and saw him write, I saw this Gentleman, the Prisoner at the Bar, near thereabouts where it was writing, I think it was at the Court of Wards. This Charge afterwards (a Parchment Writing) I did see in the Hands of this Gentleman the Prisoner at the Bar. A very little after that they called their Names they did adjourn from the Painted Chamber into Westminster-Hall, the great Hall. The Method that they observed, the first thing was to call the Commissioners by Name in the Act; the pretended Act for trying the King was read; that is, when the Court was sate the Commissioners were called by their Names, and as I remember they stood up as their Names were called: The next thing was reading the Act for trying of his late Majesty. After that was read, then this Gentleman, the Prisoner at the Bar, presented the Parchment Writing, which was called the Impeachment, or Charge, against his Majesty: Mr. Bradshaw was then President of that Court, and so called Lord President; he commanded that the Prisoner should be sent for, saying, *Serjeant Dendy, send for your Prisoner*; thereupon the King was brought up as a Prisoner, and put within a Bar: And when the Court was silenced, and settled, this Gentleman, the Prisoner at the Bar, did deliver the Charge, the Impeachment to the Court, and it was read; the King was demanded to plead to it presently. Here I should first tell you, that upon the King's first coming in there was a kind of Speech made by Mr. Bradshaw to the King in this Manner, I think I shall repeat the very Words, *Charles Stuart King of England, the Commons of England, assembled in Parliament, taking Notice of the Ef-*

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fusion of Blood in the Land, which is fixed on you as the Author of it, and whereof you are guilty, have resolved to bring you to a Trial and Judgment, and for this Cause this Tribunal is erected: There was little Reverence given to His Majesty then, which I was troubled at: He added this further, *that there was a Charge to be exhibited against him by the Solicitor-General;* I think this Gentleman was so called at that Time, and he called to him to exhibit the Charge; and this Gentleman, (the Prisoner at the Bar,) did deliver an Impeachment, a Parchment Writing, which was called a Charge against the King at that Time, which was received, and read against him.

Council. Did you ever see the Charge? [*which was now shewn to Mr. Nutley.*]

Mr. Nutley. My Lords, I do believe that this is the very Charge, I am confident it is the same Writing; I have often seen him write, and by the Character of his Hand this is the same.

Council. Go on with your Story.

Mr. Nutley. My Lords, immediately upon the Delivery of this Charge of Impeachment which was delivered in the King's Presence, after it was read the King was demanded to give an Answer to it; His Majesty desired to speak something before he did Answer to the pretended Impeachment, (for so His Majesty was pleased to call it,) he did use Words to this purpose; *saith he, I do wonder for what Cause you do convene me here before you: He looked about him, saith he, I see no Lords here, where are the Lords? Upon this Mr. Bradshaw, the President, for so he was called, did interrupt His Majesty, and told him, Sir, saith he, you must attend the Business of the Court; to that Purpose you are brought hither, and you must give a positive Answer to the Charge; saith the King, you will hear me speak, I have something to say before I Answer; after much ado, he was permitted to go on in the Discourse he was in, so far as they pleased. His Majesty said, I was in the Isle of Wight, and there I was treated with by divers Honourable Persons, Lords and Commons, a Treaty of Peace between me and my People; the Treaty was so far proceeded, in that it was near a Perfection: Truly (saith he) I must needs say they treated with me honourably, and uprightly; and when the Business was come almost to an End, then (saith he) was I hurried away from them hither, I know not by what Authority; now I desire to know by what Authority I was called to this Place? That is the first Question I shall ask you before I Answer the Charge. It was told him by Mr. Bradshaw, the President, that the Authority that called him hither was a Lawful Authority; he asked him what Authority it was, the Second Time; it was answered him by the President, that it was the Authority of the Commons of England, Assembled in Parliament, which he affirmed then to be the Supreme Authority of this Nation; the King said, I do not acknowledge its Authority: Authority, if taken in the best Sense, it must be of Necessity understood to be Lawful, therefore I cannot assent to that; I am under a Power, but not under an Authority; and there are many unlawful Powers, a Power that is on the Highway; I think I am under a Power, but not under an Authority; you cannot judge me by the Laws of the Land, nor the meanest Subject. I wonder*

you will take the Boldness to Impeach me, your Lawful King. To this purpose His Majesty was pleased to express himself at that Time, with more Words to that Purpose. The King went on to further Discourse concerning the Jurisdiction of the Court. *Bradshaw, the President,* was pleased to interrupt him, and told him several times, that he trifled out the Court's Time, and they ought not to indure to have their Jurisdiction so much as questioned.

Court. Pray go on.

Mr. Nutley. This Gentleman at the Bar I did hear him demand the King's Answer several times; a positive Answer was required of the King; the King often desired to be heard, and he interrupted him again and again, several times, and at length it was pray'd that the Charge that was exhibited against him might be taken *pro confesso*.

Court. By whom?

Nutley. By the Prisoner at the Bar, if so be that he would not Answer. This, my Lord, is the Substance of what I have to say against him.

Council. Mr. Nutley, pray what Discourse have you had at any Time with the Prisoner at the Bar concerning this Impeachment?

Nutley. Truly, my Lord, I knew the Gentleman well, I was well acquainted with him, and for the Satisfaction of my own Conscience, (for I was very tender in the Business, and sorry he was engaged in it,) I went to him, and did desire him to desist; I had Discourse with him, (for I was then a young Student in the Temple, and had a little Knowledge in the Laws:) I desired him to consider the dangerous Consequences of such a Proceeding; I may say I did it with Tears in my Eyes, for I had a very good Respect to the Gentleman for his Profession Sake, being learned therein: Truly, my Lord, he did Answer me thus, *I acknowledge it is a very base Business, but they put it upon me; I cannot avoid it, you see they put it upon me.* I had some Discourse with him concerning the Oath of Allegiance; truly he was satisfied that this Oath was against the Business in Question: I saw he was troubled at it.

Council. Can ye speak of the manner of calling for Judgment against the King?

Nutley. That (I have already answered to it) was several times done; the King was brought several Times to the Bar, and at every Time he was brought he was pressed to Answer whether Guilty? Or Not Guilty?

Court. By whom?

Nutley. By the Solicitor then, the Prisoner now at the Bar. My Lord, I remember His Majesty was pleased when he saw he could not be heard to the Discourse that he did intend to make of the whole Business; saith the King, if you will needs press me to Answer, I must Demurr to your Jurisdiction: My Lord, the Answer that was given to that was this, Mr. Bradshaw, their then President did say, Sir, saith he, if you Demurr to the Jurisdiction of this Court, I must let you know that the Court doth overrule your Demurrer; this was said, my Lord, and Judgment was pressed very often.

Court. By whom?

Nutley. By the Prisoner at the Bar.

Cook. My Lord, may I ask him a Question?

Court. Yes.

Cook.

Cook. *The first Question is, whether the Parchment was delivered by me unto the Court, or brought into the Court by Mr. Broughton, the Clerk?*

Mr. Nutley. I do encline to believe, (my Lord,) that it was brought into the Court, and delivered by some Hand or other to the Prisoner at the Bar; I do believe it was, for I do remember it was written by one Price; I was told that was his Name; that may be true; I believe it was brought into the Court, and delivered to the Prisoner now at the Bar.

Council. But did he exhibit it?

Nutley. Yes, my Lords.

Cook. *Did you see me set my Hand to that Parchment?*

Nutley. No, my Lords, but I believe it to be his Hand.

Cook. *Another Question, whether Mr. Nutley did hear me say concerning the Opinions of those Gentlemen, what they intended to do in that Business?*

Nutley. My Lords, I do remember that I had often Conference with the Gentleman at the Bar. I desired him to desist from the Business, considering the dangerous Consequences of it: Truly, my Lord, I do well remember that he did say he did hope they did not intend to take away the King's Life: Said I, if they go about any such Thing do you use your utmost Endeavour to preserve his Life; saith he, I did Labour to that Purpose, but they tell me they only intend to bring him to submit to the Parliament.

Cook. *It is said that I demanded Judgment of his Life; Mr. Nutley, I demand of you whether I used the Words of Judgment against his Life, but only I demanded their Judgment?*

Nutley. My Lords, for that I cannot remember possibly to a Syllable, but Judgment was demanded.

Court. By whom?

Nutley. By this Person.

Cook. *I said the Judgment of the Court, not against him, I meant Judgment for his Acquittal.*

Court. Did you ever hear him desire the Court that the Charge might be taken *pro confesso*?

Nutley. That I have said, my Lord, it was urged by the Prisoner at the Bar against His Majesty, that if he would not plead to the Charge, that then the Matter charged in it might be taken *pro confesso*. But, my Lord, if you please to give me leave to add this one Word more, my Lord, I did hear him say at that Time; he shewed me a Paper, that contained an Order of the Court, that did direct the very Words that he should use when he came to deliver the Charge; whether those Words were in the Order I do not know.

Cook. *Whether was I not directed by those Gentlemen the very Words I should speak?*

Court. We are satisfied in that; he saith by an Order that you shewed him, you were so directed. If you have any Thing more ask it him.

Mr. Farrington Sworn.

Mr. Sol. Gen. Pray tell my Lords, and the Jury, what was the Carriage of the Prisoner at the Bar at *Westminster*, at the Place they called the High-Court of Justice.

Farrington. My Lord, I was present about the 20th of Jan. 1648, at that which they called the High-Court of Justice, and Mr. Bradshawe sat then as President; so much as I remember concerning the Prisoner at the Bar I shall acquaint

your Lordship. This Gentleman at the Bar, after the reading of the Commission, and Directions by the President to bring His Majesty (the Prisoner they called him) to the Bar; the King being brought, after Silence made, and some Speeches made by the President, this Gentleman, the Prisoner at the Bar, having then a Parchment in his Hand, the Substance of it was for levying War against the Kingdom, he prayed that it might be read, and accepted as a Charge, in Behalf of the good People of *England*. It was accordingly read, and afterwards being demanded to Answer, after His Majesty having given several Reasons as to the Jurisdiction of the Court Four Days, every Day the Prisoner at the Bar demanded the Judgment of the Court: And if His Majesty would not Answer to the Charge it might be taken *pro confesso*.

Council. Do you know his Hand if you see it?

Farrington. I have not seen his Hand a long Time. [Then the Impeachment was shewen to the Witnesses.]

Farrington. Truly, Sir, this is like his Hand.

Council. Do you believe it?

Farrington. It is very like it, I do not know positively.

Council. Did you hear the Words *pro confesso*?

Farrington. Yes, my Lord, several times after the first Day.

Council. Did he interrupt the King in his Discourse, as to say these Words, that the Charge might be taken *pro confesso*?

Farrington. I do remember one Day there was some Interruption between the King and him, the King laying his Cane upon his Shoulder, desiring him to forbear.

Cook. *You cannot say that I interrupted his Majesty.*

Farrington. I remember that the King laid his Cane upon your Shoulders.

Cook. *Whether did I the first or the last Day demand Judgment, or that any Thing might be taken pro confesso?*

Farrington. The first Day? No; but after the first Day he did several Days; you did the last Day.

Griffith Bodurdo, Esq; Sworn.

Council. Sir, you have heard the Question, give an Account to my Lord, and Gentlemen of the Jury, of the Carriage of the Prisoner at the Bar towards his Majesty during the Time of the Trial.

Mr. Bodurdo. My Lord, I was all the Time that the King was brought there before the Court as a Prisoner; I was present all the Day, having a Conveniency out of my House into a Gallery that was some part of it over that Court. I do remember that the Prisoner at the Bar (whom I never saw before that Time) did exhibit a Charge the first Day against the Prisoner at the Bar, which was the King, in these very Terms, *the Prisoner at the Bar*: The Charge I heard it read then; I have not seen it since; the Substance was this. That for levying War against the Parliament and People of *England*, and namely, at such and such a Place killing of the People of *England*, (I think *Naseby* and *Keinton* Field was named in it, and divers other Places were nam'd in the Charge,) and the Conclusion was, that he had done those Things as a Tyrant, Traitor, Murderer, and a Publick and Implacable

cable Enemy of the *Commonwealth*. But this Prisoner at the Bar did exhibit the Charge, and the King did then, as you have heard he did, plead to the Jurisdiction of the Court. The King would fain have been heard, but I think they did adjourn for that Time. The next Day he pleaded the same Thing; I remember the Answer that was several Times given; twice given by *Bradshaw* to the King thus, *That the Court did assert their own Jurisdiction*, the Second and Third Day, I do not remember any Day after the First, but that the Prisoner at the Bar did demand Judgment for the King's not Pleading, and did several Times make Complaints to the Court of the King's Delays; that he intended Delays, and nothing else.

Cook. *Pray, my Lord, One Question; whether, my Lord, before he heard me speak of demanding Judgment against the King, whether he did not hear Mr. Bradshaw several Times say that the Court own'd their Authority, and that the Matter would be taken pro confesso?*

Mr. Bodurdo. I did hear the Prisoner at the Bar desire of the Court, that it might be so; and I heard the Prisoner tell the King that it must be so.

Joseph Herne Sworn.

Council. Mr. Herne, Tell my Lords what you know of the Prisoner's Carriage at the High-Court of Justice, as they called it.

Mr. Herne. Upon Saturday the 20th of January, 1648, it was the First Day His Majesty was convened before them. I could not come near the Court, only I saw him at a Distance; I heard nothing but the Acclamations of the People, crying out, *God Save Your Majesty*; what was done in Court I know nothing of. On Monday I was there, and had a Conveniency to see and hear what was acted; and so His Majesty being come to the Seat appointed for him, the Prisoner at the Bar being called upon by the then President *Bradshaw*, he demanded of him what he had to ask of the Court. He was then talking with *Dorilaus*, and seem'd not to mind the Business of the Court. His Majesty sitting near, takes his Stick and thrusts the Prisoner at the Bar upon his Shoulder; and the Prisoner looking back with a great deal of Indignation turned about: I did hear *Bradshaw* speaking to him in these Words, Mr. Solicitor, have you any Thing to demand of the Court? Whereupon the Prisoner at the Bar did use these or the like Words; May it please your Lordships, I have formerly in the Name of the Commons Assembled in Parliament, and the good People of England, exhibited a Charge of High-Treason, and other High Crimes, against *Charles Stuart*, the Prisoner at the Bar; (flinging his Head back in this manner to him;) he had there further to require of the Court that he might be demanded to make positive Answer by Confession or Denial; if not, that the Court would take it *pro Confesso*, and proceed according to Justice; this was on the First Day I was in the Court. The President *Bradshaw* told his Majesty, that he heard what was craved in the Name of the Commons Assembled in Parliament, and the good People of England, against him, by the now Prisoner at the Bar. The King stood up, but *Bradshaw* prevented him in what he had to say, telling of him that the Court had given him Time to that Day to know when he would plead to the

Charge. His Majesty proceeded to object against the Jurisdiction, and said he did Demurr to the Jurisdiction of the Court; upon which the President answered him, If you Demurr to the Jurisdiction of the Court, you must know that the Court hath over-ruled your Demurrer; and you must plead to your Charge, Guilty, or Not Guilty: Upon that the King asked their Authority, and desired he might give Reasons against it; he was denied it by the President; the President at last was content to tell him, that though he was not satisfied with their Authority, they were, and he must; but to satisfy him, he told him in short, they sat there by the Supreme Authority of the Nation, the Commons Assembled in Parliament, by whom his Ancestors ever were, and to whom he was accountable; then the King stood up, By your Favour shew me One Precedent. *Bradshaw* sits down in an angry manner, Sir, saith he, we sit not here to answer your Questions, plead to your Charge, Guilty, or Not Guilty: Clerk, do your Duty: Whereupon *Broughton* stood up, and asked what he had to say, whether Guilty or Not Guilty? And President *Bradshaw* said, that if he would not plead they must record his Contempt. His Majesty turned about to the People, and said, Then remember that the King of England suffers, being not permitted to give his Reasons, for the Liberty of the People; with that a great Shout came from the People, crying, *God save the King*; but there was an Awe upon them, that they could not express themselves as they would have done, I believe.

Council. What did Cook say to the Judgment? Did you hear him press for Judgment?

Mr. Hern. Yes, I heard these Words from the Prisoner at the Bar, That if the King would not plead, his Charge might be taken *pro Confesso*, and that the Court might proceed according to Justice.

Cook. One Question more, Whether he often heard me speak those Words, that it might be taken *pro Confesso*, and to proceed according to Justice?

Mr. Hern. You desired he might be held to his Plea, Confession or Denial, that he might not be suffered to use any Words to the Jurisdiction of the Court.

Cook. Whether he heard the Charge read?

Hern. I did not hear the Charge read, I was not there the First Day. I heard you confess you had exhibited a Charge of High-Treason against the Prisoner at the Bar, which was then the King's Majesty.

Cook. Whether I did not in the Charge conclude, that all Proceedings might be according to Justice?

Court. Read the Title and last Article of that Charge. Which was accordingly read, and follows in *hæc Verba*.

The Title of the Charge.

The Charge of the Commons of England against Charles Stewart, KING of England, of High-Treason, and other Crimes, exhibited to the High-Court of Justice.

The Last Clause in the Charge.

And the said *John Cook* by Protestation (saying on the behalf of the People of England, the Liberty

berty of exhibiting at any Time hereafter any other Charge against the said *Charles Stewart*, and also of replying to the Answers which the said *Charles Stewart* shall make to the Premises, or any of them, or any other Charge that shall be so exhibited) doth for the said Treasons and Crimes on the Behalf of the said People of *England* Impeach the said *Charles Stewart* as a Tyrant, Traitor, Murderer, Publick and Implacable Enemy to the Commonwealth of *England*, and prayeth that the said *Charles Stewart*, King of *England*, may be put to answer all and every the Premises; that such Proceedings, Examinations, Trials, Sentences, and Judgment, may be hereupon had as shall be agreeable to Justice.

Court. Mr. *Cook*, will you have any Witnesses examined touching the Question you last asked?

Cook. No; be pleased to go on.

Mr. *Baker* Sworn.

Mr. *Baker.* My Lords, and Gentlemen of the Jury, I was at the *High-Court of Justice*, as they called it, the First, Second, and Third Days. Not to trouble you with the Proceedings of *Bradshaw*, I will tell you what I observed of this Gentleman; I have the Notes that I took there, and pray that I may read them to help my Memory. [*Which was granted, and then he proceeded in this Manner;*] That Day, my Lord, Mr. *Cook* told the Court, that he charged the Prisoner at the Bar (meaning the KING) with Treason and High Misdemeanours, and desired that the Charge might be read; the Charge was this, That he had upheld a Tyrannical Government, &c. and for that Cause was adjudged to be a Tyrant, &c. and did then press that the Prisoner might give an Answer to that, and that very earnestly. The Second Day, my Lord, he told the Court that he did the last Day exhibit a Charge of High-Treason against the Prisoner at the Bar, (meaning the King,) and that he did desire he might make Answer to it; and he told them also, that instead of making an Answer to the Court, the King had delayed the Court, but desired the King might make a positive Answer, or otherwise that it might be taken *pro Confesso*. The Third Day, my Lord, he came and told the Court as before, that the King had delayed them, and then he Charged him with the Highest Treasons and Crimes that ever were acted upon the Theatre of *England*, and then pressed that Judgment might be given against him; and another Expression was, that it was not so much he, but the Innocent and Precious Blood that was shed, that did cry for Judgment against the Prisoner at the Bar: This, my Lord, is the Substance; there were other Passages.

Cook. Whether before this Time he had not heard something of an Act or Order Proclaimed at Westminster? Whether there was any other Word in Effect used in that Charge more than in the Proclamation?

Mr. *Baker.* I did hear of the Proclamation and Charge, and the Substance of it; I have given an Account of it, and I did hear you press upon it very much; the Proclamation, I heard of it, that it was made for the Summoning of the Court, but I did not hear the Proclamation made.

Cook. That that was called the Act of the Commons for Trying of the King.

Mr. *Baker.* I did hear of the Act, but did not take Notice of it.

Mr. *George Masterfon* Sworn.

Council. Mr. *Masterfon*, pray inform my Lords and the Jury what you know touching the Carriage of the Prisoner at the Bar at the Trial of his late Majesty.

Mr. *Masterfon.* My Lords, and you Gentlemen of the Jury, I was present in that they called the High-Court of Justice, upon the 22d, 23d, and 27th Days of *January*, in the Year 1648. I shall wave those Circumstances which you have heard, and many of which I well remember, and what I heard likewise between the King, who was then a Prisoner, and the then President *Bradshaw*; but concerning the Prisoner at the Bar, this I very well remember, that upon Monday I heard him say he had exhibited a Charge of High-Treason against the Prisoner, (then the King,) and demanded now that he might plead to his Charge; I do very well remember that after some Passages between the King and the Court, the Prisoner at the Bar desired the King might plead to his Charge, or else it might be taken *pro Confesso*: I remember upon the last Day, the Day of that Fatal Sentence, I heard the Prisoner at the Bar demand in the Name of the Commons Assembled in Parliament, and all the good People of *England*, Judgment upon the Prisoner at the Bar, pointing to the King; this is all.

Mr. *Burden* Sworn.

Council. Do you know who did examine the Witnesses against the King? And were you examined? And by whom?

Burden. By Judge *Cook*, for so he was called in *Ireland*.

Council. Did he examine you as a Witness against the King? Did he give you an Oath?

Burden. Yes, my Lord, and many others.

Cook. This is a New Thing, I never heard of this before; Where was it that I examined him? I had no Power.

Council. No, we know that, but you were Active.

Court. Where was it?

Cook. Whether there were not any others with me in the Room? And where was it?

Burden. It was at Westminster-Hall, within the High-Court of Justice.

Cook. Who was there besides me?

Burden. I cannot tell; *Axtel*, he was there, and I am sure *Cook* was there.

Council. Mr. *Burden*, pray tell my Lords and the Jury what Questions you were examined upon, and what they tended to.

Burden. He examined me, and gave me my Oath; there was Eight or Nine of us, we had been in the King's Army in former Times; this Gentleman (Colonel *Axtel* brought us in, Commanded us out of our Company, I was in his Company, and this Gentleman) himself gave us our Oaths, he asked us where we saw the King in Action? I did reply to him, and told him, I saw him in the Field with his Army; he asked me many other Questions that I could not tell him; he asked me, whether I did see the King at *Nottingham* set up his Standard? And I was never at *Nottingham* in my Life; these were the Questions.

Mr. *Starkey* Sworn.

Council. Pray inform my Lords and Gentlemen of

of the Jury what passed between you and the Prisoner at the Bar concerning the Trial of his late Majesty.

Mr. *Starkey*. My Lords, this Gentleman, now Prisoner, and myself, have been acquainted a great while, being of the same Society of *Grays-Inn*; and truly, my Lord, I confess I owe all my Knowledge in the Laws to that Gentleman; when I came first he was accus'd for Debt, and was pleas'd to do me, and several other Gentlemen, now and then the Favour to reason the Law with us, and assist us in the Beginning of the Long Parliament; that is, to give you an Account of his being indebted, he did desire I would do my Endeavour to get his Protection. Near the Time of the King's Trial there was a Gentleman with myself, one *Samuel Palmer* of *Grays-Inn*, which frequented his Company, had several Nights the Opportunity of understanding the Affairs at *Westminster*, and truly he himself did seem to us to count that a very ridiculous Council. I remember what he said one Night, I think they are all Mad, which was within Two or Three Days before the King's Trial; and instanced how a Fellow cried out to the Lord *Fairfax*, that if he did not consent to the Proceedings he would kill Christ and him. After that I did not think he did go to this Council for Employment, but out of Curiosity: When the King came to Trial we heard that Mr. *Cook* was the Person that was Solicitor, and acted that Part that you have heard of; and that during that Trial, whether the Second or Third Day, I cannot say that certainly, Mr. *Cook* came to *Grays-Inn* that Evening about Ten or Eleven of the Clock at Night, only upon some particular Occasion, as he said; I being walking in the Court in the Walk before my Chamber with another Gentleman, I did see him pass out of a House to go back again; I thought it was he, called after him; Mr. *Cook*, said I; upon that he turned back and met me; I took him by the Hand, said I, I hear you are up to the Ears in this Business; no, saith he, *I am serving the People*; truly, said I, I believe there's a Thousand to One will not give you Thanks; said I, I hear you Charge the King for the Levying War against the Parliament, how can you rationally do this, when you have pull'd out the Parliament to make Way to his Trial? He answered me, *you will see strange Things, and you must wait upon God*. I did ask him, but first he said this of himself, said he, he was as Gracious and Wise a Prince as any was in the World; which made me reflect upon him again, and asked how he could press those Things as I have heard? What Answer he made to that I cannot tell. I did by the Way inquire what he thought concerning the King, whether he must suffer or no? He told me *he must die, and Monarchy must die with him*.

Cook. *Whether was this after or before the Sentence?*

Mr. *Starkey*. It was before the Sentence; for it was either the Second or Third Trial; or rather in some interim of Time before the Sentence; for there was an Adjournment for a Day or Two; but I am sure it was before the Sentence.

Court. Mr. *Cook*, they have concluded their Evidence, plead for yourself what you think fitting.

Cook. My Lord, I have been a Prisoner Three Months, I humbly desire to acknowledge His Majesty's and his Council's Favour, that I was not put into a *Jeremy's Prison*, but in the Tower, and not in Irons; I give your Lordships humble Thanks for that; and truly, considering the Nature of the Charge, had it been in some other Kingdom they would have served us as John Baptist in Prison; I thank you that I have a fair Trial with the Judges of the Law, who are upon their Oaths to do equal Right and Justice between our Sovereign Lord the King, and every Prisoner, concerning Matters of Life and Death; and likewise those Noble Lords, that though they are not put upon their Oaths, but upon their Honour, if they know any Law to preserve my Life I trust they will rather save than destroy. My Lords, I do therefore say as Paul said, my Plea is much of that Nature, against the Law, and against *Cæsar*, I hope I have not offended at all, and so I have pleaded Not Guilty. The Learned Council have examined several Witnesses against me; and I humbly conceive that the Matter will rest in a very narrow Compass; the Substance of the Charge (so far as my Memory will serve) doth rest in these Three Things, the other being but Matter of Form. That I, with others, should Propound, Consult, Contrive and Imagine the Death of the late King. Secondly, That to the perfecting and bringing about this wicked and horrid Conspiracy, that I, with others, did assume a Power and Authority, (as I remember,) Power I am sure, then to Kill and Murther the King; and Thirdly, That there was a Person unknown that did cut off the King's Head, and that we were abetting, aiding, assisting, countenancing, and procuring the Person, (or Words to that Effect,) against the Form of the Statutes, and so forth. I have Twelve poor Words to offer for myself in this Business, wherein if I do not Answer every Thing that hath been particularly objected, I hope you will give me leave afterwards to offer it. First, I humbly propound this, that if it was not made appear to your Lordships that I did ever propound, consult, advise, contrive, attempt, or any way plot or counsel the Death of his Majesty, then I hope I cannot be found Guilty within the Statute of 25 Edward the Third; for the Naked Truth Mr. Nutley hath in a great Part spoke to; I was appointed upon the Tenth of January, 1648, for to give my Advice concerning a Charge, there having been upon the Ninth a Proclamation for the Trial; and upon the Tenth Mr. Steel, Dr. Dorislaus, and Mr. Ask, and myself, were appointed, and ordered to be of Council to draw up a Charge; here I have the Order attested by Mr. Jessop, and pray it may be read.

Court. They do admit the Thing that you were so assigned.

Cook. Then I humbly conceive that that cannot be said to be done maliciously, or advisedly, or with any wicked Intention in me, which I was required and commanded to do; acting only within my Sphere and Element as a Counsellor, and no otherwise. The next Thing is

this, my Lord, that by Law Words will not amount unto Treason; we usually say, that Words may declare an Heretick, but not a Traitor; there were some Statutes formerly 1 Edw. 6. where Words are made Treason, but they are all repealed by 1 Mariae, that nothing shall be Treason but what is expressed in 25 Edw. 3. This Objection will seem to lye, that these were Words put in Writing; and that

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that I humbly conceive to be the greatest Matter objected; to which I answer, 1. Whether there be any full, certain, clear Proof, that that is my Hand to the Charge, I must leave to you; Two or Three Witnesses say they believe it, and that it is like my Hand; that I leave to you if that appear; yet (my Lord) that that is put in Writing as done by another that is the Dictator, and does dictate unto me; I humbly conceive, that for any Man to write Words, which in their own Nature may be Treasonable, if he doth but write them by the Command of another, by speaking them after another, taking them upon rebound, that is not Treason, because they do not discover a traitorous Heart; those Words of compassing the Death of the King in the 25 Edw. 3. they are secret Imaginations in the Heart, and they must be manifest by some Overt-act; that which was dictated (my Lord) unto me, that I had expressly prescribed me, what I should say, what Words I should say. That I did not invent any Thing of mine own Head, of my own Conceit; and therefore cannot properly be said to be malicious. The next Thing that I crave leave to offer is this, that the pure and plain demanding and praying of Justice, tho' Injustice be done upon it, cannot possibly be called Treason within the Statute, then I hope nothing that has been said against me will amount to Treason: For the Words in the Natural, Grammatical, Plain, Genuine, and Legal Sense, will bear no other Construction, as I humbly conceive, but (that whereas those Gentlemen had his Majesty then in their Power a Prisoner) that it was prayed by me that they would do him Justice; I do hope that it will appear that I did give bonum & fidele Consilium. It will appear, I hope, that some would have had a very voluminous and long Charge; that I was utterly against it, as conceiving that it was not fit and requisite that any Thing should be put in; at least I durst not invent one Word myself, but what was expressed in the Act for Trial; if your Lordships will not admit it an Act, you will an Order, and so it will bear me forth, at least to excuse me from Treason, because I kept my self to the Words; whereas in that it was said, that they should proceed according to the Merits of the Cause, I was against that, that I did not understand that; but according to Justice, and that is but according to Law, because the Law is the Rule of Justice. I do humbly hope, (my Lord,) that if by Law, when Words may be taken in a double Sense, they shall always have the more favourable Interpretation, much more when the Words in the legal Sense will bear it; when it is prayed they will proceed according to Justice, I hope it will not be inferred there was any Intention of doing Injustice, when Justice was required. And therefore, (my Lord,) the next Word that I would offer is this, if, my Lord, in all Tragedies which are, as we call them, judicially or colourably, there are but these Four Actors, Accusers or Witnesses, the Jury, Judges, and Executioner; if I be none of these I cannot be Guilty of Treason. I hope I may safely say according to Law, that I had not a Hand at all in his Majesty's Death. My Lord, the Court and Council, it is very true, they do aim at the same Thing; the Council Requirendo Justitiam, the other Exequendo Justitiam, the End being the same, to have Justice. If when Justice be demanded, and Injustice be done, what is that to the Council? We read in the 19th of John concerning Pilate, Knowest thou not (speaking to Christ) that I have power to crucifie thee, and have power to release thee? My Lord, I humbly answer this to that which seems

to be the most material part in the Indictment, That we did assume a Power; my Lords, I did not assume a Power, I hope it will not be said that the Council had any Power; Eloquentia in the Council, Judicium in the Judges, and Veritas in the Witnesses. 25th of Acts, Tertullus, that Eloquent Orator, accused Paul; Paul answered for himself, and it is said, Festus being willing to do the Jews a courtesy, he left Paul bound; it was not the Council that left him bound. His Majesty was never a Prisoner to me, and I never laid any Hands upon him; if any Witnesses have spoke of any Irreverence, I must appeal to God in that I did not in the least manner carry my self undutifully to his Majesty, though One of the Witnesses was pleased to say that I said these Words, That there is a Charge against the Prisoner at the Bar; it was not said the Prisoner at the Bar; there was not One Disrespective Word from me. There is a Case in the Third Institutes of my Lord Coke, it is to this purpose, that one wilfully and knowingly forswore himself; the Case was put to inveigle the Court; and though the Court does Injustice upon a false Oath, it is not Injustice at all in the Witness, it is Perjury in him; if there can be no Injustice in a Witness, much less a Counsellor can be said to have his Hand in the Death of any, because he has no Power at all; this must needs follow, that if it shall be conceived to be Treason for a Counsellor to plead against his Majesty, then it will be Felony to plead against any Man that is condemned unjustly for Felony. The Counsellor is to make the best of his Client's Cause, then to leave it to the Court. It is said, I should demand Judgment; I do not remember that, I leave it to you, but still to demand Justice. Counsellors they do engage in Business before they do rightly understand the true Matter of the Fact; it is part of a Serjeant's Oath, that so soon as he does discover the Falsity of the Cause, he should forsake the Cause. My Lord, by what Mr. Nutley hath said it appears, and I have many Witnesses in the Country, Three or Four in Leicestershire, would have spoken full to this, that (my Lord) there was not before the Sentence of the King (to the best of my Knowledge) a Word spoken by any that they did intend to put him to Death; I say, to my Knowledge; and my Lord, when Judgment is demanded is it not Twofold, of Acquittal or Condemnation? If those that then were entrusted with the Power of Judicature, if they did not know any Law to proceed by to take away his Majesty, then I demanding their Judgment, it doth not appear to be my Judgment; and I refer it to the Learned Council, that Council many Times at the Assizes and other Courts have been sorry that the Verdict hath been given for their Clients, when they have known the Right lay on the other Side, and so I might in this. The next Thing I humbly offer, is, that if in Right Reason, considering the Condition his Majesty was then in, the advising to draw up the Charge was rather to be looked upon as a Matter of Service than Disservice, then it cannot be called Treason; it is very true, my Lord, that a very little small Overt-Act will amount to a Treason; and, my Lord, had this been in Times of Peace, and had his Majesty been no Prisoner, (now he was under the Power of an Army,) this had been great Treason; but he being a Prisoner, (not by my Means, for I was no Sword-man,) what can a Man that knows himself Innocent, being a Prisoner, desire more than a speedy Trial? So that making the Trial more Speedy cannot be said to be done Traitorously. A Trial doth follow Imprisonment as naturally and necessarily

rily as the Shadow doth the Body. If any Man shall desire and be instrumental in bringing him to a Trial which might acquit, rather than condemn him, and so humbly pray Proceedings according to Justice, this will have, I hope, a better Name than Treason. I am much beholden to His Majesty and this Honourable Parliament for the Penning of the Act of Indemnity, which I hope, my Lord, you will give me leave to take Notice of.

Court. Open as much as you will of it.

Cook. My Lords, the Words that I would make use of are in the Beginning; Treason, Murder, and other Felonies that are spoken of, they are said to be counselled, commanded, acted or done; in the Preamble, which is as the Key to open the Mind and Meaning of the Law-makers, it is said, that all Persons shall be pardoned for all, excepting such as shall be named, and in such manner as they shall be excepted; and then it comes, Provided that this Act shall not extend to Pardon such and such Persons, and by Name I am one; and it is said, all which Persons, for their execrable Treason, in Sentencing to Death, or Signing the Instrument for the horrid Murther, or being Instrumental in taking away the Precious Life of our late Sovereign Lord, Charles the First, of Glorious Memory, are left to be proceeded against as Traitors to His late Majesty, according to the Laws of England, and are out of the said Act wholly excepted and foreprized. There is not any Thing offered against me upon the Two First great Words, which are Sentencing and Signing; that which I have to do to endeavour to clear myself is this, being Instrumental in taking away the Life of his said Majesty; first, I humbly offer this to the Jury's Consideration, That where the Parliament doth begin to fix the Treasonable Part, there, I hope, and no otherwise, this Honourable Court will fix it: If it had been the Intention that Counsellors, Advisers, and such as spoke their Minds sometimes in the Business, (you know that was Epidemical,) many Words were spoken which cannot be justified; whether naturally it would not have followed, that all such Persons for their Counselling, Advising, or being Instrumental, are left to be proceeded against as Traitors, I hope you will take that into Consideration; concerning the Words, or being Instrumental, observe it is not said, or being any otherways Instrumental; but Sentencing, Signing, or being Instrumental; if therefore the Word Instrumental be not of a general comprehensive Nature, then all this Evidence which hath been given in against me, being before the Sentencing and Signing, will fall to the Ground; that this is the Legal, Genuine and Grammatical Sense, and cannot be any otherwise than as Particular, as if it were the Sentencer, Signer, and Executioner; which if it had been so nothing of the Evidence would have reached me. My Argument is this, such a Use is to be made of an Act of Parliament, that no Word may be frustrate and insignificant; but if this Interpretation shall be put upon it, Sentencing, Signing, or being any Way Instrumental, then the Words Sentencing and Signing need not have been. If Instrumental will carry the Words Sentencing and Signing, then these Words will carry no Force at all; especially, my Lord, when there is no need of any Retrospect at all; if it be so, I know not how far it may look back; there is no Necessity of putting any comprehensive Generality upon this Word Instrumental, but that the plain natural Sense will be this, that those that did Sentence and Sign, and those that were Instrumental in taking away his Life, that is, those that did Abet and Comfort that Person

unknown, or Justifie, or Countenance him, which is after the Sentencing, and not before, in the Legal Sense. Next I conceive, that a Counsellor cannot be said to do any Thing *vi & armis*.

It is said, that by Force and Arms I did Abet, &c. it is Rhetorical to say that Words may be as Swords, but Legal it is not, unless there be something *vi & armis*; in the Grammatical Sense Instrumental in taking away the King's Life; it is not said Instrumental in order to take away the King's Life, or Instrumental in advising to take away the King's Life, but Instrumental in taking away the King's Life. My Lord, the next Thing is, that there cannot be any Thing to be said to be done by me, first not falso, because in that Sense it must have the Operation of Mendacity; that there must be a Lie told in it; I did nothing but what I was required to do, to set down such and such Words, I did not invent nor contrive them, I heard nothing of it till the 10th Day of January. My Lord, for malitiose, that I did not any Thing maliciously, I hope it will appear in this; what I then spoke it was for my Fee; it may be called avaritia, but not malitia; for the Law will imply a Malice, when there is no other express Ground or Reason why the Thing was done, but here was an express Ground to speak for my Fee, I hope the Jury will take that into Consideration. Then Secondly, I was not Judicial in the Case, I was not Magisterial as any Officer, but Ministerial. As touching examining of Witnesses, it is a great Mistake, the Court had Power to give an Oath; I might be there, but I had no Power to give an Oath; but whether I might ask any Question, I do not remember, but that I should give an Oath, that is a Falsity; then, my Lord, for Proditorie, I hope there is nothing at all that appears to the Jury; so that there was no Malice nor Traitorous Intention in the Thing. There are some Matters of Law which I desire your Lordships will give me Leave to speak to, and that your Lordships will be of Council with me. I would offer something concerning his Majesty's Gracious Declaration from Breda to the Parliament; (I was then in Ireland,) I did put in a Petition to the Honourable Commissioners before any Exception was, that I might have the Benefit of that Declaration; I did lay hold of it: My Lords, there are Two Things in that Declaration that I would offer. His Majesty saith, that for the restoring of the King's Peers and People of the Kingdom to their just Rights and Liberties, he will grant a Free and General Pardon to all, excepting such as shall be by Parliament excepted; and within Three or Four Lines after it is said, a Free Parliament; though I do not in the least question the Legality of this Parliament, yet, my Lords, to this particular Purpose, whether the Parliament that was to except ought not to be a Parliament that was to be called according to his Majesty's Writ, according to the Laws of the Kingdom, I humbly conceive it will bear that; though his Majesty is pleas'd to confirm this, yet it is not such a Parliament that was to except; that I offer to your Lordships. My Lords, that that I would humbly make bold to put for myself, because it is the Priviledge of one in my Condition, is this; There is, my Lords, many Lords, the Earl of Essex, the Earl of Southampton, and others, that were adjudged in the 44 of Eliz. 3. Institutes, they did Traitorously and Maliciously conspire to take her Majesty Prisoner, and to remove her Counsellors from her, which were found Guilty, and suffered accordingly; the Reason is, That because thereby if it had been done, they had despoiled her Majesty

of her Regal Government; and the Case is Instant in Philip, who was a Nominative King, that it was not Treason to have attempted any Thing against him. My Lords, his Majesty being a Prisoner without any Hand of mine, I giving Advice according to what was dictated to me to bring him to that Trial, whereby he might have been Acquitted, and so set at Liberty, I hope that will not be said as Instrumental.

My Lords, I humbly shall offer but Two Words, 1. To the Honourable Court, then to the Jury. The Words 25 of E. 3. and so the Exposition of the Learned Judges have been from Time to Time, that there shall be no Semblable Treasons made by Presumptions or Strains of Wit, but those Treasons specified there: It is said if a Husband do kill his Wife, or a Wife kill her Husband, a Master should kill his Servant, or the Servant should kill his Master, that that shall be petty Treason; a Child did kill his Father, though that was looked upon as a great Sin, yet the Judges did not presume that to be Treason, because it was not in the very Words; this being an extraordinary Case, to write a Thing after another doth not appear that there was a Malicious Heart in him that did write. There hath been the Act of Parliament that doth call these Courts Tyrannical and Unlawful Courts; but, my Lords, a Tyrannical and Unlawful Court is a Court de facto, though not de jure; If a Court be not a Just and Lawful Court, it cannot be said but that it is a Court: We say a Thief is a True Man, though Morally he is not so; this was a Court, Officers attending on them; some said they had Authority; and therefore for one to come and act within his Sphere, not to act out of that, nor doing any thing but what he had a Prescript Form appointed him, I hope that will not be found to be within the Letter of the Law. I have been told, (how true I cannot tell) that there have been some Votes in the Honourable Parliament, that those that did only counsel or advise, those were not to be looked upon as Traitors; I have been told so, that those that did only speak as Council for their Fee, who were not the Contrivers of it, the Parliament did not intend they should be left to be proceeded against.

Court. That Letter that was sent from the Commons to the King at Breda, they speak first of the Violation that was put upon the Parliament, and of the base horrid Murder of his late Majesty. It is said that the Parliament (I conceive they meant of the remaining Part) they were not guilty, but some few ambitious, bloody, guilty Persons, who contrived the same, and others misled by them.

Cook. The other Matter of Law is this: I say that I do hope that though that Order, which I was about to produce concerning my acting, that if it may not in a Legal Sense any way be said to be an Act of the Parliament and Commons, yet it may be said to be such an Order to bear out those that did Act according to it, because there was then an Authority de facto, otherwise it were not lawful for any Man to exercise his Profession during such a Power. I hope Counsellors might then exercise their Profession, as well as others. My Lord, though I should suffer my self in this Case, I should be loth the Honourable Profession of the Law should. I think I was in my Sphere, acting as a Counsellor. Now, Gentlemen of the Jury, that which I have to say to you is an Evidence concerning Matter of Life, it must be so clear that every one that hears it may understand it. It is called an Evidence, because it is evident; it is one Reason why Prisoners for their Lives are not allowed Council for Matter of Fact, because the Evidence is, and ought to be, so clear and

plain that every one should be satisfied, both Jury and Standers by; and it is a proper Word to say the Prisoner is convicted, that is as much as, his Mouth is stopped; and therefore I say, truly as I hope I may speak it to you without Offence, as Jeremy in another Case, when some of the People would have had them put him to Death, As for me, behold I am in your Hand, do with me as seemeth good and meet unto you, Jer. xxvi. ver. 14, 15. saith he, But know ye for certain, that if ye put me to Death ye shall surely bring innocent Blood upon yourselves. I hope you will not willingly be guilty of any such Thing; I must leave it to your Consciences, whether you believe that I had an Hand in the King's Death, when I did write but only that which others did dictate unto me, and when I spoke only for my Fee; and this I would be bold to say, though the Argument is not so directly confessed, that Humane Justice, (I do first say as this my Principle and Opinion is,) that as every Man ought to pay his moral Debts, so all political Debts; there is a Debt due to Humane Justice, so political, if the Lord should have suffered me to have been Drunk, and killed a Man, for which I ought to have died, instead of speaking for my self, I would have rather intreated the Jury to have found me Guilty; I think these Things ought to be answered, political Debts. When I was in Ireland, and had Opportunity of going away, if I thought I had been Guilty I might have done it; my Name is put into His Majesty's Proclamation. It is true, I was a Prisoner Three or Four Months before, so that I could not render my self, to what End should that Proclamation mention my Name? It was said I obscured my self, but I did not. Humane Justice doth never punish so much for Expiation as for Prevention; the Judgments of the Learned Aquinas, Grotius, and Amesius, and many others, that if a Man doth kill a Man, commit any Thing worthy of Death, though he doth repent never so much, yet that others may be deterred from committing such Acts, the Magistrate is bound to put him to Death. But where there is not such a Thing, there it is different; though it is said the Land is defiled, that is, where there is Danger that the like may be committed again; now all Things are settled, there is no Danger at all; now there can never come such a Case as this again; I say, my Lord, what I acted I did as a Counsellor, I had no malicious Intention in it. Mr. Nutley bare Testimony so far, that I told him there was not Intention of putting his Majesty to Death; I only did say, that I desired them to do Justice; and I hope what was done was their Act, not mine, and so I leave my self to your Lordships.

Court. Silence Commanded.

Mr. Solicitor General. My Lords, this Gentleman who is the Prisoner at the Bar requires such an Evidence of the Fact as may be evident, he saith so evident as may be as clear as the Sun; I think that Evidence is not to seek; but if he must never be convicted till he be so far convinced as to be speechless, I believe we may stay long enough; nevertheless if he be willing (as he saith he is) to pay his Debts to political Justice, we shall quickly give him the total Sum. That which he hath said hath been like a Lawyer, the best that his Case will bear, but withal, it is a great Aggravation to his Crime, that he that knew the Law so well, should so much transgress it. He began, Words do not make Treason; he mistakes, his Charge is not for Words, Gentlemen, his Charge is for Compassing and

Imagining the Death of the King, and the Evidence of that Charge is meeting in that Assembly, and the Part that he bore in that Assembly. And yet, my Lords, he will be much mistaken too, (under Favour, and with Submission to your Lordships Judgment, and those that hear him,) if they think that in all Cases it is a general Rule that Words are no Treason; for when a Man shall proceed to declare the Imagination of his Heart, as to exhort and persuade Men to effect that wicked thing, the *killing of the King*, certainly there cannot be a greater Overt-Act than these Words, nor a clearer Evidence of such an Imagination, for *out of the abundance of the Heart the Mouth speaks*. My Lord, to say that the demanding of Justice is not Treason, though Injustice do follow, is a very weak Gloss upon a wicked Action. The Subject Matter was a Charge of *High-Treason against the King*, the Conclusion of the Charge was a *Protestation*, by which he saved to himself a Liberty to put in a new Charge, if that was not sufficient; upon the whole he desires, that the King, *as a Traitor*, may be brought to Justice. Judge ye now, Gentlemen, upon the Nature of this Demand, whether this were such a Demand of Justice as might end in Acquittal; whether he that presses that this Charge may be taken *pro Confesso*, did mean that when the Court had recorded it they should Acquit him when they had done? My Lords, to say there are Four Actors in this Case, the Witness or Accuser, the Judge, the Jury and the Executioner, and that he is none of them, and therefore in this Case he cannot be a Traitor; still, my Lord, that is to beg the Question; for if he be one of them that did Assemble in the Place, and were any Instrument of that Assembly, he hath thereby given an Evidence of an Overt-act of his wicked Heart; and when all is done this poor Gloss amounts but to this, *I am none of those Four Ranks, that is, there were others worse than my self, and therefore I am none at all*. My Lord, the Thing that he hath mainly insisted upon is the *Act of Indemnity*; my Lord, he doth observe that his Name is excepted in that Act; that he doth hope that it is so Penn'd, as by the Favour of the Parliament it may reach his Case; and he hath argued very much upon it, and he speaks as if he did believe it himself. But surely there is no colour for that Interpretation, that he should step out of this Proviso, by the very *Act of Indemnity*, that was made on purpose to bring him in by Name; the Words are, *Provided that this Act, nor any Thing therein contained, shall extend to Pardon, or give any Benefit to John Cook, &c.* "all which Persons, for
 " their execrable Treasons in Sentencing to Death,
 " or Signing the Instrument for the Horrid Murder, or being Instrumental in taking away the
 " Precious Life of our late Sovereign Lord King
 " Charles the First, of Glorious Memory, are left
 " to be proceeded against as Traitors, &c." First, my Lord, this general and clear Answer, I conceive, is to be given, that the Prisoner at the Bar being by Name excepted out of the *Act of Indemnity*, by the *Proviso* mentioned in it, although the subsequent Lines that follow be the Reasons why the Parliament do except, yet if it be within the very Words of the Exception, whether he be in the Reasons that moved them to that Exception, is not material; if he could

distinguish that he was not Instrumental in that Sense, to which he labours to restrain this *Proviso*, he can but say this, the Parliament was mistaken in their Reason, but not in their Conclusion; but he is directly within the Exception, and the Reason of it too, for the Word Instrumental goes as far as far can be, and he is properly and literally in the strict Notion of the Word, an Instrument of the Death of the King: The King could never have been brought to Death, if not to the Bar; never had been Sentenced, if he had not been Impeached; that Impeachment could never have been taken *pro Confesso*, nor the Impeachment itself delivered, if he had not delivered the one, and pressed the other: He that brought the Axe from the Tower was not more Instrumental than he: And besides, a Lawyer, as he, of great Understanding, and of good Parts, he knows very well there are no Accessaries in Treason, but he that Acts any Part in so wicked a Conspiracy, let him begin at what End he will, he stands responsible for the utmost Consequence of it; and in Effect the very penning of this *Proviso* is an express Judgment of Parliament, that he was Instrumental; but that is not to be pressed.

The next Thing he doth insist upon is the Declaration of his Majesty, that he sent from *Breda*, which he saith he laid hold upon; here lyes the Weight of his Answer, The King writes his Letter to the Parliament now sitting, that he doth purpose, for the quieting of the Hearts of Men that may be in doubt, to pardon all Persons all Crimes of what Nature soever, either against himself or Royal Father, excepting those which shall be by Act of Parliament excepted; and, my Lord, he doth say, and modestly presses, that he doth conceive the Meaning of that is to pardon all Persons what Crimes soever they have committed, except such as by a Free Parliament shall be excepted; a Legal Parliament, called by the Writ of the King, which this Parliament is not. To that I give these Answers; First, my Lord, I do say that this Letter of our Gracious Sovereign from *Breda* in itself undoubtedly is no Pardon in Law for Treason, that cannot be without the Broad-Seal. Next, a Pardon under the Great-Seal in such a Form of Words as this is would not be a Pardon for Treason, for that must not be pardoned by Implication, but by positive Words; so in the Case of Sir *Walter Raleigh*, a Commission directed to Our Well-beloved Subject would not pardon the Treason of which he was Condemned. In the next place, this Letter at the most is but a Pardon in Honour, which must always be taken according to the Meaning; and that the King's Honour may be for ever Sacred, I say this Letter doth no Way help the Prisoner at the Bar.

First, it is plain by the very Superscription of this Letter in which the Declaration was inclosed, that it is directed to the Speaker of our House of Commons in Parliament Assembled; which cannot possibly be expounded of any other Parliament than that which was then Sitting, to whose Speaker it was written.

Secondly, The Letter it self says, We have left it to you to provide for Security and Indemnity; and again, If there be a Crying Sin for which the Nation may be involved in Infamy, we cannot doubt but you will be as solicitous to vindicate

vindicate it as we can be. And then in this very Letter encloseth that Declaration, upon the Penning of which the Prisoner so much relies: Now lay all together, and it is clear the Parliament, meant by the Declaration, must be the same Parliament which was meant by the Letter; and that was this very Parliament whom the King intended to trust, both with Indemnity, and with the Vindication of his Father's Death, and to be the Dispensers both of Mercy and Justice in this particular. Another Thing is this, This very Parliament, as the Prisoner observes, they did go to the King according to his Gracious Letter, and in the Behalf of all the Good People of *England*, they did lay hold of the King's Mercy in his Letter and Declaration, and prayed that this Claim by their Speaker, in Behalf of all the rest of the Commons of *England*, might be Effectual to all Purposes, and for all Persons other than those that should be by themselves afterward excepted, according to their Requests; His Majesty accepts their Petition, and makes Proclamation, that his Pardon should extend to all but such as they should except: What can be more clear and evident, than that this is the Parliament which the King did mean to be the very Parliament to which the Letter should have Reference till the Act of Oblivion was passed? Again: The late Transactions of these Twelve Years past had involved so many Persons, that we could scarce find a Man but he had need of Mercy; nay, this very Parliament to which this Letter was written had need of Indemnity; and is it probable in the Nature of the Thing, or can it be understood by any Man, that the King writing to this Parliament, and offering them Pardon and Indemnity, should mean such a Pardon and Indemnity as a future Parliament, to be called by his own Writ, should be willing to afford them? Whose Hearts would have been satisfied with so contingent a Security?

My Lords, upon the whole Matter, by what the King hath said in this Letter, and by what the Parliament hath done in pursuance thereof, and by what the King hath proclaimed, it is to my Understanding as clear as the Noon-day, that the Honour of the King is not concern'd at all in the Exemption of the Prisoner at the Bar; and for the Cases of my Lord of *Effex* and *Southampton*, which he hath cited, they make against him; they were condemned because they endeavoured to imprison the Queen, and to remove her Counsellors, of which very Fact the Prisoner is in Law Guilty too; and then the Case of King *Philip*, the Husband of Queen *Mary*, makes nothing for him neither, unless he will speak out, and tell us plainly, that because by a former Violence the King was made a Prisoner, he became but like a Titular King, as King *Philip*.

In the next Place he saith, my Case is out of the Law, I acted as a Counsellor in my own Particular for my Fee; it was *Avaritia*, but not *Malitia*, nor *Falso*, *Malitiose*, or *Proditorie*: But he must know, that no Man hath, or can have, a Lawful Calling to pursue the Life of his King; and the Law implies Malice; for *Malitiose* and *Proditorie* are not only Words of Course, but of Truth too, in this Case, else it were as much as to say, that no Council can be Guilty of High-Treason, than which nothing can be more absurd: My Lord, for that which he said last, (for

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I must omit some Things, and give him leave to take the Advantage of it,) to stand upon it, that the Place was a Court, such a one it was that he was not answerable for the Constitution of it; if it were not in a Legal Sense, it was such an Order as might bear him out, that is, with Modesty and good Manners to justify High-Treason; it is not with such Insolency as some others before him did it, but it amounts to that, That an Order of a few Persons that first made themselves a *Parliament*, and then made a Court of Justice, had Officers, and met together, and perfected so great a Treason; I say, that this Order to bear him out is impossible. He that is a Lawyer, he must account to the Laws for what he hath done; if the Authority were not Lawful, he cannot but know that this which he calls the *Parliament* was so far from a Legal Authority, that it was one Part of the Treason that he did assist such an Assembly.

Gentlemen of the Jury, this is your own Case, here is a Charge that is exhibited by the Prisoner at the Bar, as he saith, in the Name of all the People of *England*. Look to it, for you are some of them if you own it; then it may be true what he hath said; but I hope you meet here to tell this Nation, and all the World, that the People of *England* had no Hand in that Charge; do but consider how that this Prisoner at the Bar had hunted the Life of the King, how he did fish out and examine Evidence, whether the King set up his Standard at *Nottingham*, was at such a Place, and such a Place; to what End is all this, but with Design of Blood? Were these Things to be produced against the King, and then Judgment to be demanded that he may be saved? Is it not plainly proved to you by Witnesses, how he did exhibit the Charge, press it, aggravate it, desired it might be taken *pro Confesso*, was afflicted with the Delays, how angry he was when he was interrupted? Is it not proved to you, that he was at first against the Thing, and said, *It was a base Business*? When he was engaged in it said, that he was a *Servant of the People of this Kingdom*? What doth he do at last, when the Thing had gone far? He speaks that which is the only Truth which I have heard yet from him, *He must die, and Monarchy then must perish with him*; from which Event, Good Lord deliver us.

Sir Edward Turner. My Lord, the Substance of the Defence that the Prisoner hath made at the Bar, with much Skill and Cunning, may be referred to Two Heads. The First to the Statute of the 25th of *Edward* the 3d, the Second to the late Act of Oblivion: For the First, my Lord, he saith, that his Fact is not comprized within that Statute; saith he, I did never Conspire or Imagine the Death of the King; nor did believe that would be a Consequent of their Actings. It was expressly proved that himself did say that the King must Die, and Monarchy with him; but, Gentlemen, though he had said true, that it had not been proved, or that he did not believe that would be a Consequent, yet, my Lord, I must tell you, that every Step of this Tragedy was Treason; the Summoning themselves, that was Treason; every Proceeding upon that was Treason; the Summoning of their Meetings in the *Painted Chamber*, Coming into *Westminster-Hall*, every Person as Instrumental, those that came to Act the least Part in that Tragedy,

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Tragedy, were every one Guilty of Treason; what, saith he, I acted as a Counsellor for my Fee: It was that Fee that Judas had, the 30 Pieces of Silver, that made him hang himself. He goes further, and tells you, there must be no Semblable Treasons, this is clear; the Conspiring and Imagining the Death of the King, that's the Treason that is mentioned in the Act; Treason by the Common Law; though this be not named the killing of the King; yet all these Proceedings are Demonstrations to you there was a Secret Imagination to kill him. Then to the Act of Oblivion, his Argument is, That because the Act saith, that if they had Sentenced, Signed, or been Instrumental in the Death of the King, that they should be excepted; but it is not said, or otherwise Instrumental; that this therefore should refer to subsequent, not precedent Acts, that's a strange Exposition; take it Grammatically it hath the most large Construction, Instrumental, more large than if they had said or otherwise, for it doth comprehend every Thing: There having been so full an Answer already, I will be short; I will not meddle with his Civil Debts, but with his Political; if a Man kill another, though he do repent, the Magistrate must do Justice *in Terrorem*. Though he doth repent, (I hope in God he doth so,) the Magistrates, your Lordships, must do Justice *in Terrorem*; I desire that Justice may be done upon that Man. He said it was no Treason to demand Justice against the King, because he did but demand it; I hope he will think it no Unkindness in me to desire Judgment against him, because it is Just.

Mr. *Wadham Windham*. As I understand the Prisoner at the Bar, the chief Argument which he shelters himself under was his Profession, which gives a Blast to all of us of the Long Robe; I will not mince his Arguments; saith he, here was a Court, I was appointed Solicitor; and saith he, for Men to practise before those that have not a proper Judicature, it is not Felony, Murther, or Treason, (I would not willingly mince his Argument,) and that I was appointed, and the Words dictated to me; and a Counsellor carrying himself within the compass of his Profession is not Answerable; but if he will exceed his Bounds, his Profession is so far from sheltering him, that, as it has been opened, it is very much an Aggravation; it is the Duty of a Counsellor to give Counsel; if a Man shall come to me and ask Counsel, and I shall Counsel him to kill a Man, am not I accessory to that Murder? Words by his Argument will not amount to Treason; if the Fact follows I am as Guilty as if I did the Fact; in Point of Treason it is all one as if I had done that very Act. If Mr. *Cook* did advise that Act, or was Instrumental, he is as much a Traitor as the Man in the Frock that did the Execution; for his Profession, truly, my Lord, I do not think that a Counsellor is always bound to know the Patent of him that sits as Judge, that will not be his Case; here was no ordinary Warrant of Law to carry on Justice: *Grotius* saith, in Case of Necessity for carrying on Justice, there may be many things allowed: I pray where did Mr. *Cook* read of such a Court as a High-Court of Justice; there was never such a High-Court of Justice read of in the Law; then as this was a Mock-Court, so under good Favour it was a

Mock-Jurisdiction. Was there any Law under Heaven to put the King to Death? Is it not out of the Compass of all Courts whatsoever to do it? And under good Favour, my Lord, this is but to shelter a Man's self under Colour of Justice to do the most Execrable Treason in the World; I have no more to say to you.

Lord Chief Baron. I would repeat the Evidence and your Answer to you, if you have any thing New speak to it.

Cook. *This is New; it was said by one, that if there had been no Charge there had been no Sentence given in the Case; I say that the Indictment or Charge is no part of the Trial by the Statute of Magna Charta: The Peers of the Land shall be Tried by Peers, but are Indicted by the Country; I conceive by what they have said they do make me causal of the King's Death. It is said in the Indictment there was a Power; I say this, I did not assume any Power; it cannot be said, if Council be come in to an unlawful Power, that he takes the Power, but stands with Respect at the Bar. At Assizes Judgment passes, the Clerk of the Assizes he is not Instrumental in taking away Life. For that which Mr. Starkey should say, that I should say The King must Die and Monarchy with him, I humbly beg that the Jury would take Notice of what Mr. Nutley said, that I told him there was no Intention of taking away the King's Life; and besides, it is but a single Witness. I hope there must be Two Witnesses in Point of Law to Convict a Man of High-Treason.*

Lord Chief Baron. Mr. *Cook*, you said right but even now, that if there was any Thing in Matter of Law which the Court knows of, which may be of Advantage to you, they are of Council to you, and so they ought to be.

Cook. *I thank your Lordships.*

Lord Chief Baron. I shall repeat the whole Evidence, and begin with that first; (we are upon our Oaths;) the Witnesses that are against you, I took Notice of them; you have had a great deal of Liberty, which you have made use of civilly; but, Sir, for the Fact, I think it is a great deal more full than as you have answered. First, The First Witness produced against you was Mr. *Nutley*, (I shall speak only the Material parts that concern your Charge,) he swears expressly that he saw *Price* a Scrivener writing a Charge in the Court of Wards, that he saw his Charge in your Hands; he saw afterwards, when the King of Blessed Memory was brought as a Prisoner, that there you delivered the Charge in; there is more than Words; you delivered that Charge in, that alone is an Overt-act; then if there were nothing else in that Case, that a Man in a Paper should call the King Traitor, Tyrant, Murtherer, and Implacable Enemy, as there the Words are, and he deliver this Paper, and this be read, if this be not an Overt-Act of Imagining and Compassing the King's Death, I do not know what an Overt-Act is; and he gives further Evidence; if I mistake, take free Liberty to interrupt me.

Cook. *Sir, they were not my Words, but their Words that Commanded me.*

Lord Chief Baron. This I say, that this very Thing alone, such a Paper approved by you, delivering this Paper to an Assembly, and requiring it may be read, this is an Overt-Act to prove the Imagination of your Heart for the Death of the King; the Reason is, if the King should be a Tyrant,

Tyrant, a Traitor, &c. it stirs up Hatred in the People, and the Consequences of that Hatred is the Death of the Prince. The next Thing that Mr. *Nutley* said was this, he said that you demanded positively Judgment against him, against the Blessed King, then Prisoner at the Bar. I remember you said that you did demand Judgment, but that you did not demand Judgment against the King; take it so whether you did, or not, (though you shall find in some other Witnesses that I shall repeat, that you said Judgment against the King,) the Consequence will be the same; who could you demand Judgment against but the King? He was the Prisoner: Because he did demand a further Hearing by the *Parliament*, you urged that his Charge might be taken *pro Confesso*, then it must needs be Judgment against the King; it is effectively and implicitly the same. He went further, and that was, that being your Friend and Acquaintance, and acknowledging your Parts as a Lawyer, (which truly I do very much know my self, and do know this Gentleman to be a Man of very great Parts in his Profession,) he had familiar Acquaintance with you; he told you what a base Business it was, and you did yourself acknowledge it; said the Prisoner to Mr. *Nutley* himself, it is a base Business, but they put it upon me. He did discourse further to him of the Oaths of Allegiance and Supremacy, which he knew very well, no Man better; this Gentleman, he very ingenuously confessed it, saying, I confess it is so, they put me upon it, I cannot avoid it; but then excuses it, I am the Servant of the People: Afterwards he pressed the King to answer positively, whether Guilty or Not Guilty; the pressing of the King to answer, what was it in Effect but to hasten Judgment? And that was to hasten his Death; so that this is the Substance of Mr. *Nutley's* Testimony, that he pressed Judgment; Judgment was demanded by the Prisoner now at the Bar; it is not only demanded, but pressed, and all the Current of the Witnesses at several Days are to this purpose. It is true (that I may repeat the whole for you, and against you,) that this Gentleman, the Prisoner at the Bar, when Mr. *Nutley* did urge this to him, said, he hoped they did not intend to take away the King's Life; I verily believe they do not intend to take away the King's Life; I hope they do not. But, Mr. *Cook*, it is no Excuse to say you hope, or you believe, they will not, &c. How far it may be in such a Crime something in Extenuation *in Foro Cæli*, but not *in Foro Civili*; you opened it yourself, that if a Man should go about to take the King Prisoner, it is Treason; the Law adjudg'd that to be Treason; when you knew they would condemn him as a Tyrant, Murderer, &c. you must easily believe what would follow such a Condemnation, truly Death; that is no Colour of Excuse in *Foro Civili*. *Farrington* swears to the same Purpose, that he saw you having a Parchment in your Hands, delivering it in, and prayed it might be read as a Charge of the People; you did not speak, I deliver this in as from those that deliver'd it to me; that was not in the Paper, that you said of yourself; my Brethren will tell you all this is an apparent Point of the Imagination of your Heart; at that Time he swears the same Thing, that you did desire it might be taken *pro Confesso*. Mr. *Bodurdo* is the Third, he swears the same Thing too, that you

exhibited a Charge of High-Treason against the Prisoner then at the Bar, and tells you the Substance of it; he saith that all but the First Day you demanded Judgment for not pleading to the Charge; he adds, that you complained of the Delays; I am sure that was not dictated to you; that could not be thought that you should desire Judgment for the Prisoner: It is very true which you say for yourself in that, that you did not demand it first, till it was demanded by the Court; Mr. *Bodurdo* tells you, and so it was granted the First Day, that *Bradshaw* only said it, but afterwards that you always demanded it: The next was Mr. *Herne*, he swears the same Words again, that you did in the Name of the Commons Assembled in Parliament, and the People of *England*, exhibit a Charge, &c. These are your own Words; if you did exhibit a Charge against the King, to exhibit a Charge of High-Treason the very Thing followed; if it were so, there was Death, so certainly there cannot be a greater Expression of the Imagination of a Man's Heart than that is: It is true, you asked then a Question, and that was, whether that that you concluded was not that you desired them to proceed according to Justice? It is true, the Words of the Charge are so; but before you come to Conclusion you Charge him as a Traitor, Tyrant, &c. *Communis Hostis*; after you had given that Charge you demanded Justice; those that spit in his Face they demanded Justice; every one knew what belonged to that Justice: Then *Baker*, he swears positively that you did exhibit the Charge in this Manner; he said this, that you said, you had exhibited a Charge of High-Treason, &c. and that the King sought Delays; there is your insisting upon it; he says further that you said these Words, that you did desire Judgment should be given against him, and not so much you, as the Blood that had been shed that cried for Judgment; truly whether that was a Judgment that you intended for Acquittal, that must be left to the Jury. You asked (because I will repeat it in order as my Memory will give me leave) whether there was any other Words in the Charge than was in the Proclamation? Mr. *Cook*, Whether there was any other Words, or no, that differed in the Proclamation; as it was a great Sin and foul Fact in the Proclamation, so it was as foul in the Charge. Master *Master-son* swears the same too, he heard you say the Second Day you had delivered a Charge (the Day before) against the King, and that he had delayed his Answer; you desired he might plead Guilty, or Not Guilty; the last Day, that you did in the Names of the Commons Assembled in Parliament, and the People of *England*, demand Judgment against the King; and then another swears those Words, Judgment against the Prisoner at the Bar, which was the King. *Burden* swears you Examined him as a Witness against the King, in what Place he was with the King; it seems he was in the King's Army; he swears you gave him an Oath; (it is Testimony fit to be believed;) but however, if you did not give the Oath, by what you say yourself you may be by, and asked him the Question. Master *Starkey*, he tells you, that during the Trial, and before the Sentence, that you, being an Old Acquaintance of his in *Grays-Inn*, and speaking with him, he spake like a Friend to you, *I hear you are up to the Ears in this Business*; and whereas you talk of
the

*the People, there is a Thousand for One against it; that you should tell him again, You will see strange Things, but you must wait upon God; these Words of waiting upon God are Words of that Nature, People do use them now-a-days when they would do some horrid Impiety, which hath been the Sin of too many; it is but a Canting Language, that is the best Term I can give it: You told him then He must Die, this was before the Sentence; (that is to be observed, Gentlemen of the Jury;) you say you did not know of the Sentence, you said He must Die, and Monarchy with him. You must here know that some of those Persons that sat upon him said, the King was a Gracious and Wise King; and as Mr. Cook did say, and they were the best Words they spoke, and I think he thinks so in his Conscience; but in Conclusion He must Die, and Monarchy must Die with him; others said, they did not hate King Charles, but they hated Monarchy and Government, but Monarchy was the Thing that they would Behead. I think I have done with the Evidence that was given against you; the Indictment itself was read, the Overt-Acts was the Meeting, Propounding, and Consulting about it. It appears he was in the Chamber about the Charge, that he did propound it, he delivered the Charge, and it appears withal, that he demanded Judgment, he desired the King might answer, or that it might be taken *pro Confesso*: These are Overt-Acts to declare the Imagination of his Heart. The Answer of Mr. Cook I will repeat it as clearly as I can, because nothing shall go to the extenuating of the Fact but it shall be spoken. Mr. Cook, in your Answer, your Defence that you make, you set forth the Heads of this Indictment, and you set them forth very truly; the Heads are the Aggravations of the Indictment, the Indictment was the Compassing and Imagining the Death of the King; it said it was upon these Grounds, that you did Propound, Abet, and Consult the Death of the King; that you with others did assume Power and Authority to kill the King, and that thereupon a Person unknown in a Frock did accordingly kill the King. You say to the first Part, if it did not appear that you did advise the Death of the King, that you were not Guilty: For that, Sir, as I told you before, taking them either complexly or singly, if any of the Particulars reached to one of these Acts, it was enough, but it reaches to all: You required Judgment against the King as a Traitor, and that with a Reason, and certainly Death must follow: You say you were appointed to give your Advice; you had a Proclamation first for Trial of the King; you had the Order of January 10, whereby you were appointed to give your Advice; if it were so it will be no Excuse at all; the Proclamation gives you no Warrant at all; he that obeys so wicked a Proclamation it will not save him; it appears you were privy to this before the Proclamation; if you were not at all, when such a thing as this is, such a Proclamation and Act, and such a manner of Trial, as I believe, though you have read very much, you never heard of such a Thing in our Law, or Foreign Nations, that you thereupon should take upon you to be of Council against the King, it Aggravates the Fact: Other Men may be Impudent and Ignorant, but you that were a Learned Lawyer, your being of Council doth aggravate the Thing. You say,*

Secondly, By Law Words will not amount to Treason; for that, I would not have that go for Law by no means, though it be not your Case; for you are not Indicted for Words, but Words are Treason, and Indictments are often for it; but the Difference is this, the Indictment is not for Words, but Compassing and Imagining the Death of the King; Words are Evidences of the Compassing and Imagining the King's Death; it is the greatest Evidence of the Imagination of the Heart; Words do not make a Treason, that is, if it be by Inference or Consequence, but reductively; but if it be immediately, I shall say to a Man, Go kill the King, by that which is an absolute, immediate, necessary Consequence, to say this is no Treason, I would not have that go for Law; your Case is not for Words, but for delivering a Charge, the Ground that you speak of; Words may make a Heretick, but not a Traitor; it was a witty Saying, but you have no sufficient Authority for it; these are Words put in Writing; we all know if a Man put his Words in Writing, if a Man speak Treasonable Words, and put them in Writing, they have been several Times adjudged Treason; and so in my Lord Coke's 3 *Institutes*, the Case of *Williams* of the *Temple*; there was a Book of Treason in his own Study of his making, and he was Indicted for it; Words put in Writing is an express Evidence of the Imagination of the Heart; you say it was dictated to you, but when Words are written in a Charge, and your Name to it, (which I had almost forgotten,) that's more than Words; the Witnesses swear the Likeness of your Hand; they do but swear the Likeness of your Hand; no Man can swear more, unless he was present and saw it; but you owned the Charge, and there your Name is; that besides the Two Witnesses there is your own Actions to prove it. When Two Witnesses shall swear it is like your Hand, and you own that Charge, I must leave it to the Jury: You say you did this after Command, the Words were dictated to you; the Words were *conceptis Verbis*, appointed and ordered by the Court, but the pressing was yours; he stands upon Delays, let it be taken *pro Confesso*, demanding Judgment; these were your Words; another Man may dictate a Thing, but you are not forced to speak it; you urged it, owned it; you demanded not in the Name of the Court, but in the Name of all the People of *England*; you say further, that your demanding Justice is not within the Statute; as I said before, what can be the Effect of demanding Justice, but that the King should die upon those Premises? You say farther, that it was in behoof of the King, as you would urge it; to do the King a Courtesie, in asking the King might have Justice; but you did not name what Justice it was; but you did him a Courtesie; truly the King was but a little beholden to you for that Request; all the World knows what that demanding of Justice was, it was to have the King's Head cut off; you went as far as you could; it ended with you when you demanded Justice; that is as far as you could you cut off the Head. St. Paul, when the Witnesses laid down the Cloaths at his Feet, he said, I killed *Stephen* the Martyr. You say further, that in all Tragedies the Accuser or Witness, the Jury, the Judge, and Executioner, are the only Persons; and you are none of these; you are only of Council; if

Justice

Justice was not done, what was it to you? You said you did not assume a Power, there was only Eloquence required in the Council; it hath been truly said, that this is a great Aggravation to be of Council against the King; you said his Majesty was then a Prisoner and accused; Council cannot be heard against the King; you undertake to be Council against the King in his own Person, and in the highest Crime; if the Council at the Bar in behalf of his Client should speak Treason, he went beyond his Sphere; but you did not only speak, but acted, Treason; you said you used not a disrespectful Word to the King; truly for that you hear what the Witnesses have said; you pressed upon him; you called it a Delay; you termed him not the King, but the Prisoner at the Bar, at every Word; you say you did not assume an Authority, it is an Assumption of Authority, if you countenance or allow of their Authority; you say you do not remember you demanded Judgment against the King; that is fully proved against you; you yourself asked the Question; whether you did say against the King he did not remember; but others positively, that you demanded Judgment against the King and Prisoner at the Bar; you said that before Sentence there was not an Intention to put the King to Death, to that Mr. Starkey swears that you expressly said, the King must die, and Monarchy with him, and this before the Sentence: Whereas you say this is but one Witness, that there is to be in Treason Two Witnesses; but that there should be Two Witnesses to every Particular that is an Evidence of the Fact, that is not Law; if to one Particular that is an Evidence there be one Witness, another to another, here are Two Witnesses within the Meaning of the Statute; Two Witnesses to the Indictment, Compassing and Imagining the Death of the King; being accompanied with other Circumstances, this One Witness, if you believe him, is as good as Twenty Witnesses, because other Overt-Acts are expressly proved by several Witnesses. You say next, for the drawing of the Charge, in right Reason it ought to be counted for the Service of the King: First you do acknowledge, and truly very ingenuously, that in the Time of Peace to bring him to the Bar, not being a Prisoner, is Treason, (you say it,) according to the Law, and that you delivered the Charge for the accelerating of the Trial; and that it was not done by you traiterously; you say the King was a Prisoner before; and you say what Hands he was in, in the Hands of Men of Power and Violence; it had been your Duty to have delayed it, not accelerated it, that there might have been some Means of Prevention of that Bloody Act that followed; if you knew that to be Treason to make him a Prisoner, Subjects do not use to make Kings Prisoners, but Death follows. You urge in the next Place the Act of Indemnity, and that you are not excepted; for that, you have made as much of it as the Matter will bear; yet you must consider, First, as a Rule in Law, that where they are General Words, when they come to be explained by the Particulars, you shall not include them within the General: Mark the very Words, they are these, *Provided that this Act, nor any Thing therein contained, shall extend to Pardon, Discharge, or give any other Benefits whatsoever unto such and such, (among whom you are named,) nor any of them, nor*

*those Two Persons, or either of them, who being disguised by Frocks and Vizards, did appear upon the Scaffold erected before White-Hall, upon the Thirtieth of January 1648. All which Persons, [these are the Words.] First, It shall not extend to you; then it comes, All which Persons, for their execrable Treason in sentencing to Death, or signing the Instrument for the horrid Murther, or being Instrumental in taking away the Precious Life of our late Sovereign Lord CHARLES the First of Glorious Memory, are left to be proceeded against as Traitors to His late Majesty, according to the Laws of England, and are out of this present Act wholly excepted and foreprized. First, as I told you before, and as it was very well said by Master Solicitor, admitting the Reason had been mistaken, and that you had not been comprehended in the Reason, you are excepted out of the Body, Provided it shall not extend, &c. Many times Laws do make Recitals, which in themselves are sometimes false in point of Fact; that which is the Law is Positive Words, the other Words are for the Reason; excepting all which, that is, Master Cook, which Person is excepted, not for Doing of it, but for his execrable Crimes in being instrumental. It is clear without that, if it were not so; we say when a Sentence is, or such a one, or such a one, the Third Or makes all disjunctive: Here are Three Ors, first in Sentencing to Death, or Signing the Instrument, then comes this, or being Instrumental in taking away the Precious Life of our late Sovereign, &c. this Or doth clearly exclude the other Two; or Instrumental, not only in point of Death, but farther, being either a Sentencer, Signer, or being Instrumental in taking away the King's Life; that is, being any way Instrumental. Truly, whether it be not Instrumental to exhibit a Charge against him, or complain of his Delays, to ask Justice against him in the Name of the People, to do all this, and desire that the Charge might be taken *pro Confesso*, if this be not Instrumental, I know nothing else but Sentencing and Signing: Some signed the Sentence, some the Instrument for Death: The next Degree of being Instrumental, the highest Degree of that, is to Accuse him, to deliver in the Charge against him in the Name of the People, do it again and again, be angry at the Delays. The next Thing is this, that you did not do this *falso* or *malitiose*, but for your Fee; and that though there might be *avaritia*, there was not *malitia* in it; it was done by your Profession, you were not Magisterial in it; you thought the Consequences that did follow, would not follow. If a Man does but intend to beat a Man, and he die upon it, you know in Law it is all one: You must understand there is a Malice in the Law; if a Man beat One in the Streets, and kill him, though not maliciously in him, yet it is so in Law. That you desire to have the Benefit of the King's Declaration; that you did put in your Petition proving the same; that you were a Prisoner before; that the Commons in behalf of themselves and the People of England, they craved the Benefit of it, which was granted, excepting such as should be by Parliament excepted; and that the King should mention a Free Parliament; for this, it hath been fully answered to you, and clearly, by Mr. Solicitor, that you are not at all concerned in the King's Declaration at Breda. For First, it is nothing in Law,*

Law, it binds in Honour; and we have given the same Directions Yesterday upon the like Occasion, that is, that the King's Declaration binds him in Honour and in Conscience, but it does not bind him in Point of Law, unless there were a Pardon granted by the Broad Seal; the Thing is cleared to you what Parliament the King meant by it; they were sitting at that Time, had acknowledged their Duty and Allegiance to their King; they went *ad ultimum potentie* for a Free and Absolute Parliament, whilst the King was absent, though the King was away; yet notwithstanding the King declared whom he meant; he directed one of those Declarations to Our Speaker of the House of Commons, and another to the Speaker of our Peers; in this Case it was *loquendum ut vulgus*; it was owned by him as having the Name of a Parliament; it was done with great Wisdom and Prudence, and so as it could be no otherwise; they that were Loyal Subjects, acting in the King's Absence; he consenting to it; the King owning that Authority; so he was obliged in Honour no further than his own Meaning and Words; but there is another Clause in the Act which excludes all these Persons. The next Thing is this, you say the Statute of 25 *Edward* 3, and it is very true, you say if it be any Semblable Treason, we were not to judge upon that, unless they were the Treasons in the Act; and it is most true; now you would urge but this, that this is but a Semblable Treason; but you are Indicted for the Compassing and Imagining the Death of the King: If these Acts did not tend to the Compassing and Imagining the King's Death, I know not what does; I am satisfied you are convicted in your Conscience. The next Thing (for you have said as much as any Man can in such a Cause, it is Pity you have not a better,) you say, though it was a Tyrannical Court, as it is called, but such a Court it was, and there were Officers you say, it had *figuram judicii*; that aggravates the Fact to you, to your Profession. There is a difference between a standing Court, and that which is but named to be a Court; this was but One of a Day or Two's growth before, and you know by whom; by some that pretended to be only the Commons; your Knowledge can tell you that there was never an Act made by the Commons assembled in Parliament alone; and you may find it in my Lord *Coke*, that an Act by the Lords and Commons alone was naught, as appeared by the Records; Sir *James Ormond* was Attainted of Treason; the Act was a private Act, by the King and Commons alone, the Lords were forgot; when the Judges came to try it, it was void; and another in *Henry* the 6th's Time; you know this was no Court at all; you know by a Printed Authority, that where a settled Court, a true Court is, if that Court meddle with that which is not in their Cognizance, it is purely void; the Minister that obeys them is punishable; if it be Treasonable Matter, it is Treason; if Murder, it is Murder: So in the Case of *Marshallsea*, and in the *Common Pleas*, if a Man shall begin an Appeal of Death which is of a Criminal Nature, and ought to be in the *King's Bench*, if they proceed in it, it is void; if this Court should condemn the Party convicted, and he be executed, it is Murder in the Executioner; the Court had no Power over such Things. You speak of a Court: First it was

not a Court: Secondly, no Court whatsoever could have any Power over a King in a coercive Way, as to his Person. The last Thing that you have said for yourself is this, that admitting there was nothing to be construed of an Act or an Order, yet there was a difference; it was an Act *de facto*, that you urged rightly upon the Statute of 11 *Hen.* 7. which was denied to some, God forbid it should be denied you; if a Man serve the King in the War, he shall not be punished, let the Fact be what it will. King *Henry* the 7th took Care for him that was King *de facto*, that his Subjects might be encouraged to follow him, to preserve them, whatever the Event of the King was: Mr. *Cook*, you say, to have the Equity of that Act, that here was an Authority *de facto*; these Persons had gotten the Supreme Power, and therefore what you did under them you do desire the Equity of that Act; for that, clearly the Intent and Meaning of that Act is against you; it was to preserve the King *de facto*, how much more to preserve the King *de jure*; he was owned by these Men, and you, as King; you Charged him as King, and he was Sentenced as King. That that King *Henry* the 7th did was to take Care of the King *de facto* against the King *de jure*; it was for a King and Kingly Government, it was not for an Antimonarchical Government; you proceeded against your own King, and as your King, called him in your Charge *Charles Stewart* King of *England*. I think there is no Colour you should have any Benefit of the Letter, or of the Equity of the Act. They had not all the Authority at that Time, they were a few of the People that did it, they had some Part of the Army with them; the Lords were not dissolved then when they had adjourned some Time, they did sit afterwards, so that all the Particulars you alledge are against you. The last Thing was this, you say, that it having pleased God to restore the King, Judgment should be given for Example for Terror to others, that this could not be drawn into Example again; why? Because by the Blessing of God Peace was restored; no Probability that if your Life was spared, that it would be drawn again into Example; this is the weakest Thing you have urged; you must know the Reason: There are Two Things, there is the Punishment, and Example; Punishment goes to the Prisoner, but Example to the Documents of all others; God knows what such Things may be in After-Ages, if there should be Impunity for them; it would rather make Men Impudent and Confident afterwards. If you have any more to say I will hear you, if not I must conclude to the Jury: You hear the Evidence is clear for Compassing and Imagining the Death of the King; you have heard what he has said, and what he hath done; he was within, and examined Witnesses against the King, that he was by at the drawing of the Charge where it was drawn; you hear he exhibited this Charge in the Name of the Commons Assembled in Parliament, and the good People of *England*; and what this Charge is; it is High-Treason, and other High-Misdemeanors; you find that he does complain of Delays, does again and again speak of this Charge, desire it may be taken *pro Confesso*; in the close of all, it was not so much he as Innocent Blood that demanded Justice; this was more than was dictated to him. You have heard the

the Witnesses; he was perswaded to forbear; acknowledged the King to be a Gracious and Wise King; the Oaths alledged against him, and you have heard his Excuse; I have nothing more to say; I shall be very willing to hear you further; I have not absolutely directed the Jury.

Cook. *I do humbly acknowledge your Patience in hearing me, and that your Lordships have truly and justly stated both Proofs and my Answer. If your Lordships are pleased to lay aside these Acts, or Orders, or Authority, whereby I did at that Time truly conscientiously act, and did think that it would bear me out, if you lay aside that, and look upon it as so many Men got together without Authority, and as well those that were Instrumental, though not Sentencers or Signers, and that Clause in the Act, I confess I humbly make bold to say I have not received Satisfaction in my Judgment, those very Words of not so much I as the Innocent Blood cries for Justice were dictated to me; there was nothing at all left to me, because his Majesty did not plead; there was no Trial; that which I did was according to the best, though it may be according to the weakest, Part of my Judgment: I have no New Matter.*

Lord Chief Baron. You have said no New Matter, unless it be worse than before, for now you warrant that Authority.

Cook. *Do not mistake me, (my Lord,) I mean so far as to excuse me in the Point of High-Treason.*

Lord Chief Baron. We delivered our Opinions as to that formerly; we were of Opinion, that the acting by Colour of that pretended Authority was so far from any Extenuation, that it was an Aggravation of the Thing; the meeting by that Authority was Treason, and in them that acted under them, and approving of it, the making of that traiterous pretended Act, making the Proclamation, sitting upon it, they were all so many Treasons; that was the Reason why that was urged against you, assuming upon you the Power, that was, you approving of their Power by acting under them, so that there is nothing more to be said.

Gentlemen of the Jury, You have heard the Indictment was for Compassing and Imagining the Death of the King; you have heard the several Overt-Acts repeated, and whether these are Guilty of Treason to deliver in a Charge against the King, such a One as that was in these Words, as against a Traitor, Tyrant, Murderer, and Implacable Enemy to the Commonwealth; in these very Words to desire Judgment against the Prisoner (then the King) at the Bar, angry at Delays, to desire that the Charge might be taken *pro Confesso*, to have it expressly, again and again to demand Judgment, if these be not Overt-acts of Compassing and Imagining the Death of the King, and that which hath been said by the Witnesses, it must be left to you: I think you need not go from the Bar. *Jury went together. Silence is Commanded.*

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. The Fore-man.

Clerk. *John Cook, Hold up thy Hand. Look upon the Prisoner at the Bar, how say you, is he Guilty of the Treason in Manner and Form as he stands Indicted? Or not Guilty?*

Fore-man. Guilty.

Clerk. Look to him, Keeper.

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Clerk. What Goods and Chattels?

Jury. None that we know of.

The Trial of HUGH PETERS, the same 13th of October.

Clerk of the Crown. Set *Hugh Peters* to the Bar: which was done accordingly.

Clerk. *Hugh Peters*, Hold up thy Hand; thou standest Indicted, &c. If you will challenge any of the Jury you must challenge them when they come to the Book, before they are Sworn.

Lord Chief Baron. Mr. *Peters*, you may challenge to the Number of 35 peremptorily, but beyond that you cannot, without good Cause shewn; and you may have Pen, Ink, and Paper.

Peters. My Lord, I shall challenge none.

Jury Sworn 12, Sir *Jer. Whitcb.* James Hally, *Christ. Abdy*, *Nich. Rainton*, *Rich. Cheney*, *Jo. Smith*, *Rich. Abel*, *G. Terry*, *Char. Pickern*, *Jo. Nichol*, *Fran. Dorrington*, *Anthony Hall*.

Clerk. *Hugh Peters*, Hold up thy Hand. Look on the Prisoner you that are Sworn, &c.

Sir *Edward Turner* to the Jury. You have often heard repeated to you that the Substantial Part of the Charge is the Compassing and Imagining the Death of the King, and all the rest will be but Evidence to prove that Imagination against the Prisoner at the Bar, whom we will prove to be a Principal Actor in this sad Tragedy, and next to him whom God hath taken away, and reserved to his own Judgment; and we shall endeavour to prove, that he was a Chief Conspirator with *Cromwell* at several Times, and in several Places; and that it was designed by them: We shall prove that he was the Principal Person to procure the Soldiery to cry out, Justice, Justice, or assist or desire those for the taking away the Life of the King. He did make use of his Profession, wherein he should have been the Minister of Peace, to make himself a Trumpeter of War, of Treason and Sedition, in the Kingdom: He preached many Sermons to the Soldiery, in direct Terms for taking away the King, comparing the King to *Barabbas*: He was Instrumental when the Proclamation for the High Court of Justice (as they called it) was proclaimed, directing where it should be proclaimed, and in what Place. When the King was brought upon the Stage, that Mock-work, he was the Person that stirred up the Soldiery below to cry for Justice; we shall shew you as he preached at several Times upon several Occasions, still he was in the Pulpit to promote this Business; the next Day after he was brought to Trial he commends it; you shall hear all out of the Mouth of the Prisoner, therefore I say no more; call the Witnesses.

Dr. *William Young* Sworn.

Council. Tell my Lords and Jury what the Prisoner at the Bar has declared to you concerning the Contrivance of bringing the King to Trial.

Dr. *Young*. My Lords and Gentlemen of the Jury, it was near about (and that the Prisoner may remember) the Month of *July* 1648, since we came first acquainted, when he went over to *Ireland*; it was about the Siege of *Pembroke Castle*;

Castle; but afterwards in the Year 1649 we renewed our Acquaintance; he went over into *Ireland* with that Usurper, the late Protector, as he was called, after the Town of *Wexford* was taken; coming over he fell sick of the Flux, and said he received it by Infection, praying over Captain *Horton*: Coming into *Milford*, that Captain sends a Summons to me come on Board, that was to fetch this Prisoner at the Bar, who was sick. I found him there grovelling upon the Deck, and sick he was indeed; with much Difficulty we got him on Shore; within a very few Days (to the best of my Remembrance Five Days) I perfected his Cure: We became very familiar; I observed in him that he had some secret Thoughts that I could not well discover, neither well understand; whereupon I thought it might tend to my Security that I should so much sympathize with him, to get within him to know his Intentions. After some Weeks, (for he continued with me ten Weeks, or near thereabouts, some few Days rather over than under,) we grew so familiar, that at last I found he began to enlarge his Heart to me. Many times I should hear him rail most insufferably against the Blood Royal, not only against our Martyred King, but against his Off-spring; still as we continued our Acquaintance, he became more and more open to me; so we would sit up discoursing (till about Twelve or One of the Clock at Night very often) about these unhappy Wars late in *England*. At last, my Lord, I found him that he began to tell me how he came into *England*, and upon what Account he came out of *New-England*. I shall desire that in regard his Discourses were various, that I may deliver them orderly; they were delivered to me within the Compass of ten Weeks, but the Days and Weeks I cannot remember. First, he told me (discoursing of *New-England* and the Clergy there, and much of the Clergy here in *England*, and of the Business here of Reformation,) he told me, that for the driving on of this Interest of this Reformation, he was employed out of *New-England* for the stirring up of this War, and driving of it on; this I shall my Lord speak to in the first place, and that upon the Oath I have taken: And, Secondly, he was pleased at another time to acquaint me, and that by way of Complement, complaining then against the Parliament, saying, that some time after he was come into *England* he was sent over into *Ireland* by the Parliament to receive further Instructions to drive on the Design, to extirpate Monarchy; faith he, I did dispend a great deal of my own Money, yet never had that Satisfaction from them which they promised me, that was, they promised 2 or 3000 *l.* for my Journey, and yet they have given me no more but only a small Pittance of Land out of my Lord of *Worcester's* Estate in *Worcester-shire*. I have seen his Letters directed to his Kinsman here in *London*, as I take it his Name was *Parker*, advising him for the settling of this Land, and selling it. Thirdly, my Lord, I have observed, that by way of Vilification of the Monarchical Government, I have found him jocundarily scoffing at it, and would ordinarily quibble in this Manner, saying this Commonwealth will never be at Peace till 150 be put down. I asked him what this 150 was, he told me Three L's, and afterwards interpreted the meaning to be the Lords, the Le-

vites, and the Lawyers; with that said I, we shall be like *Switzers, Tinkers* and *Traitors*. Now, my Lord, we are come to the last Particular; we discoursing thus frequently, and withal he was then a Colonel, and had a Commission under that Usurper *Oliver*, and brought over his Commission for Raising of Soldiers to foment that War in *Ireland*; that it was so I appeal to the Dictates of his own Conscience, and whether he did not press me very importunately to accept of a Commission of Major, or a Captain; he did Issue forth Two Commissions under his own Hand, one of them to bring over from *Devonshire* Two Foot Companies unto *Cork*. My Lord, because we were Militarily affected, amongst the Discourses of our unhappy Wars, I know not how it came from him, it being near Eleven Years since, and I have had many Sufferings incumbent on me, so that I may fail in some particulars, but in general thus it was: We were discoursing concerning our Martyr'd King, as then we call'd him, and of his Imprisonment in *Holmeby-House*, which I wondered at; thus we discours'd; he told me the Story how they had used him at *Holmeby*; and at last came up to this, when he was taken away from *Holmeby-House*, the Parliament had then a Design to have secured *Oliver Cromwell*, and my self, being then in *London*; faith he, we having Intelligence of it, escaped out of *London*, and rode hard for it, and as we rode to *Ware* we made a Halt, and advised how we should settle this Kingdom in Peace, and dispose of the King; the Result was this, They should bring him to Justice, Try him for his Life, and cut off his Head: Whether this was the Expression of *Cromwell* I cannot tell; but to the utmost of my Remembrance, and I am mistaken if it was not the Advice of Mr. *Peters* to *Cromwell*; and I believe it, because his former Relations of his Instructions out of *Ireland* did tend to that effect.

Mr. *Sol. Gen.* I will ask you this Question; we will not press you particularly upon your Memory, whether *Cromwell* or *Peters* said the Words? Do you remember he confessed to you they were agreed upon that Matter?

Young. They did consult and agree upon it.

Peters. My Lord, I desire to speak a Word, [his Voice being low he was brought to the Second Bar,] I am the Bolder to speak to your Lordships at this Time a Word, and it is high Time to satisfy my Conscience; if these Things were true there is enough said to destroy me; I desire leave to tell you what Offence I take at the Witness, thus my Lord. This Gentleman I do know —

Council. What say you to him?

Peters. That which I have to say is this, that in his Story he hath told that which is not true; but I will not find fault with him, because he was my Host, I will not reflect and recriminate; I shall give your Lordships in Simplicity as much Satisfaction myself as any Witness; this I say to the Man that speaks, and this is certain, I did spend some time at this Gentleman's House, he is called there Dr. Young; and my Trouble at this Discourse is this, I do not know, my Lord, that I found a more violent Man for the Parliament than himself; so far he undertook to be a Spy on one Side; this I find to be so, he will not deny it; he was very fierce in that Way; I think Words of such a Man ought to be little attended to. The Second is this,

this, this Gentleman is not a competent Witness, and that upon a Twofold Ground. First, Because I know he is under a very great Temptation and Trouble in this very Thing, and it is upon this Account he was put out of his Living in the Country, and here he came to me to help him in again, and was very highly offended because I did not do it. Secondly, it is not that I would invalidate his Witness, but give me Leave to tell you; it is his way to snap and catch at every Man, which is the Complaint of the People in his own Country. I know that same which is spoken is false; I speak it in the Presence of God, I profess I never had any near Converse with O. C. about such Things; I speak this to the Jury, that they would have a care of the Witness; I was in Sickness then; those that have known me do know likewise I have much Weakness in my Head when I am Sick, and to take Words that are spoken in a Sick Condition, he ought not to do it; for the Words themselves I do here profess against them, for the Generality of them; and that he hath been freer in my Judgment in any Communication this Way than I have been; it is marvellous, here I profess the Things Untruths, I call God and Angels to witness they are not true. I will give you an Account of my whole Condition by and by, if I may be heard.

Court. You shall be heard at large; that which you have been heard now is concerning the Competency or Incompetency of the Witness: the Incompetency against him is this, that when you came thither none more violent for the Parliament than himself, and that he was a great Spy, and you say it was usual with him to take such Courses: these are but Words; if you have any Witnesses we will hear them; the Man may be traduced and slandered, and so all Witnesses may be taken away.

Mr. Peters, if you take this Course God knows when this Business will end; if you have a Mind take Pen, Ink, and Paper, and take Notes of the Witnesses, and make Exceptions to them one after another; but interrupting one, and so another, we shall never have done.

Young. I do recollect my self of some other Conferences between us; as to my being Malicious, I know he never did me any Wrong, and therefore I cannot be Malicious; and as for my Reputation, having resided Two Years in London, I can have Certificates both from my Country, and some of this City, to vindicate me in that particular: But, my Lord, that which I would inform your Lordship is this, he told me he took Duke Hamilton a Prisoner himself in his own Chamber, seized on his Goods, and took his George and Blue Ribbon off his Shoulder, and the George he shewed me.

Wybert Gunter Sworn.

Council. Mr. Gunter, what can you say concerning a Meeting and Consultation at the Star in Coleman-street?

Gunter. My Lord, I was a Servant at the Star in Coleman-street, with one Mr. Hildesley; that House was a House where Oliver Cromwell and several of that Party did use to meet in Consultation; they had several Meetings; I do remember very well one among the rest, in particular that Mr. Peters was there; he came in in the Afternoon about Four a Clock, and was there till Ten or Eleven at Night; I being but a Drawer could not hear much of the Discourse;

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but the Subject was tending towards the King after he was a Prisoner, for they called him by the Name of Charles Stuart: I heard not much of the Discourse; they were writing, but what I know not; but I guessed it to be something drawn up against the King; I perceived that Mr. Peters was privy to it, and pleasant in the Company.

Court. How Old were you at that Time?

Gunter. I am now Thirty Years the last Bartholomew-Day, and this was in 1648.

Court. How long before the King was put to Death?

Gunter. A good while; it was suddenly, as I remember, Three Days before Oliver Cromwell went out of Town.

Peters. I was never there but once with Mr. Nathaniel Fines.

Council. Was Cromwell there?

Gunter. Yes.

Council. Was Mr. Peters there any oftner than once?

Gunter. I know not, but once I am certain of it; this is the Gentleman; for then he wore a great Sword.

Peters. I never wore a great Sword in my Life.

Mr. Starkey Sworn.

Starkey. My Lords, in the Month of December, before the King died, in the beginning of that Month, and so towards the 12th of January following, the Head-Quarters of the Army were at Windsor, and Mr. Ireton, that is dead, (who was a General Officer of the Army) was quartered in my Father's House there, and by reason of his long Residence there, being about Two Months, I knew him very well. My Lords, this Gentleman Mr. Peters, he likewise quartered in another Place in that Town, and Cromwell himself was quartered at one Mr. Baker's that lay low in the Town; so that in truth my Father's House being near the Castle, and there being in it a large Room, and in respect that Mr. Ireton was quartered there, usually the Council of War sat there. My Lords, I was then in the House constantly: Besides this Council of War, which did commonly sit there, I did observe that Cromwell, Ireton, and this Gentleman Mr. Peters, and one Colonel Rich, and a Fifth Person, whose Name I have forgot, did usually meet and consult together, and would sit up till Two or Three a Clock in the Morning very privately together; this was their usual Course when their Council of War sat; Mr. Ireton came in to Supper, but went out again; there were Guards upon them: After this Time it happened that I was often in Mr. Ireton's Company, where Mr. Peters coming to him, was very often at Meals there, but especially at Nights.

Mr. Ireton being civil in Carriage, would usually entertain Discourses with Mr. Peters, likewise would favour me sometimes with Discourse; and in that Discourse I did many Times take occasion to assert the Laws in point of the King; and discoursing about the King as being a Capital Instrument in the late Inconveniencies, as they called it, in the Times of the War, Mr. Ireton would discourse this ordinarily; I was bold to tell them that the Person of the King was *solutus legibus*; this Gentleman, the Prisoner at the Bar, told me it was an unequal

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qual Law. I did observe Mr. *Peters* did bend his Discourse, not by way of Argument only, but in point of Resolution of Judgment, fully against the Person and Government of the King. I remember some of his Expressions were these, That he was a *Tyrant*, that he was a *Fool*, that he was *not fit to be a King*, or bear that Office; I have heard him say, that for the Office it self, (in those very Words which shortly after came into print,) that it was a *Dangerous, Chargeable, and Useless* Office. My Lords, the constant Discourse of this Gentleman at that Time was such as he did believe would never be called into Question, so it was not a thing that a Man was necessitated to observe by an Accident, but it was their whole Discourse. I will put you in mind of a particular Passage: When the News came to *Windsor* that the King was in Prison at the *Isle of Wight*, my Father, (whose House that was,) was very much troubled at it; and being an Ancient Man, was not able to controul his Passions with Reason, told my Mother that they (meaning Mr. *Ireton*, &c.) should have no Entertainment there, and took the Key of the Cellar and put it in his Pocket; his Passions being lessened, Mr. *Ireton*, his Wife, and another Officer being at Supper, and afterwards my Father said Grace, and, as he usually did, tho' they were there, he said that Usual and Honest Expression, praying for the King in these Usual Words, *God save the King, Prince, and Realm*; sometimes they did laugh at it, but never did reflect upon him; but this Night he made this Expression, *God save the King's most Excellent Majesty, and preserve him out of the Hands of all his Enemies*. *Peters*, who was then at the Table, turns about to him, and said, *Old Gentleman, your Idol will not stand long*; I do conceive he meant it of the King. For a matter of Two Months of the constant Residence and being of the Army there, I did observe that in the General Council there, and in this Private Cabal, (after the Business was broke out, and when the King was taken Prisoner, and carried to *Windsor*;) Mr. *Peters* was the constant Man; and when the Business broke out, I looked upon it in reason that *Cromwell*, *Ireton*, and this Gentleman at the Bar, and *Rich*, and that other Gentleman, whose Name I have forgot, that they were the Persons that did the Business. My Lords, Mr. *Peters* he continued at *Windsor*; I remember very well that after the Body of the Army, the General, and the Officers of the Army, were gone to *London*, he continued in *Windsor*: I remember a Passage of one *Bacon*, who was a Secretary; Mr. *Peters* being in Discourse of the King, Mr. *Bacon* took great Distaste at Mr. *Peters* for some Affront put upon the King; Mr. *Peters* falls upon him, and rails at him, and was ready to beat him; we understood it so, because he did tell him of his affronting the King.

Council. Mr. *Peters*, if you have any thing to ask this Witness you may.

Peters. I have many Things to ask him. Did I ever lye there?

Starkey. No.

Peters. Did you see me there at Three a Clock in the Morning?

Starkey. I have seen you go up at Ten a Clock at Night to Mr. *Ireton's* Chamber, and sometimes I understood you did not go away till Four a Clock in the Morning; I went to Bed it's true, but I understood it so.

Thomas Walkeley Sworn.

Council. Give your Testimony what Consultation you have had with the Prisoner at the Bar.

Walkeley. I came out of *Essex* in at *Aldgate*; just as I came in a Proclamation was read for Trial of his late Majesty; I went down the next Day to the *Painted Chamber* at *Westminster*, where I saw *Oliver Cromwell*, *John Goodwin*, and *Peters*, and others; *John Goodwin* sat in the middle of the Table, and he made a long Speech or Prayer, I know not whether, but Mr. *Peters* stood there: After *John Goodwin* had done his Prayer, it was desired that Strangers might avoid the Room; then came up *Cook*, and *Doristlaus*, and *Humphryes*, and *Ask*, and *Dendy*, and several others, and stood by *Bradshaw* at the upper End of the Table; but *Cromwell* stood up and told them it was not necessary that the People should go out; but that was over-ruled; and so I went out and staid their Rising, and saw this Gentleman Mr. *Peters* come out with them. After that, when the King was brought to Town a Prisoner, the Lord *Carew*, a very Honourable Person, meeting with me, saith he, *Walkeley*, if you will ever see your Old Master, go now, or else it may be you will never see him. Where is he, my Lord, said I? saith he, he is coming on this side *Brainford*. I went to the farther end of *St. James's* Corner, and there I met some of the Army coming, and then I saw his Majesty in his Coach with Six Horses, and *Peters*, like Bishop *Almoner*, riding before the King triumphing; then after that, in *St. James's* Park, I saw *Peters* marshalling the Soldiers, and I was forced to go about. My Lord, this is all I can say concerning that. I remember one thing further of him; I heard him in *Westminster-Hall* say, within a Year or Two after the Army was raised, *If we can keep up our Army but Seven Years longer we need not care for the King and all his Posterity*.

Mr. *Proctor* Sworn:

Proct. I having occasion to go from *London* to *Windsor* the Day that the King was brought from thence a Prisoner, a little on this side *Brainford* I saw great Troops of Horse; I did conceive what the Cause was, having heard the King was to be brought up to his Trial; after I had passed some number of Horses, at last I espied the Prisoner at the Bar immediately before the King's Coach, singly riding before the Coach-Horses, and the King sitting alone in the Coach. My Lord, I did put off my Hat, and he was Graciously pleased to put off his Hat; the Troopers seeing this, they threw me into the Ditch, Horse and all, where I staid till they passed by, and was glad I escaped so.

Hardwick Sworn.

Council. When the Proclamation was read in *Westminster-Hall* for Trial of the King, did you see Mr. *Peters* there?

Hardwick. I was in the Hall when that ugly Proclamation was proclaimed, where I saw *Dendy*, *King*, and that Gentleman, the Prisoner at the Bar, in the Hall; after the Proclamation was proclaimed, the Prisoner at the Bar came out into the *Palace-Yard*, and told them, *Gentlemen*, saith he, (a great many Officers and Soldiers being there,) *all this is worth nothing, unless you proclaim it in Cheapside, and at the Old Exchange*.

Council. Explain yourself, what Proclamation do you mean?

Hardwick. The Proclamation for the High-Court of Justice.

Holland Simpson Sworn.

Council. What do you know concerning the Prisoner at the Bar?

Simpson. I do know Mr. Peters very well, I have known him these 11 or 12 Years: When the High-Court of Justice was sitting, both in the Court and Painted Chamber I saw this Gentleman in Consultation there, and at several other Places, at Sir Will. Brereton's, and other-where.

Council. Did you see him at the Trial?

Simpson. I saw him, but not as a Judge. There was one Day in the Hall Colonel Stubbards, who was Adjutant-General, (he was a very busie Man,) and Colonel Axtel; Mr. Peters going down the Stairs, comes to him, and bids Stubbards to command the Soldiers to cry out Justice, Justice, against the Traitor at the Bar.

Council. Who did he mean?

Simpson. The King was at the Bar at the same Time; whereupon, my Lord, the Soldiers did cry out upon the same; and as the King was taken away to Sir Robert Cotton's, some of them spit in the King's Face, but he took his Handkerchief, wiped it off, and smiled.

Peters. *I do not know this Gentleman, did he ever see me?*

Simpson. Yes, divers Times in the Painted-Chamber, at Sir William Brereton's, at the Deanery, in Consultation with Bradshaw, and you were admitted, and no Man else, as I know, unless Sir Will. Brereton, who came along with you.

Thomas Richardson Sworn.

Richardson. My Lords, the First Day that this Court of Justice (as they called it) did adjourn, I went up into the Court, and I saw the Prisoner at the Bar with some more standing in the Court, and I came and stood close by him, and some with him, whom I did not know; I heard him commend Bradshaw, the Carriage of him in the Trial of the King, and another Cook's Carriage; to be short, Mr. Peters holding up his Hands, said, *This is a most Glorious Beginning of the Work.*

Sir Jeremy Whitchot Sworn.

Whitchc. My Lords, I have by Accident, not by Choice, been several Times in Mr. Peters's Company; truly I have heard him speak very scurrilously of the King; amongst the rest he was making some kind of Narration of Cromwell making an Escape, and that he was intended to be surpriz'd; That if he had not presently gone away he had been clapt up in the Tower, and declared a Traitor; he said there was a Meeting of the Officers of the Army, where he us'd this Expression, *And there we did resolve to set aside the King.* My Lord, after this (it was at another Time) he was speaking of that which they called the High-Court of Justice, and I do very well remember this was his Expression of it, *I cannot but look upon this Court with a great Reverence, for it doth resemble in some measure the Trial that shall be at the End of the World by the Saints.* This is all that I perfectly remember; it was a great while ago; I cannot speak more punctually; I have seldom heard him speak of the King, but of the Tyrant: I remember one Time

he was saying he would have Preached before the King, but, said he, *the poor Wretch would not hear me.*

Richard Nunnelly Sworn.

Coun. Was Peters upon the Scaffold at the Time of Execution, or before?

Nun. On that unhappy Day, 30th of Jan. 1648, this Hugh Peters came an Hour before the King came to Whitehall; I came with a Warrant of 40 or 50000*l.* to Oliver Cromwell, being Door-keeper to the Committee of the Army; Nunnelly, says Oliver Cromwell, will you go to Whitehall? Surely you will see the Beheading of the King; and he let me into Whitehall; coming into the Boarded Gallery I met Hugh Peters, and he was in the Gallery; and then I got with Hugh Peters into the Banqueting-House; being there, Hugh Peters met one Tench of Houndsditch, that was a Joiner; meeting him, he speaks to him, and whispers in his Ear, and told him somewhat, I do not know what it was; but Tench presently went and knocked Four Staples upon the Scaffold; I meeting Tench again, What art thou doing, said I? What, will you turn Hangman? Says he, This Day will be a Happy Day; said I, Pray God send it be not a Bloody Day; upon that Hugh Peters went upon the Scaffold just an Hour before the King came, and then he went off again. I watched at the Window when the King's Head was cut off, and afterwards I saw the Vizards going into a Chamber there; about an Hour afterwards (I staying there at the Door) there comes Hugh Peters in his Black Cloak and Broad Hat out of that Chamber (as I take it) with the Hangman; I am sure I did see him go along with the Hangman to take Water; this is all I can remember, it being many Years since.

Peters. *I humbly beg I may be heard in this Case; I have here a Witness, and I desire he may be examined; it is noised I was upon the Scaffold, I here call God to witness I was not out of my Chamber that Day; I was Sick that Day; I speak in the Presence of the Lord.*

Court. If your Witness will stay he shall be heard; there are more Witnesses to the same Thing, and so he may speak to all together.

Dr. Mortimer Sworn.

Mortimer. Me Lar, me ha serd de King, &c.

Court. We cannot understand a Word.

Coun. He is a Frenchman, my Lord.

Court. Pray let there be an Interpreter.

[One Mr. Young was Sworn to interpret truly his Evidence.]

But it being afterwards found difficult and troublesome, the Council waved his Evidence, and prayed another Witness might be called.

Dr. Mortimer. Me Lar, me can peak Englis—

Coun. No, no, pray sit down, we will examine other Witnesses. Call Stephen Clough.

Stephen Clough Sworn.

Coun. What do you know of Hugh Peters?

Clough. My Lords and Gentlemen of the Jury, in 1648 I heard of a meeting of the Council of Officers at Westminster, I think in the Painted-Chamber, and I being willing (my Lord) to hear what their Consultations were, I went thither, and was there as one of them (but I was not one,) amongst the rest Hugh Peters was one; when the Room was pretty full the Door was shut. Mr. Peters desired to call for a Blessing upon their Business, in his Prayer he uttered these Words,

Words, "O Lord, (said he) what a Mercy is it to see this great City fall down before us! And what a Stir is there to bring this Great Man to Trial, without whose Blood he will turn us all into Blood if he Reign again!"

Peters. *What Day was this?*

Clough. It was about Three Weeks or a Month before the King died.

Peters. *Where was this?*

Clough. In the Painted Chamber.

Peters. *You have been very Bold.*

Clough. I speak upon my Oath.

Peters. *How long was this ago?*

Clough. In 1648.

Peters. *How many Years since is that?*

Clough. You know your self sure how many Years since 1648.

Peters. *How long before the King Died, do you say?*

Clough. About Three Weeks or a Month before the King was Murdered.

Council. We shall call a Witness to prove, that in December 1648, there was a Solemn Fast appointed to seek God in what they were about, and Mr. Peters was appointed to Preach before them.

Mr. Beaver Sworn.

Mr. Beaver's Evidence. My Lord, and you Gentlemen of the Jury, upon a Day that was appointed for a Fast for those that sat then as a Parliament, I went to *Westminster* to find out some Company to dine with me, and having walked about an Hour in *Westminster-Hall*, and finding none of my Friends to Dine with me, I went to that Place called *Heaven*, and Dined there; after I had Dined I passed through St. Margaret's Church-yard to go Home again, (I lay in the *Strand*.) I perceived all the Church-yard full of Muskets and Pikes upon the Ground, and asked some Soldiers that were there what was the Business? They told me they were guarding the Parliament that were keeping a Fast at St. Margaret's; Who Preaches, said I? They told me Mr. Peters is just now gone up into the Pulpit; said I, I must needs have the Curiosity to hear that Man, having heard many Stories of the Manner of his Preaching; (God knows I did not do it out of any manner of Devotion;) I crouded near the Pulpit, and came near the Speaker's Pew; and I saw a great many Members there, whom I knew well: I could not guess what his Text might be, but hearing him talk much of *Barabbas* and our Saviour, and insisting altogether upon that, I guessed his Text was that Passage wherein the Jews did desire the Release of *Barabbas* and crucifying of Christ; and so it proved; the First Thing I heard him say was, *It was a very sad Thing that this should be a Question amongst us, as amongst the Old Jews, whether our Saviour Jesus Christ must be crucified, or that Barabbas should be released, the Oppressor of the People: O Jesus, saith he, where are we, that that should be a Question amongst us? Says he, And because that you should think, my Lords and Gentlemen, that it is a Question, I tell you it is a Question; I have been in the City, which may very well be compared to Hierusalem in this Conjunction of Time, and I profess those foolish Citizens for a little Trading and Profit they will have Christ* (pointing to the Redcoats on the Pulpit-stairs) *crucified, and the great Barabbas at Windsor released, says he; but I do not much heed what the*

Rabble says: I hope, says he, that my Brethren of the Clergy will be wiser, the Lips of the Priests do use to preserve Knowledge; I have been with them too in the Assembly, and having seen and heard what they said, I perceive they are for crucifying of Christ, and releasing of Barabbas; O Jesus, what shall we do now? With such like strange Expressions, and shrugging of his Shoulders in the Pulpit.

Council. How long was this before the King was Murdered?

— It was a few Days before the House of Commons made that thing called An Act for his Trial.

Council. What did he say to the Members?

— I am coming to it; says he, *My Lords, and you Noble Gentlemen of the House of Commons, you are the Sanhedrim, and the great Council of the Nation, therefore you must be sure to do Justice, and it is from you we expect it; you must not only be Inheritors of your Ancestors, but you must do as they did; they have opposed Tyrannical Kings, they have destroyed them; it is you chiefly that we look for Justice from. Do not prefer the great Barabbas, Murderer, Tyrant and Traytor, before these poor Hearts, [pointing to the Red-coats,] and the Army, who are our Saviours: And thus for Two or Three Hours Time that he spent, he nothing but rak'd up all the Reasons, Arguments and Examples he could, to perswade them to bring the King to condign, speedy and capital Punishment.*

Peters. *I do not know you, are you sure you saw me at that Time? Do you know me?*

— Yes, Sir.

Peters. *I did not Preach there at that Time.*

Council. Pray, my Lord, will you call Mr. Jessop, who hath the Records of the Parliament, and can produce the Order, whereby you were appointed to carry on the Work of that Fast; there was the Order for his Preaching, and Order for Thanks for his Work.

[Mr. Jessop produced the Journal, wherein was the Order following, which was read.

[Clerk reads.] Die Jovis 7. September 1648. Resolved, that there be a Day of Publick Humiliation for this House to seek God in these Times of Difficulty, and that to Morrow be the Day, and kept here in this House. Resolved that Mr. Peters, Mr. Marshal, and Mr. Caryll, be desired to perform the Duty on the Day of Humiliation with the House to Morrow.

Council. That is not it we intend, there was one after that, in December 1648.

[Clerk reads.] 20 December 1648. Ordered, That Mr. Peters be desired to Preach on Friday next, the Day of Publick Humiliation, at Margaret's Westminster, in the Place of —

Council. Call Mr. Chace. After this the Work went on, and the High-Court of Justice sate; and the First Day they sate was Saturday January 20, in Westminster-Hall, the 21st being the Sunday following; I think this Gentleman was at White-Hall; he will tell you what he preached.

Mr. Chace Sworn.

Chace. My Lord, I heard the Prisoner at the Bar preaching before Oliver Cromwell and Bradshaw, who was called Lord President of the High-Court of Justice, and he took his Text out of the Psalms in these Words, *Bind your Kings with Chains, and your Nobles with Fetters of Iron; that was part of the Text: But says he*

he in his Sermon, *Beloved, it is the last Psalm but one, and the next Psalm hath Six Verses, and Twelve Hallelujahs, Praise ye the Lord, praise God in his Sanctuary, and so on; For what?* says he, *Look in to my Text, there is the Reason of it, That Kings were bound in Chains, &c.* He went on with a Story of a Mayor and a Bishop and his Man; *The Bishop's Man, saith he, being Drunk, the Mayor laid him by the Heels; the Bishop sends to the Mayor to know by what Authority he Imprisoned his Servant; the Mayor's Answer was, there is an Act of Parliament for it, and neither the Bishop nor his Man are excepted out of it; and applied it thus: Here is, saith he, a great Discourse and Talk in the World, What, will ye Cut off the King's Head? the Head of a Protestant Prince and King? Turn to your Bibles and you shall find it there, Who-soever sheds Man's Blood, by Man shall his Blood be shed; (says he) I will even answer them as the Mayor did the Bishop, here is an Act of God, Who-soever sheds Man's Blood, by Man shall his Blood be shed; and I see neither King Charles, nor Prince Charles, nor Prince Rupert, nor Prince Maurice, nor any of that Rabble, excepted out of it. And further he said, This is the Day that I, and many Saints of God besides, have been praying for these many Years.*

Peters. *Ask him whether he took Notes.*

Chace. No Sir, but it being so Memorable a Sermon I took special Notice of it; I came to my Brother's House in *Shoos-Lane*, and told him; said I, Brother, I have been at *White-Hall*, and have heard the most Execrable Business that ever was heard in the World by a Minister of the Gospel, and I told him the Words: I observed that *Oliver Cromwell* did Laugh at that time when you were preaching.

Tho. Tongue Sworn.

Council. What do you know of the Prisoner's Preaching?

Tongue. Upon *January 21, 1684*, I was at *White-Hall*, where this Gentleman preached, and he preached upon this Text, *Psalm cxlix. v. 8. To bind their Kings in Chains, and their Nobles in Links of Iron;* in which Text this *Peters* did much applaud the Soldiers there; he said he hoped to see such another Day following as the Day before, and that *Blessed be God* (says this Parson *Peters*) *the House, the Lower House, is purged, and the House of Lords themselves they will down suddenly; this is all that I well remember at that Time. Upon the 28th of January, 1648, next Day after Sentence of the King, I heard Peters preach upon this Text in St. James's Chappel, Psalm. cxlix. 6, 7, 8, 9. Let the high Praises of God be in their Mouth, and a Two-edged Sword in their Hands, to execute Vengeance upon the Heathen, and Punishment upon the People, to bind their Kings with Chains, and their Nobles with Fetters of Iron, to execute upon them the Judgment written, this Honour have all his Saints; praise ye the Lord: And there he did so Saint the Red-coats, and so Reprobate the poor King's Friends! And in the middle of his Sermon he took Occasion to produce a Text, Isaiah xiv. 18, 19, 20. All the Kings of the Nations, even all of them, lye in Glory, every one in his own House. But thou art cast out of thy Grave like an abominable Branch, and as the Raiment of those that are slain, thrust through with a Sword, that go down to the Stones of the Pit, as a Carcass trodden under Feet; thou shalt not be joined with them in Burial; because*

thou hast destroyed thy Land, and slain thy People, the Seed of Evil-doers shall never be renowned: Says he, This I did intend to insist and preach upon before the poor Wretch, and the poor Wretch would not hear me.

Council. Who did he mean?

Tongue. His Majesty, who was the Day before Condemned; saith he, *Look in your lesser Bibles and you shall find the Title is, The Tyrant's Fall.*

Council. That that was spoken of the King of Babylon, the Ignominy that was cast upon him, he applies it to the King of England.

Peters. *Ask him where it was?*

Tongue. It was in *St. James's Chappel, Sunday the 28th of January 1648*, in the Forenoon.

Reynold Bowdler Sworn.

Bowdler. That which I have now to say is this, I did hear him a few Days before the King was Murthered, preach in *St. Sepulchre's Church*, there he compares the King that was then to Die, to *Barabbas* a Murderer, and in this manner; saith he, *There is a great Company amongst us like the Jews, they cry out, let Christ be crucified, and let Barabbas be released; still comparing the King to Barabbas the Murtherer; these were his Words, with many more to the same Purpose.*

William Rider Sworn.

Council. Speak what you know concerning the Prisoner.

Rider. I was at the same time at Church in *St. Sepulchres*.

Council. How long was that before the King died?

Rider. It was very near the King's Death.

Council. Was it after the High-Court of Justice sate, as they called it?

Rider. About that Time it was. My Lord, as soon as ever he had read the Words of his Text, which was, *He shall call his Name Emmanuel*, he presently shook Hands with his Text, and fell (as he was wont) to News, and there he said, *The great Inquiry now is to know what should become of the King; Let that alone, saith he; and presently he falls to it again, and was pleased to style the King Barabbas; saith he, There is a great many of the People had rather Christ should be crucified than Barabbas; and here he was applauding the Soldiers; and said that Emmanuel was written upon the Bridles of their Horses; and he was speaking of the King's Soldiers, saith he, I have known Eighty Thousand of them, and not one of them a Gracious Person.*

Council. Now we expect the Answer of the Prisoner at the Bar, the Indictment hath been fully proved.

Peters. *I desire that Witness may be admitted which I spoke of, his Name is Cornelius Glover.*

Council. We have omitted One Evidence; we desire Master Walker may be called.

Mr. Walker Sworn.

Walker. On Sunday after the King was first brought to his Trial, out of Curiosity I went to hear Mr. Peters at *White-Hall*; after he had made a long Prayer, saith he, *I have prayed and preached these Twenty Years, and now I may say with Old Simeon, Lord, now lettest thou thy Servant depart in Peace, for mine Eyes have seen thy Salvation. Afterwards he speaks of the Text, of binding their Kings in Chains, &c. then much reviled the King: But soft there, saith he, I must*

not talk so here, I am in the King's Chappel; there is a very Remarkable Passage in Amos; Amos went to preach, and Amaziah would not let him, but Amos would preach; the poor Wretch would not hear me, but yet I will preach. Afterwards he speaks of the Mayor of Exeter that committed the Bishop's Servant for being Drunk; saith the Mayor, here is an Act of Parliament for it, and I do not see that the Bishop nor his Man are either of them excepted out of the Act; and, saith he, in Scripture it is said, Whosoever sheddeth Man's Blood, by Man shall his Blood be shed; and I do not find that either King Charles, Prince Charles, Prince Rupert, Prince Maurice, or any of that Rabble are excepted.

Council. Now Mr. Peters you may call your Witnesses.

Cornelius Glover not Sworn.

Lord Chief Baron. Where do you dwell?

Glover. In Paul's Church-yard.

Lord Chief Baron. What is your Quality of Life?

Peters. A Servant of the King's.

Lord Chief Baron. I do not ask you, Mr. Peters.

Glover. I belong to the Post-House.

Peters. Pray hear him speak.

Lord Chief Baron. What would you have him asked?

Peters. Whether I was out of my Chamber that Day the King suffered?

Lord Chief Baron. What say you to that?

Glover. I was come to Mr. Peters a little before that Time, to live with him as his Servant; it fell out that Day he was ill in his Chamber all the Morning; the Soldiers in St. James's House were all gone away; I had a Desire to go see the Meeting, where they were at White-Hall; saith he, Thou seemest to have a great Desire to go and look about thee, it is very sad, but if you will go you may. I did go over the Park.

Council. What Time?

Glover. About Noon.

Council. What Hour?

Glover. I do not know; I did not stay there; the Soldiers and the People filled the Place, and I went back again to the Chamber; I came back again within a matter of an Hour's Time.

Council. Was the King dead before you came back again?

Glover. They said he was not: When I went Home he asked me what was doing? I told him there was a great Croud, I could not come near; I staid there an Hour, and then went out again, and still there was a Croud; and I came back again, and Mr. Peters was in his Chamber then.

Council. Was he in Bed, or up?

Glover. I do not remember.

Council. How Old were you then?

Glover. I am not above 32 or 33.

Council. Was Mr. Peters sick?

Glover. Yes, he was Melancholy sick, as he used to be.

Lord Chief Baron. How long have you been at the Post-House?

Glover. About Five Years.

Lord Chief Baron. Mr. Peters, have you any more to ask him?

Peters. I brought him to testify that I was not out of my Chamber that Day, and that I was sick.

Lord Chief Baron. Did you desire to go, or did he send you?

Glover. I did desire to go, being newly come to London.

Lord Chief Baron. This Gentleman, though not upon Oath, is examined, and it is only to One Particular, nothing at all to the Main Proofs.

Peters. I bring him only to vindicate my self from that Aspersions of my being upon the Scaffold.

Lord Chief Baron. They do not lay the Weight of their Evidence upon that: The King's Council have done with their Evidence, if you have any Thing to say, you have your Liberty.

Peters. May it please your Lordships, I will give you an Account of the Business: I lived Fourteen Years out of England, when I came over I found the Wars begun; I began no War, my Lord, nor have been the Trumpeter; when I came out of the West-Indies, I fled from the War into Ireland, to the Western Part there; and it was after the Rebellion, when some of the Irish had been stirring there, I went and spent my Time there. I was neither at Edge-hill, nor Naseby; but, my Lord, after I came over there was War that the People were engaged in; I was not here in the Beginning of it, but was a Stranger to the Carriage of it. When I came into the Nation I looked after Three Things: One was, that there might be Sound Religion; the Second was, that Learning and Laws might be maintained; the Third, that the Poor might be cared for; and I must confess I have spent most of my Time in these Things, to this End and Purpose: There was a Noise in all Parts of some Miscarriages in Matters of Religion, after it was settled I lived in Ireland; I must profess for my own part, solemnly, that my Carriage hath been upon these Heads. For Religion, I have, through God's Mercies, spoke the Truths of the Protestant Church, upon this Account I did stay to see what God might do: I was sent over to his Majesty that we might have a little Help in point of Excise and Customs, and Encouragement in Learning. My Lord, this is true, that I being here in the Nation, and being sent over upon the Occasions of the Country, and not upon any Design; but this I say, (I cannot deny it,) that after I came over, and had seen the State of England, in some Measure I did stir, but by strong Importunities, the Ministers of London deeper than I: I am very sorry to hear of my Carriage towards the King; it is my great Trouble; I beg Pardon for my own Folly and Weakness; I thought God had a great Controversy with the Nation, and the Lord was displeased on all Hands; that which some People took to I did take unto; I went into the Army; I saw at the Beginning of it that Corruptions grew among them: I suppose none can say I have gone aside from any Orthodox Truth of the Lord: And now to take off the Scandal upon me, and to the Business, let me beg of your Lordships to consider whatever Prejudices or Revenge may take up Men's Hearts, there is a God that knows all; God hath a Regard to the People of England; I look upon this Nation as the Cabinet of the World. That that doth concern the Business is this, my Lord, that after this Time hither I came, and did bear Witness to all the World, that there was amongst us something that was for better, and something worse, for the Nation; I took Advice of some great Persons concerning the Weightiness of it, I had neither Malice nor Mischief in my Heart against the King; upon this I did engage so far, being Invited; I went into the Wars, and there I found very

very strange and several Kinds of Providences, as this Day hath been seen; I do not deny but that I was Active, but not to stir in a way that was not Honourable. I challenge a great Part of the Nation to manifest my Carriage among them; I shall make it good divers ways; I had so much Respect to his Majesty, particularly at Windsor, that I propounded to his Majesty my Thoughts Three ways to preserve himself from Danger, which were good, as he was pleased to think, though they did not succeed, and the Work died; as for Malice, I had none in me. It is true, there was a Difference amongst us, an Army, and an Army; I never had a Groat or Penny from O. Cromwell since I knew this Place: I profess I have had no Ends for Honour or Gain since I set Foot upon this Shoar; I challenge any Man that belonged to that Party whether they had not the same Respect from me as my own Party; I have not persecuted any with Malice; I will only take off Malice.

Lord Chief Baron. Your Business is Matter of Fact.

Peters. I am unskilful in Law, this that I offer is to shew that I had no Malice in me; I was so far from Malice, that I have a Certificate, if worth the reading, from one of the Eminentest Persons in the Nation, to shew I had no Malice: It is concerning the Marquiss of Worcester, under his Lady's Hand, beginning with these Words, I do here testify that in all the Sufferings of my Husband, Mr. Peters was my great Friend, &c. I have here a Seal, [and then produced it] that the Earl of Norwich gave me to keep for his Sake for saving his Life, which I will keep as long as I live.

Lord Chief Baron. I am not willing at all to interrupt you, or hinder you; that which you speak of doing good Services is not at all to the Point; we do not question you for what Good you have done, but for the Evil you have done; I hope there is no Malice in your Heart, nor upon the Court nor Jury, we and they are upon our Oaths; and you hear the Matter alledged against you; pray come to the Matter.

Peters. My Lord, I cannot remember them.

Lord Chief Baron. Then I will remember you: You are charged by this Indictment for Compassing and Imagining the Death of the King, and there is set forth sundry Particulars to prove the Overt-Act, that you with other Persons named in that Indictment, did consult and meet together how to bring about the King's Death. Then you are charged with several Acts of Contriving and Endeavouring the King's Death. Overt-Acts that tend to the Compassing and Imagining the King's Death, or any one of these, to encourage the bringing on the King to his Death, the consulting or meeting together about it, though you did not sit or sentence; yet if you did any Thing tending to that Incouragement, or otherwise Abet it, Comfort, or any wise Aid those Traiterous Persons that did it, in the doing of it you are by Law Guilty of the whole Fact: The proposing and determining the King shall die, though you were not he that actually put him to Death, yet notwithstanding if you did the other, you are Guilty of all; if you shall speak any Seditious Speeches, be they in the Pulpit, or out of the Pulpit, if you shall utter any Thing that tends to Sedition, these are open Acts, which prove the Imagination of the Heart: though Imagination of the Heart be Treason, yet it cannot be proved but by open

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Acts, yet the Imagination it self is Treason. First you did conspire, all the Witnesses go along to prove this. Dr. Young saith, you came over from Ireland to his House, and after Five Days that you were recovered of the Flux, you staid there Ten Weeks; you said yourself there was enough, if it were true, to condemn you or any Man: I shall repeat it to you; you told him a Narrative, that you came from New-England, from thence to Ireland, and then you came to Holland, with an Intent to see how you might bring on the Kingdom to be a Commonwealth: Next he saith, you spoke very often against the King by way of Disgrace, against him and his Family, against the King and his Off-spring, this you said very often: Then you spake in Vilification of Monarchical Government, that this Commonwealth would never be at Peace till 150, or Three L's, Lords, Levites, and Lawyers were taken away, at which he replied, then they must be all Switzers, Tinkers or Traitors; he swears you were a Colonel, and had a Commission; that you would have had him accept of a Commission; and that you had Two Companies come from the West; you told him the Parliament had an Intent to secure Cromwell and yourself, but that you rid hard for it; and then you confessed you agreed then upon his Death, to bring him to Trial, and to cut off his Head; you did agree together, and he believes it was your Advice to Cromwell; your Answer was this, that he was more violent than yourself; that he took upon him to be a Spy; and that he was no competent Witness, because he was under a Temptation, because you did not help him to his Living, and so conceived it to be Malice; you say he was used to take up such Courses in his own Country; the Matter is not whether you had Malice to the King's Life or Monarchy. For the next, One Gunter, he swears, that he was a Servant to Mr. Hildesley, at the Star in Coleman-street, and this was in 1648; he saith, that many of the Party of Cromwell did use to resort thither, among the rest he saw you, he said he came in to them, and their Discourse was about Charles Stewart, and the Prisoner — and did guess it was about the King; that you were privy to it then; he saith this was Three Days before Oliver Cromwell went out of Town; the Effect of that is urged no further than this, that you were so far of the Cabal, that you were present with those Persons, Cromwell, Ireton, Rich, and others; you said, I was there once with Mr. Nathanael Fines. Starkey, he saith, that at his Father's House Ireton lay, and was quartered there at Windsor, before and when the King was Prisoner; that you had your Quarters there, and Cromwell too, in that Town: The General Meeting of the Council of War was at his Father's House; that Ireton and his Wife lying there, you came and resorted thither very often; he saith then, that it appeared that after the Council of War had done, many Times Rich, and you, and Cromwell, and Ireton, were there together, sometimes till Two a Clock in the Morning; he saith then, that he did observe there was a Fifth Person, (he did not remember his Name) and you sat up usually till Two or Three in the Morning; you had Guards about you; he saith further, that Ireton being a Domestick, he often discoursed with him, and you came sometimes to be there too; that there be-

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ing some Discourse concerning the King, many Times he did assert the Law concerning him, that he was *solutus legibus*, as to his Person; that you should say, that it was an unequal Law, and that you did then discourse fully against the King's Government; you said he was a Tyrant, not fit for that Office; that the Office was useless, chargeable and dangerous; these very Words he observed, which afterwards were Printed when they took away Monarchy. He saith further, that was their full and whole Discourse; he saith that his Father at Supper used to say that usual Grace, *God save the King, Prince, and Realm*; but afterwards that he heard the King was made a Prisoner, that his Father altering the Grace, he said, *God save his most excellent Majesty, and deliver him out of all his Enemies Hands*, you rose up, and said, *Old Gentleman, your Idol will not stand long*; that he did observe you often with them; he saith further, when Bacon was coming out, and speaking some Words concerning your frequent Affronting the King, you took up a Staff, and were ready to beat him, and made an Uproar: It appears also of your being privy to Cromwell's Actions. The next Witness is *Walkeley*, and he swears this against you, that he was in the *Painted-Chamber* the next Day after the Proclamation was made, and there he saw *John Goodwin* and you; and there was an Assembly, and at the Middle of the Table *John Goodwin* was, and made a long Speech or Prayer; that *Cromwell* would have had the People stay there, but it was ordered they should be turned out; at the End he saw you come out with the rest; there it appeared you were in the Consultation; he saith he met the Army at *St. James's*, and there, when they were half past, he saw the King in his Coach, and there he saw Mr. *Peters* like Bishop *Almoner* riding immediately before the King; and at *St. James's Park* he saw you Marshalling the Soldiers, that he was forced thereupon to go about; he saith further, that within a Year or Two after the Army was raised he heard you say these Words, *If we can keep up our Army Seven Years longer we need not care for the King and all his Posterity.*

Peters. My Lord, I must deny Abundance of this; the King commanded me to ride before him, that the Bishop of London might come to him.

Lord Chief Baron. But this was Three Weeks after — The next Witness against you is one *Proctor*; he saith, that Day (as the other Witness did) he saw you riding just before the King's Coach, and because he did his Duty the Soldiers threw him, Horse and all, into a Ditch. The next Witness is one *Hardwick*, he saith that when the Proclamation was read he saw you in *Westminster-Hall*, and that you said, they had done as good as nothing, unless it was proclaimed in *Cheapside* and at the *Old-Exchange*; this you said to some of the Officers there.

Peters. My Lord, I cannot acknowledge it.

Lord Chief Baron. The next Witness against you is *Simson*, he swears he saw you in Consultation with *Oliver Cromwell*, and take Sir *William Brereton* by the Hand, and come to *Bradshaw's*, and this during the time of the King's Trial; he further saith, that one Day when the King was at his Trial you commanded Colonel *Stubbers* to bid his Soldiers cry out *Justice, Justice*, which they cried, and afterwards some of the Soldiers spit upon the King.

Peters. I do believe that he that swore that cannot say I was there.

Lord Chief Baron. Another Witness is one *Richardson*, who saw you the First Day in the Court; and he said further, that you commended *Bradshaw* and another, to wit *Cook*, for their Carriage in the Trial of the King; that you held up your Hands, and said, *This is a most Glorious Beginning of the Work.*

Peters. Whereabouts in the Court?

Richardson. In the Body of the Court, called then the *High-Court of Justice.*

Peters. My Lord, I do not know that ever I was in the Body of the Court.

Lord Chief Baron. The next Witness is Sir *Jeremy Whichcot*, he saith he heard you often speak scurrilously of the King; and making a Narrative of *Cromwell's* Escape, you said there was a Meeting, and there we resolved to set aside the King; remember what the other Witness said, we agreed, and here we resolved; you said, I cannot but reverence the *High-Court of Justice*, it doth resemble the Judging of the World at the Last Day by the Saints; so it was the Saints that sat there; I would have preached before the Wretch, but the Poor Wretch would not hear me; you often called him Tyrant; I cannot possibly remember the Place, Things, or Words, that are alledged. Then you have another Witness, *Nunnelley*, he saith he came with a Warrant to *Oliver Cromwell* for some Money, and that he should say, go and see the Beheading of the King at *White-Hall*; he saith there he met with you (though you said you were not there that day) going to the *Banqueting-House*; that you spoke to *Tench*, and whispered in his Ear, and that *Tench* went and knocked Staples on the Scaffold; he meeting *Tench*, said, What, are you a Hangman? Saith *Tench*, This Day will be a happy Day; he saith, after all this *Hugh Peters* was upon the Scaffold, and that he went out with the Hangman —

Peters. I do profess to your Lordships before Angels and Men that I did not stir out of my Chamber that Day.

Lord Chief Baron. The Council doth not put Reliance upon that, because of what your Witness saith, tho his Evidence is not at all Satisfactory. The next is *Clough*, and he swears this, that he saw you in the *Painted-Chamber* with the Council of Officers, and there you desired them to call on God for a Blessing upon their Business, and there you said, O Lord, what a Mercy it is to see this great City fall down before us! And what a Stir is there to bring this Great Man to Trial, without whose Blood he will turn us all into Blood, if he reign again! And this was about a Month before the King was Murthered.

Lord Chief Baron. You hear it, Mr. *Peters.*

Peters. Some Part I did, but it is impossible for me to bear down many Witnesses; indeed my Lord, I say this, they are marvellous Uncharitable, and speak many false Things.

Lord Chief Baron. The next is this, the Testimony concerning several Sermons of yours; and let me tell you the Pulpit ought not to be a Place where Men with Impunity may speak any Thing, what they list, of Sedition and Treason.

Peters. I am of the same Judgment myself, my Lord.

Lord Chief Baron. And there was a Solemn Day to seek God, then you preach'd at *St.*

Margaret's

Margaret's Church; this was Mr. Bever; in he came, and heard you talk much of *Barabbas* and our Saviour; there you fell upon this, speaking of the King, it is a sad thing that it should now be a Question, whether we should crucifie our Saviour Jesus Christ, or that great *Barabbas*, speaking of the King; you called him Traitor, Tyrant, Murtherer of his Subjects, and the like, you went on in a Way of a Story, These Citizens for a little Trading they will have Christ crucified, and the great *Barabbas* at *Windsor* released; and said you, the Clergy, the Assembly, they are all for crucifying Christ, and releasing *Barabbas*; you made that Expression, *O Jesus, what shall we do?* The King was a Prisoner then at *Windsor*; you made your Application to the Parliament that was then present; you told them the People did expect Justice from them; you must not prefer the great Tyrant and Traitor, naming the King, to these poor Hearts, (the *Redcoats* standing by.)

Peters. *I must profess against most of that.*

Lord Chief Baron. There is the same by others. It is further proved by the Order that you were appointed to preach.

Peters. *I do not deny I preached, but not these Things.*

Lord Chief Baron. The next Thing is this, there was one Mr. Chase, this was during the Trial, he saith you preached at *White-Hall* upon this Text, *Psalms cxlix. To bind their Kings in Chains, and their Nobles in Fetters of Iron:* You had Two or Three other Verses more; then you made a Discourse of a Mayor and a Bishop's Man, the Bishop's Man being drunk, the Mayor committed him to Prison; the Bishop being angry, asked by what Authority? The Mayor said, there was an Act of Parliament for it; he did not find that either the Bishop or his Man was excepted; you applied that to the King; said you, I will shew you an Act of the Bible, *Whosoever sheds Man's Blood, by Man shall his Blood be shed*; this doth not except the King, Prince, Prince Rupert, Prince Maurice, or any of that Rabble.

Peters. *It is false.*

Lord Chief Baron. You said further, this is the Day that I and many other Saints of God have prayed for these many Years; and *Oliver Cromwell* laughed at that Time. The next Witness was *Tongue*, he heard you Preach, and he swears the same with the former; that you applauded the Soldiers, and that you hoped to see such another Day following as the Day before; and that Blessed be God the House is purged, and the Lords will be shortly pull'd out; and the Twenty Eighth Day of *January*, which was the Day after the King was Sentenced, at *St. James's*, his Chapel, you took for your Text the *cxlix Psalm*, 6, 7, 8, and 9 Verses, whereof these Words were Part, *To bind their Kings in Chains, and their Nobles with Fetters of Iron*; there in the middle of that Sermon, having spoken before of the King, you said you did intend to Preach before the poor Wretch upon the 14th of *Isaiah*, 18, 19, and 20 Verses, speaking of all the Kings of the Nations, *Thou art cast out of thy Grave like an abominable Branch*, &c. he saith further, you said, look upon your lesser Bibles and you will find the Title is, *The Tyrant's Fall*. There is another Witness, that is one *Bowdler*, a few Days before the King's Death, at *St. Sepulchres*,

there you fell upon the Old Comparifon; all along you compared the King to *Barabbas*; and that a great many would have Christ crucified, and *Barabbas* released; all along comparing the King to *Barabbas*. One more, and that was *Ryder*, he heard this Text, *He shall call his Name Emmanuel*; you fell to speak of News; what shall become of the King? And you said the King was *Barabbas*, and a great many would rather have Christ crucified than *Barabbas*. And then Mr. Walker he saith, that after the King was first brought to his Trial he heard you say this, I have prayed and preached this Twenty Years, and now may I say with Old *Simeon*, *Lord, now lettest thou thy Servant depart in Peace, for mine Eyes have seen thy Salvation*: He mentions that you made Use of the other Comparifon of the Mayor and the Bishop's Man, and inferred from thence, that the King and Prince, &c. were not excepted out of the Scripture, where it is said, *Whosoever sheds Man's Blood, &c.* You have heard all this witnessed against you, what have you to say for yourself?

Peters. *These are but single Witnesses.*

Lord Chief Baron. The Statute is Two Witnesses for Treason, but not Two to One individual Thing, tho' there are several Witnesses have proved the same Thing about *Barabbas*, and our Saviour, *bind their Kings with Chains, &c.* and of your other Actions there is a whole Jury of Witnesses. Two Witnesses expressly, we agreed upon the King's Death, and we resolved to set the King aside.

Peters. *I do not know the Witnesses.*

Lord Chief Baron. One is Sir *Jeremy Whitchcot*, the other is *Doctor Young*; you shall do well if you have any Thing to invalidate these Witnesses to speak it, else the Jury will be sent together to deliver up their Verdict.

Peters. *My Lord, if I had Time and Opportunity, I could take off many of the Witnesses, but because their Testimony is without Controul I cannot satisfy my self; I have no Skill in the Law, else I might have spoke for my self; I do not know what to say more, unless I had more Time and Counsel.*

Mr. Solicitor General. If the Prisoner can say no more, here is this in it; here are Five Places where he did consult about the King's Death, at *Windsor*, at *Ware*, in *Coleman-street*, in the *Painted Chamber*, and in *Bradshaw's House*; and Four Witnesses to prove this; there are Two Witnesses to his Comparifon of the King and *Barabbas*, and Two Witnesses to his Text of binding their Kings in Chains, &c. Proof that he hath been in Action in *New-England*; that he came from it with that Intent, and then went to *Holland*; that he had been in Arms; that he called the Day of his Majesty's Trial a Glorious Day, resembling the Judging of the World by the Saints; he prays for this in the *Painted-Chamber*, preaches for it at *White-Hall*, *St. James's Chapel*, *St. Sepulchres*; what Man could more contrive the Death of the King than this miserable Priest hath done? The Honour of the Pulpit is to be vindicated; and the Death of this Man will preach better than his Life did; it may be a Means to convert many a miserable Person, whom the Preaching of this Person hath seduced; for many come here and say they did it in the Fear of the Lord; and now you see

who Taught them; and I hope you will make an Example of this Carnal Prophet.

The Jury went together, and after a little Consultation settled in their Places.

Clerk. Are you agreed in your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. How say you? Is the Prisoner at the Bar Guilty of the Treason whereof he stands Indicted? Or Not Guilty?

Fore-man. Guilty.

Clerk. And so you say all?

Jury. Yes.

Clerk. Look to him, Keeper.

Council. We desire Mr. Cook may be brought to the Bar, and that they may both have their Judgment pronounced.

Clerk. John Cook, Hold up thy Hand; what hast thou to say why the Court should not pronounce Judgment for thee to Die according to Law?

Cook. *I have a few Words, Matter of Law: First, there is no Averment in the Indictment, that John Cook mentioned in the Act of Indemnity, is the same with the John Cook mentioned in the Indictment, and that I am the John Cook mentioned in both.*

Lord Chief Baron. This will not help you in this Case, you have owned, and have pleaded by the Name of John Cook.

Cook. *The second is this, that the Overt-Acts should be particularly expressed in the Indictment.*

Lord Chief Baron. This cannot be alledged in Arrest of Judgment, the Jury have found you Guilty of Compassing and Imagining the Death of the King by the Statute of 25 Edw. 3. and this cannot help you.

Cook. *I say it was professionally.*

Lord Chief Baron. That hath been over-ruled already; we have delivered our Opinions; the Profession of a Lawyer will not excuse them, or any of them, from Treason, and this hath been over-ruled, and is over-ruled again.

Cook. *I humbly conceive that the remaining Part of the House of Commons were to be Judges whether there was a Force or not.*

Lord Chief Baron. This is all past and over-ruled.

Cook. *Then I have no more.*

Clerk. Hugh Peters, Hold up thy Hand; what hast thou to say for thyself why Judgment should not pass against thee to Die according to Law?

Peters. *I will submit myself to God, and if I have spoken any thing against the Gospel of Christ I am heartily sorry.*

Silence commanded.

Lord Chief Baron. You are both Persons of that Ingenuous and Liberal Education as I hope I shall not need to tell you what it is to Die, you have had a great deal of Time to think of it; you could not but think of this Issue of your Doings long ago, and therefore I shall spare my Labour of telling you what it is to Die, and of that Eternity that you are to enter into; only give me leave in a few Words, in relation to both your Professions, to say something to shew the Nature and Heinousness of this Offence, the Murther of the King. If you were not actually guilty of putting the King to Death; nay, ad-

mitting (in Charity) you had no intent to go as far as you did, you are by the Laws of Christ and this Nation, guilty of High-Treason, in that you that are a Lawyer know very well, (and I speak it that you may lay it to your Heart in the Convictions of your Conscience. I must say to you as Joshua said to Achan, my Son, give Glory to God, and confess; and it would become you so to do,) you know very well it is the Law of this Nation, that no one House, nor both Houses of Parliament, have any coercive Power over the King, much less to put him to Death; you know, (as you cited very well,) that the imprisoning of the King is Treason. You know both of you, this is an undoubted Truth; the Rule of Law is, that the King can do no Wrong; that is, the King can do no Wrong in the Estimation of Law; he may do some particular Acts as a private Person, but he can do little Prejudice in his own Person; if he would hurt any it must be by Ministers, in that Case the Law provides a Remedy; if he doth it by Ministers they must answer for it. The King of England is one of those Princes who hath an Imperial Crown; what is that? It is not to do what he will; no, but it is that he shall not be punished in his own Person if he doth that which in itself is unlawful. Now remember this when you took the Oaths of Allegiance and Supremacy; (I presume you both did so;) What was your Oath of Supremacy? It was this, that the King was the only Supreme Governour of these Realms; it goes further, as he was Supreme Governour, so he was the only Supreme Governour, that excludes Co-ordination; you swear farther, that you will to the utmost of your Power defend the King against all Conspiracies and Attempts whatsoever; truly you that were a Lawyer when you had thus sworn, your Fee could be no Excuse against what you had sworn to. We know that the King, in his Politick or Natural Capacity, is not only *salus Populi*, but *salus Reipublice*. The Law hath taken Care that the People shall have Justice and Right; the King's Person ought not to be touched; the King himself is pleased to judge by the Law; you see he doth by Law question the Death of his Father; he doth not judge it himself, but the Law judges it. Mr. Peters knows very well he subscribed the 39 Articles of Religion; look upon them that were confirmed in 1552, and upon those Articles that were confirmed in 13 Elizabeth; the King is there acknowledged to have the chief Power in these Nations; the meddling with the King was a Jesuitical Doctrine: This I speak, not that the King should or ought to Govern but by the Fundamental Laws of the Land; they that keep within the Bounds of the Law are happy; you that are a Lawyer know this in Point of Law, and you that are a Divine know this in Point of Divinity. You both know the Truth of it, and when you have thought upon it, I hope you will reflect upon that horrid Crime, the shedding of Royal Blood. You see he had granted all those Grievances of the People, taken them away, secured them, for the future; and at this very Time, when this horrid Act was done, you see he had granted all at the Desire of the People; he had made those Concessions, such, as (were it not in respect of others more than those that treated themselves) they thought was more than could be expected by the Nation.

on. You that had a Hand in the King's Death, it falls upon you, the Guilt of it, because you were some of those Instruments that assisted those Persons that broke the Treaty; prepare yourselves for that Death which you are to die; it is a Debt which we all owe to Nature; if in this Case there is something of Shame comes to you, it is that you must take as Part of the Reward of your Sin. The only Work I have now to do is to pronounce the Judgment, and this is the Judgment of the Court, and the Court doth award, that both of you be led back to the Place from whence you came, and from thence shall be drawn upon a Hurdle, &c. and the Lord have Mercy upon your Souls.

Clerk. Crier, make Proclamation.

Crier. O Yes, &c. All Manner of Persons, &c. and all Jurors and Witnesses, are to appear at this Place to Morrow Morning at Seven of the Clock in the-morning, upon Pain of One Hundred Pound apiece. So God bless King Charles, &c.

October 15.

Memorandum, That the Bill of Indictment against William Hewlet, alias Howlet, was found at Hicks's-Hall, October 12th instant.

Proclamation of the Court being made:

Clerk of the Crown. Set William Hewlet, alias Howlet, to the Bar: which was done accordingly.

Clerk. William Hewlet, alias Howlet, Hold up thy Hand. Thou standest Indicted of High Treason in the County of Middlesex, by the Name of William Hewlet, alias Howlet, for that thou, &c. How sayest thou, art thou Guilty of the High-Treason whereof thou hast been Indicted, and art now Arraigned? Or Not Guilty?

Hewlet. *I am not Guilty, my Lord.*

Clerk. How wilt thou be Tried?

Hewlet. *By God and the Country.*

Clerk. God send thee a good Delivery. Set him aside.

The Trial of DANIEL AXTELL, October 15, 1660.

Clerk of the Crown. Set Axtell to the Bar: which was done accordingly.

Clerk. Daniel Axtell, Hold up thy Hand.

Axtell. *Pray, my Lord, let me have Pen and Ink.*

Lord Chief Baron. Give Mr. Axtell Pen and Ink.

Clerk. Daniel Axtell, these Men that were last called of the Jury are to pass, &c. if you will challenge them, or any of them, you must challenge them when they come to the Book, before they are Sworn.

Lord Chief Baron. Do you know how many you have Liberty to Challenge? Because I would not have you misinform'd, 35 you may Challenge peremptorily, and no more.

Axtell. *I thank your Lordship.*

Lord Chief Baron. Unless you have any particular Cause; if so, you may challenge more.

Axtell. *I confess I am wholly ignorant of the Law.*

John Kirke, John Smith, Thomas Morris, Ralph Halsell, John Sherecroft, Francis Beale, Robert Cromwell, John Gallyard, John Shelbury, George Rithe were called, and by the Prisoner Challenged.

Thomas Bide, Charles Pitfield, Robert Sheppard, William Dod, Thomas Usman, William Maynerd, George Plucknet, Samuel Harris, John Nicholl of Hendon, Henry Marsh, Thomas Bishop, Thomas Snow, in all Twelve, were admitted, and sworn of the Jury.

Clerk of the Crown. If any Man can inform my Lords the King's Justices, &c.

Clerk. Daniel Axtell, Hold up thy Hand. Look upon the Prisoner you that are sworn, and hearken to your Charge; you shall understand that the Prisoner stands Indicted, &c.

Council. May it please your Lordships, and you Gentlemen that are Sworn of the Jury, the High-Court of Injustice that was Erected for Trial of the late King, it had all the Formalities of a Court to put in Execution that Bloody Act; they had their President, their Council, their Chaplain, and their Guards; some of their Judges have been already Tried, one of their Council, and their Chaplain. Now, my Lord, we come to the Guards, and this Gentleman at the Bar, that is now the Prisoner, he was Commander of that Black Guard, that Cruel and Bloody Guard: The Indictment is, *That he did Imagine and Compass the Death of the King*; there be several Overt-Acts that are mentioned in the Indictment as Evidences of that Imagination, as the Consultation to bring him to Trial, the actual bringing him to Trial, and the Bloody Execution upon the Scaffold; our Evidence shall be this, that during the Time of the Trial the Prisoner at the Bar did Command the Soldiers in Westminster-Hall, himself did keep the Entrance into the Court; and when Bradshaw did speak to the King, and told him he trifled away Time, and required his Answer to the Charge exhibited in the Name of the Commons of England Assembled in Parliament, and the good People of England, that a Noble Person in the Gallery there cried out, *It was a Lie*; saying that above half the Commons disowned it; saying where are these good People? *It is a Lie*; Oliver Cromwell is a Traitor; this Bloody Fellow commanded the Soldiers to Shoot her; he did several times command and encourage the Soldiers to cry out, *Justice, Justice*; and the last Day of that horrid Trial, called by them *the Day of Judgment*, he likewise commanded them to cry out, *Execution, Execution*; and when some of them would not do it, he had the Valour to Beat them. My Lords, and Gentlemen of the Jury, if we prove any of these Particulars to demonstrate unto you that he was Guilty of Compassing and Imagining the King's Death, it is equal as if we had proved he did actually cut off the King's Head.

Mr. Bodurdoo, Mr. Nutley, Mr. Harrington, Sir Purbeck Temple, Mr. Simpson, Mr. Baker, Mr. Huncks, and Mr. Jeonar, Sworn.

Council. Mr. Simpson, Tell my Lords, and the Jury, who had the Command of the Soldiers during the Trial of the King in Westminster-Hall.

Simpson.

Simpson. My Lords, (as I said before in the Case of Mr. Peters,) Col. Stubberd and Col. Axtell had the Command of the Soldiers below Stairs, near that which was called the High-Court of Justice.

Axtell. I desire to know his Name, my Lord?

Simpson. My Name is Holland Simpson.

Council. Did you see him there commanding the Soldiers?

Simpson. There was a kind of Hubbub in the Court; there was a Lady (they said it was the Lady Fairfax) who at the exhibiting of the Charge against the King, said to be in the Name of the Commons and People of England, she spoke out aloud, and said, it was a Lie, that not half, nor a quarter of the People; Oliver Cromwel is a Rogue and a Traitor; they called for a Guard, this Gentleman he was called, and brought up some Musqueteers, and commanded his Soldiers to Present and give Fire against the Lady, and commanded her to Unmask.

Axtell. What Lady was it? I desire to know.

Simpson. She went by the Name of the Lady Fairfax; I know not whether it was so or no, it was the common Report it was she.

Clerk. Mr. Huncks, Pray tell my Lord what you know of the Prisoner at the Bar.

Huncks. My Lord, to say positively any Thing of the Man touching his Command I cannot, but only that Morning the King died he came into the Door of the Room where Colonel Phayre, Colonel Hacker, Cromwell, and myself, were, (Ireton and Harrison lying in Bed together in the same Room,) and then he stood at the Door half in and half out; I refused to Sign an Order for Executing the King, as Cromwell ordered me, and some little cross Language having passed, saith the Prisoner at the Bar, Colonel Huncks, I am ashamed of you, the Ship is now coming into the Harbour, and will you strike Sail before we come to Anchor? This I appeal to yourself; but for crying out, Knock them down, shoot them, I know not who it was; the Officers cried, Justice, and some of the Soldiers, but I profess I know not who it was particularly; but they cried, Justice, and then I fell a trembling, for I was afraid of the King; but these were the Words he used to me, Will you strike Sail, &c?

Axtell. My Lord, I desire to ask him a Question.

Lord Chief Baron. Ask him what you will.

Axtell. If I am not in the right I hope your Lordships will direct me.

Lord Chief Baron. Go on.

Axtell. Colonel Huncks, where was it?

Huncks. In a little Room in White-Hall, where Ireton and Harrison lay in Bed together.

Axtell. Do you know whereabouts?

Huncks. I think I can go to the Room again; I appeal to your own Conscience before all this People.

Axtell. By your Favour, Sir, the Room, I perceive, you know not; and truly, Sir, My Lord, if you please to give me Leave, because he appeals to my Conscience, I do appeal to the great God, before whom it may be I shall shortly be Arraigned to give an Account of all my Words, Thoughts and Actions, I do not remember that ever I had any Converse with this Man there, or met him there, or any of that Company there, that Day; he was a Stranger to me, but I wish that you (to save yourself being in the Warrant for Execution) do not make others a Peace-Offer-

ing to save yourself; the Lord that knows my Heart I appeal to him; I appeal to your own Conscience, because you appeal to my Conscience, I never met you, nor saw you there.

Huncks. Have you done? Then give me Leave; you say you do not know me; I appeal to the same God, when Cromwell took upon him to have the Crown, have not I said, What have you got by being Jehu-like? Lord, strike me Dead here if it be not true.

Axtell. I will not reflect upon him; but because he hath appealed to my Conscience therefore I speak it; it is known Notoriously how Jehu-like you were, when you were one of the Chief Guards of his Majesty, One of the Forty Halberteers that did oppose every Person then for the King; had I had Time, and had not been a close Prisoner as I was, there were Witnesses enough.

Council. This after our Evidence is more proper.

Huncks. Spare me not, Colonel Axtell.

Lord Chief Baron. Take the Old and Ancient Course, let the Witnesses that are produced for the King be all heard, then give your Answer to all of them together.

Axtell. My Memory is not very good.

Lord Chief Baron. You have Pen, Ink and Paper.

Lord Chief Baron. Mr. Axtell, is this all that you desire to speak to Colonel Huncks?

Axtell. Yes, my Lord.

Lord Chief Baron. Have you any other Questions?

Council. My Lord, we have a few Words; he objects as if Colonel Huncks were under a Danger; he is pardoned.

Axtell. I desire to ask him upon what Account these Words were spoke.

Huncks. My Lord, it was this; Cromwell having a Commission, (which I think I heard read here,) Colonel Hacker was reading of it, my Lord, Cromwell he comes to me, and by vertue of that Commission he would have me to write a Warrant for Executing the King, but I refused to write that Warrant; the Prisoner then standing at the Door, (If God blefs me I will search all the Doors at White-Hall, but I will find it out,) I not doing it, I said, Why should it be offered to me? Says Cromwell, Thou art a peevish Fellow; Cromwell fell a writing; as soon as ever he had done that writing, he gave Hacker the Pen, what Hacker writes I know not; and upon my refusing, this Prisoner at the Bar said, Colonel Huncks, I am now ashamed of you, the Ship is now coming into the Harbour, and will you now strike Sail before you cast Anchor?

Council. You observe the Course of this Evidence; there was a Warrant of Commission directed to Three Persons, Hacker, Huncks, and Phaire, for Execution of the King; Cromwell demanded of this Gentleman (Colonel Huncks) that he should Sign a Warrant by vertue of that other Warrant, and this Gentleman refused it: The Prisoner objects this, that he to save himself doth witness this against the Prisoner; Gentlemen, he did refuse the Thing; have you any Thing to ask Colonel Huncks?

Axtell. He says Colonel Phaire and Hacker were there, I do not doubt but they will be so conscientious to vindicate me from all this Charge.

Lord Chief Baron. If it be any Thing that tends to your Defence that you will be heard afterwards;

terwards; but have you any Questions to ask Colonel Huncks?

Axtell. *No more; I know nothing of it, if I were to Die at this Bar presently.*

Council. Sir Purbeck Temple, Pray tell my Lords and the Jury your Knowledge of the Carriage of this Gentleman touching the Trial of his late Majesty.

Sir Purbeck Temple. My Lord, being present, and engaged by some Persons of Honour, Servants of his late Majesty, to be present when that horrid Murther was acting before this Court of Justice, (as they called it,) I was present at all the Trials of the King, and very near him; I heard the King demand from Bradshaw by what Authority and Commission they proceeded thus strangely to Try him. Then I heard the Lady Fairfax, and one Mrs. Nelson, (my Sister,) after the exhibiting of the Charge in the Name of the Commons Assembled in Parliament, and the good People of this Kingdom, against Charles Stewart, King of England; I say I heard the Lady cry out from a Gallery over the Court, *Not half the People; it is false; Where are they, or their Consents? Oliver Cromwell is a Traitor.* Upon which I heard the Prisoner at the Bar cry out, *Down with the Whores, shoot them;* which made me take farther Notice of him; seeing him in Westminster-Hall, commanding the Soldiers there, I saw him the most active Person there; and during the Time that the King was urging to be heard, he was then laughing, entertaining his Soldiers, scoffing aloud, whilst some of the Soldiers, by his Suffering, and (I believe) Procurement, did fire Powder in the Palms of their Hands, that they did not only offend his Majesty's Smell, but inforced him to rise up out of his Chair, and with his Hand to turn away the Smoke; and after this he turned about to the People, and smiled upon them, and those Soldiers that so rudely treated him: Then turning himself to Bradshaw, said to him and the Court, *There are some sitting here (fixing his Eyes upon some Persons near Bradshaw) that well knew that if I would have forfeited or betrayed the Liberties and Rights of the People I need not have come hither, (or Words to this Effect,) but their Liberties and Rights are dearer and nearer to me than my Three Kingdoms, nay, than my Life itself; therefore I desire you to bear me, and remember that I am your Lawful King, that have done you many Acts of Grace and Favour.*

After which, this Person, Mr. Axtell, Prisoner at the Bar, commanded his Soldiers to cry out *Justice;* which the Soldiers not readily obeying of him, I saw him beat Four or Five of them with his Cane until they cried out, (with himself,) *Justice, Justice, Execution, Execution,* which made me turn to a Noble Lord, by whom I then stood, and said, *Pray, my Lord, take Notice, there is not above Four or Five that cry out Justice, Justice.* I heard also of their spitting in the King's Face; and I think no Body's Sufferings have been so like those of our Saviour Christ Jesus, as his Majesty's were. After this, this Person crying *Justice, Justice, Execution, Execution,* a second Time, the Court proceeded to pass a Sentence; the which his Majesty pressed hard against, and said, *Sir, before you pass that ugly Sentence, (which I very well understand you are determin'd to do,) I desire you to bear me; hear me, hear me;* passionately, and most affectionately expressing it, which they denying the King, and the Noise of *Justice, Ju-*

stice, Execution, Execution, being repeated, they proceeded and read that ugly Sentence of Death: After which his Majesty was immediately hurried away from the Bar into a common Sedan, where he was carried by two common Porters; which Sedan I followed to the middle of King's-Street; where I saw the two Porters in Reverence go bare, till the Soldiers (under the Command of the Prisoner at the Bar) beat them, and would not suffer them to go bare, when they carried him. After this the People cried out, *What, do you carry the King in a common Sedan, as they carry such as have the Plague? God deliver your Majesty out of such Enemies Hands.* In which Street I was forced to leave the Sight of his Majesty, occasioned by the Injuries and Hurts I received in my Person from the Soldiers under Axtell's Command, they carrying him through the Streets shouting in Triumph. A short Time after I received an importunate Command from a Lady of great Honour, (a Servant of his Majesty's) that I would endeavour to find out where the Body of the Martyr'd King was, and to give her an Account where it then was: Applying my self to White-Hall, after Two or Three-score Intreaties, I was denied; but understanding that Money would do it, I gave the Person then under the Command of Mr. Axtell, that then kept it, half a Piece to shew it me, who in a scoffing Manner took me by the Hand and said, *If thou thinkest there is any Sanctity or Holiness in it, look here;* where I saw the Head of that Blessed Martyr'd King lye in a Coffin with his Body, which smiled as perfectly as if it had been alive; this is the sad Account of the Martyr'd King, and this horrid Prisoner, Mr. Axtell.

Axtell. *My Lord, may I ask that Gentleman some Questions?*

Lord Chief Baron. Yes, yes.

Axtell. *My Lord, he seems to say that I bid the Soldiers cry out for Justice; he doth not say at all I was there in Command, but he saith a Lady, by Report the Lady Fairfax, spake some Words, and that I should bid the Soldiers Silence her; truly I desire to know the Certainty of the Place where I stood.*

Sir Purbeck Temple. My Lords, and Gentlemen of the Jury, I saw this Person standing within a Pike or two's Length, as I can guess it, (I remember the Place within a Yard of the Ground in Westminster-Hall,) I do not say this Person sat in the Court as a Principal Officer, that did then hold his Majesty Prisoner at the Bar; I did not say it was a Lady unknown, or reported to be such a one; but I said it was the Lady Fairfax, and my own Sister, Mrs. Nelson, and he cried, *Shoot the Whores.*

Axtell. *He seems now to say I Commanded the Guards; I never was a Guard to his Majesty, or had any thing to do in that Business, but it was wholly committed to a Company of Men I know not of. That Gentleman that spoke I have no Acquaintance with him, I think he did not know me at that Time.*

Lord Chief Baron. Have you any thing to ask him?

Sir Purbeck Tem. My Lord, another Passage he puts into my Memory; when I did observe a Thousand of sad Faces, I saw none laughing but yourself, as if you had been carousing and entertaining the Soldiers. I do not charge you that you Commanded those Halberteers, but those

Red-

Red-coats; you were all in Red: I saw you cane those Four or Five Soldiers I mentioned, till they cryed Justice, Justice, with you; and that with the Powder in the Palms of their Hands they forced the King to rise out of his Chair, which you were much pleased with, and laughed at.

Axtell. I say before the Lord, before whom I must be judged again for this, I do deny this whole Account.

Griffith Bodurdoo, Esq; Sworn.

Bodurdoo. My Lords, and you Gentlemen of the Jury, I was at the time of this sad Trial in Westminster-Hall.

Axtell. Your Name, Sir, I beseech you?

Council. His Name is Mr. Bodurdoo.

*Bodurdoo. I say I was all the time of the King's Trial in Westminster-Hall; I was in a Gallery that I had out of my House where I then lived, just under and besides the House of Commons, and I do remember I saw this Gentleman there; I do think he was then called Lieutenant-Colonel Axtell, so far as I remember; truly I have not seen him since, before this Day, nor have had any Reason to have known him, but that I saw him very Active in giving Commands to the Soldiers there: This Gentleman was keeping the Court, letting some in, and putting others out; he seemed to have the Command of it; one Day (whether it was about some Passage, or their President's Speech, I know not) there was a Lady in the same Gallery where I stood, and some Muttering, *It is a Lye, not half the People*, or Words to this Effect; he the now Prisoner at the Bar standing below in the Court, without the Bar, not far from Dendy, with Five or Six Soldiers, upon this Muttering and Disturbance (as he apprehended) to the Court, he called to the Soldiers, saying, *Shoot them, if they speak one Word more*; they did also present the Muzzles of their Muskets up to the Gallery; my Lord, by this we were very hush; after that immediately within half a Quarter of an Hour Dendy came to the Gallery from the Court, to know who it was that made that Disturbance; but the Lady was withdrawn into my Chamber, and did not come out afterwards.*

Axtell. Where was this, Sir?

Lord Chief Baron. What is it you desire?

Axtell. My Lord, where he saw me then?

Lord Chief Baron. Mr. Bodurdoo, you hear the Question.

Mr. Bodurdoo. There was a Gallery, which I do believe is yet standing, and the Court was just underneath the Gallery, and you were just underneath the Gallery, and Five or Six Soldiers with you.

Richard Young Sworn.

Council. What do you know of the Carriage of the Prisoner at the Time of the Trial?

*Young. I was upon a Scaffold, whereby I did see what was done in the Hall; I saw that Lieutenant-Colonel Axtell was busy and very active in encouraging the Soldiers to say, *Let us have Justice against the King.**

*Axtell. I desire to ask Mr. Young one Question; others say that the Word was, *Cry for Justice*, this Gentleman is pleased to make some Addition, Let us have Justice against the King.*

Young. No, not against the King, but I conceived you meant against the King.

Axtell. I cry you Mercy, you do but conceive so.

Young. You were upon the Right Hand of the Hall, almost at the Corner near the Pavement; it could not be otherwise applied.

John Jeonar Sworn.

Council. Speak your Knowledge of Col. Axtell's Carriage at the High-Court of Justice.

*Jeonar. I had the Honour to wait upon the King as a Domestick Servant, to the Time of his Death; that Day, which was the First Day the King was brought to his Trial, I did wait upon him among other Servants; we stood close to the Bar where the King was, some Three or Four of us; Colonel Axtell was upon the Right Hand of us commanding the Guard, to keep Things in Order when the Court was to be withdrawn; (the many Circumstances about the Lady Fairfax shall be omitted;) the President commanded the Prisoner to be withdrawn; with that Col. Axtell steps down before me to draw out his Guard; this I heard him say, *Soldiers, cry for Justice, Justice*; I was the next Man to him; and upon the last Day of the Trial he did come down in the same manner, and bid the Soldiers cry out for *Execution, Execution*.*

*Axtell. I do desire a Question may be asked of that Gentleman; I must confess I did not know the Gentleman at that Time, though he said he knew me; he seems to say that at the First Day I encouraged the Soldiers to cry, *Justice, Justice*, and the Last Day, *Execution, Execution*; what Place was this in, Sir?*

*Jeonar. I tell you the King was brought from Cotton-House, through a Guard, that you managed, of Musqueteers, and with a Guard of Partizans; besides, there was myself and others there: When we came up we got as close to the Bar as we could; you were passing up and down from above and below: When the Court was dissolved, you stepped down just before to draw your Guard to make ready, and to cry, *Justice, Justice*, and the Second Time, *Execution, Execution*; you were very near me, and then you cried, *Justice, Justice, Execution, Execution*.*

Axtell. Are you certain? I have heard other Men, I confess, accused for this, some other Officers.

Jeonar. I did hear you, I do know you by Sight.

Council. You know him now to be the same Person?

Jeonar. Yes.

Samuel Burden Sworn.

Council. Tell my Lord and the Jury what you know of the Carriage of the Prisoner.

Burden. My Lords and Gentlemen, I do believe Col. Axtell knows me well enough, I was then under his own Command at White-Hall; there were some Cavaliers then in the Regiment; it was my Fortune I came into your Company, I wish I never had: You commanded more besides my self to be a Witness against the King, and Justice Cook took my Examination; you brought me in, you commanded the Guards that Time at White-Hall, when the King was upon his Trial.

Axtell. What more?

Burden. And you commanded Elisba Axtell, with a File of Soldiers, to take a Boat and go down to the Common Hang-man, who liv'd beyond

yond the Tower, to Execute the King; he is now Sheppard's Serjeant in Ireland.

Axtell. My Lord, I desire to ask him a Question; he was pleased to say I desired him to be a Witness.

Burden. Yes.

Axtell. Where was it?

Burden. In the Court at White-Hall.

Axtell. My Lord, I have seen the Printed List of Witnesses against the King, and in that List you shall find no such Name.

Burden. I have been a Prisoner in Dublin by your means.

Axtell. My Lord, I hope you will take Notice of that.

Council. Burden, do you remember any of his Commands to Web, to draw up in the Banqueting House?

Burd. He commanded Web to draw up in the Banqueting-House, during the time of Execution, his own Company. I was one of his own Company then.

Council. In order to what?

Burden. For Execution.

Axtell. My Lord, is Web here?

Burden. He is in Dublin.

Axtell. I wish he were here.

Edward Cook Sworn.

Cook. May it please your Honour, my Lord, the last Day of the Trial of His Majesty I came into Westminster-Hall, coming where the Court was, I did see Col. Axtell, the Prisoner at the Bar, there with some Musqueteers.

Council. What Day was this?

Cook. The last Day of His Majesty's Trial.

Lord Chief Baron. Go on, Sir.

Cook. Standing there a little while, His Majesty came Guarded with some Halberteers, when he came by the Soldiers that stood with Colonel Axtell, His Majesty Bowed, and afterwards put off his Hat, and went up to the Court; I could not know what Bradshaw said to him, I stood below; I heard him say he was brought by the Consent of the Commons and People of England; there stood a Lady above in a Gallery, crying out, it is a Lie, where are the People? or their Consents? Cromwell is a Traitor: Whereupon Colonel Axtell standing by, saith he, What Drab is that that Disturbs the Court? Come down, or I will fetch you down.

Mr. Nelson Sworn.

Council. Tell my Lords, and Gentlemen of the Jury, touching the Discourse between you and the Prisoner at the Bar, in Dublin.

Nelson. My Lords, and Gentlemen of the Jury, upon a Discourse with the Prisoner at the Bar in Dublin, Five or Six Years since, upon the Platform in that Castle we discoursed of the late King's having had several Reports; I desired to know of him who it was that Executed the King, thinking he might inform me; he was pleased to tell me this, saith he, the Persons that were employed in that Service, you know them as well as I do; truly Sir, not I, said I, I saw them in Vizards, but not their Visage, as I know of; yes, saith he, you do know them; it is true, saith he, myself and others were employed in that Affair, in order to the Execution; but there were several Persons came and offered themselves, out of a kind of Zeal, to do the Thing, but we did not think it proper to imploy Persons whom we did not know, but we made choice of a

couple of Stout Persons; pray let me hear their Names, said I; saith he, it was Hewlet and Walker; I desired to know their Reward; truly, saith he, I do not know whether 30 l. apiece, or between them; I said it was a small Reward for a Work of that Nature; truly, saith he, that was all.

Axtell. You named one Man, I did not hear the other named.

Nelson. I named Hewlet and Walker; he was one that managed the Execution, he told me so, and it pleased you, Sir.

Axtell. He is pleased to say that in Ireland there was such Conference; was any Body by?

Nelson. No, Sir.

Axtell. Did I Name any Body to you?

Nelson. You named those Two Persons.

Axtell. Certainly I must Invent them then, for I had no more Knowledge of them than any one here.

Nelson. You told me you were one of them that had the managing of that Affair.

Council. My Lord, we have done with our Evidence; those Particulars that were first opened to you have rendered the Prisoner much a blacker Person than we thought; we leave him to his Defence.

Axtell. May it please your Lordships in the first place, because I am ignorant in the Laws, I desire to know upon what Statute this Indictment is grounded.

Lord Chief Baron. It is grounded upon the Statute of the 25th of Edward the Third.

Axtell. My Lords, I must acknowledge my Ignorance of the Laws, being a Thing I never studied, nor have the Knowledge of, but I have heard it is the Duty of your Lordships and the Judges to be of Counsel for the Prisoner in Things wherein he is ignorant in Matter of Law, to make his just Defence; and therefore, my Lord, the Indictment itself being Matter of Law, if your Lordships please not to grant me Council to speak to Matters of Law, I humbly pray that your Lordships will be pleased, that for want of Knowledge, Formalities, Punctilioes, and Niceties of the Law, I might not undo myself: I have heard by a learned Judge, that though the Judge be of Council to the King, yet by his Oath he is also to be Councillor to the Prisoner, and stands as Mediator between the King and Prisoner; and therefore, my Lord, I shall beg that humble Favour, that wherein I shall fall short to make the best Improvement of my Plea in Matter of Law, that your Lordships will help me, and not take Advantages against me, as to the Niceties, Formalities, and Punctilioes of the Law; and my Lord, this is a Resemblance of that Great Day, where Christ will be Judge, and will judge the Secrets of all Hearts, and of all Words, and of all Persons, and by him all Actions are weighed, knows all our Hearts whether there be Malice, or how it stands in the Frame of each Heart before him in this place; and therefore I hope there will be nothing by pre-judging, or any Thing by pre-cluding, to be so Black a Person as is seemed to be said against me. My Lords, I must shorten the Time, and come to speak as to the Authority.

Lord Chief Baron. As to what, Sir?

Axtell. I speak as to the Authority by which, or under which, I acted; I humbly conceive, my Lord, under Favour, that I am not within the Compass of that Statute of the 25 Ed. 3. for that questionless must intend private Persons, Counselling, Compassing, or Imagining the Death of the King. But you know, my Lords, the War was first stated

by the Lords and Commons, the Parliament of England, and by Vertue of their Authority was forced to be raised, and they pretended by Law that the Right of the Militia was in them; and your Lordships will remember in several Declarations and Acts that was mutually exchanged between His Majesty and Parliament; and, my Lord, that was the Authority, the Lords and Commons assembled in Parliament raised a Force, and made the Earl of Essex General, and after him the Earl of Manchester, of the Eastern Association, and after that Sir Thomas Fairfax, Lord General of the Forces; by this Authority I acted, and this Authority I humbly conceive to be legal, because this Parliament was called by the King's Writ, chosen by the People, and passed a Bill they should not be Dissolved without their own Consents; that the Parliament was in Being when the Trial was, and a Question whether yet legally Dissolved.

In the Fourth Place, they were not only owned and obeyed at Home, but Abroad, to be the chief Authority of the Nation, and also owned by Foreign States and Kingdoms, who sent Ambassadors to that Purpose; under them did all the Judges of the Land Act, who ought to be the Eye of the Land, and the very Light of the People, to guide them in their right Actions; and I remember the Judges upon Trial, (I have read it of High-Treason,) Judge Thorp, Nicholas and Jermin have declared it publickly, that it was a lawful justifiable Thing by the Law of the Land to obey the Parliament of England. My Lord, it further appears as to their Authority over the People of this Nation, Petitioning them as the Supreme and Lawful Authority: And, my Lords, as I have heard it hath been objected, that the Houses of Lords and Commons could make no Act, truly my Lord, if you will not allow them to be Acts, tho' they intitule them so, call them so, and are obeyed as so, by the Judges, Ministers, and Officers of State, and by all other Persons in the Nation, yet I hope they cannot be denied to be Orders of Parliament; and were they no more but Orders, yet were they sufficient, as I humbly conceive, to bear out such as acted thereby. And, my Lord, the Parliament thus Constituted, and having made their Generals, he, by their Authority, did Constitute and Appoint me to be an Inferior Officer in the Army, serving them in the Quarters of the Parliament, and under and within their Power; and what I have done, my Lord, it hath been done only as a Soldier, deriving

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my Power from the General; he had his Power from the Fountain, to wit, the Lords and Commons; and, my Lord, this being done, as hath been said by several, that I was there, and had Command at Westminster-Hall, truly, my Lord, if the Parliament Command the General, and the General the Inferior Officers, I am bound by my Commission, according to the Laws and Customs of War, to be where the Regiment is; I came not thither Voluntarily, but by Command of the General, who had a Commission (as I said before) from the Parliament. I was no Counsellor, no Contriver, I was no Parliament Man, none of the Judges, none that Sentenced, Signed, none that had any Hand in the Execution, only that which is charged is, that I was an Officer in the Army; if that be so great a Crime, I conceive I am no more Guilty than the Earl of Essex, Fairfax, or the Lord of Manchester.

Judge Mallet. You are not charged as you were an Officer of the Army.

Axtell. My Lords, That is the main Thing they do insist upon: My Lord, I am no more Guilty than

his Excellency the Lord General Monk, who acted by the same Authority, and all the People in the Three Nations; and my Lord, I do humbly suppose, if the Authority had been only an Authority in Fact, and not Right, yet those that acted under them ought not to be questioned; but if the Authority commanded, whatsoever Offence they committed, especially that that guided me, was no less than the declared Judgment of the Lords and Commons sitting in Parliament; they declared that was their Right as to the Militia; and having explained several Statutes of Henry the 7th, wherein the King having entered-changed Declarations with the Parliament, the Parliament comes to make an Explanation on that Statute; and, my Lord, it is in Folio 280, wherein they do positively expound it, and declare it as their allowed Judgment. To clear up all Scruples to all that should take up Arms for them, saith the Parliament there, as to the Statute of 11th of Henry the 7th, Chapter the First, which is printed at Large, comes there to explain it in General, and comes here, Folio 281, and gives this Judgment; It is not, say they, agreeable to Reason or Conscience, that any one's Duty should be known, if the Judgment of the High-Court of Parliament be not a Rule or Guide to them. In the next Place, this is the next Guidance, Rule, and Judgment of Parliament, upon the Exposition of this Statute, and as they have said in several Places, (was it not too much to take up your Lordship's Time,) they are the proper Judges and Expounders of the Laws. The High Court of Parliament have taken upon them to expound the Law, and said that we Lawyers will give the Meaning of the Text contrary to what they have Expounded the Meaning under their Hands: In the same Declaration His Majesty is pleased to quit that Statute upon which I stand Indicted, the 25th of Edward the Third, where they do, my Lord, expound that very Statute in the Declaration made in 1643, Folio 722. I come to the declared Judgment, wherein they did positively say, that the Persons that do Act under their Authority ought not to be questioned as Persons Guilty, Folio 727, that is the Exposition that the Lords and Commons Assembled in Parliament do make upon the Statute.

Council. My Lord, this is an Argumentation of Discourse in Justification of his Proceedings, we desire to know what he will Answer as to the Plea.

Axtell. My Lords, I have this further to say, that if a House of Commons Assembled in Parliament may be guilty of Treason, (for the Truth is, if I acted Treason, that acted under the Authority of the Lords and Commons in Parliament, and of the Commons in Parliament, then doubtless they must begin the Treason:) If the House of Commons, who are the Collective Body and Representation of the Nation be guilty, all the People of England, who chose them, are guilty too; and then where will there be a Jury to try this? Concerning the Commons alone I have been over-ruled.

Lord Chief Baron. If you have any Thing to say to the Lords and Commons, Answer to your Charge; your Charge is nothing of the Lords and Commons, but what you acted when the House was broke and forced.

Council. You cannot but know that there is nothing charged against you, for which you can so much as pretend an Authority of the Lords and Commons; you know before you could do this horrid Murther, you were the Persons that destroyed

destroyed the Lords and Commons both; indeed you Ravel in a Business, to make People gaze upon you without any Ground.

Axtell. *I am upon my Life, I hope you will hear me patiently.*

Lord Chief Baron. God forbid but we should.

Axtell. *I do desire to assert my Authority; if any Thing was done upon the House of Lords and Commons I do not come hear to justify their Actions, I was not concerned in it. My next Plea is this; that if a House of Commons can be charged Guilty of High-Treason as a Community, the distributive Body must needs be Guilty.*

Court. If there should have been 20 or 40 Men come out of the House of Commons, and should Murther a Man, they must Answer for that; it is not the Community that can do such an Act of Treason: These Persons that you call a House of Commons, there was but 26 of them, and these must be the People; this is the State of the Case; and when you have thrust out thrice the Number of those remaining, only those can serve your Turn.

Lord Annesly. Mr. Axtell, I am very sorry to see you in that Place, and it troubles me as much to hear you vent that for an Authority, which you know yourself was no Authority; you would now for your Defence for Life, (and it is Reason you should make as full a Defence for Life as you can,) you would shelter yourself under that Authority, which I am sorry I must say you were one of the greatest Violators of. You cannot forget how near a Close of this Bloody War, by the Mercy of God, this Nation was, when the Army interposed, whose Trade it was to live by War, when they had felt so much of the Sweet of War, they would not suffer the People to enjoy Peace, though the Lords and Representatives in Parliament had agreed to it; a Treaty was begun, Terms of Peace propounded and agreed to; this you cannot forget, and will have no need of Notes or Books to help your Memory: When the People Groaned under the Miseries of War, and Thirsted after Peace, then came up the Army, who were Servants to the Parliament till that Time, taking upon them the Authority; (you cannot forget that yourself was one of the Number that came to offer Accusations against the Majority of the Commons House, calling them Rotten Members;) the House of Lords was not then suffered to sit, they would not join in that Ordinance that was preparing for the Trial of the King; when the Lords had refused, they were no longer fit to be Lords neither; then comes in a new Authority, which we never heard of before; a Remnant of the House of Commons joining with the Army that had driven away the greatest Part of the House of Commons; (for in all Assemblies and Courts the Major Part must determine, or no Determination,) after this Course was taken, then is an Act set on Foot, they take upon them by Votes of their own to be the Parliament of *England*; that the Supreme Power of the Nation is in the Representatives of the People; who were they? Those few only that remained; almost all the Cities, Counties and Boroughs of *England* had none left to represent them, they were driven away by Force; then was this Act of Parliament (such an Act as was never heard of before) set on Foot and passed as an Act by a few of the House of Commons; if

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you can plead this for your Defence, this is the Act that you must shelter under. But you know the Lords and Commons had unanimously resolved for Peace, and so agree with the King. If this Act will be any Defence, you may plead it to the full; and this is all you have to say, therefore go upon no foreign Matter.

Axtell. *If it please your Lordship, that worthy Lord that spoke last is pleased to say, that I was one of the Persons that did accuse some of those Members of Parliament; truly, my Lord, I never did come to the Commons Bar but once, presenting a Petition; and for my Hand either in Charging any of the Members, or Secluding any of them, I never had any Hand in that Matter; this is all to that Part. Next, I humbly conceive here I must ground my Bottom, and if I perish, I perish by a Judgment in a Parliament; my Commission that did Authorize me to obey my General, was given me when the Lords and Commons sate in Parliament; I had no other Commission than this: My Lord Fairfax commanded the Army after the King's Death by the like Commission; I did but my Duty in going to my Regiment; the General saith, go to such a Place, stay there; if I refuse, by the Law of War I Die; if I obey, I am in Danger likewise; I say my Commission was given me by the Lords and Commons, and therefore I hope, my Lord, that what I have said and offered in that Particular is not Truthless, but of Weight.*

Court. The Effect of your Commission is only to make you an Officer.

Axtell. *My Commission bears Date the 27th of March 1648, Ten Months before the King's Death; we had no other Commissions, therefore I humbly conceive the Question will be this in Point of Law, and I humbly desire it may be truly and fairly stated by your Lordship, and these Honourable Judges, that whether a Man being guided by the Judgment of the Lords and Commons Assembled in Parliament, and having declared their Judgments and Exposition of that Statute of the 25th of Edward the Third, and Acting only by that Judgment of Parliament, and under their Authority, can be questioned for Treason. That, my Lord, is a Question that I do humbly think is a Point in Law, and that you will please fairly and truly to state it, whether I am within the compass of that Statute whereupon I am Indicted.*

Council. My Lord, we do not charge him with any Thing that he did act under the Colour of his Commission, or with any Thing he did before that, but that which we charge him with are the Acts that he did at the Trial of the King; shew us your Commission from the Lords and Commons Assembled in Parliament, for Trial and Execution of the King, you say something; we do not charge him for any Thing done by Vertue of that Commission, but with those violent Acts that he did in encouraging the Soldiers to cry, *Justice, Justice, Execution, Execution*, and all those other violent Actions of his own malicious Heart against the King. We humbly beseech you he may answer to that which is the Charge against him, and that is, the *Compassing and Imagining the Death of the late King*, and his declaring that by those Overt-Acts that we have proved. My Lords, we desire that the Prisoner at the Bar may remember that he is not Indicted for Levying War against the King; if so, then that, Sir, which you offer, might be given as a Plea, and we should have spoken to it; but you are Indicted for *Compassing and Imagining the*

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Death

Death of the King; and that which we have given in Evidence were the subsequent Overt-acts to prove the same.

Axtell. *I hope you will not think it much to give me some more Freedom for my own Defence for Life; My Lord, I must needs say, though there was a Force on the Parliament, I am not to justify it; I was no Lawyer, no States-man, no Counsellor, but a Soldier; and if the General, who had a Commission from the Lords and Commons, and that some Years before and after the King's Death, be not Guilty of Treason, what I did was by Command from my General; and though I am charged with being in Arms in Westminster-Hall, and at such and such a Place, yet it was not a Voluntary Act, for I was bound to obey my General; I do humbly pray that I may have your Lordship's Judgment in this Point; I must say it was from the Sense of their Exposition of the Law, and of the Statutes, and from the Authority, that every one took up Arms for, and served them, and obeyed either the one General, or the other; I say, it was under this very Authority, and this must needs acquit me from all the Guilt that is laid upon me.*

Lord Chief Baron. You put yourself upon the Judgment of the Court upon this which you call a Point in Law. First, It is manifest that there is no Excuse at all for Treason; no Man by his Commission can warrant the doing of an Act which is Treason: You must take Notice of the Authority, whether it be good or no; *Kelyn. 13.* your Commission was not to put the King to Death, but on the contrary, to preserve the King's Life. The Lords and Commons, what they did we do not meddle with; the Reason and Ground of what they did was the Preservation of the King's Person, as well as the Maintenance of the Laws and Liberties of this Nation; they made Protestations, Declarations, and Oaths, for the Preservation of the King's Person; and you could not but take Notice of those Things: Now whereas you go about to shroud yourself under the Lord Fairfax, he had no such Power, and therefore you can challenge no more than he had; and to what you say concerning the Judgment of the Parliament, there will be a great deal of Difference between a particular Case and a Declaration of Lords and Commons; there is nothing you have said that hath any Thing of Force, and God forbid you should make use of it; but I must tell you, you could not but notoriously know all those Transactions that were in the Army, what the Army had done, that they came up with Swords in their Hands, and turn'd out whom they would; you saw what the Lords and Commons had done, that the Treaty was ready for its Birth; and then you came up with your Myrmidons, with Force and Arms, and excluded the greatest Part of the Members, and then the Lords were laid aside: It is true, the Lords were not wholly dissolved, but they would not suffer them to sit, nor Act at all, and this was apparent to the Nation. So that this was but a Colour and Pretence of a Parliament, that a few Persons, (for so they were) but an Eighth Part of the House of Commons, should take upon them to act as an House, and of that Eighth Part (which was but Forty Six in the whole) there was but Twenty Six that Voted that Act which you say you obeyed: But you say you obeyed the General; you are not to obey the General in this Case;

for the Facts that you have committed are not charged as Acts of War; you are not charged for bringing the Soldiers in, but for those violent Actions that you were guilty of there; you made the Soldiers cry out, *Justice, Justice, Execution, Execution*; you sent officiously for a Hangman to come down to you; your Commission gave you no Power for this; the Death of the King you know how it was designed; you know the Act for the bringing in of that Commission (as they call'd it) to sit in Justice was after the House of Commons was reduced to a very small Number, and some of those dissenting too; what you did act under that Authority, if you can justify it, in the Name of God say so; but do not engage the Nation in those Things which they abhorred, and by the Mercy of God are laid asleep.

Mr. Justice Foster. You begin at the wrong End; you ought, as all Men ought to do, first to Answer the Matter of Fact, and not to put in those long dilatory Pleas, till you have answered the Matter of Fact, whether those Things charged on you to be true or not; then if you have any thing further to say for yourself by Way of Excuse, it will be the Time to speak, and not before.

Axtell. *May it please your Lordships, I humbly conceive I am upon that Method to the first Part of the Witness; they accuse me for commanding my Soldiers in Westminster-Hall, then I must prove my Authority, which I have been about to do, and declared the Judgment of Parliament.*

Lord Chief Baron. The Court have heard you with a great deal of Patience, and that which is not at all to the Business.

Axtell. *I only refer this as to the Authority; (I humbly conceive you will give me Leave to insist upon this, and how far I may improve it for my own Defence;) here is the Commission by which my Lord Fairfax acted, and that after the King's Death, and I acted by the same Authority he did; I had not been at Westminster-Hall but on the Command of the General.*

Court. Doth that Commission Authorize you to cry *Justice, Justice*? And to look up and down to get Witnesses against the King? Is that in your Commission?

Axtell. *I am to serve and obey all my Superior Officers, that is my Commission; if I do not I die by the Law of War.*

Court. You are to obey them in their Just Commands; all Unjust Commands are Invalid. If our Superiors should command us to undue and irregular Things, (much more if to the committing of Treason) we are in each Case to make Use of our Passive, not Active, Obedience.

Axtell. *Under Favour, it is not proved, that I did either Compass or Imagine the King's Death; that is Matter of Fact.*

Court. Let us try that.

Axtell. *My Lord, I did nothing but as a meer Soldier; I had Authority from the General; I would leave this before your Lordships and the Jury, that what I have done hath been by Authority of the General.*

Lord Hollis. Sir, a Word to you; if you could satisfy the Court that you had received a Commission from the General to do those Things with which you stand charged it were something, then were it proper for you to plead it, and

and the Court to Judge. Pray take this along with you, the General gave you no such Command; what you are charged with in the Indictment is, for *Compassing and Imagining the Death of the King*, and that by such and such Overt-acts, as making your Soldiers cry out *Justice and Execution*, for being active and forward in sending for the *Executioner*, and such other Acts; prove these are in your Commission, and you say something: I am sure you cannot be ignorant that that very Authority that you now do urge to give Life and Power to your Actions, that you destroyed it, laid it in the Dust, acted contrary to it several Ways; when the Parliament protested against fetching the King from *Holmby*, as they did, when they went on proceeding in the Way of Peace, then came you up to the Bar, (I think you yourself,) and charged some of the Members; first Eleven as Rotten Members, and these Men were forced away; this you know your General had no Commission to do; and this you know was a Violation of that Power that gave your General the Commission. After that, when the Treaty was brought on in the *Isle of Wight*, when there was great hopes of Peace, then you know the King was hurried thence by Force, which the Parliament protested against. After that, when both the House of Commons and Lords came to consider of one Particular that passed, they resolved that it was sufficient Ground to proceed on for the Settlement of Peace; then did you fall upon these Houses, and tear them in pieces, and throwing out above 200, suffered only about 40 to remain, and they were glad to send for One Member out of Prison to make up a House. That which you say of the Supreme Authority, and that by Vertue of which you did act, it shews that you did not at all go by any Authority, but you followed your own Lusts; and therefore do not sew these Fig-leaves together, which will stand you in no stead; if you would apply yourself to answer that which you are charged with, it were something.

Axt. *I do desire to have no more Interruptions than is meet in making my own Defence. My Lord, here are many Things by way of Motive urged to the Jury which is not within the Charge, I desire I may have that fair Play, that nothing may be urg'd but what is in the Charge.*

Lord Chief Baron. You give the Occasion; Mr. Axtell; keep to the Matter, and you shall not be interrupted.

Lord Hollis. I shall be very sorry to urge any Thing against you which doth not necessarily follow; for what you say touching your Authority, I shall shew you have no Authority.

Axtell. *My Lord, I have the same Commission as the General; what I did was not of mine own Head, I had a Command: As for all that hath been charged against me I shall say this, I was none of the Court, I did not fetch the King from the Isle of Wight, nor advis'd, compassed, or imagined, his Death, or Sentenced him to Death, or Signed the Warrant for his Execution, or Executed him; I am none of them, my Lords; and therefore whoever did make any Breach upon the House of Commons, they were Grandees, Persons of a greater Quality; I was an inferior Officer; I was never at the House Bar, but upon presenting one Petition to the Parliament from the Army. I shall now come to speak to the Evidence which hath been given*

particularly against me; and the First, my Lord, is Mr. Simpson, he saith, I had the Command of the Guards at Westminster-Hall: My Lords, I have told you already, shewn you by what Authority I came thither, and that I ought not to refuse; if I had, according to the Laws of War I must have suffered Death; and that is all as to Mr. Simpson, only that a Lady (he knows not who) speake something there.

Lord Chief Baron. He saith he heard you bid the Soldiers give Fire against the Lady.

Axtell. *My Lord, I must say, if there was any Lady that did speak, who she was I know no more than the least Child here; but, my Lord, to Silence a Lady I suppose is no Treason; if a Lady will Talk impertinently it is no Treason to bid her hold her Tongue.*

Lord Chief Baron. A Lady was speaking pertinently enough, when she heard Bradshaw say to the King, such a Charge is exhibited, a Charge of High-Treason against him in the Name of the Commons Assembled in Parliament, and the good People of England; she said, *That was a Lie, not half, nor a quarter of the People of England; that Oliver Cromwell was a Traitor*; then you took upon you to Command the Soldiers to Fire at her, and accordingly they levelled the Muzzles of their Musquets towards her.

Axtell. *My Lord, as to that Particular concerning Oliver Cromwell, or any other Words concerning the Court, I understand them not; but if any Interruption was made, to preserve the Peace, to desire a Woman to hold her Tongue is no Treason. To the next Particular, wherein Colonel Huncks saith, at a Door of a certain Lodging where Ireton and Harrison were in Bed together, he saith that upon his Refusal to Sign the Warrant for Executing the King, I said to him, Colonel Huncks, I am ashamed of you, the Ship is now coming into Harbour, and will you strike Sail before we come to Anchor? Truly, my Lord, I think all that amounts to nothing; if it were so, which I deny it; for to bring the Ship into Harbour, what is that? There is no Person named, Fact named, nor Design named; and I appeal to my Conscience, I remember not the Time, Place, Person, or Words; and I can call for Colonel Phayre and Colonel Hacker, who were there; for I desire Things may appear right, I desire they Two Persons may be called for their Evidence in that Point.*

Lord Chief Baron. They both are in the same Condition, Colonel Hacker in the Prison behind you, Colonel Phayre in the Tower; Mr. Axtell, you know the Strength of one Affirmative Witness; I saw such a Man, and heard such a Man say, &c. is more than if Twenty should Witness they stood by, but did not see him, or hear him speak.

Axtell. *My Lord, he saith only this, I saw you at the Door going into Ireton's Chamber, and said, Will you strike Sail, &c? Truly, my Lord, he doth not say what, or how, any Thing I meant; there must be according to Sir Edward Coke's 7th Book of his Institutes, that Oracle of the Law, he saith, That Evidence ought to be as clear as the Sun at Noon-day; all that you can say is this, it must be a wide Inference, a large Inference; I conceive there is nothing in these Two Witnesses, and if the Two Prisoners were here they would clear me in this.*

Lord Chief Baron. If by Law you could have had them, you should; but I fear if they could be admitted they would not be to your Advantage.

Axtell.

Axtell. *Then, my Lord, in the next Place, Colonel Temple is pleased to say, that the Lady Fairfax saying something against the Court, (which in truth, as I said before, I know not who it was, or what the Words were,) he saith, I bid Fire against them; I did nothing but what I was commanded upon Pain of Death, to preserve Peace, and in Pursuance of that Command from the Superior Officers of the Army, Silence was required, and that was all that was done. I suppose where a Man is commanded to keep Silence, as the Sheriff is required to keep all at Peace in a Court, if he restrain a Person that will not be quiet, it is not Treason in him, nor in me, in this Particular. My Lord, in the next Place Mr. Temple is pleased to say, that I stood upon the Pavement laughing, while others sighed; truly, my Lord, I know not whether I saw the Gentleman, or no; certainly Smiling is no Treason, if I did so, though I believe I had as great a Sense that Day as many other Persons there; this is the Sum of that he saith; only he further adds, that I bid the Soldiers cry for Justice; truly, my Lord,—*

Lord Chief Baron. Because it may be your Notes are short, I will acquaint you there was a little more in it; he said you bid the Soldiers cry out, *Justice, Justice*; and they coming not very readily to it, you struck some of them, till they with yourself cried out *Justice, Justice*; till they with yourself did it.

Axtell. *My Lord, to that I answer, that in the Hall there was some kind of People did set up a crying some kind of Words, and may be some of the Soldiers might cry so too; I might command them to hold their Tongues, and to say I'll teach you to cry Justice, and so the Gentleman standing by might believe I was the Person that bid them do it: Truly, my Lord, this is all that the Gentleman says, which I humbly conceive is nothing, because he does not say against any Person; and therefore, my Lord, I do hold to that Maxim in the Law, as Sir Edward Coke holds, (that Man of great Parts, of Learning and Knowledge,) That in Matters of Treason, wherein a Man is the highest concerned in his Life and Posterity, there ought not to be construed against him Inferences or Presumptions, or Strains of Wit; there is no more in this, and this is all that I say in this Particular. In the next Place, Mr. Temple is pleas'd to say, that after the Court had sentenced his Majesty he was hurried away in a Sedan; truly, whether he was, or not, I know not; there was a Guard of Halberteers, whereof Colonel Huncks was one, and several others, as I have heard; they were Select Guards of his Majesty, guarding him from St. James's to other Places; how he came to be hurried I know not, it was not by me; and whereas he says during the whole Trial I was there, truly I think I was there by Command of my General, by Authority of the Lords and Commons.*

Lord Chief Baron. You speak this that the Jury may understand you did it by Command of your General. Do you mean by Express Command?

Axtell. *I did not move a Day but by Special Command.*

Lord Chief Baron. By whom?

Axtell. *The Lord Fairfax gave his Orders every Morning to his Adjutant-General, or Major-General, and they issued them out to such and such Persons as he appoints.*

Lord Chief Baron. Who gave these Orders out?

Axtell. *The Lord Fairfax; we did all under him.*

Lord Chief Baron. You had not the Order immediately from him?

Axtell. *The Major-General had.*

Lord Chief Baron. What Major-General gave you that Order?

Axtell. *There was Cromwell and Ireton.*

Lord Chief Baron. The Lord Fairfax gave you no immediate Commission.

Axtell. *He gave my Superior Officers.*

Lord Chief Baron. How do you know that?

Axtell. *My Lord, because they told me so, it was by his Command.*

Lord Chief Baron. The Question is now understood.

Axtell. *The next Person that speaks is Mr. Bourdooe, and he says that I commanded the Soldiers at the King's Trial; and that a Lady that was speaking was commanded Silence, to this purpose; truly, my Lord, this is but the same as before.*

Lord Chief Baron. You said Shoot too.

Axtell. *No, (my Lord,) I said not any such Word, or any Thing like it; I heard there was an Officer went up and intreated her to be silent; I say, it is the same with the former, it is no Treason to desire one to be silent. My Lord, the next Witness that speaks in Evidence against me is Mr. Young; he says this, I bid the Soldiers cry for Justice; it is very like that Person, as well as Mr. Temple, might see me in the Croud speaking to make the Soldiers quiet, I might repeat the Words that the People said, repeat the Word Justice, or some such Word, as the Peoples Words.*

Lord Chief Baron. Remember how he repeats them; he saw you active in setting on the Soldiers to cry Justice.

Axtell. *If I have taken them right; one says he heard me say such Words as Justice, and that he saw me strike Two or Three Soldiers; if in the Tumult such a Word should be started, I hearing of them I might strike those Soldiers that said Justice, Justice, and might repeat the Words, I'll give you Justice, and so strike them; that is a good Evidence that it might be a Repetition of their Words, and not any of mine own: They both speak as to the Word Justice, but here was not Justice mentioned to any Person; I might repeat their own Words, and chastise them for those Words; besides this, (tho' I do not say the Word was spoken by me,) if the Word Justice had been spoken, my Lord, I hope it is no Treason to say, I desire Justice; it is God's great Attribute, it is God's Ordinance, and that can be no Treason. I have read in Law Books, (though but lately,) and I cannot find that the Word Justice should be made Treason; then there is no Person to whom that adjunct doth belong. The next Evidence, my Lord, is Captain Jeonar, he saith I commanded a Guard; truly several Regiments took their Turns as they were commanded by the General, and I, as an Inferior Officer, was there; but that is no more than what was said before, it was done by the Authority of the General; if I had not done it I had died by the Law of War: He saith, there was a Cry for Justice; I can say nothing more than I have formerly said; it may be in the Tumult the Soldiers might say so, and I chastising of them, and repeating that in my Chastisement, they might think they were mine own Words.*

Lord Chief Baron. Mr. Axtell, I would help your Memory; he swears the last Day you encouraged the Soldiers to cry, *Execution, Execution.*

Axtell.

Axtell. For that Particular I am coming to it, (I thank your Lordship for helping me;) my Lord, for that of Execution, truly I cannot say whether I was there that Day or no; one Day I was commanded to be there with some Companies in Westminster-Hall, but whether I was there any more than that one Time is the Question: Admit I was there that Day, I was never there but when I was commanded; when the Colonel that commanded the Regiment was there, I, as an Inferiour Officer, ought to be there: I was there by a Special Order, and not by a Voluntary Act of mine own, and so it cannot be Compassing the Death of the King. For as to the Word Execution, what can be the Sense of this Word? Execution is a single Word; those People that started the Word Justice might put it in the Heads of the Soldiers, which I might strike to command Silence; they likewise might upon the same Account cry out Execution, and so to hinder all Tumults, and Hubbubs, and the like, in the Place; I might repeat their Words in correcting of them for it, I might say, I'll Justice you, I'll Execution you: But my Lord, this Word Execution of Justice, it is a Glorious Word: not that there can be an Inference that what they did I should say was Justice, or to approve of any Thing that they did, but only in General Execution of Justice, which, my Lord, relates not to any Person; possibly the rude People might be speaking (as hath been said before) in that Manner, and the Soldiers might take it up, and I might reprove them, and make Use of their own Words by way of Repetition, I will Justice you, I will Execution you.

My Lord, in the next Place I do desire to speak to that of Mr. Burden; he did observe to your Lordships and the Jury, my Country-men, my Brethren, with whom are the Issues of Life and Death, for whose Life they must answer before the Lord as to Righteousness, Judgment, and Equity; I say, my Lord, as to Mr. Burden, he tells you, that for my Sake he was Imprisoned; saith he, I have suffered much by him; and speaks it with much Indignation of Spirit; I have suffered, and been Imprisoned by him, and afterwards he comes to speak his Evidence; how much his Evidence may be of Force I desire, my Lord, the Jury may consider of that; and then he comes and saith, I commanded a Guard at the Banqueting-House in White-Hall. Truly, my Lord, the Lord Fairfax commanded a Regiment to quarter there, and I, as an Inferior Officer, might be there. In the next Place, my Lord, he saith, I sent Elisha Axtell to fetch the Hangman; truly, my Lord, I wonder this Person is not come from Ireland; (if this were so,) the Authority there would not send that Person with his great Evidence, as well as this Person; he may as well charge any Person with this as me: It is evident, Ireton, Harrison, and Cromwell, they did all amongst themselves; I never was with them, amongst them, received no command from them, nor obeyed them; nor did any Thing but what I had Command for from the General, who, by the Law, I was bound to obey as a Soldier. I shall only observe one Thing more; this Person being so long a Prisoner, to Extricate himself out of his Imprisonment and Chains, poor Man! he may say more than is true. I wonder he should say I sent for the Executioner; I never knew of any Circumstance touching Consultation about his Death, or took him Prisoner. When they sent to me to be one of his Guard, I never would go; I humbly conceive there is nothing sticks upon me in this, considering the Circumstances, and the Words of the Person that spoke them.

My Lord, the next Person that speaks against me is Mr. Cook, he saith he heard me say, Thrust that Lady down that made a Disturbance in the Court, or Words to that Purpose; it is probable there might be a Desire of Silence. The next Evidence is Lieutenant Colonel Nelson, he saith, that upon a Discourse —

Lord Chief Baron. I would put you in Remembrance, lest you should forget what Sir Purbeck Temple said, that by Leave of Persons under your Command he saw the Body of the King. It is only a Circumstance.

Axtell. I have heard there were Chirurgions, Physicians, and Halberteers, appointed by whom I know not; they had the Care of such Things, and had the keeping of him; he was locked up by them; no Body could come in but by them; I never had a Key; possibly Colonel Temple might come to me, quartering there, and desire me to speak to some Persons that had the Charge of it to let him in; whether I did or no I cannot remember; but if it were so, I hope it will not amount to Treason. The last Thing given in Evidence against me is by Mr. Nelson, he saith, that upon some Discourse between us, he was asking what Person cut off the King's Head, and that I should say Hewlet, &c. Truly, my Lord, I was never privy; and I appeal to Mr. Rushworth; if he were here, who was Secretary, if ever he saw me in any Council, to advise, or act, or any Thing in that Kind, in relation to the King's Trial, Sentence, or Execution; for me to know the Person that was imployed about the Execution it is strange, when (as I said before) they did all within themselves. I had no Knowledge thereof, and meddled not within any Thing but within my own Sphere as a Soldier under my Lord Fairfax, by Authority of Parliament. For naming any Person, truly, my Lord, it would be a wonder to me that I should name any Person to go to do any Person that Wrong and Injury, to say he was the Person; I must invent it, for I knew nothing of it. But by common Fame up and down the City it was said to be another Person; but who it was I cannot say, my Lord; but to all this that hath been said against me, there are but Two Things upon Two Witnesses that are placed upon me; the First, my Lord, here is Two Witnesses for crying Justice, and Execution.

Lord Chief Baron. I think you have more than Two to those Words.

Axtell. Not for both together.

Lord Chief Baron. No, but several for Justice.

Axtell. There is Three to that; I shall only say this to your Lordship, and this Jury, in whose Hand this Life of mine is, and is committed to them, either to acquit or condemn me; and God knows the Hearts of all Men, and my Innocency and Integrity; I shall say nothing to the Witnesses, it is a Day of Temptation; and I desire the Jury, my Countrymen, my Fellow-Citizens, my Brethren, that they would well consider of it, the Word Execution and Justice; admit I had said them, (which, my Lord, I do not, I must not grant,) there being an Uproar of People, there such Words might be used, and possibly Soldiers might take them up from them, and chastising the Soldiers I might repeat the Words, I will Justice you, I will Execution you.

Lord Chief Baron. The Evidence is, that you beat them because they did not readily cry, Justice, Justice.

Axtell. It might be more probable I beat them because they did do it, I might chastise them for doing of it, and repeat it is a Reason for their Chastisement;

ment; and but admitting it was true, which I grant not, yet I hope Justice, and Execution of Justice, as it is so great an Attribute of God, by God's Laws, nor Man's Laws, is no where made Treason, but Mercy attends it, and Judgment attends the contrary; I leave it upon the Consciences of the Jury to weigh it carefully, how I could be guilty of Compassing and Imagining the Death of the King, when nothing is charged against me to be either of Council, Sentencing or Signing, or to be at the Execution; only one Man, as I told you before, he spoke something Wrathfully, and that he had suffered much, and therefore he is come over now, and saith I should send for the Executioner, which I never knew of, or had any Hand in sending for; how much Validity that hath, I leave to the Jury; if it were so, it is not Treason; for Words may make a Heretick, not a Traitor; I speak that by way of Preface; I do humbly conceive that these being only noted Words, Execution and Justice, the King not so much as named, nor any Thing done to it by me, I say, I conceive it doth not amount to Treason by the Law; and besides, it is against the Law of the Great Judge, the Judge of Judges; all of us that are now, and are to come, shall stand before him to receive our Deserts; I say it is against the Law of God to make me an Offender for a Word; for a Word. I have heard the Judges say, that the Laws of England are grounded upon the Laws of God, and the Laws of England are Laws of Mercy, not of Rigour: My Lord, if a Man shall be destroyed in his Life, in his Posterity, for a Word, (admit the Thing had been so,) I leave upon the Consciences of my Jury, before the Presence of Jesus Christ, and before whom they and I must come to be re-judged again at the Tribunal; and besides, it is only Words, and Words uncertain; and Sir Edward Coke saith, he must declare plain Truth in Matter of Treason; nothing must be taken for Evidence that may be a Presumption or Inference, or Strain of Wit; I hope upon this Consideration that the Word Justice, fixed upon me by Two Witnesses, may be taken up at Second or Third Hand from the People or Soldiers, by chastizing them for the Tumult. Then, my Lord, in the next Place, these Words were never put in Writing, and so not Treason; then, my Lord, there was never an Overt-Act done by me; for that Act of Indemnity that His Majesty and both Houses of Parliament passed, wherein they were pleased the very last to except me, I wonder'd when I came to be excepted of that Number. I do come back to the Place where I left, and that is the Overt-Act. My Lord, I would only bring it in in this Place; when I was excepted by the House of Commons, one of the Twenty, I was excepted thus, not extending to Life; I went up and down free at Noon-Day; I did not hide my self; ingaging a Person that was one of His Majesty's Servants, to do me a Courtesie, he promised me he would do it, and contrary to his Promise, he was pleased to bring the King's Warrant to carry me to the Tower; and after that I came to be excepted with that Black Catalogue of excepted Persons, and to be brought to the Trial of the Law. Now (my Lord) I return to that Overt-Act, as it was but Words uncertain, and they may be Words repeated from the Third or the Fourth Hand, for they were not put in Writing, according to that Act of Indemnity, which I understand the Meaning of to be thus; that for their execrable Treasons in Sentencing, Signing, or otherwise Instrumental, they are excepted out of this Act, and to be tried according to the Laws of this Nation. I understand that to be instrumental, to be Instrumentally the Executioner of the King, I

never had any Hand in that. Upon the whole, this is the Fact that is proved by Two Witnesses; they heard me say, Justice and Execution, which must relate to the Execution of Justice, which by the Law of God is not Treason, especially when there was not the Word King; for a Word, to take away, and destroy so many, my Life, Wife, Children, and many Fatherless that are under the Charge of the Prisoner at the Bar, is very sad; the Words I do not grant, but upon such Probabilities as I have said I might repeat them, I will Justice you, I will Execution you; and then the Words were not written; I say as Sir Edward Coke said, They may make a Heretick, but not a Traitor. The other Part of the Evidence is this, that I was there with Soldiers at Westminster-Hall; I must say, if that be Treason to be guided by the Judgment of Lords and Commons in Parliament, I must say, if that be Treason to take up Arms for a Parliament upon such Grounds and Expositions of the Statute which they have made and published by their own Authority, if I am Guilty under the General, then the Parliament would be Guilty of Treason.

Lord Chief Baron. That you have spoke to — I am loth to interrupt you.

Axtell. I thank your Lordship for informing me, but I was commanded to be there by my General; if I had not gone I must have died; I did only stand there for Preservation of the Peace, in no other Sense; if the General order me to be at such a Rendezvous, I must be there; if I disobeyed he would have condemned me by the Law of War. The next Thing against me material are these Two Things, that is, that I should send one Elisha Axtell for the Executioner; I must say it is most admirable such Things should be laid to my Charge; I hope your Lordships and the Jury do observe, he told you, he suffered much, and a poor Man, under his Extremities, and Losses, and Sufferings, perhaps might start some unadvised Words, and being now sent over, may ascertain it. But doubtless this Elisha Axtell being in Ireland, if by Command it had been so, would have been sent over; truly I must say, I had no Hand in the Business; it was left wholly to them amongst themselves, and whatever was done, or whatever was said, it was said and done by them; I never was acquainted with any Thing of that Nature. He said he heard I should send Elisha Axtell for an Executioner; if Hear-says may be Treason it will be a hard Lesson; and, my Lord, Sir Edward Coke saith, there must be Two Witnesses, here is but one. It comes from such a Man, my Lord, as the Providence of God — but I will say no more as to that, but pray the Jury will take Notice of it.

Lord Chief Baron. You need not doubt of it, it shall be taken Notice of, this of Burden.

Axtell. Now, my Lord, I have but Two or Three Words more, the Statute of the 25th of Edward the Third, it doth intend private Persons, my Lord; here is my Commission.

Lord Chief Baron. It is owned you had it from your General.

Axtell. My Lord, His Majesty is pleased to say in His Gracious Letter, We do by these Presents declare, That we do grant a Free and General Pardon to all our Subjects, of what Degree or Quality whatsoever, who within Four Days after the publishing hereof shall lay hold upon this our Grace and Favour, excepting only such Persons as shall hereafter be excepted by Parliament; that is, a Parliament called by his own Writ. You know this Parliament —

Lord

Lord Chief Baron. Mr. Axtell, I would not interrupt you to that, but this very Objection was made by one of the Prisoners before; this Answer was given, First, the King's Declaration is not a Pardon in point of Law, it must be under the Broad-Seal, but God forbid but it should bind in Honour. You instanced in the Word Parliament, what was meant by the Word Parliament: You must know this, the Exigency of the Times were such, that there were many Noble Persons that took the Advantage to assemble themselves together to reinstate the King; they did that which was just and lawful, according to the Exigency of the Times; this Declaration he sent to the Two Houses, he called them His Two Houses; so that it appears clearly and manifestly they were then sitting, they being accepted by the King, and owned by him; and they did sit in Way of Convention, according as a Parliament, and his Majesty sent his Letter to them; and these are the Persons that have thought fit to except you out of that Act.

Axtell. My Lord, may I speak to that any further?

Lord Chief Baron. If you do, it will be overruled.

Axtell. I submit — with Submission to the Providence of God; I did apply to Sir Harbottle Grimston for the Mercy and Favour of his Majesty, according to his Declaration; and here is Sir Harbottle's own Hand for a Certificate.

Lord Chief Baron. This is allowed you, that you did claim that Benefit within the Time, but you may remember that it was referred to those Two Houses of Parliament, they were to consider who was fit for the Pardon, and you are by them excepted out by Name: Your Question now is no more, but *whether Guilty? Or, Not guilty?* And these are but extravagant Discourses — that you say otherwise, and rather do you Harm than Good.

Axtell. I hope you will pardon me, my Lord; I hope I have spoken to clear the Point, the Fact charged by your Lordship, and before the Jury; and I hope the Lord will give the Jury a Memory of it, and a right Understanding in what I have said for my own Defence. My Lord, the next Thing I have to offer, is this, to expound that Act of Parliament, that it was the Intention of his Majesty and Parliament that all should be excepted, but those Guilty of Councelling, Signing, or Sentencing. Truly, my Lord, I humbly conceive, I being none of those, am not Guilty of Treason. I shall only speak one Word to my Jury, That they will remember what I have said, that there is but Two Things, Two Witnesses, as to Justice and Execution; that it relates to no Person, but in General; and then I do not own the Things, but possibly they might hear such Words, I taking of them up upon a Rebound, reproved the Soldiers; for the other, that I should send one for the Executioner, (he heard so,) and that I should name who was the Executioner, I would not have that Person, or any other, to suffer for that.

Lord Chief Baron. That is not at all pressed upon you, not as to any Charge.

Axtell. I thank your Lordship. I am very Ignorant.

Lord Chief Baron. Have you done, Sir?

Axtell. I leave the Matter to the Jury, in whose Hands I, and my little Ones, and Family, are left; I only say this to you, remember your Ancestors, remember your Posterity. I never heard it before that

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Words were Treason. In Queen Mary's Time Throckmorton was acquitted for Words by the Jury. Gentlemen of the Jury, I leave my Case, my Life, my All, in your Hands.

Lord Chief Baron. Gentlemen of the Jury, there hath been several Things offered by the Prisoner at the Bar, as near as my Memory will give me leave in so long a Discourse, I shall repeat all Things which he saith for himself, and which are said against him. There are some Things that he seems to utter as tending to Matter of Law, and something meerly of Fact, proper only for you of the Jury. For Matter of Law, he hath urged several Things for himself; not by Way of Justification of the Fact, (I must do him that Right,) but in Excuse of himself; and I hope his Conscience hath so wrought upon him, that he is of Opinion the Fact was a horrid Fact, which was so indeed.

For that which he hath said for himself, First, He doth alledge to have his Commission from the Lord Fairfax, my Lord Fairfax had his Commission from the Two Houses of Parliament, and this Gentleman's was in March, the Beginning of the Year 1648. He saith, what he did was in Obedience to his Superiors, as a Soldier; that he never consulted or advised about any Thing of the Trial or Execution of his Majesty. For this Point, it hath already been spoken to, Gentlemen; for that which hath been spoken to at large heretofore I must repeat it here, that he may know it, That no Person whatsoever, no Community, not the People, either Collectively or Representatively, have any Coercive Power over the King; neither the Lord Fairfax, his General, nor he, nor any other Person, could be excused for this horrid Fact of bringing the King to Trial, no Person, as I said before, nor Community, have any such Power. The Law-Books which he hath lately seen, (and truly he hath employed his Time well in that,) the Law-books tell us, that whereas the Two Spencers had broached a damnable and detestable Principle, That the Homage was only due to the King, in respect to his Crown; that if he did not demean himself according to such and such Rules, his Subjects might rule him *per asperitatem*, by Asperity and Sharpness; but this was condemned by Two Acts of Parliament; they both appear in my Lord Coke, in Calvin's Case. I do not go to repeat all the Evidence that might clear this Truth; I say, had there been any such Thing, but it hath been told him there was no such thing in Fact. My Lord Fairfax's Commission was for the Preservation of the King, as well as for the Liberties of the People. The 11th of Richard 2, Robert de Vere, and others, for levying a War, was punished, but this Gentleman was not charged for levying of War. If either of the Houses of Parliament should command such a Thing as tends to the Death of the King, it would be void in itself. Something he let fall of the Parliament not being dissolved. My Masters, for that you have heard some of my Lords declare how, and in what manner, this was an Authority of Parliament, but it was clearly nothing at all; this Gentleman goes by vertue of a Power from the Lord Fairfax. The next Thing he urges in point of Law was this, he comes by Way of Dilemma; saith he, either I must obey my General, or die by the Law of War. He goes further, and urges the Statute of 11 Henry 7.

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He comes further, and saith, in the 25th *Edward 3*, that concerns single Persons, truly it concerns every Man. The Indictment, you see how it is laid, it is for *Imagining and Compassing the Death of the King*. The Overt-Acts in the Indictment, you have heard what they are; there must be more than one Witness for Treason. It is very true; but if one Person prove one Thing, another Person another; if one swear he did cry, *Justice, Justice, Execution, Execution*, and another swear some other Part, Gentlemen, this was here before delivered to you for an Overt-Act. It is any thing that opens and makes it appear to the Jury that he did do the Things for which he is Indicted; I say, any one of these, that they did meet together, and did consult in order to the putting the King to Death. That they did meet in a Traitorous Assembly about the King's Death; I shall say no more; you need not, I think, go from the Bar.

[The Jury go together, and after a little Consultation among themselves, they returned to their Places.]

Clerk of the Crown. Gentlemen of the Jury, are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. Daniel Axtell, Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar: How say you, is he Guilty of High-Treason whereof he stands Indicted, and hath been Arraigned? Or Not Guilty?

Foreman. Guilty.

Clerk. Look to him, Keeper. What Goods and Chattels?

Jury. None to our Knowledge.

The Trial of Colonel HACKER, on the Fifteenth of October, 1660, at the Sessions-House in the Old-Baily.

Clerk of the Crown. Set Francis Hacker to the Bar. *[Which was done accordingly.]*

Clerk. Francis Hacker, Hold up thy Hand. These Men that were last called are to pass upon you, &c. If you will Challenge all, or any of them, you must Challenge them when they come to the Book, before they are Sworn.

Lord Chief Baron. You may Challenge 35 peremptorily, but no more.

Hacker. My Lord, I shall Challenge none.

Tho. Bide, Rob. Sheppard, William Dod, Sir Tho. Allein, Sir Hen. Wroth, Tho. Morris, Ralph Halsal, John Galliard, John Nichol, Tho. Usman, Tho. Nicol, Christopher Abdy, in all Twelve. The Jury Called and Sworn.

Clerk of the Crown. Make Proclamation. If any Man can inform my Lords the King's Justices, &c.

Clerk. Francis Hacker, Hold up thy Hand. Look upon the Prisoner, you that are Sworn of this Jury. You shall understand that Francis Hacker, Prisoner at the Bar, stands Indicted, &c.

Mr. Serjeant Keeling. My Lords, and Gentlemen of this Jury, Francis Hacker, the Prisoner at the Bar, stands Indicted, amongst others, for

Compassing and Imagining the Death of the late King Charles the First, of Happy Memory. The Compassing and Imagining is the Treason itself; the other Points, as *Convening, Assembling, Meeting together*, and the actual Villany that followed all these, are but as Evidences of that Imagination. As to this Person at the Bar, our Evidence will be thus; we shall make it appear to you that he was one of the Persons that were upon the Guard, and kept the King a Prisoner, that he might be sure to be brought to that *Mock Court of Injustice*. Then it will appear to you that this Prisoner at the Bar was highly Trusted by all those Miscreants that thirsted for the King's Blood, by their Bloody Warrant directed to him and others, to take the King's Person into Custody, and to see Execution done. This was the Person that kept him till he brought him to that Fatal Stage. That this Warrant was lately brought from his own House by his own Wife to the House of Lords. And then we shall shew you that this Person set his Hand to the Warrant to the Executioner for Execution. That he did not do it ignorantly nor unwillingly, for he heard the Warrant read. We shall make it appear that he was upon the Scaffold, and had the Ax in his Hand.

Council. Crier, call Holland Simpson, Colonel Tomlinson, Mr. Nunnelly, Mr. Nutley, Hercules Huncks, and Benj. Francis: who were all Sworn as Witnesses.

Council. Mr. Simpson, speak your Knowledge of the Employment of the Prisoner, touching the Trial and Execution of the King.

Hacker. My Lords, I will confess what I know in this Case, to save your Lordships the Trouble. I confess I was upon the Guard, and had a Warrant to keep the King for his Execution. *[The Warrant being shewn to the Prisoner, he confessed that to be the Warrant.]*

Council. After you had that Warrant brought to you, did you by vertue of that direct another Warrant for Execution of the King? Did you not take the King (then Prisoner) from the Custody of Colonel Tomlinson?

Hacker. No, Sir.

Council. We shall prove it; *[the Warrant was read.]* At the High-Court of Justice for Trial, &c. My Lord, at the time that this Warrant was Signed, the Person of the King was in the Custody of Col. Tomlinson; Did not you take and demand from Col. Tomlinson the Person of the King, as soon as you received that Warrant?

Hacker. No, Sir, I demanded him not.

Council. Col. Tomlinson, tell my Lords the manner of that Business.

Tomlinson. My Lords, and Gentlemen of this Jury, I shall, as my Memory enables me, make a faithful Narrative of this Business: I had indeed to do with the Guard that had to do with the Person of the King about St. James's. Being then an Officer of the Army, a Colonel of Horse, when the King came to St. James's, it was observ'd by some, that there was too great an Access of People admitted to the King; and within One Day or Two after, there was a Party of Halberteers appointed, for the stricter observing the Guard; they were commanded by Three Gentlemen, of whom this Prisoner at the Bar was One; the Orders every Day for removing the Person of the King were commonly directed to Four Persons, and those were my Self, Lt. Col.

Lt. Col. *Cobbet*, Capt. *Merryman*, and one more; but the Guards that still went along were the Halberteers. So that every Day when the King did go to *Westminster*, he went to Sir *Robert Cotton's* House, and so far I went with him, and no farther; I never went with him, nor saw him, at that pretended High-Court of Justice. When he used to go to the High-Court of Justice, commonly (every Time indeed) the Serjeant, Serjeant *Dendy* (as I remember his Name was,) he used to come and demand that the King should go to the High-Court of Justice, and Col. *Hacker* did ordinarily go with him, with the Halberteers. It was my Custom to stay in the Room till he came back again; these Orders continued during the Time of his Trial. After the Sentence was given, on the Day whereon the Execution was to be done, it was ordered, (which Order may be produced, if significant) that the Guards that were for the Security of the Person of the King should cease, when a Warrant from the High-Court of Justice should be produced: I would not omit any thing that I well remember; and this I remember, that the Night before the Execution, the King called me into his Chamber, and told me several Things; I will take the Occasion to trouble you with a short Discourse of it: He told me of some Legacies he had given; he told me he had prepared something that he would speak the next Day; and in the close of it he desired me that I would not leave him; (for I speak it in Truth,) there were many times several Incivilities offered to him; and tho' I was upon a Duty that was of a harsh and unpleasing Nature to me, and did desire several Times to be released from it, (as I believe is well known to some,) yet I did not admit any Time that any Incivility should be offered to him; People would take Tobacco before him, and keep their Hats on before him, I always check'd them for it; he was pleased to have a Consideration of that Care that I had in that Capacity I then stood. That very Night before his Death he was pleased to give me a Legacy, which was a Gold Tooth-picker and Case that he kept in his Pocket. The next Day, when the Warrant came, the Guard of Halberteers went with him through *St. James's Park*, I was present, walking near the King, the Bishop of *London*, (now of *Canterbury*) was with him, and some others. As we were going through the *Park*, he was pleased to Discourse something of what he had been Discoursing before, touching his Burial; he wished that the Duke of *Richmond*, and some others that he should bring, should take Care of it. That Morning, in the *Park*, he told me he had been thinking of what he had said the Night before. He told me he had some Thoughts that his Son might come to Bury him, and desired he might not suddenly be Buried; I gave him Assurance I would communicate his Desire, and so I did: When he came to *White-Hall*, he went into a Room in the Gallery, (I know not the Name,) the Guard stood in the outer Room there. There was a Gentleman that came to me there, and told me he was endeavouring to present a Letter from the Prince to the King, and told me he could not get an Opportunity; I said he should not want an Opportunity, if I could help him; it was Mr. *Henry Seymour*; it was delivered, and the King read it, and he gave several Things in Charge to

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Mr. *Seymour*, to acquaint the Prince with, and was pleased to mention to him something of Civility that I had shewn him in his Imprisonment; the Effect and Fruit of it I find, and do most humbly acknowledge before all the World my Thanks to his most Gracious Majesty the King, and to the Lords and Commons. After Mr. *Seymour* was gone from him, (I do not well remember the Time, whether it was Twelve, One, or Two a-Clock,) Col. *Hacker* came in, and there was present with him the Two other Gentlemen that were named in the Warrant, (as I remember,) I am sure Col. *Hacker* (if my Memory fail me not) did produce the Warrant. Myself, and those Gentlemen that were concerned in the former Orders, looked upon this Warrant, by which the Orders which we had were at an End. I must confess I did not, nor none of those did tell him, that the Orders for Security of his Person were at an End; but Col. *Hacker* did go in to him, and after a little while Col. *Hacker* comes to the Door, and the King was coming forth, and he told me that the King desired I should go along with him; and indeed the Night before, when the King told me that he had prepared something to speak, he desired I would not leave him. So Col. *Hacker* led him forth, the Bishop of *London* followed him, and I followed the Bishop of *London*; the Guards were prepared without, and they went on to the Scaffold; when we came to the Scaffold, I went so far as to the Entrance upon it; the King was upon it, and had looked a little while about it, and was thinking to have spoken over, but he turned about to me, and began to direct his Speech to me. I cannot trouble you with what the King said, for I cannot remember it; but that Colonel *Hacker* was there in Prosecution of that Warrant, and upon that Warrant our Orders were at an End, I do averr.

Council. You delivered him upon that Warrant, did you?

Tomlinson. He went and received the King upon that Warrant; it was a Chamber that was known then by the Name of the *Horn-Chamber*, and there the King was in the inner Room; this is the Substance of all.

Council. We will trouble you with One or Two Witnesses more.

Council. Mr. *Tomlinson*, did Mr. *Hacker*, or his Soldiers, take Tobacco to the Offence of the King?

Tomlinson. I do not say that any Tobacco was taken there by Mr. *Hacker*; but the Soldiers would be stepping in, and take Tobacco at his Chamber in *St. James's*, and committed other Incivilities.

Council. We have proved that the Prisoner did demand, and had the Person of the King: Now we will prove to you that himself had the Boldness to make a Warrant in pursuance of the former, for the Execution of the King.

Council. Crier, call Mr. *Huncks*. [*He being Sworn, said.*]

Huncks. My Lords, and Gentlemen of the Jury, that Day the King died, a little before the Hour he died, I was in *Ireton's* Chamber, where *Ireton* and *Harrison* were in Bed together, there was *Cromwell*, Col. *Hacker*, Lieut. Col. *Phayre*, *Axtell*, and myself, standing at the Door; this Warrant for the Execution was there produced, and you [*looking upon Mr. Hacker at the Bar,*]

C c 2

were

were reading of it, but *Cromwell* addressed himself to me, commanding me, by Vertue of that Warrant, to draw up an Order for the Executioner; I refused it, and upon refusing of it there hapned some cross Passages. *Cromwell* would have no Delay. There was a little Table that stood by the Door, and Pen, Ink, and Paper being there, *Cromwell* stepped and writ, (I conceive he wrote that which he would have had me to write:) As soon as he had done writing, he gives the Pen over to *Hacker*; *Hacker*, he stoops and did write, (I cannot say what he writ,) away goes *Cromwell*, and then *Axtell*; we all went out; afterwards they went into another Room.

Council. What followed?

Huncks. Immediately the King came out, and was Murther'd.

Mr. Secretary Morrice. Mr. *Huncks*, you did tell us in the *Tower*, (when we were sent by His Majesty's Council to examine you, and others there,) that Colonel *Hacker* did then Sign that Warrant for nominating and appointing the Execution.

Huncks. My Lord, *Cromwell* comes to me, and bids me write a Warrant for that Purpose; I refusing of it, *Cromwell* writes himself, and *Hacker* writing on the same Paper, what should I conceive but that it was the Warrant? (the King presently after coming to the Scaffold.)

Council. Did *Cromwell* give you no bad Names because you would not write that Order? Did not he say you were a Coward?

Huncks. He said I was a froward peevish Fellow.

Council. Did *Hacker* only write his Name, or give Directions in the drawing up of the Order?

Huncks. I conceive he only writ his Name.

Council. My Lord, we have only that Eye-witness.

Huncks. *Hacker* confessed to the Gentleman Jaylor of the *Tower*, that if he did do it he did it by Order.

* *Mr. Secretary Morrice and the L. Annesly Sworn.*

Council. Mr. Secretary, we desire you would be pleased to tell my Lords what Colonel *Hacker*, the Prisoner at the Bar, did confess to you, and others, touching this Business.

Mr. Secretary. When Colonel *Huncks* (for that Title he now assumes,) was brought over out of *Ireland*, and committed to the *Tower* of *London*, there was Three of the Council, by Order of the Board, sent to examine him, Sir *Anthony Asbly-Cooper*, Mr. *Annesly*, and myself: In Obedience to that Order we repaired to the *Tower*, and had Col. *Huncks* brought before us; we told him, that he (being one of those which were appointed by Warrant from the Supposititious High-Court of Justice to carry on the Execution of the King, and see it done,) must needs know who was the Executioner: Whereunto he answered, that he, for his Part, did not know who was the Executioner, for the Warrant whereby the Executioner was nominated and appointed was refused to be signed by him, but Colonel *Hacker* signed it, and therefore Colonel *Hacker* must know it. Accordingly upon our Return we made our Report to the Board, and upon this there was an Order

that Col. *Hacker* should be sent for, taken into Custody, and brought before the Lords of the Council: Accordingly he was apprehended, and the same Three Counsellors were sent down to examine him. We took him into a private Room, and examined him, and told him, (amongst other Things,) that he being the Man that (as we are informed,) did Sign the Warrant for the nominating and appointing the Executioner, doubtless he must needs know who that was; at first he said he did not Sign this Warrant: I told him I would have him well advised what he said; for if you deny it, it will be proved by such a Man, naming Colonel *Huncks*, and that you will do yourself a great Prejudice if you deny that; faith he, *I do believe I did Sign the Warrant for appointing the Executioner*; this is all I can say.

Lord Annesly. Gentlemen of the Jury, it is very true as you have been told already, that I was amongst those that the Council sent to the *Tower* of *London*, first to examine Colonel *Huncks*, and Mr. *Cook*, that hath been condemned, *Hulet*, and some other Prisoners. We did examine Colonel *Huncks*, and he did by his Examination acquit himself from Signing that Warrant that he was charged with, being one of the Three appointed to see Execution done; but they appointed another to Sign the Warrant, (Colonel *Huncks* refusing,) and upon his refusing, (as he said,) *Cromwell*, that urged him to it, said he was a cowardly fellow, or something to that Purpose: When we examined him about the Person in the *Frock*, he said he knew nothing of that, but that Colonel *Hacker* Signed that Warrant for Execution; this Examination being reported to the Council, the Lords sent for *Hacker*. I think upon Notice Colonel *Hacker* came; he had been of the Army, and continued till that Time an Officer. When he came thither, the Lords of the Council having Notice of it, commanded the same Persons formerly appointed to go out and examine him; we had him into a little Room belonging to the Clerks of the Council, and examined him to that Point concerning the Man that cut off the King's Head, whether he knew any Thing of it? He did affirm positively he did not know; we told him that he was the Man by Testimony that Signed a Warrant for Execution of the King, and then certainly he must know the Person that he appointed by his Warrant; he said, if I did Sign any Warrant it was by Command of the General; that being but Hypothetical, we thought it meet to make it more positive, whereupon we asked him whether he was the Man that Signed the Warrant, Or no? Thereupon, (as I remember, and as the Examination, which was all written with mine own Hand, doth help my Memory,) he did say he did believe he did Sign such a Warrant; thereupon he was asked further, how could it be possible that he could forget the Man, if he Signed the Warrant; he knew who the Man was that was appointed; he said for that, that he did believe the Warrant was read to him, and that therein the Man's Name might be, but he could not now remember his Name; this was the Effect of his Examination and Confession.

* These were both Commissioners, yet came off from the Bench to give Evidence, but did not go up to the Bench again during that Trial. Kelyng 12.

Council. Mr. Francis, did you see Colonel Hacker, at the Time of the Execution, upon the Scaffold?

Francis. Yes, I did see him as a Principal Commander there; I was coming out of *Westminster* into *London*, about half an Hour before the King came upon the Scaffold; coming near the Scaffold, as soon as I was engaged in the Throng, (when I had passed about Eight or Ten Yards,) I could not pass backward nor forward; I was enforced to stand there: During that Time I saw the Scaffold, and the Ax, and the Block taken up by divers People; and principally I saw a Man that is not here, he is in Custody, I saw him take it up, and try it with his Thumb, and lay it down; this was *James Berry*, he came off, and came not upon the Scaffold again, unless disguised.

Council. Did you see Hacker there? Did you see him upon the Scaffold when the King came on?

Francis. I did see him, he was there; His Majesty came to the Side of the Scaffold next to *St. James's*; he looked that Way and smiled; after a while the Block and Ax lying down about the middle of the Scaffold, there was a Black Cloth hung about the Rails of the Scaffold.

Council. We have another Evidence, the Prisoner hath confessed enough; but we have proved that he had the King in Custody; he confessed that he believed he did Sign the Warrant, and that he at the Time of Execution was there to manage it. What do you say for yourself?

Hacker. Truly, my Lord, I have no more to say for myself, but that I was a Soldier, and under Command, and what I did was by that Commission you have read.

Lord Chief Baron. Can you deny any Thing that Mr. Secretary and Mr. Annesly have declared?

Hacker. I cannot tell what I might then say, the Gentlemen were very strict with me; truly I have been no Counsellor, nor Advisor, nor Abettor of it, but in Obedience to the Command over me I did act. My Desire hath been ever for the Welfare of my Country, and that Civil Power might stand.

Lord Chief Baron. Have you yet resolved who you gave the Warrant for Execution to?

Hacker. No, my Lord, I delivered none.

Lord Chief Baron. But you know who it was directed to.

Hacker. No indeed, my Lord; be pleas'd to ask Col. Huncks whether I read this Warrant or no.

Lord Chief Baron. This is all you have to say for yourself?

Hacker. Yes, my Lord.

Lord Chief Baron. Then, Col. Hacker, for that which you say for yourself, that you did it by Command, you must understand that no Power on Earth could Authorize such a Thing, no Command in such a Case can excuse you. There is a Twofold Obedience, a Passive-Obedience, to suffer rather than do Things unlawful; and an Active Obedience, to do that only which is lawful; and therefore this will not excuse your Obedience to those unlawful Commands.—Gentlemen of the Jury, you see the Prisoner at the Bar stands Indicted for *Compassing* and *Imagining* the Death of the late King; and there are several open Acts set forth in the Indictment, which tend to prove that Matter; one is *Assem-*

bling and *Meeting* together, another is *Sitting* upon the King, another *Sentencing*, and at last concludes with the *Murder* of the King, as the Consequence of all. Any Thing that tends to the proving of this *Compassing* and *Imagining* his Death in any one of these Particulars, that is an Evidence to you to prove the whole Indictment. This Gentleman was Commander of Halberteers; Col. Tomlinson saith, that though he kept the Guards that were about the King's Person, this Gentleman, with Two other Persons, brought Halberteers, that there might not be such frequent Access as formerly to the King; there is one Act. He commands these Halberteers at that Time, when the Business was in Agitation, before that High-Court, as they called it. You see after the Sentence was given that he was one of the Persons to whom the Warrant for Execution was directed; you see afterwards there was a consulting together, *Cromwell*, *Ireton*, *Harrison*, and *Axtell*, were in the Chamber, when Col. Huncks refused to Sign; the Prisoner signed the Warrant, but knows not the Person to whom it was directed: You see besides Col. Tomlinson's Testimony, who saith further, that when they were discharged, Col. Hacker went in, and the King was brought out presently after to that Fatal Place. Col. Huncks Swears that when the Warrant was offered to him he refused it; that Hacker, the Prisoner at the Bar, signed a Warrant, though he doth not remember the Name of the Person to whom; it appears by Two Witnesses (honourable Persons) he confessed he signed it, but he did not know the Person to whom directed. You see another Witness, *Benjamin Francis*, he saith he saw Hacker upon the Scaffold with the King.

He doth not deny the Fact; you need go no further, it is very plain he had a Hand in this Business, a principal Agent in it; he that brought the King to the Scaffold, he that had the Care in managing that Business, he that signed the Warrant to the Executioner, either he is Guilty of *Compassing* the Death of the King, or no Man can be said to be Guilty.

The Jury went together, and after some little Consultation returned to their Places.

Clerk of the Crown. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. Francis Hacker, Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar, how say you, is he Guilty of the High-Treason, whereof he stands Indicted, and hath been Arraigned? Or Not Guilty?

Foreman. Guilty.

Clerk. Look to him, Keeper.

Clerk. What Goods and Chattels, &c.

Jury. None that we know of.

The Trial of WILLIAM HULET, on the Fifteenth of October, 1660, at the Sessions House in the Old-Baily.

Clerk of the Crown. Set William Hulet to the Bar, [who was brought accordingly.] William Hulet,

Hulet, alias Houlet, Hold up thy Hand. Those Persons that were last called of the Jury are to pass, &c. if you will challenge them, or any of them, you must Challenge them when they come to the Book before they be Sworn.

Lord Chief Baron. Understand you have Power to Challenge Five and Thirty Men, and not above; you may Challenge them without Cause shewn. If you have Cause for any other you may Challenge them also. If you will have Pen, Ink, and Paper, you may have them.

Hulet. Truly, my Lord, I cannot write but a very little; I shall not need them. I did not understand my Indictment well, I desire to hear it again.

Lord Chief Baron. You will hear it read again.

Clerk. Sir. Thomas Allen, Sir Henry Wroth, Tho. Bide, Robert Sheppard, Thomas Morris, Ralph Halsal, John Gallyard, John Nichol, Thomas Ufman, Christopher Abdy, William Dod, in all Twelve. Jury Called and Sworn.

Clerk of the Crown. William Hulet, alias Houlet, Hold up thy Hand. You Gentlemen that are Sworn, look upon the Prisoner.

Clerk. You shall understand that he stands Indicted of High-Treason, by the Name of William Hulet, alias Houlet, late of Westminster in the County of Middlesex, Gent. for that he as a false Traitor, &c. [here the Indictment was read,] unto which Indictment he hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Countrey, which Countrey you are: Now your Charge is to enquire, &c.

Sir Edward Turner. May it please your Lordships, and you Gentlemen that are Sworn of this Jury, we are now entering upon the last Act in this sad Tragedy of the Murther of the late King; there have been before you some of the Judges, the Council, the Chaplain, and the Guard; this Prisoner at the Bar, in the last Place, was one of those, which came with a Frock on his Body, and a Vizor on his Face, to do the Work. The Course of our Evidence will be this, First, we shall prove by Witnesses that saw him, and knew him, that he was thus disguised; he hath confessed that he was upon the Scaffold, that he hath had several Preferments; and I fear it will appear, that it was he, that gave that Fatal Blow; for he hath confessed he had an Hundred Pounds given him for his Service therein; and we doubt not but to pluck off his Vizor by and by. The Indictment is for Compassing and Imagining the Death of his late Majesty of Glorious Memory; if we prove to you any Circumstantial Overt-Act whereby you shall be convinced of this, you are to find him Guilty.

Richard Gittens Sworn.

Council. Mr. Gittens, tell my Lord and the Jury what you know concerning the Prisoner at the Bar.

Gittens. The Thing is this, my Lord, this Gentleman at the Bar and myself were both in a Regiment in One Company as Serjeants about Twelve or Thirteen Years together. About a Day or Two before the King came to the Scaffold, Colonel Hewson did give Notice to a Lieutenant that we should come to him, about 38 of us, and he put us all to our Oaths, that we should say nothing of what they did; he Swore us to the Book; after he had Sworn us, he asked us if we would undertake to do such an Act; if we would we should have an Hundred Pounds

down, and Preferment in the Army as long as that stood, and the Parliament. Afterwards we refused every Person, we thought Captain Hulet did refuse; after all refused, it seems he did undertake to do the Deed. When the King was brought on the Scaffold, we were in Scotland-yard, and they were upon the Guard in the Banqueting-Chamber; when they were there I laid down my Arms, and got into the Company; Captain Webb kept the Guard, with his Halbert in his Hand, by the Scaffold, and I did bustle to come near to them; then I returned back. Hulet (as far as I can guess) when the King came on the Scaffold for his Execution, and said, Executioner, is the Block fast? Then he fell upon his Knees.

Council. Who did?

Gittens. Hulet, to ask him forgiveness; by his Speech I thought it was he; Captain Atkins said, who would not undertake to do this Fact; I told him I would not do it for all the City of London; no, nor I neither for all the World, saith Atkins; you shall see Hulet quickly come to Preferment; and presently after he was made Captain-Lieutenant.

Council. Was he with his Regiment that Day?

Gittens. We could not see him with the Regiment all that Day; he was never absent at any Time before.

Council. Did you know his Voice?

Gittens. Yes, Sir.

Council. Did you mark the Proportion of his Body, or his Habit, what Disguise he was in?

Gittens. He had a Pair of Freeze Trunk Breeches, and a Vizor, with a Gray Beard; and after that Time Colonel Hewson called him Father Gray-beard, and most of the Army besides, he cannot deny it.

Hulet. I desire as to this Witness; he doth alledge that he and I were Serjeants in One Company, which I deny; he was not in that Company I was in; I desire to know of him how he comes to know that I was there at that Time.

Gittens. By your Voice.

Hulet. I will Swear that this Man was with the Regiment under the Scaffold; where were you at that Time when the Act was done?

Gittens. Where was I? By Captain Webb.

Hulet. Where was he?

Gittens. At the Door of the Banqueting-house.

Hulet. Was you on the Scaffold, or no, Sir?

Gittens. I was on the Scaffold End.

Hulet. My Lord, I desire you to consider what this Person saith, that he was upon the Guard in Scotland-yard, and at the Scaffold with Captain Webb. My Lord, I desire again, whereas he said I had a Gray Beard, let any Man besides himself say that ever I was called by that Name Gray-beard, throughout the Regiment.

Stammers Sworn,

Council. What have you to say concerning the Prisoner at the Bar?

Stammers. He was a Captain-Lieutenant to Colonel Hewson's Troop; when I had entered my self into that Troop I was a while in Dublin, and I was commanded by the Prisoner at the Bar, I and the rest, to march to a Place called Lutterels-Town, about 5 Miles beyond Dublin; the Prisoner at the Bar came thither to us Two Days after; then being in his Chamber he sent for me up; I went up and sat down; he examined where I had served: I told him I did formerly

merly belong to the Lord of *Inchiqueen*; he asked me if I was ever in the King's Army? With that he walks about the Room Two or Three Turns; saith he, I was the Man that Beheaded King *Charles*, and for doing it I had an Hundred Pounds, saying, I was a Serjeant at that Time.

Hulet. *I desire to ask him a Question; I confess—(what is your Name?)*

Council. *Stammers*, his Name is *Stammers*.

Hulet. *Such a one was under my Command: I think I have not seen you these Eight Years: I desire to know when these Words were spoken, and the Place.*

Stammers. I say in *Lutterels Town*, in your own Chamber, and that was Nine or Ten Years ago.

Hulet. *It is about Eight Years ago since I left that Command: Who was by at that Time?*

Stammers. No body.

Hulet. *'Tis strange: How long had you been in the Troop before?*

Stammers. I was in *Dublin* about a Fortnights time, then you sent for me, and I came to *Lutterels Town*; the first Time that I came to the Troop was at *Dublin*, and then you came to me with Two Orders from *Hewson*, and then you did pretend you was Brother to one Mr. *Chambers*, and then we went and quartered in *Lutterels Town*.

Hulet. *My Lord, his Examination in Ireland and this doth not agree; you did deny this before Baldwin a Trooper; I desire his Examination may be read, (which was accordingly read, and agreed with the Testimony now given.) I desire he may mention what Man that was, that I sent for him.*

Stammers. I cannot tell what Man.

Hulet. *My Lord, I desire that Servant may be either named or produced.*

Stammers. I cannot remember the Man, it was Seven Years ago.

Hulet. *Then again upon another Account, as he speaks before, that I should examine him where he had been, and that he should say at the Lord Inchiqueen's.*

Captain *Toogood* Sworn.

Toogood. I shall first give your Lordships and the Jury what I have heard others say concerning the Prisoner at the Bar, and that is first Colonel *Hewson*; I was in the Year 1650, about September, in *Dublin Castle*, about some Business with *Hewson*; Captain *Hulet*, the Prisoner at the Bar, came into the Room, he talked with Col. *Hewson* a little while; I observed them very familiar, and I asked *Hewson* what he was, he told me he was his Captain-Lieutenant of Horse; I desired to know where he had him? he told me he made him so from a Serjeant, and a very Mettled Fellow he was; it was he that did the King's Business for him upon the Scaffold. In the Year 1653, there was a Disbanding of the Army in *Ireland*; this Gentleman was then continued Captain-Lieutenant in *Pretty's* Regiment: I discoursed with *Pretty* concerning him, and one Part of it, I remember, was about the King's Death; and he did tell me that he was assured by Colonel *Hewson*, that *Hulet* either cut off the King's Head, or held it up, and said, *Behold the Head of a Traitor*; Col. *Pretty* would not tell me which of the Two it was; but I saw the Person that did it, and methought he did resemble this Person. About 12 Months after I came

to live near the Prisoner in *Ireland*; once I remember at one Mr. *Smith's* at the *White-horse* in *Carlow* I met him there, and I was asking the Prisoner at the Bar the Question, Whether he was the Man that cut off the King's Head, or not? Saith he, Why do you ask me this Question? I told him I had heard so by several, namely, by *Hewson* and *Pretty*; upon that he said, well, *What I did I will not be ashamed of; if it were to do again, I would do it.* Once since that Time, about half a Year afterwards, I was in the same Place, and there talking with him about the King's Death; he was telling me it was true, he was one of the Two Persons, that were disguised upon the Scaffold. I desired to know what if the King had refused to submit to the Block? Saith he, there were *Staples* placed about the Scaffold, and I had that about me that would have compelled him; or Words to that Effect; other Times I have heard him speak something to this. November the last, in the Queens County at *Maryborough*, Col. *Jones* took upon him to be Governour, and to chuse Two out of a Regiment that might be the Rulers of the People, Legislators I think they call'd them; I did Discourse about the Business again, and did oppose it all: After a while he began to be very hot in the Business about *Lambert*: Said I, you were heretofore too forward; says he, if it be the Business of the King's Head I will never deny it, call me to an Account when you will: I have observed in *Ireland*, that it hath been generally reported that he was either the Man that cut off the King's Head, or that held it up, as I said before, and I have heard them sometimes call him *Grandfire Grey-beard*.

Hulet. *My Lord, I do confess I know the Gentleman very well, we were in a Regiment together; I never discoursed with any concerning this, but only once at a Place going from Cullen to Munster we did drink at a Place called Goran, we were discoursing about the Business of the King, the Justification of the cutting off His Head; saith Stammers, I did hear that you were one of the Persons for that purpose; said I, they that say so, do me Wrong: Saith he, it is no Matter if you were so, for it was a Just Act: Said I, whether it was or no I have nothing to do to justify it; he was speaking, as I hope to be saved, I would have done it.*

Walter Davis Sworn.

Council. What can you say, Mr. *Davis*, to this Business?

Davis. Gentlemen, that which I can say is this; in *January* last was Two Years I was at *Dublin*, I met Captain *Hulet*, he invited me to take Share of a Pint of Wine, I went with him to a Tavern; when we were in the Tavern he called for a Pint of Wine, and I call'd for another; before we had Drank the last Pint of Wine, said I to Captain *Hulet*, I pray resolve me this one Question; it is reported that you took up the King's Head, and said *Behold the Head of a Traitor*; Sir, said he, it was a Question I never resolved any Man, though often demanded; yet, saith he, whosoever said it then it matters not, I say it now, it was the Head of a Traitor.

Hulet. *I confess we did meet together, as you say, but I must and do deny the Words.*

Lieutenant-Colonel *Nelson* Sworn.

Nelson. My Lords, and Gentlemen of the Jury, upon a Discourse with Colonel *Axtell*, as I related

lated once this Day, about Six Years since, in many other Discourses we fell to discourse about the Death of the late King; I supposing he had been acquainted with that Affair, I desired him to tell me those Two Persons disguised upon the Scaffold; he told me I knew the Persons as well as himself; saith he, they have been upon Service with you many a Time; pray, Sir, said I, let me know their Names; truly, said he, we would not employ Persons of low Spirits that we did not know, and therefore we pitch'd upon Two Stout Fellows; who were those, said I? It was *Walker* and *Hulet*, they were both Serjeants in *Kent* when you were there, and Stout Men; who gave the Blow, said I? Saith he, poor *Walker*, and *Hulet* took up the Head; pray, said I, what Reward had they? I am not certain whether they had Thirty Pounds apiece, or Thirty Pounds between them.

Hulet. Pray let *Mr. Axtell* speak to this, he is hard by.

Colonel *Tomlinson* Sworn.

Council. Pray tell my Lords your Knowledge in this Business.

Tomlinson. My Lords, and Gentlemen of this Jury, I cannot punctually remember what their Habits were; they had close Garments to their Bodies, they had Hair on their Faces, one was Gray to the best of my Remembrance, the other was Flaxen.

Council. Can you tell who struck the Blow?

Tomlinson. My Lord, I cannot remember, but I think he with the Gray Hair on his Face did it.

Nelson. My Lord, I will not positively say it, but it came lately to my Mind, that I did hear in *Ireland* by Colonel *Pretty* that *Hulet* did it; my Lord, this Colonel *Pretty* is alive in *Ireland*.

Benjamin Francis Sworn.

Francis. My Lords, and Gentlemen of the Jury, as to the Prisoner at the Bar, he was very Active in that horrid Act; there was Two of them had both Cloaths alike, their Frocks were close to their Bodies, (as I remember,) they were rather in Butchers Habits of Woolen; one had a Black Hat on his Head cock'd up, and a Black Beard, and the other had a Gray grised Periwig hung down very low; I affirm that he that cut off the King's Head was in the Gray Periwig, and I believe this was about that Man's Stature, (pointing to *Mr. Hulet*,) and his Beard was of the same Colour, if he had any. I was coming from *Westminster*, the Scaffold was encompassed within with a great Guard of Soldiers of *Redcoats*, I think commanded by *Biscoe*.

Hulet. Was you upon the Scaffold?

Francis. No, Sir, there was none of my Constitution upon the Scaffold.

Council. Fuller Evidence I think cannot be expected; you have heard all the Witnesses; what can you say for yourself?

Hulet. My Lord, here are several Witnesses examined concerning the Business, and for my Part I do not understand the Law; I must leave it to the Court. I can upon the other Account prove where I was at that very Time; I can in the next place, my Lord, since I came into London, for I did not hear it before, I can tell you who was the Person, that did that Act; I can bring Forty and Forty Witnesses that will prove, who they were that did it, as I have

been informed by several Witnesses, that they know who was the Person that did it: Upon the other Account, I can prove where I was that Day, but I did not know, when I was Arraigned, what was laid to my Charge; here were some Examinations taken before my Lord Mayor concerning the Person or Persons, that did that Act. [Here he offered a Paper, a Copy of the said Examinations, Subscribed *Mary Brandon*, and divers others.]

Mr. Secretary Morrice. Was you not examined in the Tower?

Hulet. Yes, Sir.

Mr. Secretary Morrice. Did not we tell you that you were charged with cutting off the Head of the King?

Hulet. Yes, Sir, you did tell me so.

Lord Chief Baron. Then you had time to provide your Witnesses.

Hulet. I was a close Prisoner.

Lord Chief Baron. Where were you on the Day of Execution?

Hulet. I was a Prisoner then at *Whitehall*.

Lord Chief Baron. For what?

Hulet. Upon this Account we were taken up, about Seven or Nine of us were taken up, we were all Serjeants, Three of Colonel *Hacker's*, the rest of *Pride's* and *Fairfax's*, and about Ten of Clock at Night were discharged.

Lord Chief Baron. For what was you Imprisoned?

Hulet. For refusing to be upon the Scaffold.

Burden. It was a Common Speech among the Soldiers, that *Hulet* cut off the King's Head.

Lord Chief Baron. How long before did you see *Hulet* upon the Guard?

Burden. The Day before, but not that Day, nor the Day after.

Lord Chief Baron. *William Hulet*, the Evidence against you is Twofold, one concerning the cutting off the King's Head, the other that you were in a Frock; if it be proved that you did not cut off the King's Head, yet if you were in a Frock in that Place, it will not excuse you; if you have any Thing to say I will be glad to hear it.

Hulet. I desire the Persons may be examined upon Oath, Prisoners and others, who was the Person that did it; I mean *Hacker*, *Huncks* and *Phayre*.

Lord Chief Baron. You that are the Prisoner, for that which concerns *Hacker* and *Phayre*, you know what Conditions they are in, one already tried for his Life, the other a Prisoner in the Tower; and *Hacker* saith himself he doth not know the Person at all; you that are Prisoner at the Bar, the Court conceives you have had Time to get your Witnesses here; you were informed of the Business before you came here, yet notwithstanding, it is conceived there are some here that can say something tending to the Information of the Jury, but they are not to be admitted upon Oath against the King.

Sheriff's Officer Examined.

Sheriff's Officer. My Lord, all that I can say in this Business is this; one of our Fellows that belong to our Master, the Sheriff, *John Rooten* by Name, he and I were talking about this very Story, and he did acquaint me with this, That he was in *Rosemary Lane*, a little after the Execution of the King, drinking with the Hangman, that he did urge him whether he did this Fact; God forgive me, saith the Hangman, I did

did it, and I had Forty Half-crowns for my Pains.

Abraham Smith Examined.

Smith. My Lord, as soon as that Fatal Blow was given I was walking about *Whitehall*, down came a File of Musketeers; the first Word they said was this, Where be the Bargemen? Answer was made, Here are none; away they directed the Hangman into my Boat; going into the Boat he gave one of the Soldiers a Half-crown; saith the Soldiers, Watermen, away with him, be gone quickly; but I fearing this Hangman had cut off the King's Head, I trembled that he should come into my Boat, but dared not to examine him on Shore for fear of the Soldiers; so out I lanced, and having got a little way in the Water, said I, Who the Devil have I got in my Boat? Says my Fellow says he, why? I directed my Speech to him, saying, Are you the Hangman that cut off the King's Head? No, as I am a Sinner to God, saith he, not I; he shook every Joint of him; I knew not what to do; I rowed away a little further, and fell to a New Examination of him, when I had got him a little further: Tell me true, said I, are you the Hangman that hath cut off the King's Head? I cannot carry you, said I; No, saith he, I was fetched with a Troop of Horse, and I was kept a close Prisoner at *Whitehall*, and truly I did not do it; I was kept a close Prisoner all the while, but they had my Instruments. I said I would sink the Boat if he would not tell me true; but he denied it with several Protestations.

William Cox Examined.

Cox. When my Lord *Capell*, Duke *Hamilton*, and the Earl of *Holland*, were Beheaded in *Palace-yard* in *Westminster*, my Lord *Capell* asked the Common Hangman, said he, Did you cut off my Master's Head? Yes, saith he. Where is the Instrument that did it? He then brought the Ax. Is this the same Ax, are you sure? said my Lord. Yes, my Lord, saith the Hangman, I am very sure it is the same. My Lord *Capell* took the Ax, and kissed it, and gave him Five Pieces of Gold. I heard him say, Sirrah, wert thou not afraid? Saith the Hangman, they made me Cut it off, and I had Thirty Pound for my Pains.

Richard Abell Examined.

Abell. My Lord, in the House of one Mr. *Bramston* I did hear *Gregory* himself confess that he cut off the King's Head.

Lord Chief Baron. You that are the Prisoner at the Bar, the Court is willing to give all full Scope, as far as may be, to examine the Truth of the Fact; as they would not condemn the Innocent, so they would not acquit the Guilty: Do you desire further Time to examine the Truth of it, before it be put upon the Jury?

Hulet. I do confess I do not understand the Laws, I desire a little further time; I desire the Jury may be withdrawn; I desire a Fortnights Time, but submit to the Court.

A Stranger Examined.

Stranger. My Lord, I was with my Master in the Company of *Brandon* the Hangman, and my Master asked *Brandon* whether he cut off the King's Head, or no? He confessed in my Presence that he was the Man that did cut off the King's Head.

Lord Chief Baron. You that are the Prisoner at the Bar, the Court was willing to give you as much Time as they could by Law; the Jury hath been charged, and Evidence given; all those Witnesses have been Examined that we could hear of now for your Advantage; I will say something to you. It was here said, and given in Evidence, that *Axtell* did send a Boat to fetch the Common Hangman: If we knew more that might tend to your Advantage it should be repeated. You Gentlemen of the Jury mark it; There is first *Gittens*, he swears that he was in the same Regiment that you were in 12 or 13 Years together; he saith that he and others were called together upon their Oaths, and you amongst the rest; and there was an Oath of Secrecy, asking them if they would do such an Act; they all refused to do it, so did you; but he said, the Day of Execution of the King this *Gittens* got among them, and one Captain *Webb* kept the Door, and he saw you fall before the King, and ask the King Forgiveness; he said he heard your Voice, and so knew you; and that the Day after Captain *Atkins* said, you shall see *Hulet* shortly come to Preferment; and he saith he did not see you in the Regiment that day; and that *Hewson* and all the Regiment used to call you *Father Grey-beard*. *Stammers* he saith, that you was Captain-Lieutenant to Col. *Hewson's* Troop; and you coming to *Lutterels* Town asked him several Particulars, whether he had been in the King's Army? Walking up and down, you said you were the Man Beheaded King *Charles*, and for that you had One Hundred Pounds; this he Swears positively. *Sampson Toogood*, he swears he saw you come to Col. *Hewson's* in 1650, you talked to him very familiarly; when you were gone he asked who you were? he told him you were a Captain-Lieutenant of Horse; and he said that you were a very Mettled Fellow, and did the King's Business upon the Scaffold; that afterwards Col. *Hewson's* Regiment being discharged, you came to be of *Pretty's* Regiment, and that he told this Gentleman that he was assured by Col. *Hewson* that it was you that either cut off the King's Head, or took it up, and said, *Behold the Head of a Traitor*. He saith afterwards, that in 1654 in *Carlrow* he asked you the same Question, and you demanded of him who told him; he answered he was told by several Persons, namely, *Hewson* and *Pretty*; you said, What I did I will not be ashamed of, and if it were to do I would do it again; he says again at another Time, that you were One of the Two Persons who were then upon the Scaffold, and that there were Staples to enforce the King to submit, if he struggled; I had that about me which would have done the Business. And he says, in November last you came to a Meeting upon a Summons of Col. *Jones*, and then did avouch *Lambert's* Quarrel; he said you were too forward heretofore; you said, if it be the Business of the King's Head I will never deny it, call me to an Account when you will. He heard many call you *Grandfire Grey-beard*. Then there is another Witness, I think his Name is *Davies*, he was in Discourse with you drinking Two Pints of Wine; it is reported (says he) you took up the King's Head, and said, *Behold the Head of a Traitor*; and he desired you to resolve him whether it was so or no; you said again, it had been demanded often, but you never

resolved any Man; you said, whosoever said it then, I say now, *It was the Head of a Traitor.* *Nelson*, he swears, That about Six Years since he was in Discourse with *Axtell* about it, and *Axtell* told him they were a couple of Stout Men to your Knowledge, (speaking to *Nelson*;) I was one to do in that Affair; we made Choice of Two, *Walker* and *Hulet*; who gave the Blow? *Walker*; but *Hulet* took up the Head. Colonel *Tomlinson*, he says, that there were Two on the Scaffold, one that had a Grey Beard, and the other somewhat Flaxen. *Nelson* also heard by Col. *Pretty*, that you did it. And then *Ben. Francis*, he says, they had both Frocks alike, one a Black Beard, and a Grey-grisled Perriwig, and believes he was about your Stature. This is the Substance of what the Witnesses have said against you. Gentlemen, you hear what has been proved on behalf of the Prisoner, that is, if you believe the Witnesses that are not upon Oath, that *Brandon* confessed it, and denied he did it: Several Witnesses that say *Brandon* confessed he did it, and that he told them of a Sum of Money that was given him. *Gentlemen of the Jury*, You see the whole Point in this Case, the Indictment is for Compassing and Imagining the Death of his late Majesty; the Evidence goes Two Ways, part of the Witnesses one way, part another way; if you believe either of them, then you ought to find that the Defendant is Guilty; if either he was in the Frock, though he was not the Man that did it; or if you find he did it, it is a clear Testimony of his Imagining and Compassing the Death of the King. Now it rests upon you to consider the Evidence that is given for the Common Hang-man, that he should be the Man that did it, that the Prisoner at the Bar did not Cut off the Head: On the other Side, if you do believe he was One of the Two in the Frocks, upon the Relations of these Persons, *Pretty*, *Hewson*, and *Axtell*; if you believe it upon these Relations, and after his own Confession, that if he was to do it again, he would do it; then upon this Evidence that is given you, he is to be found Guilty, tho' he did not cut off the King's Head. You have heard the Evidence on all Sides, it rests upon you; pray, go together, and consider of your Verdict. I have forgotten one Thing. God forbid I should omit any Thing that may be as well for Advantage, as against the Prisoner at the Bar: If you take it singly, if you have nothing of other Proof, what another Man says of me doth not charge me, unless there be something of my own; what you have heard from himself, and what you have heard by Relations from others, that is to be left to you. It is my Duty to tell you, that which is said by another of me, that alone is not a pregnant Evidence; you must remember with all what is sworn positively, what he said himself; this being said, I must leave it to you. Pray go together.

[After a more than ordinary Time of Consultation, the Jury returned to their Places.]

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. *William Hulet*, alias *Howlet*, Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar: How say you, is he Guilty of the High-Treason, &c.

Fore-man. Guilty.

Clerk. Look to him, Keeper. What Goods and Chattels?

Jury. None, to our Knowledge.

[And then the Court adjourned till to Morrow Morning Seven a Clock, in this Place.]

October 16th, 1660.

Sessions-House in the Old-Bailey.

Proclamation being made.

Clerk of the Crown. Set *Isaac Pennington*, *Henry Marten*, *Gilbert Millington*, *Robert Tichburn*, *Own Roe*, *Robert Lilburn*, *Henry Smith*, *Edm. Harvey*, *John Downs*, *Vincent Potter*, *Augustin Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, and *Tho. Wayte*, (in all Fifteen) to the Bar: which was done accordingly.

Clerk of the Crown. You the Prisoners at the Bar, those of the Jury that were last called are to pass, &c. If you, or any of you, will Challenge all, or any of them, you must Challenge them when they come to the Book, before they be Sworn.

Charles Pitfield, *Christopher Abdy*, *Richard Cheyney*, *George Tirrey*, *Daniel Cole*, — *Hall*, *Richard Abell*, *Edmund Starnel*, *Edmund Pit*, *Will. Witcomb*, *Fran. Dorrington*, and *T. Nicoll*, Called and Sworn of the Jury.

Clerk of the Crown. *Isaac Pennington*, *Henry Marten*, &c. Hold up your Hands. Gentlemen that are Sworn, look upon the Prisoners at the Bar. You shall understand that the said *Isaac Pennington*, &c. together with, &c. [Here the Indictment was read.] unto which they and every of them have severally pleaded Not guilty, and for their Trial have put themselves upon God and the Country, which Country you are: Now your Charge is to enquire, &c.

Council. May it please your Lordships, and you Gentlemen of the Jury, the Prisoners at the Bar stand Indicted of High-Treason, for Compassing and Imagining the Death of the late King *Charles* the First, of Glorious Memory. The Indictment sets forth several Overt-Acts, by which that Imagination doth appear, the Treason it self is the Compassing: Our Evidence will go on thus, we shall prove against them all, that they did sit (in that which they called the High-Court of Justice) upon the King, whilst the King was a Prisoner at the Bar, most of them did Sentence him; all but *Harvey* and *Pennington* did Sign that Bloody Warrant for his Execution; and that one of the Prisoners at the Bar was in before the High-Court of Justice, consulting of bringing it about. When we have proved this, I think it is enough. Pray call the Witnesses.

Harvey. My Lord, according to my Duty, I shall save this Honourable Court all their Trouble. I do humbly acknowledge that I was and did Sit in that Court, but I did not Sign and Seal that Warrant.

Lord Chief Baron. It is very true, Mr. *Harvey*.

Harvey. I hope your Lordships and this Honourable Bench will give me leave (in that Time which

which you shall appoint) to shew you my Reasons that I did it not of Malice, and it was an Error not of Will, but of Judgment; what I have to say will be thought not for the annihilating, yet for the Extenuation of my Crimes.

Lord Chief Baron. Say now what you will, only consider with your self whether you have not already spoken as much as you can for the Extenuation of it; say what you can further.

Harvey. Let me speak a Word.

Lord Chief Baron. Go on, Sir.

Harvey. My Lord, I do humbly conceive if I had conceived that I had then done any Thing of Treason, I would not for all the World have been there; I was present when his Majesty did not own the Court, desiring that both his Houses might meet, that he might have a Conference with them for settling of the Peace: My Lord, heartily and unfeignedly I did endeavour that that Advice might be embraced, and that no Sentence might be pronounced. I was one of those (with some others) that did so far promote it, that that which they called the High-Court of Justice did withdraw to consider of it, but the Major Part of it did dissent. But, my Lord, I was so unhappy as to return to the Court, though with Reluctancy; I went with a Resolution not to go more to them, nor never did; I was summoned to come to the Court: I did declare I abhorred the Thing, that my Soul had Reluctancy against it, and I was greatly grieved and troubled at it, and I did refuse any more to come, or to consult about any thing that followed, in order to His Majesty's Death, and to Sign, and to Seal. And that I may make it appear to your Lordships, I pray I may have a Witness or two examined.

Lord Chief Baron. Name them. Did he Sit upon the Day of Sentence?

Council. Yes he did; he followed it.

Mr. Edward Corbet Examined.

Mr. Corbet. My Lord, the Attestation which I this Day make solemnly, in the Holy Fear of Almighty God, and in Awful Reverence of this great Tribunal, hath only this great Scope, that Colonel *Harvey*, the Prisoner at the Bar, upon that Day of Signing the Warrant for that horrid Execution of His most Excellent Majesty, not in Title only, but in Reality, he finding me as I was passing to the Duty of my Place in the Assembly of Divines then Sitting, he seized on me, and desired Privacy of Time and Place, that he might disburthen his Soul and Spirit unto me; it was then about Nine a Clock in the Forenoon to the best of my Remembrance.

Lord Chief Baron. What Day, I beseech you?

Corbet. To the best of my Remembrance upon the *Monday*; Sir, says he, I desire to make known unto you the deep Horror that sits upon my Spirit, the Sadness and Grief, above all Expressions, that my present Case has cast me into; I have endeavoured, Sir, (says he) in the Sight of God, all that possibly I could, to divert them from the Sentence, I could not prevail. Sir, says he, I have been this Morning solicited with very much Earnestness, that I would go and Sign, and Seal, and Order that wicked Execution, which my Soul abhors; and, Sir, that I might be removed and withdrawn from all Temptations and Sollicitations of such a wicked Fact, I beseech you spare me your Time this Day; which I did, in the Presence of another

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Divine, till Four a Clock in the Afternoon, and then I parted and went to *Westminster*, to Sign and Affix that which I did apprehend my bounden Duty, the Vindication of the Assembly of Divines, wherein we did testify, that it was far from our Thoughts to advise the Parliament to any such unheard of unnatural Act.

Council. We do admit, that after he sat, and Sentence past, that he did not Sign.

Harvey. Be pleased to call one *Mr. Thomas Langham*, he hath heard me often declare against that Act.

Mr. Thomas Langham Examined.

Lord Chief Baron. What do you say, *Mr. Langham*, as to this Business?

Langham. Sir, about the Time that His Majesty was executed in 1648, I was then Servant to Alderman *Sleigh*, who was formerly Partner with this Colonel, and he frequently came to Alderman *Sleigh's* every Night; and the Alderman having some Business with him, would ask him what News there was at the High-Court of Justice; he usually told him the Passages upon any Day; the Alderman asked him, if so be he thought His Majesty might escape? He told them this, That he would do what lay in his Power, that he might not come to have Sentence past: Upon *Saturday*, being also there, he told him this, That he had done what lay in his Power, to hinder the Sentence, but could not attain his Design; but he was resolved he would never Sign nor Seal to His Majesty's Death, for it was utterly against his Judgment.

Harvey. There is another, (my Lord,) and but one more, that is *George Langham*.

Lord Chief Baron. To what purpose? This is believed.

Harvey. I shall only crave and supplicate this Favour of this Honourable Bench, that this Honourable Bench will be pleased, on my Behalf, (since I have endeavoured it Two Months before,) to present my humble Petition to His Sacred Majesty, and to intercede for Mercy and Favour on my Behalf; my self, my Wife, and Thirteen Children, shall humbly pray.

[The Court received the said Petition, and promised to present it to His Majesty.]

Millington. I do not know whether it will be seasonable for me to interpose now, I would speak a little.

Lord Chief Baron. Is he next in Order?

Clerk. No, my Lord, *Pennington* is next.

Pennington. I am unwilling to be troublesome to the Court. This I shall take the Boldness to say, (which shall be nothing but Truth,) I never had a Hand in plotting, contriving malicious Practices against His Majesty, demonstrated by my utterly refusing to Sign the Warrant for his Execution, though often solicited thereto; I cannot deny but I sate amongst them that Day of the Sentence, but I cannot remember I was there when the Sentence passed. My Sitting amongst them was out of Ignorance, I knew not what I did, therefore I hope you will believe there was nothing of Malice in any Thing I did; I was mis-led to it.

Lord Chief Baron. I cannot hear you. [He not speaking aloud.]

Pennington. It was Ignorance, not Malice, that led me; if I had known what I had done I would not have done it; I humbly pray that there may

be a favourable Construction made of it, I humbly leave it with you. I did my Duty to pray for the King, but had no Malice to act willingly against him.

Clerk. *Henry Marten.*

Council. He did both Sign and Seal the Precept for Summoning the Court, and the Warrant for Execution; sat almost every Day, and particularly the Day of Sentence.

Marten. My Lord, I do not decline a Confession, so as to the Matter of Fact, the Malice set aside, *Maliciously, Murderously, and Traitorously.*

Council. If you have any Thing to say to that, we will prove it.

Lord Chief Baron. That I may inform you in it, there is Malice implied by Law, Malice in the Act itself: That which you call Malice, that you had no particular Intention or Design against the King's Person, but in relation to the Government, that will not be to this present Business; if it should extenuate any Thing, that would be between God and your own Soul; but as to that which is alledged in the Indictment, *Maliciously, Murderously, and Traitorously*, they are the Consequences of Law. If a Man meet another in the Street, and run him through, in this Case the Law implies Malice; though but to an ordinary Watchman, there is Malice by the Law in the Fact; if there was no such expressed Personal Malice as you conceive, yet the Fact done implies Malice in Law.

Mr. Solicitor-General. My Lord, he does think a Man may Sit upon the Death of the King, Sentence him to Death, Sign a Warrant for his Execution, *Meekly, Innocently, Charitably, and Honestly.*

Marten. I shall not presume to compare my Knowledge in the Law with that of that Learned Gentleman; but according to that poor Understanding of the Law of *England* that I was capable of, there is no Fact that he can Name that is a Crime in itself, but as it is Circumstantiated. Of killing a Watchman, as your Lordship instanced, a Watchman may be killed in not doing his Office, and yet no Murder.

Lord Chief Baron. I instanced that of a Watchman, to shew there may be a Malice by Law, tho' not expressed; tho' a Man kill a Watchman, intending to kill another Man, in that Case it is Malice in Law against him: So in this Case, if you went to kill the King when he was not doing his Office, because he was in Prison, and you hindred him from it, the Law implies Malice in this. It is true, all Actions are Circumstantiated, but the killing of the King is Treason of all Treasons.

Justice Forster. If a Watchman be killed it is Murder; it is in contempt of Magistracy, of the Powers Above; the Law says that Contempt adds to the Malice.

Council. We shall prove against the Prisoner at the Bar (because he would wipe off Malice,) he did this very Merrily, and was in great Sport at the Time of the Signing the Warrant for the King's Execution.

Marten. That does not imply Malice.

Ewer Sworn.

Council. Come, Sir, you are here upon your Oath, speak to my Lords and the Jury; you know the Prisoner at the Bar very well, you have sometimes served him; were you present in the

Painted Chamber, January 29, 1648, at the Signing the Warrant, the Parchment against the King?

Ewer. The Day I do not remember, but I was in that Chamber to attend a Gentleman there; I followed that Gentleman, [*looking at Mr. Marten,*] I followed that Gentleman into that Chamber.

Lord Chief Baron. After what Gentleman?

Ewer. Mr. *Marten*, My Lord. I was pressing to come near, but I was put off by an Officer, or Soldier there, who told me I should not be there; I told him I was ordered to be by that Gentleman. My Lord, I did see a Pen in Mr. *Cromwell's* Hand, and he marked Mr. *Marten* in the Face with it, and Mr. *Marten* did the like to him; but I did not see any one set his Hand, though I did see a Parchment there with a great many Seals to it.

Sir Purbeck Temple Sworn.

Council. What do you know of that Gentleman in his Carriage of this Business?

Sir Purbeck Temple. My Lords, I being present in Town, when that horrid Murther was contrived against the late King, there came some Persons of Honour, Servants to the late King, to my Father's House, Sir *Edward Partridge*, to engage me to join with them to attempt the King's Escape. In order whereunto they told me, nothing would tend so much to His Majesty's Service, as to endeavour to discover some Part of their Counsels, for that it was resolved by *Cromwell* to have the King tried at the *High-Court of Justice*, as they called it, the next Day, and desired me (if possible) to be there to discover their Counsels, whereby the King might have Notice, and those that were to attempt his Escape. In order whereunto, the next Day, by giving Money to the Officer of the *Painted Chamber*, I got in by Day-light in the Lobby of the Lords-House; I espied a Hole in the Wall, under the Hangings, where I placed my self till the Council came, where they were contriving the manner of trying the King when he should come before them: And after the manner of Praying, and private Consults amongst themselves, when their Prayer was over, there came News that the King was Landed at Sir *Robert Cotton's* Stairs; at which *Cromwell* run to a Window, looking on the King as he came up the Garden, he returned as White as the Wall: Returning to the Board, he speaks to *Bradshaw*, and Sir *Henry Mildmay*, how they and Sir *William Brereton* had concluded on such a Business; then turning to the Board, said thus: *My Masters, he is come, he is come, and now we are doing that great Work that the whole Nation will be full of; therefore I desire you to let us resolve here what Answer we shall give the King when he comes before us; for the first Question that he will ask us will be, by what Authority and Commission we do Try him? To which none answered presently. Then after a little Space, Henry Marten, the Prisoner at the Bar, rose up, and said, In the Name of the Commons and Parliament assembled, and all the good People of England; which none contradicted, so all rose up, and then I saw every Officer that waited in the Room sent out, by Cromwell, to call away my Lord such-a-one, (whose Name I have forgot,) who was in the Court of Wards Chamber, that he should send away the Instrument, which came not, and so they adjourned themselves*

selves to *Westminster-Hall*, going into the Court of *Wards* themselves, as they went thither. When they came to the Court in *Westminster-Hall*, I heard the King ask them the very same Question that *Cromwell* had said to them.

Mr. Solicitor. Gentlemen, the Prisoner at the Bar confesses his Hand to the Warrant for Executing the King; you see by his Servant how Merry he was at the Sport; you see by this Witness, how serious he was at it, and gave the Foundation of that Advice upon which they all proceeded; and now he says he did it not traitorously, I humbly conceive he means it was Justifiable.

Sir Purbeck Temple. At another Time I was in Town on a *Friday*, and wanting Horses I went to *Smithfield*, where I saw the Horses of State of his late Majesty, to be Sold in the common Market; at which I called to the Rider, said I, What makes these Horses here? Says he, I am to Sell them; Why, said I, there's the King's Brand upon them, *C. R.* and he shewed them me: Said I, will you sell these Horses? What Price? He asked me Three or Four-score Pound a-piece; says I, Who Warrants the Sale of these Horses? Says he, *Mr. Marten* and *Sir William Brereton*. Afterwards I heard the Horses were taken into the *Mews* by the Prisoner at the Bar, and *Sir Will. Brereton*.

Council. Was this before the Trial?

Sir Purbeck Temple. It was in 1642, or 1643.

Council. That's nothing to this Business.

Marten. My Lord, the Commission went in the Name of the Commons Assembled in Parliament, and the Good People of *England*; and what a Matter is it for one of the Commissioners to say, Let it be acted by the Good People of *England*?

Mr. Sol. Gen. You know all Good People did abhor it. I am sorry to see so little Repentance.

Marten. My Lord, I hope that which is urged by the Learned Council, will not have that Impression upon the Court and Jury that it seems to have, that I am so obstinate in a Thing so apparently Ill: My Lord, if it were possible for that Blood to be in the Body again, and every Drop that was shed in the late Wars, I could wish it with all my Heart: But, my Lord, I hope it is Lawful to offer in my own Defence that, which, when I did it, I thought I might do. My Lord, there was the House of Commons, as I understood it, (perhaps your Lordships think it was not a House of Commons,) but then it was the Supreme Authority of *England*; it was so reputed both at Home and Abroad. My Lord, I suppose he that gives Obedience to the Authority in being, *de facto*, whether *de jure*, or no, I think he is of a Peaceable Disposition, and far from a Traitor. My Lord, I think there was a Statute made in *Henry* the Seventh's Time, whereby it was provided, That whosoever was in Arms for the King *de facto*, he should be indemnified, tho' that King *de facto* was not so *de jure*: And if Supreme Officers *de facto* can justify a War, (the most pernicious Remedy that was ever adjudged by Mankind, be the Cause what it will,) I presume the Supreme Authority of *England* may justify a Judicature, though it be but an Authority *de facto*. My Lord, if it be said that it is but a Third Estate, and a small Parcel of that, my Lord, it was all that

was extant. I have heard Lawyers say, that if there be Commons appurtenant to a Tenement, and that Tenement be all Burnt down except a small Stick, the Commons belong to that One small Piece, as it did to the Tenement when all standing. My Lord, I shall humbly offer to Consideration, whether the King were the King indeed, such a one whose Peace, Crowns, and Dignities, were concerned in Publick Matters: My Lord, he was not in Execution of his Offices, he was a Prisoner. My Lord, I will not defer you long, neither would I be offensive: I I had then, and I have now, a Peaceable Inclination, a Resolution to submit to the Government that God hath set over me. I think his Majesty that now is, is King upon the best Title under Heaven, for he was called in by the Representative Body of *England*. I shall, during my Life, long or short, pay Obedience to him: Besides, my Lords, I do owe my Life to him, if I am acquitted for this. I do confess I did adhere to the Parliament's Army heartily; my Life is at his Mercy; if his Grace be pleased to grant it, I have a double Obligation to him.

Mr. Sol. Gen. My Lord, this Gentleman, the Prisoner at the Bar, hath entred into a Discourse that I am afraid he must have an Answer in Parliament for it. He hath owned the King, but thinks his best Title is the Acknowledgment of the People; and he that hath that, let him be who he will, hath the best Title. We have done with our Evidence.

Marten. I have one Word more, my Lord; I humbly desire that the Jury would take Notice, that though I am accused in the Name of the King, that if I be Acquitted, the King is not Cast: It doth not concern the King that the Prisoner be Condemned, it concerns him that the Prisoner be Tried: It is as much to his Interest, Crown and Dignity, that the Innocent be Acquitted, as that the Nocent be Condemned.

Mr. Sol. Gen. My Lord, this puts us now upon the Reputation of our Evidence; and you may see how necessary it is to distinguish between Confidence and Innocence; for this very Person that desires you to have a Care how you Condemn the Innocent, he doth seem to intimate to you, that he is an Innocent Person at the Bar; and yet confesses he did Sit upon the King, did Sentence him to Death; that he Signed the Warrant for the Execution; and yet here stands the Person that desires you to have a Care of Condemning Innocence: What is this at the Bottom of it, but that the Fact is such as I dare not call Innocence, but would have you to believe it such? Gentlemen of the Jury, was it your Intention the King should be so Tried as this Prisoner moved? It will concern you to declare, that the People of *England* do abhor his Facts and Principles; every Fact the Prisoner hath confessed himself, the Sitting in that Court, which was Treason; his Sentencing was Treason; Signing the Warrant for Execution was the Highest of Treasons: Gentlemen, all that he hath to say for himself is, there was an Authority of his own making, whereby he becomes Innocent; but we hope out of his own Mouth you will find him Guilty.

Gilbert Millington. I desire you to hear me; I come not hither to dispute, but to acknowledge;

I will not trouble you with long Discourses. My Lord, it is not fit for Wise Men to hear them, I am not able to express them; I will not Justifie my self, I will acknowledge my self Guilty. My Lord, the Reason why I said the last Day, *Not Guilty*, was in respect of being upon the Scaffold, and Murdering the King, and those Things; but I will wave all things, if your Lordship will give me Leave, and will go unto the lowest Strain that possible can be; I will confess my self Guilty every Way. I was awed by the Present Power then in Being. This I leave with you, and lay my self at your Feet, and have no more at all to say, but a few Words in a Petition, which I desire you will please to accept, and so I conclude.

Council. We do accept this Honest and Humble Confession, — and shall give no Evidence against him to aggravate the Matter.

Lord Chief Baron. Your Petition is accepted, and shall be read.

Robert Titchburn. My Lord, when I first pleaded to the Indictment, it was, *Not guilty, in Manner and Form as I stood Indicted*; my Lord, it was not then in my Heart, either to deny or justifie any Tittle of the Matter of Fact; my Lord, the Matter that I was led into by Ignorance, my Conscience leads me to acknowledge; but, my Lord, if I should have said Guilty in Manner and Form as I stood Indicted, I was fearful I should have charged my own Conscience as then knowingly and maliciously to act it. My Lord, it was my Unhappiness to be called to *so sad a Work* when I had so few Years over my Head; a Person neither Bred up in the Laws, nor in Parliaments where Laws are made. I can say with a clear Conscience, I had no more Enmity in my Heart to his Majesty, than I had to my Wife that lay in my Bosom. My Lord, I shall deny nothing; after I was Summoned, I think, truly, I was at most of the Meetings; and I do not say this, that I did not intend to say it before, but, preserving that *Salvo* to my own Conscience, that I did not maliciously and knowingly do it, I think I am bound in Conscience to own it: As I do not deny but I was there, so truly, I do believe I did Sign the Instrument. And had I known that then, which I do now, (I do not mean, my Lord, my Afflictions and Sufferings, it is not my Sufferings make me acknowledge,) I would have chosen a Red-hot Oven to have gone into, as soon as that Meeting: I bless God, I do this neither out of Fear, nor Hopes of Favour, though the Penalty that may attend this Acknowledgment may be Grievous; my Lord, I do acknowledge the Matter of Fact, and do solemnly protest I was led into it for want of Years; I do not justifie either the Act or the Person; I was so unhappy then as to be Ignorant, and I hope I shall not now, (since I have more Light,) justifie that which I was ignorant of; I am sure my Heart was without Malice; if I had been only asked in Matter of Fact at first I should have said the same; I have seen a little: The Great God before whom we all stand, hath shewn his Tender Mercy to Persons upon Repentance; *Paul* tells us, though a Blasphemer, and a Persecutor of Christ, it being done ignorantly, upon Repentance he found Mercy; my Lord, Mercy I have found, and I do not doubt but Mercy I shall find. My Lord, I came in upon the Proclamation, and now I am here, I

have in Truth given your Lordship a clear and full Account, whatever the Law shall pronounce, because I was Ignorant; yet I hope there will be Room found for that Mercy and Grace that I think was intended by the Proclamation, and I hope by the Parliament of *England*. I shall say no more, but in pleading of that, humbly beg that your Lordships will be Instrumental to the King and Parliament on that behalf —

Council. We shall give no Evidence against the Prisoner; he says he did it ignorantly, and I hope and do believe he is a Penitent; and as far as the Parliament thinks fit to shew Mercy, I shall be very glad.

Owen Roe. I have not much to say, I never had any Ability; therefore, my Lord, it was never my Intent upon my Plea, as was said before, to deny any Thing I have done; for I was clearly convinced that I ought to confess it before, and I do confess against myself, that I did Sit there several Times, and to the best of my Remembrance I did Sign and Seal the Warrant for his Execution; and truly, my Lord, it was never in my Heart to contrive a Plot of this Nature. How I came there I do not know, I was very unfit for such a Business, and I confess I did it ignorantly, not understanding the Law, so was carried away hidden in the Business, not understanding what I did; therefore, my Lord, I humbly intreat this Honourable Court, that you will consider of it, and look upon me as one that out of Ignorance did it; and if I had known of my Act, I would rather have been torn in pieces with a Thousand Horses. When I heard of the Declaration and Gracious Pardon of His Majesty, I confess I went to my Lord Major's, and laid hold of it, and I thought my Life as secure as it is now in my own Hands; but I do wholly cast my self upon the King's Mercy; and as I have heard he is a Gracious King, full of Lenity and Mercy, so I hope I shall find it. I was never against Government; it is a Blessed Thing that we have it; I hope all the Nations will be happy under it. I shall submit to his Majesty and Government. I can say no more; I was not brought up a Scholar, but was a Tradesman, and was meerly Ignorant when I went on in that Business; I do humbly intreat your Lordships, that you would, as tenderly as may be, present my Case to the King, whom I rest upon, and leave all to your Lordships Wisdom and Discretion, to do what you will concerning me —

Council. We accept his Confession, and do hope he is Penitent before God, as well as before the World.

Robert Lilburn. Be pleased to give me leave to speak a few Words; I shall be Ingenuous before your Lordships. I shall not wilfully nor obstinately deny the Matter of Fact; but, my Lord, I must, and I can, with a very good Conscience, say, that what I did, I did it very innocently, without any Intention of Murder; nor was I ever Plotter or Contriver in that Murder; I never read in the Law, nor understood the Case thoroughly; whatever I have done, I have done ignorantly.

Lord Chief Baron. Because you shall not be mistaken in your Words, God forbid that we should carp at your Words; the Word Innocent hath a double Acceptation, Innocent in respect

spect of Malice, and Innocent in respect of the Fact.

Lilburn. The Truth is, my Lord, I was for the withdrawing of the Court, when the King made the Motion to have it withdrawn; and upon the Day (my Lord) that the King was put to Death, I was so sensible of it, that I went to my Chamber and mourned, and would, if it had been in my Power, have preserv'd his Life. My Lord, I was not at all any Disturber of the Government; I never interrupted the Parliament at all. I had no Hand in those Things, neither in 1648, nor at any other Time. I shall humbly beg the Favour of the King, that he would be pleased to grant me his Pardon, according to his Declaration, which I laid hold on, and rendered myself according to the Proclamation.

Council. We shall say nothing against him.

Henry Smith. My Lord, I shall not desire to spend your Lordship's Time; what I have done, I did it ignorantly, not knowing what I did. I shall not deny the Matter of Fact; but as to that I pleaded *Not guilty* before, it was in relation to that which I was ignorant of, the Law of the Nation; I have not been Bred to it, I humbly desire your Lordships to consider, that what I did was done ignorantly, not knowing the Law.

Council. What was that?

Smith. I do confess that I Sat in the Court, I do not remember that I Signed or Sealed, [*both the Warrants being shewed him*] adds, my Lords, I confess the Hands are like mine, but whether they be so or no, I know not.

Council. Then we will prove it. Is the Seal yours?

Smith. I do not know.

Council. Do you confess you were in the *Painted Chamber* the 29th of *January*? Do you remember any Thing of that?

Smith. I do not certainly know that.

Council. My Lord, he hath said enough. Shall the Jury doubt of that which he believes?

Smith. I do not remember that I did write it.

Council. My Lord, we press it no farther, he hath confessed enough.

Smith. My Lord, what I have done I beseech you consider I did it in Ignorance, not knowing the Law; there were those about me that were able to call me, who were then in Authority, whom I dared not disobey, if so, I had been in Danger also.

Council. My Lords, we have done; be pleased to direct the Jury upon these several Evidences and Confessions.

Smith. I beg one Word, I must declare this, I can speak it seriously, that from the first to the last of these unhappy Wars, I have been a Man of Trouble and Sorrow; I have been (as many Wiser Men have been) run upon Error. My Lord, I know not what I have done; I pray that this Court will be pleased to be a Mediator for me, that I may have his Majesty's Favour, and that this Petition may be received on my Behalf. [*He then delivered his Petition to the Court.*] I can rejoice for that Happy Settlement that is again in the Nations, and declare cheerfully my humble Submission to that Government, and desire the Lord will bless and prosper his Majesty and the Parliament in these Nations; my Lord, I rendered myself according to the Proclamation; I shall say no more.

Lord Chief Baron. Gentlemen, you of the Jury, these Prisoners that stand before you at the Bar, that is, Mr. *Harvey*, *Pennington*, *Marten*, *Millington*, *Titchburn*, *Roe*, *Lilburn*, and Mr. *Smith*, there are Eight, these are Persons who by the *Act of Indemnity* are to be Tried for their Lives for the Treasons they have committed, but no Execution is to be until the Parliament have further considered the Matter that is before us, and you are to find the Matter of Fact: What Mercy they shall find hereafter, that is to be left (as I told you) to the Consideration of the Parliament, we are to proceed according to Law and Justice. They are all Indicted for Compassing and Imagining the Death of our late Sovereign Lord, *Charles* the First, of most Glorious Memory; and for that that hath been opened to you there are so many Overt-Acts, which are as so many Evidences to prove that Indictment, which is the Compassing and Imagination of their Hearts to put the King to Death. If any one of these be proved, that is alone enough to prove the Indictment, which is the Compassing and Imagining of the Heart, that is the Treason, the others are but Evidences. If any thing burst forth from the Mouth, or from the Hand, as here it is, these are Evidences of the Imagination of the Heart; for this you have heard by the Confession of all of them, that they did enough to find the Indictment; they have all of them confessed their Sitting upon the King in that Traitorous Assembly, which they called the *High-Court of Justice*. There is One of the Overt-Acts expressly laid down in the Indictment, they took upon them an Authority to consider how to put the King to Death, and that they did put the King to Death; but they were mistaken, as some of them said, that the actual Murdering of the King was not their Meaning. But if they did that which tended towards it, they are all Guilty of Treason; it is all one to you, if they be guilty of any of these; either Sitting, Sentencing, or Signing, they are Guilty; and all of these, except Two, are Guilty of all these. The Matter is clear and pregnant; there is something hath been said by many of them, with a great deal of Expression of Sorrow; they did confess (all but one) the Fact; and that which tended to their Defence was Ignorance; but that doth not at all concern you. It will be taken in its due Time into Consideration; the several Departments of them all, that is for another Judicature. Your Business is to find the Matter of Fact; only let me repeat unto you, there is Mr. *Harvey*, who hath pleaded several Matters which are not proper for you, expressing his Sorrow and Penitence, we shall not trouble you with that, because they are for the Consideration of another Court; we ought all to have a tender Compassion, ought to be sorry with and for them that are sorrowful. The like of Alderman *Pennington*. *Marten* hath done that which looks forward more than backward. I could wish with all my Heart he had looked more backward; that is, to Repentance of that which is past, than Obedience to that which is to come; it is a Trouble to repeat those Things which he said himself, and truly, I hope in Charity he meant better than his Words were. *Millington*, he hath done the like with the rest, confessed the Fact, put himself upon Mercy wholly, and said, he *was over-awed by the present Power*. This

This I repeat, not as any Thing to you, who are to consider only Matter of Fact. For Alderman *Titchburne*, he hath spoken very fully, and truly very conscientiously—upon the whole Matter, acknowledges his Ignorance, his Sorrow, his Conviction in Point of Conscience; and I beseech God Almighty to incline his Heart more and more to Repentance. *They that Crucified Christ*, (to use his own Words,) *through Ignorance, found Mercy*. Colonel *Roe*, he confesses the same wholly, and casts himself upon the King's Mercy, and he thought it a blessed Thing that the King was restored again, and submitted wholly to Mercy; and so did Mr. *Lilburn*, he said he went to his Chamber and mourned the Day the King was Beheaded; I am very glad he had so early a Sense of it. *William Smith* he did it ignorantly, he was not guilty thus far; that was, he was led on, even like one silly Sheep that follows another; by what relation I have heard of the Person, at that Time he was not thought fit to be of the Privy Council. There is nothing more to say to you, the Fact is confessed by them all. It is so clear you need not go from the Bar.

[After a little Consultation between the Jurors they returned to their Places.]

Clerk of the Crown. Are you agreed of your Verdict?

Jurors. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. *Edmund Harvey*, Hold up thy Hand. How say you, is the Prisoner Guilty of the Treason whereof he stands Indicted, and hath been Arraigned? or Not Guilty?

Jury. Guilty.

Clerk. Look to him, Keeper.

Clerk. What Goods and Chattels, &c.

Jury. None to our Knowledge.

The same Question being asked touching Alderman *Pennington*, *Henry Marten*, *Gilbert Millington*, Alderman *Titchburn*, Colonel *Roe*, Colonel *Lilburn*, and *Henry Smith*, they were severally found Guilty by the Jury in manner aforesaid. All which Prisoners finding the Place where they stood to be Cold and Unwholsom, prayed the Court they might have Leave to be returned to the Prison till the Court shall be pleased to command their farther Attendance; which was granted.

The rest of the Prisoners aforesaid, together with *W. Heveningham*, brought to the Bar.

Clerk. You the Prisoners at the Bar, those Persons last called of the Jury are to pass, &c. If you, or any of you, will Challenge all, or any of them, you must Challenge them when they come to the Book, before they be Sworn.

Clerk. *Charles Pitfield*, *Christopher Abdy*, *George Terry*, *Daniel Cole*, *Anthony Hall*, *Richard Abel*, *Edmund Starnel*, *Edmond Pit*, *William Whitcomb*, *Francis Dorrington*, *Thomas Nicholl*, *Robert Sheppard*, in all Twelve, Admitted and Sworn of the Jury.

Clerk. If any Man can inform, &c.

Clerk. *John Downes*, Hold up thy Hand, &c. and the like was said to all the other Persons following, viz. *Vincent Potter*, *Augustine Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, *Thomas Waite*, and *William Heveningham*. Look upon the Prisoners at the Bar, you that are Sworn; you shall understand that *John Downes*, the Prisoner at the Bar, stands Indicted, &c.

King's Council. May it please your Lordships,

and you Gentlemen of the Jury, the Prisoners at the Bar stand Indicted of High-Treason, for Compassing and Imagining the Death of the late King *Charles the First*, of Blessed Memory; the Evidence by which we shall make out against them this Treason of their Heart, in Compassing and Imagining the King's Death, (for that is the Substance of the Indictment, and all that follows is but Evidence,) will be by proving that they did sit as Judges in that pretended Court of Justice when the King stood a Prisoner at the Bar; that they did Sentence him to Death, every one of them; and we shall prove against all but one of them that they did Sign that Bloody Warrant for Murthering of the King; and against one of them that stands at the Bar we shall prove (to his Shame and Confusion of Face) that he did Spit in the Face of our late Sovereign Lord.

John Downes. My Lord, I have humbly pleaded *Not Guilty*; not with any Intention to justify the Fact, or to extenuate it; but, my Lord, in regard there is that charged in the Indictment, that my Conscience saith I am not guilty of, I durst not plead Guilty; otherwise, my Lord, I should not have troubled you with *Not Guilty*, but should have humbly taken the Shame and Confusion for it; it is my Intention to put the Court to as little Trouble as possibly I can; therefore I do humbly intreat of your Lordships, and the Court, that you will permit me to acknowledge that which will be a sufficient Evidence of my Conviction, if the Court so please, and that you will be pleased to hear me on my Behalf; if I can humbly offer to you some special Thing which is not in the Case of another, (I could wish it had, if it had we had none been here.) I do humbly acknowledge, that to sit upon that Occasion in that Place is Evidence enough to convince what is in the Heart, except by some signal Actions that might happen from some that might shew how it was his Unhappiness to be put into such a Business, yet had neither Malice nor Treason in his Heart: I do humbly conceive that there is that Goodness in you, that this Plea, this Allegation will be most Welcome to you. My Lord, though there was such a Thing, such an unparallel'd Thing, I was thrust into this Number; but never was in Consultation about the Thing: God is Witness I was not put in till the Act was ready to pass in a second Commitment, by one of the same Number; I denied it, yet they said I must make one, I must take my Share; so I came in. Never did I know of His Majesty's being brought to London till he came. My Lords, in this great Unhappiness I think it is some Mitigation, and I judge it a Happiness, that so Wise, Prudent Persons as this Court consists of, that you are my Judges, that can look back, my Lord, and consider what the Times were then, and can, my Lord, account it a Happiness that there is a special Wisdom in you, that in Nice Cases you will be able to make a Distinction. I do indeed, my Lords, sadly and seriously confess, that I was divers times with those Persons that were called Judges of the late King, at several Meetings and Sittings; it is long ago, I cannot say how often; I was several times there. My Lord, I do humbly beg of your Lordships, (I will trouble you as short as I can,) that you would be pleased so far to favour me as to give me leave to give you a short Account of the Business: The last Day His Majesty came

came to that which was called then a Court, several times he was brought, (I think Thrice,) and His Charge was given in Words high enough; he said He *could not acknowledge their Jurisdiction*; that was the Answer, my Lord, till the last day; then I confess I was there. He that was called *President* did again and again tell him the Heads of his Charge; told him he had several Days given for Consideration, that this was the last Day that the Court (as they call'd themselves) would give him for his final Answer; if he stood still to Day, and moved to the Jurisdiction of the Court, they must take all *pro Confesso*, and would give Sentence: My Lord, to this His Majesty indeed with a great deal of Composedness and Wisdom told them to this Effect, I cannot own your Jurisdiction; you have Power enough indeed, I wish you may use it well; but because you are so ready to give a Sentence, which may be sooner given than avoided, I think fit to let you know that I have something that I desire to speak to my Parliament, for I have something to offer unto them that will be satisfactory to you all, and will be for the immediate Settlement of the Kingdom in Peace.

— My Lord, he that was called *President* answered, that no Notice could be taken of any Thing, but only whether he would Answer to his Charge: Upon that, my Lord, His Majesty indeed, (with the greatest Earnestness that ever I beheld, and yet in no unseemly Passion,) told them they might soon repent of such a Sentence; that he did conjure them to withdraw once again, and to consider of it, if it were but half an Hour, or (saith he, if that be too much for you) I will withdraw. My Lord, here I can make my Appeal to him that must Judge me when you have done with me, I had not a murderous nor a traitorous Thought against him; but Sir, I confess such deep Passions did fall upon me, that truly myself I was not. I remember the Persons between whom I fate, as it fell out, were one Mr. *Cawly*, and Col. *Walton*, these Two I fate betwixt, these were the Words I spake to them, *Have we Hearts of Stone? Are we Men?* They laboured to appease me; they told me I would ruin both myself and them; said I, if I die for it I must do it. *Cromwell* fate just the Seat below me, the hearing of me make some Stir, Whispering, he looked up to me, and asked me if I were myself? What I meant to do, that I could not be quiet? Sir, said I, no, I cannot be quiet; upon that I started up in the very Nick; when the *President* commanded the Clerk to read the Sentence, I stepping up, and as loud as I could speak, spoke to this Effect, these Words, or to the like Purpose; my Lord, (said I) I am not satisfied to give my Consent to this Sentence, but have Reasons to offer to you against it, and I desire the Court may adjourn to hear me; presently he stepped up and looked at me; nay, saith he, if any one of the Court be unsatisfied the Court must adjourn: Sir, accordingly they did adjourn into the inner *Court of Wards*; when they came there I was called upon by *Cromwell* to give an Account why I had put this Trouble and Disturbance upon the Court? I did speak, Sir, to this Effect, (it is long ago, the very Words I think I cannot speak,) but to this Effect I did speak: My Lord, I should have been exceeding glad if the Court had been pleased to condescend to this gracious

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Expression; but it is not too late for me: I desire not his Death, but his Life, and that the Nations may be settled in Peace: The King now is pleased to offer, that if he might but speak with his Parliament he would offer to them such Things as should be satisfactory to us all. So (said I) what would you have? Your Pretence of bringing him to these Proceedings was, that after such a long and bloody War His Majesty would not condescend to such Concessions as might secure the Parliament's Party; but now you hear him, that he will give every one of us Satisfaction: I told them, sadly told them, (I think I may truly say more sadly than at this Time,) that if they should go precipitantly on, and give Judgment upon him, before they had acquainted the Parliament with what the King was pleased to offer, we should never be able to answer it; the rather, my Lord, (and that I did press with all the little Understanding that I had) if they did but consider the last concluded Order that the Parliament made after the passing of the Act for Trial, (that which was so called,) I say there was this Order that shut up all, that upon any Emergency that could not at that Time be thought on in the House, the Court should immediately acquaint the House with it. My Lord, I did infer as strongly as I could to them, that if this were not Emergent I could not tell what was: The King denied the Jurisdiction of the Court, and yet with all Vehemency desired to speak with his Parliament; were not these Emergencies? If not, I knew not what were Emergencies. My Lords, besides this, there was another Thing I did press, that I thought was of greater Consequence than this, as to the Satisfaction of every Man's particular Conscience; that admitting (if it might be admitted) that the King was liable to His Subjects, that they might call him to an Account, and might Condemn him; (I beg your Pardon that I take the Boldness to make such Admissions,) but if such a Thing might be admitted, certainly it did exceedingly become those Judges that were to give such a Sentence, (not against a Common Person, but against the greatest,) to be very well satisfied in Matter of Fact, to a full Evidence before them, that such and such Things that were said were true. I do acknowledge this, that to the best of my Apprehension, (I wish it had been so to others,) there was a great Shortness in this; I do humbly affirm this, that not one Member of the Court did hear one Witness *Viva Voce*; I did press that if the Court did give Judgment against the King, without a fair Examination, I said it was such a Thing as no Judge at any Assizes would do against a common Person; what I had was from *Peters*, and from some private Whispers from one of them that is gone, and hath received his Sentence and Doom. *Cromwell* did answer with a great deal of Storm; he told the *President*, that now he saw what great Reason the Gentleman had to put such a Trouble and Disturbance upon them; saith he, sure he doth not know that he hath to do with the hardest-hearted Man that lives upon the Earth; however, it is not fit that the Court should be hindered from their Duty by one peevish Man; he said, the Bottom was known, that he would fain save his Old Master; and desired the Court, without any more ado, would go and do their Duty. Another that spoke to me in Answer was

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one that hath been before you, and hath received his Sentence, but is not dead, (and I desire I may not name his Name,) his Answer was to what I have said, that some Men were either Scepticks, or Infidels. After this I did go into the Speaker's Chamber, and there I did ease my Mind and Heart with Tears, God only knows. I have an unhappy Memory, I have slipt many Things.

Lord Chief Baron. Remember yourself by Papers, if you have any no Man will hinder you.

Downes. I have no Papers; but, my Lord, for the Truth of this I have said, there are some Witnesses that will make the Substance, the Effect of this appear.

Lord Chief Baron. Mr. *Downes*, there is one Particular before you come to the Witnesses, that after all these Convictions you signed the Warrant; if you deny it, the Council will prove it.

Downes. I did never hope, or think, that any Thing I can say should be so satisfactory to you, but Things might be retorted upon me; and perhaps what I thought might be for extenuating my Crime may fall out to my Disadvantage: I understand you do proceed upon Three Particulars, either Signing the first Warrant for constituting the Court; to my Remembrance I know not of it; if my Hand was to it I have forgot.

Council. Your Hand is not to that, but we mean your Hand is to the Warrant for Execution, — pray shew it him. [*It was shewn him.*]

Downes. My Lord, how to reconcile that which hath been said before, with this that comes after, I leave it to you, I am totally at a Loss. When those Times were, how impetuous the Soldiers, how not a Man that durst either disown them, or speak against them. I was threatened with my very Life, by the Threats of one that hath received his Reward I was induced to it. Certainly, my Lord, it doth argue that there was not Malice Predominant; Love and Hatred cannot be at the same Time in one Person. Design, my Lord, what should be my Design? A poor, ordinary, mean Man. Surely, my Lord, I could not design any great Matters or Places. I knew myself unfit; I humbly beg you would give me leave to tell you a little what I got —

Mr. Sol. Gen. By your Favour, my Lord, the Prisoners at the Bar may say what they will by Way of Extenuation; but we expect that when they enter upon these Discourses they will save your Lordship's Time, and ours, by a publick Confession, and Evidence of Sorrow. We cannot spend so long Time to hear these long Discourses; we will rather prove it against every Man singly.

Downes. I will trouble you no further, I do acknowledge all; I humbly submit, and beg your Favour, and leave myself upon my Countrymen the Jury, and beg the King's Mercy specially. — Pray spare me one Word, that you will hear but a Witness or Two unto that Business.

Council. He doth confess he Sat and Signed; we believe he is Sorrowful, and against his Conscience he did Sign: and that he did it out of a Fear, and from a Threat; that he was overawed; (so was the Hangman too;) but after he had apprehended this Sorrow, and declared his Judgment upon the Fact, he Signed the Warrant.

Downes. My Lord, I do humbly beg his Majesty's Mercy; I came in upon the Proclamation.

Vincent Potter. My Lord, my Condition requires Ease for my Body; [*he had a Fit of the Stone upon him at that same Time;*] I pray that the passing the Sentence for Execution may be suspended.

Lord Chief Baron. The Execution must be suspended, for you are within that Qualification.

Potter. I desire only this, I am not in a Condition to declare what I know, and would speak; I am mighty full of Pain; if I am under that Qualification, let me rest under that.

Council. Do you confess the Indictment? Or will you put us to prove it?

Potter. I am one that came in.

Lord Chief Baron. It is thus with you, whether or no did you Sit, Sign, or Act in this High-Court of Justice against the King?

Potter. I will deny nothing; I confess the Fact, but did not contrive it; I am full of Pain.

Lord Chief Baron. According to the Demerit of the Case in Law you must receive Judgment here, but no Execution of that Judgment shall be, until the King, by Advice and Consent of Lords and Commons, shall order the Execution of it; you are to be Tried now; do you confess you Signed the Warrant for Execution of the King?

Potter. I do confess it, my Lord.

Council. We do accept it.

Potter. I beseech you let me go to ease myself.

Lord Chief Baron. Officer, set a Chair for him; [*which was done.*] Mr. *Potter*, sit down.

Aug. Garland. May it please your Lordship, I came here this Day intending to have waved my Plea, and referred myself to this Honourable Court, to be recommended to the King's Mercy and the Parliament; but hearing of some Scandal upon me, more than ever I did hear till within these few Days, I shall desire your Favour in hearing of my Trial.

Mr. Sol. Gen. My Lord, he saith well; for if he had confessed the Indictment we should not have accepted it. *Call the Witnesses.*

Garland. I do confess this; I Sate, and at the Day of Sentence Signed the Warrant for Execution.

Mr. Sol. Gen. And we will prove that he spat in the King's Face.

Garland. I pray let me hear that, otherwise I would not have put you to any Trouble at all.

Clench Sworn.

Council. Do you know the Prisoner at the Bar, *Augustine Garland*?

Clench. I know him very well.

Council. Tell my Lords and the Jury how you saw him behave himself to our Sovereign Lord the King when he was at the Bar.

Clench. I was that Day at *Westminster-hall* when the King had Sentence; they hurried the King down, and Mr. *Garland* came down Stairs by them; towards the Bottom of the Stairs he Spit in his Face at a little distance.

Council. Do you believe he did it on Purpose, upon your Oath?

Clench. I suppose he did it somewhat Suspiciously in that way; I did see the King put his Hand in his Left Pocket, but I do not know whether the King wiped it off.

Mr.

Mr. Sol. Gen. The King wiped it off, but he will never wipe it off so long as he lives: He hath confessed that he Sate, that he Sentenced, and that he Signed: We say he contrived it at the beginning, and at last bid Defiance to the King; I shall desire he may be remembred in another Place.

Garland. I do not know that I was near him at that Time: I do not remember this Passage; I am afraid he is an Indigent Person. If I was Guilty of this Inhumanity I desire no Favour from God Almighty.

Lord Chief Baron. I will tell you this doth not at all concern the Jury, but this Circumstance possibly may be considered in another Place.

Garland. I refer my self whether you be satisfied that I did such an Inhumane Act, I submit that to you; I dare appeal to all these Gentlemen here, (*looking upon the Prisoners,*) or any other, whether they ever heard of it, nor was I ever accused for such a Thing till a few Days since; but I wave my Plea, and refer my self to the Court: Now, my Lord, this is the Truth of my Case; there is that Honourable Gentleman, the Speaker of the House of Commons, knows I lived in *Effex* in the begining of these Troubles, and was forced to forsake my Habitation; I came from thence to *London*, where I have behaved my self fairly in my Way. Afterwards in 1648 I was chosen a Member into the Parliament; in *June* 1648 I came in a Member of the Parliament. My Lord, after the Division of the House by the Insolence of the Soldiery, some came to me, and desired me that I would go to the House; I was then at my Chamber at *Lincolns-Inn*; I forbore a Week and more; said I, I do not expect to be admitted, for they look upon me as another Person; said they, if you will go you shall have no Contradiction; I went, and went in; when I was in, the First Business that came was the Business of Trial upon the King, and it was put on me to be Chair-man for bringing in this Act for Trial; I did not know how to contradict that Power or Authority, (be it what it will,) but I must obey; (I fear my Ruin will follow it, in that respect) my Lord, when I came there I was forced to run throughout what they had imposed upon me.— Having seen me I could not shrink from them for fear of my own Destruction, and thereupon I did go in, and did that which I have confessed to your Lordships, not out of any Malignity to his Majesty, I never had any Disrespect to him in my Life; my Lord, I did not know which Way to be safe in any thing, without Doors was Misery, within Doors was Mischiefe. I do appeal to all that had any Thing to do with me, that I never did any Wrong to any that was of the King's Party, but helped them as I was able. My Lord, when the Government was thus tossed, and turned, and tumbled, and I know not what, and the Secluded Members came into the House, I knew not what to do in that Case neither. As soon as this Parliament had declared the Treaty, which was the Eighth of *May*, the Ninth of *May* I appeared before the Right Honourable the Lord Mayor of *London*, and did claim the Benefit of his Majesty's Gracious Declaration, and to become a Loyal Subject, as in my Heart I always was; and my Lord Mayor being there, I hope he will testify that as soon as I heard of the Proclamation I rendered

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my self according to the Proclamation; my Lord, this hath been the Carriage of me, being always under Fear and Force; I refer my self to your Lordships.

Simon Meyne. When I was last here, my Lord, that I did then speak *Not Guilty*, was not as to the Matter of Fact, but my Conscience telling of me that I had no Malice or ill Intention to his Majesty, that was the Reason. For Matter of Fact I shall acknowledge what I have done, and lye at his Majesty's Feet for Mercy. I am an ignorant weak Man in the Law, I will confess the Fact.

Council. Did you Sign the Warrant for Summoning that Court? And did you Sign the Warrant for Execution of the King?

Meyne. I did Sit in Court.

Council. Did you Sign the Warrant for Execution?

Meyne. My Lord, I knew not of the King's bringing up, I never was at any Committee.

Council. We do not ask you that; look upon the Warrant, and see if your Hand and Seal be not to it.

Meyne. My Lord, it is my Hand.

Council. Then, my Lord, we have done.

Meyne. My Lord, I acknowledge it is my Hand, by what importunity it may be known to some here; I was very unwilling to it; I was told, what Fear was there when Forty were there before, and Twenty was of the *Quorum*? I was thereupon dawn in to set my Hand to it. My Lord, I never plotted nor contrived the Business. There was a Gentleman that told me, if I did offer to speak in the House, (and pluck'd me down by the Coat) and he told me I should be Sequestred as a Delinquent; (the Name of this Person I shall omit;) saith he, you will rather lose your Estate than take away the King's Life. I leave it with you.

James Temple. At the last Time I pleaded to the Indictment *Not Guilty*, but I shall now desire to see my Hand, and if it be my Hand I must confess all Circumstances must follow. (*The Warrants being shewn him,*) I do acknowledge it is my Hand to both; I never did consult concerning the Court.

Council. There are some worse than he, but he is bad enough.

James Temple. I refer myself to the King and Parliament; and presented a *Petition*, which was received by the Court.

Peter Temple. When I was here the last Time I pleaded *Not Guilty*—the Reason was, because there are divers Things in the Indictment that my Conscience tells me I am not Guilty of; for I had not a Malicious or Traitorous Heart against the King. To save your Lordships Time I will confess what I am guilty of: I was in the Court, Sat there; if I see my Hand I shall confess it.

Council. Were you there when Sentence was given?

Temple. Yes, Sir.

Council. Shew him the Warrants, (*which being shewed him,*) I acknowledge they are my Hand, and refer it to your Lordships.

Council. Mr. *Wayte*, You heard the Charge read against you, what say you to it?

Thomas Wayte. Truly, my Lord, when I was here last I pleaded *Not Guilty*; I humbly desired then your Lordships to hear me a Word

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or Two. You promised me then I should be heard; I shall desire to speak for myself.

Lord Chief Baron. God forbid but you should.

Mr. Sol. Gen. By your Lordship's Favour we must speak first; if he will confess the Fact he may speak what he will. Did you Sit in the Court?

Waite. Yes.

Council. The Day of Sentence?

Waite. Yes.

Council. Is your Hand to the Warrant for Execution?

Waite. I know not; pray let me see it. (*It was shown him.*) My Lord, I confess it is like my Hand, but I do not remember it.

Council. If you do not acknowledge it it will be proved.

Waite. Truly, my Lord, I do believe it is my Hand.

Council. Then the Jury will not doubt it.

Waite. But I desire to be heard. I am loth to trouble you much; I will tell you how I was brought into this Business. My Lord, I was a Member of that House that Erected this Court when the Treaty was in the *Isle of Wight*. Immediately after the Army came up I was utterly against that Act in the House. When the Army came up to purge the House I was much troubled at it; I desired to know the Charge they had against them. Two or Three Days after I did move, and there were other Gentlemen that did move, to know what Charge there was. They sent Word we should have a Charge in due Time; we sent, and none came, but said we should have it in due Time; I went to those worthy Gentlemen to see them in Prison, and seeing nothing would be done, I took my Leave, and made Account to see them no more, and went down into the Country to *Leicestershire*; I was sent for up several times; I would not come with Threats upon Pain of Sequestration. My Lords, there were Petitions going up and down the Country for bringing the King to that Business, which was against my Conscience. I went to *Rutlandshire*, I heard there were some things working there; I used my Interest, and I thank God I stopped it; I came then to *London* when all these Things were destroyed; I came to *London* the Day before the Sentence was given; I went to the House, (thought nothing;) some were sent to the Tower, and I was sent for to the House, and my Name was in the Act unknown to me; but one sent a Note in my Lord Gray's Name, that he would speak with me, I went to him, and I said, My Lord what would you do with me? Saith he, I did not send for you; thereupon *Cromwell* and *Ireton* laid hold on me; said they, we sent for you, you are one of the High Court; no, said I, not I, my Judgment is against it; they carried me to the Court. When the King desired to speak with his Parliament, I rising up, one told me I must not be heard, for the President was to give Judgment, and said, there was an Order that none should speak in Court. *Mr. Downes* did move, and they did adjourn the Court, and I was glad I got out; *Cromwell* laughed, and smiled, and jeered in the Court of Wards. I hope your Lordship will be pleased to consider I was no Contriver, no Soldier that put the Force upon the House that erected the Court, none of the Law-makers, or did any Thing maliciously against the King.

My Lord, I was looked upon with an Evil Eye for regarding the King's Friends in the Country; *Gray* told me the King would not Die, I hope he will not, said I: The next Day, on *Monday*, I went to the House, they were labouring to get Hands for his Execution at the Door; I refused, and went into the House; saith *Cromwell*, those that are gone in shall set their Hands, I will have their Hands now. That Night I went to the Lord *Gray's*, and he said, I am afraid they will put him to Death. I said so also. My Lord, I have been a great Sufferer, I was drawn in, trepan'd into it; since being a Friend to the King's Friends, I am almost ruined in my Estate; I beseech your Lordships make the best Interpretation. I hope you will believe I was no Contriver; I humbly lay hold upon the King's Mercy and Favour. I came in upon the Proclamation; I pray that this Honourable Court will prefer my Petition to the King, and both Houses of Parliament: which the Court then received.

William Heveningham. My Lord, in 1648 we were under a Force, under the Tyranny of an Army; they were our Masters; for a Malicious and Traitorous Heart I had not. I do absolutely deny the Signing the Warrant for Summoning the Court, and also that Warrant for Execution of the King; at the Time of Sealing I had that Courage and Boldness that I protested against it.

Council. We do not question him for that, but for Sitting in the High Court of Justice, and that upon the Day of the Sentence; do you deny that?

Heveningham. My Lord, I cannot say positively.

Council. If you deny the Matter of Fact, it must be proved.

Heveningham. My Lord, I cannot say positively, but it may be I might.

Council. Either say positively you did, or else let the Witnesses be called.

Heveningham. Truly, my Lord, I think I did: but my After-Actions.

Lord Chief Baron. *Mr. Heveningham*, that shall be considered.

Council. My Lord, to Sit upon the Day of Sentence was High-Treason in itself, and is an Evidence of Compassing and Imagining the King's Death.

Heveningham. I shall lay hold of the Declaration; I came in upon the Proclamation; I pray your Lordships to intercede for me to the King and both Houses of Parliament; I pray the Mercy of this Court.

Lord Chief Baron. You of the Jury, they have all confessed, and therefore you may go together.

Simon Meyne. My Lords, I have forgot my Petition; it is at my Lodging, I desire I may send it at Night.

John Downes and *Peter Temple* prayed the like Favour.

Lord Chief Baron. Do, send them, they shall be received.

The Jury having consulted together a certain Time, they went to their Places.

Clerk. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk.

Clerk. John Downes, Hold up thy Hand—
Look upon the Prisoner; how say you? Is he
Guilty of High-Treason whereof he stands In-
dicted, and hath been Arraigned? Or not Guilty?

Fore-man. Guilty.

*Clerk. Look to him, Keeper. What Goods and
Chattels, &c.*

*Fore-man. None to our Knowledge. And the
like Verdicts at the same time passed in the same
Manner against Vincent Potter, Augustine Garland,
Simon Meyne, James Temple, Peter Temple, Tho-
mas Waite, and William Heveningham.*

*Potter. I hope I may be freed from Irons, I
am in Pain, and a Man of Bulk.*

*Lord Chief Baron. We can give no Order in it,
we must leave it to the Sheriff.*

Potter. I beg it of you, my Lord.

*Lord Chief Baron. We must leave it to the
Sheriff. Mr. Heveningham, you must withdraw
from the Bar.*

*Clerk. Officer, bring down Waller, Fleetwood,
Hacker, Axtell, Hulet, Pennington, Marten, Mil-
lington, Titchburn, Roe, Lilburne, Smith, and
Harvey, and set them to the Bar. Which was
done accordingly.*

*Clerk. Hardress Waller, Hold up thy Hand.
Thou hast been Indicted, and found Guilty of
High-Treason, what canst thou say why Judg-
ment should not pass on thee to die according to
Law?*

*Waller. My Lords, I am now, it seems, Con-
victed by Law, and so adjudged: Your Lordships
the other Day on my Desire told me I might
have Liberty to speak upon my Trial, I must
now beg the like upon a Condemned Person.*

*Lord Chief Baron. You are Convicted, not Con-
demned.*

*Waller. My Lords, I was the first that pleaded
Guilty, I bless God that he gave me a Heart to
do it, I find most Peace in the doing it; and
since there is nothing left but Hopes of Mercy,
I humbly submit it to your Lordships to hear
me in this sad Condition, that that may make
me seem more capable of Mercy. I have, my
Lords, been so unhappy to have been transplanted
out of my Country these Thirty Years. I have
been but once these Eleven Years in England,
this must needs make me a Stranger.*

*Lord Chief Baron. I must not hinder you, be-
cause it is for Mercy that you plead; but con-
sider with yourself whether it will not be better
to give it in a Petition: I leave it to you, we can
do nothing in Point of Mercy but Judgment.*

*Waller. Only this, (my Lord,) whether I am
not the more capable of your Mercy.*

*Lord Chief Baron. That you may understand
it, the Act of Indemnity of Parliament hath ex-
cepted you; yet upon some Qualifications: we
are to proceed according to Law, that is, to go
to Conviction and Judgment. The Act says, that
after Judgment there shall be no Execution, but
that it shall be suspended till a further Act of
Parliament to be passed for that Purpose; so that
in the mean Time we are to proceed no further
than Judgment. That which concerns Mercy
is referred to another Place. If you please to
say any Thing to satisfy us, or to go by Way
of Petition, it must be left to you, but what
you say for Mercy is nothing to us.*

*Waller. I humbly thank your Lordship for
this clear and noble dealing, and withal, I would
beg that these People that are Witnesses of my*

Shame and Guilt, may know that it was a Force
and Temptation upon me; I shall not insist
much, I have said that I did plead Guilty, which
was most safe to my own Conscience, yet I should
make it appear that I did appear more to pre-
serve the King from Trial and Sentence than any
other.

*Lord Finch. Sir Hardress Waller, I have heard
of late of your Sorrow, which I was glad to
hear of, because you are my Kinsman, both by
your Father and Mother's Side, and also my
Country-man; I was glad to hear of your great
Penitence for that horrid Crime, and I would
have been glad to have seen it now; advise with
yourself, whether you do yourself any Good in
speaking to extenuate, when you know there is
no Man against whom there are such Circum-
stances of Aggravation as against you; consider
whether a publick Penitence would not be more
proper.*

*Waller. I beseech you report me both to His
Majesty and Parliament, and receive me into
your Grace, as being Penitent, truly Penitent:
To say so now were a small Thing, for the fear
of the Punishment may procure it; but I have
been more Penitent when no Eye hath seen me
but God; when I never imagined to be que-
stioned for this Sin, then my Heart hath yearned
in the Business; but I shall not trouble your
Lordships. God holds forth Mercy, His Majesty
holds forth Mercy, the Parliament holds forth
Mercy. My Lord, let me say something to you,
(though it be but a Word,) of the Violence and
Force of Temptation; you may have been un-
der it, or may come to it; Christ himself was
under it; we find that faithful Abraham, by the
Power of a Temptation, delivered up his Wife
to commit Adultery, which scarce a Heathen
would; we find that valiant Peter denied his
Master; righteous Lot committed Incest. None
abhors this Fact more than I do; I have done it
so long beforehand, I need not be afraid to speak
it in the Face of the Judge of all Men; that is
all I shall say. I rendred my self Three Times;
I had as much Opportunity to make my Escape
as any Person whatsoever.*

Lord Chief Baron. It is understood, Sir Hardress.

*Clerk. Isaac Pennington, Hold up thy Hand,
Thou art in the same Condition as the former,
what canst thou say for thy self why Judgment,
&c.*

*Pennington. My Lord, I have said what I have
to say, and shall not trouble your Lordships any
further.*

*Clerk. Henry Marten, Hold up thy Hand. Thou
art in the same Condition, what canst thou say
for thyself why Judgment, &c?*

*Marten. I claim the Benefit of the Proclama-
tion.*

*Clerk. Gilbert Millington, Hold up thy Hand.
Thou art in the same Condition, what canst thou
say for thyself why Judgment, &c?*

*Millington. I shall not trouble you with long
Discourses; I will say no more but this, I have
made a publick Resentment of my Sorrow for
this Offence formerly, and many times. I shall
now desire no more, but humbly beg that I may
have the Benefit of the Proclamation, and pray
his Majesty's most Gracious Pardon.*

*Clerk. Robert Titchburn. Hold up thy Hand.
Thou art in the same Condition, what canst thou
say for thyself why Judgment, &c?*

Tichburn. My Lord, I will not trouble you with any Repetitions, I have made my humble Request before, I leave it with you.

Clerk. Owen Roe, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Roe. My Lord, I have no more to say than I said before.

Clerk. Robert Lilburn, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Lilburn. I shall refer myself without further Trouble to the Court; my Lord, I beg the Benefit of the Proclamation.

Clerk. Thomas Waite, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Waite. I can declare no more than what I have already; my Heart is sorry for what I have done; I beg the Benefit of the Proclamation.

Clerk. Edmund Harvey, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Harvey. My Lords, I have no more than what I said before.

Clerk. John Downes, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Downes. I shall not trouble you any further, I shall desire the Benefit of his Majesty's Proclamation.

Clerk. Vincent Potter, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Potter. My Lord, I do not know Law, I understand it not; I am not in a Condition to speak what I would have willingly spoke; I desire that God would have Mercy, and I look for Mercy from God, [and wept.]

Clerk. Augustine Garland, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Garland. I humbly desire your Lordship's charitable Opinion of me: Notwithstanding what has been objected against me, I humbly refer myself to the Parliament.

Clerk. George Fleetwood, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Fleetwood. My Lord, I have already confessed the Fact, I wish I could express my Sorrow, [and wept.]

Clerk. James Temple, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

James Temple. My Lord, I can say no more, I beg the Benefit of the Proclamation.

Clerk. Simon Meyne, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Meyne. I have told you before, my Lord, I have no more.

Clerk. Peter Temple, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Peter Temple. My Lord, I came in upon the Proclamation, and I humbly beg the Benefit of it.

Clerk. Francis Hacker, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Hacker. My Lord, I have nothing to say but what has been before your Lordships.

Clerk. Daniel Axtell, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Axtell. May it please your Lordships, my Case differs from the rest of the Gentlemen.

Lord Chief Baron. I would be loth to hinder you, but I must tell you, that what hath been over-ruled must not be spoke to; if you have any Thing against the Indictment, Matter of Law, go on.

Axtell. I have one Thing more that I did not then mention.

Lord Chief Baron. If it tend not as an Exception to the Indictment it is not to be heard.

Axtell. My Lord, then I shall apply myself to that Point; I humbly conceive, my Lord, that my Overt-acts were not sufficiently set down in the Indictment, as might be sufficient in Law to Attaint me of High-Treason; I do not remember that the Overt-act that was applied to me in Evidence was charged in the Indictment; I have only that Exception, because of the Insufficiency of that Point. In the next Place, my Lord, there is not the right Additions to my Name; there are many Persons of the same Name; I am arraigned by the Name of *Daniel Axtell of Westminster*, in the County of *Middlesex*, Gentleman. I think none knew me to live there, and inhabit there.

Lord Chief Baron. I would not interrupt you; this is past; you should have made your Exception to that as Master *Marten* did before concerning his Name; that should have been first done; you have appeared and pleaded to that Name, and it was, *late of Westminster*.

Axtell. My Lord, I have this to speak in Arrest of Judgment, that the Indictment being grounded upon that Statute of the Twenty fifth of *Edward the Third*, it is either mistaken, or not pursued; my Lords, I did Yesterday give you the Judgment of the Lords and Commons concerning the Statute in relation to my Case; I say the Statute was mistaken, or not pursued.

Lord Chief Baron. That was offered before, Sir, as to the Matter of it.

Axtell. My Lord, I think not, I am mistaken if it were.

Lord Chief Baron. Then open it.

Axtell. My Lord, I do not find in that Statute that Words are an Overt-act, Words only.

Lord Chief Baron. This was over-ruled. The Things that you objected were these, that there is not any Overt-act that is laid that could be applicable to your Case; if it were not particularly applicable (you are found Guilty by the Jury,) it would be nothing: But there is an Overt-Act, you were present at the Court, beating the Soldiers, sending for an Executioner: But for Words, if one Man should say, here is the King, go and kill him, this is Treason; but you were guilty in all, according to Law. You being there, and doing this, you were not guilty only of the Words, but of all that was done; there is none but Principals in Treason. What we say and do to you we well know we must answer before God Almighty for it.

Axtell. I have but one Word more; truly I do appeal to God, before whom I shall have another Trial, I do not find my self Guilty either of Consulting, Contriving, or having a Hand in the Death of the King; I am Innocent, and I pray God that my Innocent Blood—

Lord

Lord Chief Baron. Pray Sir —

Axtell. May not cry —

Lord Chief Baron. You are now to speak in Arrest of Judgment.

Axtell. I have no more; I pray your Lordship's Favour and Mercy to me.

Clerk. William Hulet, alias Howlet, Hold up thy Hand. Thou art in the same Condition, what canst thou say for thyself why Judgment, &c?

Hulet. Truly, my Lord, I have little further to say; if you had been pleased to give me further Time I should have cleared myself; I call God above to Witness upon this Account that I am as clear as any Man; I submit to the Mercy of the Court.

Lord Chief Baron. For that I do, (but cannot positively say it,) that at your Request (notwithstanding the Judgment will pass against you) there may be some Time till his Majesty's Pleasure be known before any Execution will be upon that Judgment against you; in the mean time we must proceed according to Law and Justice.

Proclamation for Silence whilst Judgment is given.

The Lord Chief Baron's Speech before the Sentence pronounced against the aforementioned Prisoners found Guilty.

YOU that are Prisoners at the Bar, you stand here in several Capacities, yet all of you Persons convicted of the detestable and execrable Murder of our Sovereign Lord King Charles the First, of blessed Memory. Mistake me not, I do not say that you are all of you guilty of executing the Fact, but in Law, and in Conscience, (pro tanto, though not pro toto,) you are guilty of it, in that you prepared the Way and Means to it, in that you brought his Head to the Block, though you did not cut it off. You are here in Three Sorts, and I must apply my Words accordingly; and truly I do it with as much Sorrow of Heart as you have, many of you being Persons of liberal Education, great Parts; I say you are of Three Sorts. There are some of you, that, though the Judgment of Death is to pass against you, by His Majesty's Grace and Favour, and the Mercy under him, of the Two Houses of Parliament, Execution is to be Suspended until another Act of Parliament shall pass to that Purpose, that is, all of you but Three; for those Three, the one of them that was last called, William Heveningham, he is in another Capacity too; for I presume some Time will be given to him to consider of something relating to him, before any Order will be given for his Execution; there are Two others of you, and that is Daniel Axtel and Francis Hacker; and for you, as it yet stands before us, there is no Mercy, there is no room for it: But though you be in these several Classes, yet what I shall say will concern you all, because I do not know how it may fall with you; none of us knows how soon we may come to our Deaths, some (probably) sooner than others; all must come to it: You are now before the Tribunal of Man, but that is for Judgment for your Offence here; but there is another Judgment hereafter, and a Tribunal before which both you and we must stand, every Man here, and we must receive according to our Work; those that have done ignorantly, by a serious and unfeigned Repentance God Almighty may shew Mercy unto them. He hath reserved

Mercy even for the greatest Offenders. St. Paul himself, when he persecuted Christ ignorantly, upon his Repentance he found Mercy; those of you that are not yet convicted in your Consciences of the Foulness of this horrid Fact, look into your Consciences a little more, and see if it be not a great Judgment for your former Offence, that you should be given over to a Reprobate Sense; let me tell you, a seared Conscience, a bold Confidence, not upon good Grounds, is so far from securing the Conscience, it may stifle perhaps the Mouth of Conscience, but it will rise up more in Judgment against you. Here you have made your Defence, and I do not blame you for it; Life is precious, but remember the Thoughts of your Hearts are open; whether you did it ignorantly, covetously, or to get the Government into your own Hands, that I am not able to search into, God and you only know that; give me Leave to say something, perhaps I have repeated it by Parts before; God is my Witness what I speak I speak from mine own Conscience, and that is this, Gentlemen, because I saw it stuck with some of you, that is, that whatsoever the Case was, that by the Laws of these Nations, the Fundamental Laws, there could not be any Coercive Power over your King. I speak it again, because I would as near as I could speak the whole Truth, and would not mis-lead any Man in such a Case; remember that no Power, no Person, no Community or Body of Men, (not the People, either Collectively or Representatively,) have any Coercive Power over the Person of the King, by the Fundamental Laws; for that, Gentlemen, I shall begin to shew you that which all of you might remember, that is, your Oaths of Allegiance and Supremacy, and to add to this that Obligation which all this whole Nation did oblige themselves to, by the Parliament, without Question, then rightly represented, and in Being, the first of King James; whereby to shew you, that not only Persons, but the Body Politick of the Nations, not only the single Members, but the Members in both Houses of Parliament, were Loyal and Obedient Subjects to the King, their Head, even to yield a Natural and Humble Obedience and Allegiance. I told you the Act of 1 King James, when King James came first into England, We the Lords and Commons representing the whole People of the Nation, (the very Words of the Act are so primo Jacobi, Chap. 1.) Representing the whole Body of the Nation, do acknowledge an Humble and Natural Liege Obedience to the King as Supreme, his Heirs and Successors; and in the Name of themselves, and all the People, humbly submit themselves until the last Drop of their Blood be spent in Defence of the King and his Royal Posterity; and therefore they did oblige themselves and all the People of England, (as far as they could represent them, (the Words are more full than I can express them, and indeed it is so Dark I cannot read them;) They did acknowledge to be bound to him and his Imperial Crown. Remember these were not Words of Complement; you shall find that they all of them, and so did so many of you as are Members of Parliament, yea, all of you, before you came into the House of Commons, did take the Oath of Allegiance, which was made after this Recognition, the Third and Fourth of King James, or otherwise were not to be Members. What was that Oath of Allegiance that you took? It was, that you should Defend the King, his Person, (that is in 3 Jacobi, Chapter the Fourth,) his Crown and Dignity: What was it? Not only against the Pope's Power to Depose, but the Words are, or otherwise;

look

look into the *Act*, and reflect upon your own Conscience, and you shall find that all did Swear to defend the King, his Crown and Dignity, and there it is called Imperial Crown. I would have you lay this to Heart, and see how far you have kept this Oath: Gentlemen, in the Oath of Supremacy, which you all took, therein you did further acknowledge that the King was the only Supreme Governour of this Realm: Mark the Words, I will repeat them that you may lay it to Heart; you that have more Time to apply it to your Fact; and you that have less Time, for ought I know, you have reason to consider what I have to say; you swore then, that the King by the Oath of Supremacy, which all of you have taken, or ought to have taken; if any of you have not taken it, yet notwithstanding you are not absolved from the Obligation of it; but most of you did take it; there you did swear that the King is the only Supreme Governour of this Realm; and you swear there that you would defend all Jurisdictions, Priviledges, Prebeminences, and Authorities, granted or belonging to the King's Highness, his Heirs, and Successors, or united and annexed unto the Imperial Crown of this Realm. For the First, if the King be Supreme then there is no Co-ordination. Non habet Majorem, non habet Parem; that Word (Imperial Crown) is at least in Nine or Ten several Statutes; it is the very Word in this *Act* that was made lately in pursuance of former *Acts* concerning Judicial Proceedings. And so in the Time of King Charles, they acknowledged him to be their Liege Sovereign; I say that Word Supreme, and so the Word Imperial Crown, is in the First of Queen Elizabeth, the Third and the Eighth of Elizabeth, the Twenty fourth of Hen. 8. Chap. 12. there it is said this Kingdom is an Imperial Crown, subject to none but God Almighty. Before these Times you shall find in the 16 of Richard the Second, the Statute of Præmunire, the Crown of England Subject to God alone. I will go higher, William Rufus, (some of you are Historians, and you shall find the same in Eadmerus, and also in Matthew Paris, shortly after William Rufus his Time,) when he wrote to the Pope he Challenged, and had the same Liberty in this Kingdom of England, as the Emperor had in his Empire; (mistake me not, I speak only as to the Person of the King,) I do not meddle of Rights between the King and Subjects, or Subject and Subject; you see in this Case concerning the Death of his Majesty's Dear Father, and our Blessed Sovereign, of happy Memory, he doth not judge himself, but according to Law; that which I assert is as to the Person of the King, which was the Priviledge of Emperors, as to their Personal Priviledges; if he had offended, and committed an Offence, he was only accountable to God himself. I will come back to what I have said; you swore to be faithful to the King as Supreme. The King of Poland hath a Crown, but at his Oath of Coronation it is conditioned with the People, that if he shall not Govern according to such and such Rules they shall be freed from their Homage and Allegiance. But it differs with our King, for he was a King before Oath. The King takes his Oath, but not upon any Condition; this I shew you, to let you see that we have no coercive Power against the King. The King of England was anointed with Oil at his Coronation, which was to shew that Absolute Power, (I do not say of Government,) but of being accountable to God for what he did: The Law saith, The King doth no Injury to any Man; not but that the King may have the Imbecilities and Infirmities of other Men, but the King in his Sin-

gle Person can do no Wrong: But if the King command a Man to beat me, or to disseize me of my Land, I have my Remedy against the Man, though not against the King. The Law in all Cases preserves the Person of the King to be untouched; but what is done by his Ministers unlawfully, there is a Remedy against his Ministers for it; but in this Case, when you come to the Person of the King, what do our Law-books say he is? They call it, Caput Reipublicæ, Salus Populi, the Lieutenant of God; and let me tell you, there was never such a Blow given to the Church of England, and the Protestant Religion. There was a Case, and that of the Spencers, you shall find in the 7th Report of the Lord Coke, in Calvin's Case, that Homage is due to the King in his Politick Capacity; and then they made this damnable Inference, that therefore if the King did not demean himself as he ought, that he should be reformed, pure aspertee, by Asperity, Sharpness, or Imprisonment: But these were condemned by Two *Acts* of Parliament in Print, that they could not do that even in that Case; one was called the Banishment of Hugh Spencer; and the other is in 1 Edward 3. upon the Roll. My Masters, in the first of Henry the Seventh you shall find it in the Printed Seven Books, he saith, That as to the Regality of his Crown, he is immediately Subject unto God. Mark the Doctrine of the Church of England, Gentlemen; I do not know with what Spirit of Equivocation any Man can take that Oath of Supremacy: You shall find in the Articles of the Church of England, the last but One or Two; it is that Article which sets forth the Doctrine of the Church of England; they say, that the Queen, and so the King, hath the Supreme Power in this Realm, and hath the Chief Government over all the Estates of the Realm; the very Words are so; this was shortly after making the *Act*; the Articles were in 1562, and she came in 1558, or 1559; it is to shew you the King hath the chief Government over all the Estates within the Nation; and if you look upon it, you shall find it was not only the Judgment of the Church, but of the Parliament at the same Time. They did confirm this Article so far, that they appointed that no Man should take, or be capable of a Living, but those that had taken that Oath. God forgive those Ministers that went against it. The Queen, and the Church, were willing that these should be put into Latin, that all the World might see the Confession of the Church of England, and of the People of England; you may read it in Cambden: I have told you how, and wherein, the chief Power consisted; not in Respect the King could do what he would; no, the Emperors themselves did not challenge that; but this they challenge by it, that they were not accountable to Man for what they did: No Man ought to touch the Person of the King; I press it to you in Point of Conscience; you see in the Scripture, in Psalm 51. the Psalm of Mercy, whereby we ask Pardon of God for our great Offences; I think none of you in this Condition but will join in this; you know the Adultery and Murder that David committed, this Penitential Psalm was made for that; what doth he say? Against thee, thee only have I sinned, &c. tibi soli peccavi, Domine; not because he had not sinned against Man, for 'tis plain he had sinned both against Bathsheba and Uriah too; but because he was not liable to the Tribunal of Man, he was not bound or accountable to any Man upon Earth. And now, my Masters, I beseech you consider, that some of you for ought I know suddenly, and some of you for

for ought I know not long after, all of us, we do do not know how soon, must come to make a right Account to God of what we have done. After this Life you enter into an Eternity, an Eternity, an Eternity of Happiness, or of Woe; God Almighty is merciful to those that are truly penitent; the Thief upon the Cross, and to all that are of a penitent Heart. You are Persons of Education, do not you go on in an obstinate perverse Course, for Shame of Men, even this Shame which you now have, and which you may have when you come to die; a sanctified Use may be made of it; you pay to God some Part of that Punishment which you owe to him for your Sins. I have no more to say, but the next Thing I have to do, is to give the Sentence, the Judgment, which truly I do with as unwilling a Heart as you do receive it. You Prisoners at the Bar, the Judgment of the Court is this, and the Court doth award, That you be led back to the Place from whence you came, and from thence to be drawn upon an Hurdle to the Place of Execution, and there you shall be Hanged by the Neck, and being Alive shall be cut down, and your Privy Members to be cut off, your Entrails to be taken out of your Bodies, and (you living) the same to be Burnt before your Eyes, and your Heads to be cut off, your Bodies to be divided into Four Quarters, and Heads and Quarters to be disposed of at the Pleasure of the King's Majesty, and the Lord have Mercy upon your Souls.

Court adjourned till Friday Morning Seven a Clock.

Friday, October 19. 1660.

Set William Heveningham to the Bar.

Serjeant Keeling. May it please your Lordships, the Prisoner at the Bar, William Heveningham, hath been Indicted for High-Treason, for Compassing and Imagining the Death of the late King, of Blessed Memory; he has been Tried, the Jury has found him Guilty, I do humbly move your Lordships in the Behalf of the King that you will proceed to Judgment.

Clerk. William Heveningham, Hold up thy Hand. What canst thou say for thyself why Judgment, &c?

Heveningham. My Lords, I have nothing more to say than I said formerly, only I plead the Benefit of the Proclamation, and cast myself upon the Mercy of our most Gracious Sovereign, and desire your Lordships to be Mediators on my Behalf.

Lord Chief Baron. By the Act of Indemnity (of which you claim the Benefit, and we ought to take Notice of it) we are to proceed to Judgment, but no Execution of this Judgment is to be until by another Act of Parliament, by Consent of the King, it shall be ordered. And therefore I need not speak any more of that, or any Exhortation to prepare yourself for Death; our Work is only to give Judgment. The Judgment of the Court is this, and the Court doth award, that you the Prisoner at the Bar be led back to, &c. and the Lord have Mercy upon your Soul.

Of these, Ten only were Executed, viz.

Thomas Harrison.

John Carew.

John Cook.

Thomas Scot.

Hugh Peters.

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Gregory Clements.

John Jones.

Daniel Axtell.

Francis Hacker.

Adrian Scroop.

Whose Behaviour at their Execution is thus related by their several Friends.

The Execution of Major-General HARRISON, the Day of October, 1660. at Charing-Cross.

THE Sheriff came that Morning that he was to die, and told him, that in half an Hour he must be gone; he answer'd, that he was ready, and would not have him stay at all on his account. But the Sheriff left him to stay a little longer, and in the mean time, he was longing for the Sheriff's coming, and as his Friends judg'd he was in haste to be gone, and said, He was going about a great Work for the Lord that Day; and that his Support was, that his Sufferings were upon the account of *Jehovah*, the Lord of Hosts. He said, He look'd upon this as a clear Answer of his Prayers; for many a time, said he, have I begg'd of the Lord, That if he had any hard Thing, any reproachful Work, or contemptible Service to be done by his People, That I should be employ'd in it; And now blessed be the name of God, who accounteth me worthy to be put upon this Service for my Lord Christ: Oh, this is nothing to what Christ suffer'd for me!

He parted with his Wife and Friends with great Joy and Chearfulness, as he did use to do when going some Journey, or about some Service for the Lord. He told his Wife he had nothing to leave her but his Bible; but that he was assured that God would make up all her Losses in due time; and desired, that those that did love him, should manifest their Love in being loving and tender to his dear Wife.

The Sheriff commanding the Keeper to acquaint Mr. Harrison he must go to suffer, the Keeper came forth, and return'd Answer, That he was ready when he pleas'd: Then the Sheriff commanded the Keeper to fetch him forth; so he came forth immediately, sooner than was expected; (running down the Stairs with a smiling Countenance;) by reason of his sudden coming, the Door (that he was to go up a pair of Stairs at) was not open'd, which occasion'd his Stay in the Hall till the Keeper could be found; and there one Mrs. M. took him by the Hand, and said, with a loud Voice, *Blessed be the great God of Hosts, that hath enabled you, and call'd you forth to bear your Testimony; the God of all Grace and Peace be with you, and keep you faithful to the Death, that you may receive a Crown of Life.* With that one of the Officers pulled the Woman away by the Shoulder, saying, Away with this Woman, she stands prating here. But the Major-General replied, Be not offended with her, she speaks Scripture-Language: So they thrust her away from him, and would not permit any to speak more to him in that Place.

Then he was carried into a Room where the common Prisoners were, and told them what a sad thing it was to be condemn'd to die, and to want the Love and Favour of God; But it's not so with me; for tho' I die, yet I know I shall live with Christ to all Eternity, and this is out of the exceeding Riches of the Grace of God; for he it is that maketh the Difference: For as I am in myself, I am a base, vile, and nothing Creature; but compleat in him who is the Head

of all Principalities and Powers. Poor Men! I wish you all as well as I do my own Soul. Oh that you did but know Christ! his Bowels earn towards the greatest of Sinners; his Blood is sufficient to do away the deepest Iniquity; he waiteth to be gracious, and is willing to receive all that come unto him: Oh therefore labour to come to Christ! your Time in this World is short and uncertain; you are walking upon the Brink of Eternity, and are ready to drop in every Moment; if you die without the Fear of our God, you will be miserable for ever and ever; but if you come to know Christ to be yours, it will be your Joy and Happiness World without End. He then put his Hands into his Pocket and gave them some Money, and wish'd them to take heed of sinning against the Lord. And from thence was carried upon the Leads on the Top of Newgate, so that he could see the greatest Part of the City; he then said, *The Earth is the Lord's, and the Fulness thereof, and there is nothing hid from his Eyes.* From thence he was carry'd down two Pair of Stairs, where he was tied about the Back, Breast, and Shoulders; he took the Rope in his Hand and said, *Friends take notice that God gives me Power to receive this with Thanksgiving,* and he help'd the Serjeant to put on the Rope. Then a Friend came weeping to him to take her leave of him, he said, *Hinder me not, for I am going about a Work for my Master.* Then looking about him, said, *Sirs, it's easy to follow God when he makes a Hedge about us, and makes liberal Provision for us; but it's hard for most to follow him in such a Dispensation as this; and yet my Lord and Master is as sweet and glorious to me now, as he was in the time of my greatest Prosperity.*

He also said, this I can say for myself, *That according to the Light that God hath given me, I have served him and my Country with Integrity and Uprightness of Heart, not willingly nor wittingly wronging any:* But this I have done with much Infirmary and Weakness. One telling him, that he did not know how to understand the Mind of God in such a Dispensation as this: He said, *Wait upon the Lord; for you know not what the Lord is leading to, and what the End of the Lord will be.*

After this, addressing himself to a Gentleman, he said, *I dare not, nor cannot be a Pleaser of Men:* A Friend answer'd, it appear'd so by your declining Cromwell's Interest; which Words he assented to, and further said, *The manner of my speaking before the Court may seem strange to some; but my Design was not to approve myself before Men, but God; and what I said, was according to my Conscience.* And as the Rope was tying on, he repeated Isaac's Words to Abraham; *Father, here is the Wood, but where is the Sacrifice?* and also said, *If the Lord see good, he can provide another Sacrifice, he can deliver those that are appointed to die; but his Will be done, Death is not terrible to me; yea, it is no more to me than a Rush, I have learn'd to die long ago.* And was often heard to say, concerning the Lord's Dispensation to him and his People, *Shall not the Lord do with his own what it pleaseth him?* And so parting with his Friend, went down Stairs to the Sledge, and ask'd which way must I sit? for I am not acquainted with this: *Good is the Lord in all his Ways.* Then he was carried away, in the Sledge, having a sweet smiling Countenance,

with his Eyes and Hands lifted up to Heaven, his Countenance never changing in all the Way as he went to the Place of Execution, but was mighty cheerful, to the Astonishment of many. He call'd several times in the Way, and spoke aloud, *I go to suffer upon the Account of the most glorious Cause that ever was in the World.* As he was going to suffer, one in a Derision call'd to him and said, *Where is your Good Old Cause?* He with a cheerful Smile clapt his Hand on his Breast, and said, *Here it is, and I am going to seal it with my Blood.* And when he came to the Sight of the Gallows, he was transported with Joy, and his Servant ask'd him how he did; he answer'd, *Never better in my Life:* His Servant told him, Sir, there is a Crown of Glory ready prepar'd for you. O yes, said he, I see it. When he was taken off the Sledge, the Hangman desir'd him to forgive him. I do forgive thee, said he, with all my Heart, as it is a Sin against me; and told him he wish'd him all Happiness. And further said, *Alas poor Man, thou dost it ignorantly; the Lord grant that this Sin may not be laid to thy Charge:* And putting his Hand into his Pocket, gave him all the Money he had; and so parting with his Servant, hugging of him in his Arms, he went up the Ladder with an undaunted Countenance; from whence he spake to the Multitude as follows.

Gentlemen,

I Did not expect to have spoken a Word to you at this time; but seeing there is a Silence commanded, I will speak something of the Work God had in Hand in our Days.

Many of you have been Witnesses of the Finger of God that hath been seen amongst us of late Years, in the Deliverance of his People from their Oppressors, and in bringing to Judgment those that were guilty of the precious Blood of the dear Servants of the Lord. And how God did witness thereto by many wonderful and evident Testimonies, as it were immediately from Heaven; insomuch that many of our Enemies, who were Persons of no mean Quality, were forc'd to confess, *That God was with us; And if God did but stand neuter, they should not value us:* And therefore, seeing the Finger of God hath been pleading this Cause, I shall not need to speak much to it: In which Work I with others were engag'd; for the which, I do from my Soul bless the Name of God, who out of the exceeding Riches of his Grace accounted me worthy to be instrumental in so glorious a Work; and tho' I am wrongfully charged with Murder and Blood-shed, yet I must tell you, I have kept a good Conscience both towards God, and towards Man; I never had Malice against any Man, neither did I act maliciously towards any Person, but as I judg'd them to be Enemies to God and his People; and the Lord is my Witness that I have done what I did out of the Sincerity of my Heart to the Lord. I bless God I have no Guilt upon my Conscience, but the Spirit of God beareth Witness that my Actions are acceptable to the Lord, thro' Jesus Christ; tho' I have been compass'd about with manifold Infirmities, Failings and Imperfections in my holiest Duties; but in this I have Comfort and Consolation, that I have Peace with God, and do see all my Sins wash'd away in the Blood of my dear Saviour. And I do declare as before the Lord, that

that I would not be guilty wittingly, nor willingly, of the Blood of the meanest Son, no not for ten thousand Worlds, much less of the Blood of such as I am charged with.

I have again and again besought the Lord with Tears to make known his Will and Mind unto me concerning it, and to this Day he hath rather confirmed me in the Justice of it, and therefore I leave it to him, and to him I commit my Ways; but some that were eminent in the Work, did wickedly turn aside themselves, and to set up their Nests on high, which caused great Dishonour to the Name of God, and the Profession they had made. And the Lord knows I could have suffer'd more than this, rather than have fallen in with them in that Iniquity, tho' I was offer'd what I would if I would have joined with them; my Aim in all my Proceedings was the Glory of God, and the Good of his People, and the Welfare of the whole Commonwealth.

The People observing him to tremble in his Hands and Legs, he taking notice of it, said:

Gentlemen, By reason of some Scoffing that I do hear, I judge that some do think I am afraid to die, by the Shaking I have in my Hands and Knees; I tell you, no, but it is by reason of much Blood I have lost in the Wars, and many Wounds I have receiv'd in my Body, which caused this Shaking and Weakness in my Nerves; I have had it this twelve Years: I speak this to the Praise and Glory of God; he hath carried me above the Fear of Death; and I value not my Life, because I go to my Father, and am assured I shall take it up again.

Gentlemen, Take notice, that for being instrumental in that Cause and Interest of the Son of God, which hath been pleaded amongst us, and which God hath witnessed to by Appeals and wonderful Victories, I am brought to this Place, to suffer Death this Day; and if I had ten thousand Lives, I could freely and cheerfully lay them down all, to witness to this Matter.

Oh, what am I, poor Worm, that I should be accounted worthy to suffer any thing for the sake of my Lord and Saviour Jesus Christ! I have gone joyfully and willingly, many a time, to lay down my Life upon the Account of Christ, but never with so much Joy and Freedom as at this time; I do not lay down my Life by Constraint, but willingly; for if I had been minded to have run away, I might have had many Opportunities; but being so clear in the thing, I durst not turn my Back, nor step a Foot out of the Way, by reason I had been engaged in the Service of so glorious and great a God. However, Men presume to call it by hard Names; yet I believe, ere it be long, the Lord will make it known from Heaven that there was more of God in it than Men are now aware of.

[The Sheriff minding him of the Shortness of Time, if he had any thing to say to the People, he might.]

He said, I do desire as from my own Soul, that they and every one may fear the Lord, that they may consider their latter End, and so it may be well with them; and even for the worst of those that have been most malicious against me, from my Soul I would forgive 'em all so far as any thing concerns me; and so far as it concerns the

Cause and Glory of God, I leave it for him to plead; and as for the Cause of God, I am willing to justify it by my Sufferings, according to the good Pleasure of his Will.

I have been this Morning, before I came hither, so hurried up and down Stairs (the meaning whereof I knew not) that my Spirits are almost spent; therefore you may not expect much from me.

Oh the Greatness of the Love of God to such a poor, vile, and nothing Creature as I am! what am I, that *Jesus Christ* should shed his Heart's Blood for me, that I might be happy to all Eternity, that I might be made a Son of God, and an Heir of Heaven! Oh, that Christ should undergo so great Sufferings and Reproaches for me! And should not I be willing to lay down my Life, and suffer Reproaches for him that hath so loved me! Blessed be the Name of God that I have a Life to lose upon so glorious, and so honourable an Account: *[Then praying to himself, with Tears; and having ended, the Hang-man pull'd down his Cap; but he thrust it up again, saying,]* I have one Word more to the Lord's People, that desire to serve him with an upright Heart: Let 'em not think hardly of any of the good Ways of God for all this; for I have been near this seven Years a suffering Person, and have found the Way of God to be a perfect Way, his Word a tried Word, a Buckler to them that trust in him, and will make known his glorious Arm in the Sight of all Nations. And tho' we may suffer hard Things, yet he hath a gracious End, and will make a good End for his own Glory, and the Good of his People; therefore be cheerful in the Lord your God, hold fast that which you have, and be not afraid of Suffering; for God will make hard and bitter Things sweet and easy to all those that trust in him: Keep close to the good Confession you have made of Jesus Christ, and look to the Recompence of Reward; be not discouraged by reason of the Cloud that now is upon you; for the Sun will shine, and God will give a Testimony unto what he hath been a doing, in a short Time.

And now I desire to commit my Concernments into the Hands of my Lord and Saviour Jesus Christ, he that hath deliver'd himself for the chief of Sinners; he that came into the World, was made Flesh, and was crucified; that hath loved me, and washed me from my Sins in his own Blood, and is risen again, sitting at the right Hand of God, making Intercession for me.

And as for me, Oh! who am I, poor, base, vile Worm, that God should deal thus by me? for this will make me come the sooner into his Glory, and to inherit the Kingdom, and that Crown prepar'd for me! Oh, I have served a good Lord and Master, which hath helped me from my Beginning to this Day, and hath carried me thro' many Difficulties, Trials, Straits, and Temptations, and hath always been a very present Help in Time of Trouble; he hath cover'd my Head many times in the Day of Battle: By God I have leaped over a Wall, by God I have run thro' a Troop, and by my God I will go thro' this Death, and he will make it easy to me. Now into thy Hands, O Lord Jesus, I commit my Spirit. *[Then he was turn'd off, and was cut down alive, for after his Body was*

open'd, he mounted himself, and gave the Executioner a Box on the Ear.

The Execution of Mr. JOHN CAREW, the Day of October 1660, at Charing-Cross.

THE Day he suffer'd, and the Hour being come, the Rope being ty'd about him, he rejoyc'd exceedingly, saying, *Oh! What am I, that I should be bound for the Cause and Interest of the Son of God?* And when he was coming down Newgate Stairs, to go into the Sledge, in a very smiling, chearful manner, he utter'd Words to this Effect; *My Lord Jesus, for the Joy that was set before him, endur'd the Cross, and despised the Shame, and is now set down on the right Hand of God; whose Steps I desire to follow.* It was also observ'd, that the Chearfulness of his Countenance, all the way as he went to the Gibbet, remain'd, to the Encouragement of the Faithful, and Admiration of Enemies, uttering by the way many chearful Expressions, setting forth his Joy in the Lord.

When he was brought to the Gibbet, before he went up the Ladder (his Hands being bound) he exhorted several Friends standing by, to be faithful unto Death, and not to be ashamed of the Cause for which they suffered, and they should receive a Crown of Life. And further said to a Friend that stood by, That he hoped the Truths of the Kingdom which he had preach'd up and down would not be the less esteem'd, for that he came now to Seal them with his Blood.

After he had mounted the Ladder, he made the following Speech.

Truly, it is not Words, nor that which I have to speak in mine own Spirit, will glorify God, or give any Advantage to your Souls, or unto me: But it is, if I may speak a few Words in the Spirit of the Lord, and in the Power of his Might, and from an unfeigned Love unto Jesus Christ: That would indeed give me an open Entrance, and make my Passage very sweet; and a Blessing may be behind, even upon you. The first thing (indeed) that hath been very weighty (and I desire to leave it upon all, upon Saints, as well as upon those that are not acquainted with Jesus Christ) that Eternity, Immortality, and Eternal Life, it is a wonderful thing; the Thoughts and Apprehensions of it are able to swallow up a poor Soul: We little think what it is; he that knows most of God, and most of Christ, and hath the greatest Measure of the Anointing, he little, little knows what it is to appear before the holy, the most glorious, the most righteous God of Heaven and Earth; to stand before his Judgment-Seat, before Jesus Christ that is at his Right Hand: And where all the holy Angels are so ashamed (because of the Glory of God) that they fall down and cover their Faces, and cry *Holy, Holy, Lord God Almighty, which art, and wast, and art to come.* And therefore, if such glorious Creatures, if such excellent Spirits as these Seraphins and Cherubins be, if they do fall down before the Glory and Majesty of this most excellent and wonderful God, how should Dust and Ashes do? And how should they fear and tremble to appear before him? And therefore, I

say, think of this, and of the Righteousness of God, as well as of his Glory and Majesty, and of his Justice; that when for one Sin he threw down the Angels (those glorious Spirits) into Hell, and he would take no Ransom or Redemption for them; and tho' he hath Mercy on the Sons of Men (according to his own Election and Purpose, and according to that that he hath purchased for himself in Christ Jesus before the Foundation of the World was laid) yet in time he made his Son a Sacrifice before Men and Angels, to bring his chosen Ones to Glory. That he should take Pleasure to send his own Son out of his Bosom, who was the Delight of his Soul, and bruise him for our Sins; yet it pleased the Father to bruise him. The most holy and righteous God, that had but one Son, one only begotten Son (that was the Delight of his Soul) and should take Pleasure to bruise him, that we might be healed, and laid Stripes upon him that we might be healed! Oh! the Height and Depth, Oh! the Length and Breadth of the Love of God in Christ Jesus unto poor Souls. Oh! this is that the Angels do desire to stoop down and look into, and to know more of this great Mystery of the Love of God in Christ: And that God should take upon him the Nature of Man, and put him into that glorious Union with his own Son; and that he should leave the Angels, tho' Christ was made a little lower than they for suffering Death for us: Yet now, because the Nature of Man is united to the Godhead by vertue of that Marriage and Union, we become the Sons of God, and Heirs of Glory. Those that are adopted by Jesus Christ are brought near to the Throne of Glory, are in a high and glorious Communion and Fellowship with the Father and Spirit, owned of all the holy Angels. And therefore they do stand without the Throne (as in several Places of the Revelations) and round about the Elders, and round about those that were given to the Lamb (as in the fifth of the Revelations, and many other Scriptures) they stand without; but there is another Company within, which is the twenty-four Elders, and four living Creatures, they fall down and worship God, they are nearer than the Angels; Oh! who hath credited, who hath believed this Report, and to whom is the Arm of the Lord revealed? Oh! how many Professors are there in this Day, in this Nation, that call upon the Name of Christ, and that say they shall be saved by Christ, and do live and trust most in their own Works and Righteousness; and never come to the Knowledge and Understanding of this great Mystery of the Love of God in Christ? Who never received those Teachings from the Anointing, and according to the New Covenant, where it is promised, that they shall be all taught of God; all the Children of God shall be taught of him, and there is no one can teach these but the Father, none can draw them to the Son but the Father; and no Man can come to the Father but through the Son: And this great Mystery is both by the Light and Operation of the holy Spirit, who makes the new Creature in the Soul: O that God would pour out of his Holy Spirit! that God would pour out the Spirit of the New Covenant, and the Spirit of the Gospel, and the Spirit that can declare the Mystery of God's Word in the Spirit, and that he hath made manifest through Jesus Christ. Oh! there is much talking

talking and speaking in the Name of Christ, and how many Men spend little Time in getting Evidences in the Power and Demonstration of the Spirit, and come to apprehend God in Christ, that speak of him? Oh! there are few of these, the Lord knows. O that the Anointing may be poured out more now, according to this Faith, in the way of this Grace, and in this Love of God, even in the Electing Love of the Father; and in the Redeeming Blood of Jesus Christ, according to the purchased Possession that he hath obtained through his own Righteousness, wherein God hath been just also, in justifying the Ungodly; and among them, such a poor simple Piece of Dust and Ashes as I have been, and have to this Day little glorified my Father; and yet I can call him Father, thro' some measure of his Spirit, and Father, according to the Spirit of Adoption too; and can say the Lord Jesus hath given himself for me; and I take the Lord Jesus Christ as the great Gift of the Father, desiring to bear witness of that Love, and of that wonderful Grace and Glory, that he hath made me Partaker of in and thro' him. Oh! blessed be the God and Father of our Lord and Saviour Jesus Christ, who hath called me to this Hope, and who hath made me Partaker of this Glory, that the Saints are enlightened in. And now I long to see the Face of this Father, and of his Son, tho' I have such a Number of Sins in me; and tho' I have an Interest in him, and can call him Father at any time, without Doubt, and in full Assurance of Faith in the Holy Spirit; yet if Jesus Christ were not there, to present me faultless before the Presence of God, I should be afraid to appear before him; but he is able to do it, and therefore saith the Apostle, *Now unto him that is able to save you, and to present you faultless before the Presence of his Glory with exceeding Joy, &c.* I am a poor sinful Piece, full of Iniquity, laden with many Burdens, that have a Body of Death that I carry about me, and I am now about to lay it down, and my Soul shall enter into eternal Life, and be made perfect in a Moment, thro' the mighty Power of God that hath wrought that glorious Work of raising Christ from the Dead. Oh! all my Strength, and all my Joy, and all my Life is in Christ, and in him alone; and I have a Righteousness already of his working, according to his own Grace, and according to his own mighty Power, and according to his own Mercy, that he hath been pleased to work in me; and so hath been pleased to keep me in a very wicked, and in a very evil Day, by the Power of his Grace. And I desire to glorify my Father, and many Years have I been in that Work, that hath been of late in this Nation; a few and evil have been the Days of my Pilgrimage, but I have desired to serve the Lord with Faithfulness, and in the Integrity of my Soul, without Prejudice against any Creature, and it hath been the Desire of my Soul to approve my self faithful towards God, and towards Man: And what I have done, I have done it in Obedience to the Lord; that I had in my Eye, and in my Heart. There are many things laid upon many of those that profess the Kingdom and glorious Appearance of Jesus Christ, as if they were Enemies to Magistracy and Ministry; and, as if so be we were for the Destruction of the Laws and Properties of Mankind; therefore shall I speak a few Words

unto that: And if indeed we were such, we were fit to be turn'd out of the World; as some now think they should do God good Service in sending such poor Creatures quickly from hence. There is no such thing; I desire to bear Witness to the true Magistracy, that Magistracy that is in the Word of the Lord. And that true Ministry, which Ministry is a Ministry from the Anointing; that doth bear Witness to the Lord Jesus, and hath his Holy Spirit. That Testimony I desire to bear; and that Testimony I desire to stand faithful in, with Integrity to the Lord Jesus, as King of Saints, and King of Nations. And therefore it is, I say, to have a Magistracy as at the first, and Counsellors as at the beginning, Men fearing God and hating Covetousness. And that Ministry as doth preach the everlasting Gospel.

Here Mr. Sheriff interrupted him, saying, *'Tis desired that you spend the rest of your Time in preparing your self.* Another said, *You spend your self, Sir, in this Discourse.* Another said, *It rains.* Then Mr. Carew said, *I will pray.*

His Prayer being ended, a Friend that stood by said, *It is expected you should speak something to the Matter of your Suffering.* The Under-Sheriff said, *'Tis not to be suffer'd; What are you, that you put on Men to speak? What are you, Sir?*

Mr. Carew said, *Farewel, my dear Friends, farewel; the Lord keep you faithful.* The Friend said, *We part with you with much Joy in our Souls.*

Mr. Carew said to the Executioner, *Stay a while, I will speak one Word,* and then said very solemnly, with a loud Voice, *Lord Jesus receive my Soul; Lord Jesus, into thy Hands I commend my Spirit.* And then was turn'd off.

Mr. JOHN COOK's Execution, the 16th Day of October, 1660, at the same Place.

Mr. Cook to Mr. Peters in the Dungeon said,

Brother Peters, we shall be in Heaven to morrow in Bliss and Glory; what a Blessed Thing is that? my very Heart leaps within me for Joy; I am now just as I was in the Storm, almost in Sight of Heaven; read me *Isaiah xliii. 9, 10. and lxi. 10, 11. Hof. xiii. 14.*

Then looking upon his Bed, said, That shall be my last Pillow; I will lay me down and sleep awhile: and he slept about an Hour and half, and then awoke, saying, Now farewel Sleep, no more Sleep in this World, and farewel Darkness and Night, I am going where there shall be no Night, neither need of a Candle, nor of the Sun, for the Lord will give us Light, *yea, the Lord will be our everlasting Light, and our God will be our Glory.*

And welcome every Thing that gives Notice the Hour is at Hand, welcome the Cock that crows, welcome sweet Death, my good Friend, that will bring me so near Eternity. O blessed be God, blessed be his Name; Oh this Christ is a blessed Christ! he answereth all Things, and within few Hours we shall be crown'd with Glory and Victory; blessed be our Lord Jesus that hath given us the Victory over Sin and Death. Welcome Mr. Loman, my Keeper, welcome Angels, that will within a few Hours take the Office, and guard me into Eternity.

At Midnight he pray'd very fervently, and the common Prisoners heard him, and seem'd very sorrowful by their Expressions, saying, Sir, the Lord be with you; O that our Souls might go where your Soul goes.

About the Morning, speaking to Mrs. Cook said, Lamb do not dishonour my last Wedding-day by any Trouble for me: For if all my Judges did but know what Glory I shall be in before twelve a-clock, they would desire to be with me.

And let the Executioner make what haste he can, I shall be before-hand with him; for before he can say, here is the Head of a Traitor, I shall be in Heaven. *Come Lord Jesus, come quickly, my Soul longeth for thee, and I wait to hear thy Voice, saying, come up hither, and immediately I shall be in the Spirit, and then shall I for ever be with the Lord.* And at Midnight there was a Cry heard, the Bridegroom cometh, and they that were ready went in unto the Marriage; *This Day I shall enter into the Joy of my Lord.*

Come, Brother Peters, let us knock at Heaven Gates this Morning, God will open the Doors of Eternity to us before twelve a-clock, and let us into that innumerable Company of Saints and Angels, and to the Souls of just Men made perfect, and then we shall never part more, but be with the Lord for ever and ever, singing Praises, singing Praises to our Lord and everlasting King to all Eternity: He said further, O what a good Master have I serv'd, that stands by me now, and supports me! with his everlasting Arm he bears me up; then said, *Come away my beloved, make haste, and be thou like unto a young Roe, or a young Hart upon the Mountains of Spices.* Behold I come Lord Jesus, I come full Sail to thee, I come upon the Wing of Faith, Lord Jesus receive me. And going to lye down upon his Bed, he said, It is no more to go to die to-morrow than it is to go to sleep to-night. I bless the Lord I am free from Trouble, and my poor Heart is as full of spiritual Comfort as ever it can hold, *and this Joy can no Man take from me.*

The Doors of the Prison being open'd in the Morning, he spent that little Time he had left in Prayer and heavenly Discourse with Friends that came to visit him, preparing himself for his Suffering, with such a Chearfulness, as was an Astonishment to the Spectators.

Then speaking to his Wife, said, Farewel my dear Lamb, I am now going to the Souls under the Altar, that cry, How long, O Lord, Holy and True, dost thou not judge and avenge our Blood on them that dwell on Earth? and when I am gone, my Blood will cry and do them more Hurt than if I had liv'd. But I am now going to Eternity, blessed be God, be not troubled for me, but rejoice, because I go to my Father and your Father, to my God and your God. And after some Time spent in Prayer, he desir'd his Wife not to with-hold him by an Unwillingness to part with him now, when God call'd for him, to be offer'd up as a Sacrifice for his Name and Cause.

After a little Pause, she freely gave him up to the Lord; to which he replied, Now all the Work is done, and said, I resign thee up to Jesus Christ, to be thy Husband, to whom also I am going to be married in Glory this Day.

His Wife shedding Tears, he said, Why weep-

est thou? let them weep who part and shall never meet again; but I am confident we shall have a glorious Meeting in Heaven; here our Comforts have been mixt with Chequer-work of Troubles, but in Heaven all Tears shall be wip'd from our Eyes.

He ask'd several times if the Sheriff was not come, saying, why stay the Wheels of his Chariot? why do they drive so heavily? I am ready, blessed be God, I have nothing to do but to die.

Word being brought that the Sheriff was come, he makes haste to be gone, and his Wife stepping after him, took him by the Arm; whereupon he said, *O do not hinder me from going to Jesus Christ!*

And then with a chearful Countenance, taking leave of his Friends, he went to the Sledge that carried him, whereon was also carried the Head of Major-General Thomas Harrison, with the Face bare towards him; and notwithstanding that dismal Sight, he passed rejoicingly thro' the Streets, as one borne up by that Spirit, which Man could not cast down. Being come to the Place of Execution, when he was taken out of the Sledge, he said, *This is the easiest Chariot that ever I rid in in all my Life.*

Being come upon the Ladder, and the Rope put about his Neck, he rejoiced, saying, *Blessed be the Name of God, that I am bound for the sake of Christ.*

Then he address'd himself to God in Prayer.

Having ended his Prayer, he made the following Speech:

Mr. Sheriff and Gentlemen,

The most glorious Sight that ever was seen in the World was our Lord Jesus Christ upon the Cross; and the most glorious Sight next to that is to see any poor Creature suffer for him in his Cause.

I desire to speak a few Words briefly, to let you understand what a glorious Work the Lord hath been pleas'd to accomplish upon my Spirit. I bless the Lord, I have ransack'd into every Corner of my Heart, and I have searched into all my Sins, actual and original, secret and open, known and unknown, so far as the Lord hath discover'd them to me; and I have confessed them all with a penitential bleeding Heart, and contrite Spirit; blessed be his Name, he hath been pleas'd to come in abundant manner, and hath been pleas'd to shew me that the only Remedy is the Blood of Christ; and I have, blessed be the Lord, applied that precious Blood to my poor Soul, and have laid hold upon Christ, by a true and lively Faith; and there is a sweet Calm and Serenity in my Soul and Conscience, blessed be thy Name. I desire to glorify God, and to give him the Glory of all, and to take Shame unto myself for any Sins that I have ever committed, that I know to be Sin; and therefore, I desire to rejoice in the God of my Salvation; as *Isa. lxi. 10. I will greatly rejoice in the Lord, my Soul shall be joyful in my God, for he hath clothed me with the Garment of Salvation; he hath cover'd me with the Robe of Righteousness, as a Bridegroom decketh himself with Ornaments: And as a Bride adorneth herself with Jewels, even so the Lord delighteth in me. And as the Earth bringeth forth her Buds, and as the Garden causeth the things that are*

are sown in it to spring forth, so the Lord will cause Righteousness and Praise to spring forth before all Nations.

And *Isaiab* xliii. 9, 10. *Ye are my Witnesses, saith the Lord. I do desire to bear a Testimony unto God, and to Jesus Christ, for Justice and Truth, and Righteousness and Holiness.*

The Lord knows I have no Malice upon my Heart against any Man or Woman living upon the Face of the Earth; neither against Jury that found me guilty, nor Court that passed Sentence; I desire freely to forgive every one from the Bottom of my Heart. And as concerning this great Dispensation, you may (it may be) desire to hear something of it. Truly, I say, As to the King's Majesty, I have not any hard Thoughts concerning him: My Prayer shall be for him that his Throne may be upheld by Truth, and by Mercy; for by Mercy, as *Prov.* 23. *the Throne is upheld.* But I must needs say, that poor we have been bought and sold by our Brethren, as *Joseph* was.

Brother hath betray'd Brother to Death; and that Scripture is in a great measure fulfill'd, *Mat.* x. 21. *The Father against the Son, and the Son against the Father; and Brother shall deliver up Brother to Death.* I desire for my own Part to kiss the Rod; and I do desire (if it may please the King's Majesty) that no more Blood may be shed after mine: It may be the Lord will put it into his own Breast.

Here is a poor Brother coming, I am afraid that he is not fit to die at this Time; I could wish that his Majesty might shew some Mercy.

The Sheriff interrupted in Words to this effect: *Let that alone, for the King's Majesty hath Clemency enough for all but his Father's Murderers.*

Mr. Cook replied, Then I shall proceed to speak something concerning my Profession and Faith, which I bless the Lord, is founded upon the Rock Christ Jesus. I do not expect Salvation for any thing I have ever done, but only lay hold upon Christ as a naked Christ, and there to bottom my Soul.

I can say, to the Praise and Glory of God, that I have endeavour'd in my Place, and to my Power, to do that which might be to God's Glory, according to the best of my Understanding. I have stood for a Gospel Magistracy and Ministry, and that many Delays in the Law might be removed, (and that thing I have much suffer'd for) I say it's good both for King and People, that many Delays in Matter of Justice should be removed, and that publick Justice might be speedily and cheaply administred.

And as for my Profession, I am of the congregational Way; I desire to own it, and am for Liberty of Conscience, and all that walk humbly and holily before the Lord; and desire to walk in the Fear of the Lord, and I believe it is a Truth, and there can be nothing said against it. I do confess I am not convinc'd of any thing I have done amiss; as to that I have been charg'd with, I am not indeed; neither did I understand the Plea of the Court, that if the Lords and Commons had brought the King to the Bar, and had set him over them again, their bringing him to the Bar had been Treason.

I desire never to repent of any thing therein I have done; but I desire to own the Cause of God and Christ; and am here to bear witness to it, and so far as I know any thing of myself, I can freely confess it.

Here the Sheriff interrupted him again, desiring him to forbear any such Expressions.

Mr. Cook replied, It hath not been the Manner of English Men to insult over a dying Man, nor in other Countries among Turks or Galliaffes.

The Lord bless every one of us, and help us, that we may look more to the Honour and Glory of God than the Concernments of our own Lives: For alas, what is a poor miserable Life to us, but that therein we might give Honour and Glory to the God of all our Mercies?

And if there be any here of that Congregation to which I was related in the time that I lived here, I would commend to them that Scripture, *Phil.* ii. 17, 18. *Yea, and if I be offer'd up upon the Sacrifice and Service of the Faith, I joy and rejoice with you all, for the same Cause also do you joy and rejoice with me.* And *Deut.* xviii. 11. *The Lord God of your Fathers make you a thousandtimes more than you are, and bless you as he hath promised.* The Lord be pleas'd to speak Comfort to them, and to all them that fear the Lord.

The Lord keep England from Popery, and from Superstition, and keep it from Prophane-ness, and that there may not be an Inundation of Antichrist in the Land. And that is all the Harm I wish unto it.

The Lord hath forgiven me many thousand Talents, and therefore I may well forgive those few Pence that are owing unto me. I bless the Lord I have nothing lying upon my Conscience, but I can unbosom myself to every one, and to the Throne of free Grace, in the Simplicity of my Spirit; I have endeavour'd to do nothing but with a good Conscience, and thro' the Integrity of my Heart, tho' accompanied with many Frailties.

I desire to bless the Lord, my Lot was rather in Ireland than here, here I have been more known where I have given the Offence.

The Sheriff again interrupted him.

Mr. Cook replies, Sir, I pray take notice of it, I think I am the first Man that ever was hanged for demanding of Justice, therefore I hope you will not interrupt me.

I suppose you were there, and do bear me witness in your Conscience, that there was not any thing then, that I did not communicate to the Court, that I now speak upon the Ladder.

If you will believe the Words of a dying Man, I say, as I must give an Account, I have nothing lieth upon my Conscience. We must all meet together at the great Day of the Lord, to give an Account of all our Actions, (and then it will appear) the Lord grant we may meet with Joy and Comfort.

I have a poor Wife and Child, and some Friends left, I desire you that come along with me, to commend to them *Isai.* liv. 4, 5, and 10 ver.

I hope the King and Parliament will consider our poor Friends as to their Estates; you know that those Lords that formerly suffer'd under the Parliament, did not lose all their Estates; I hope there will be some Consideration as to Justice, (lest that our small Estates prove a Poison amongst their great deal) and my poor Wife and Relations suffer.

The Lord grant that Mercy may be shewed, that Mercy and Righteousness may magnify and exalt itself above Justice. I shall not hold you long; I shall desire, in the Fear of the Lord, to give

give myself (as in *Rom. xii. 1.*) *A living Sacrifice, Holy and acceptable unto God, which is but a reasonable Service.*

And so I do intreat that I may have a little Time to call upon the Lord, unless there be any thing more desir'd, or any one that would ask me a Question.

Truly I forgive all from my Heart, I have nothing upon my Heart to accuse any of them withal. I bless the Lord I have a clear Conscience, I say it in the Integrity and Simplicity of my Heart, (I do now appeal to the great God, to whom I must give an Account of what I have done) knowing that all my Guilt is washed away in the Blood of Jesus Christ, (and before him I hope to appear) and have nothing else to plead any thing at all for me.

And so I hope that I have declar'd myself with Simplicity and Integrity, in a few Words, that you may understand my Mind.

Then he went to his Prayers again; after which he was turn'd off.

A little before his Death he had wrote a Letter to a Friend, in which, among other things, he says, *I look upon it as the most noble, and highest act of Justice, that our Story can parallel; and so far as I had an hand in it, never any one Action in all my Life comes to my mind with less regret or trouble of Conscience than that does.*

The Execution of THOMAS SCOT, the 17th Day of October, 1660, at the same place.

THE Night before Execution, when he was in the Dungeon, he was (as he had been that Day) somewhat sadder than at other times; and one ask'd him, if any particular Thing lay on him? He said, No; but the Lord was pleas'd to suspend his comforting Presence: But, said he (with an humble Boldness I would speak it) The Lord shall not put me off with any thing besides himself. After having spent some Hours in Prayer, as at other Times, about Midnight we left him, and his Fellows, that they might get a little Rest, for the Support of their natural Spirits; and in three or four Hours his Wife, Children, and many other Friends return'd. When we came, we found them praying: As soon as Colonel Scroop had ended, Mr. Scot turned about, and opening his Arms, he imbraced his Wife, and one of his Daughters: Ah, said he, my dear ones, God is good, he is come, he is come! I am full, I am full. O bless the Lord for me, and with me! O my Soul, and all that is within me, magnify the Lord! By and by he went to Prayer himself; and one would have thought he had been (as it were) in Heaven, his Soul was so enlarged in blessing, praising and magnifying the God of his Salvation. O! said he to his Wife, *I would not change this dark Room for the best Star-Chamber under Heaven.* He desir'd his Friends and Relations would not be solicitous for his Body; but let them do what they pleas'd, and exercise what Cruelty they would; saying, it was meet it should be so: And that the dead Bodies of the Witnesses must be unburied, that the Scriptures might be fulfill'd.

Some Part of his Prayer was, to bless the Lord, that (as the Psalmist said) tho' he came in there weeping, and fearing that he had not yet

been bearing precious Seed, yet now they were returning rejoicing and triumphing, and carrying their Sheaves with them. Call us not (said he) *Marahs* (as she once said) but call us *Naomies*; for we came in hither (some of us) empty, but we are going out full: The Lord hath not writ bitter things, but good of us; for this is glorious Grace, *That we are counted worthy to suffer for GOD and his CAUSE.* Oh! What shall we render to the Lord? We will *take the Cup of Salvation, and call upon the Name of the Lord.* Oh our Souls, bless the Lord! and we do with our Souls bless thee, that we have an Eternity to bless thee in; for no less will satisfy our Souls. And now, O blessed and glorious God! shall we be among thy Worthies? If possible, let us attain to the first three; but if we attain not to so glorious a Testimony as that, yet, O Lord! let us be among thy Worthies. We desire to glorify thy great and blessed Name, that thou hast in any Measure enabled us to encourage our Hearts in the Lord our God, at such a time as this, when eighty are (as it were) in the Flames; and the People speak of worse than stoning us. When some spake of the Reproaches of the People, he said, he accounted that his Honour. Being upon the Ladder he address'd himself to the Spectators in the following manner.

Gentlemen, I stand here a Spectacle to GOD, to Angels, and Men: To GOD and Angels, to whom I hope I am shortly a going. And now to you I owe it; to God, and the Nation, and myself, to say something concerning each. For myself, I think it may become me to tell you how, and why I came hither; and something in the general, concerning my Capacity. In the Beginning of these Troubles I was (as many others were) unsatisfy'd. I saw Liberties and Religion in the Nation in great Danger, to my best Apprehension; I saw the Approaches of Popery in a great Measure coming in upon us: I saw —

Upon which the Sheriff interrupted him in these Words: *If you will betake yourself to Prayer, you may.*

Mr. Scot replied, *I shall not speak to reproach any —*

The Sheriff interrupted him again, saying, *You have but a little Time, Mr. Scot, therefore betake that little Time to Prayer.*

Mr. Scot replied, *I shall speak —*

The Sheriff interrupted him again, saying, *I beseech you, Sir, betake yourself to Prayer.*

Mr. Scot said, *It may become me to give an Account of myself, because —*

The Sheriff interrupted him again, saying, *It doth not become you to speak any such thing here, therefore I beseech you betake yourself to Prayer; it is but a little time you have to live: You know, Mr. Scot, that is the most needful thing.*

Mr. Scot replied, *'Tis so —*

The Sheriff interrupted again, saying, *Sir, But when you came upon the Stage, you depriv'd yourself very much.*

Then said Mr. Scot, *I thought to tell you how I came hither —*

Here the Sheriff interrupted him again, and spake to this Effect, *Every Body knows, that —*

Mr. Scot said, *Sir, 'Tis hard that an Englishman hath not Liberty to speak —*

The Sheriff interrupted again, saying, *I cannot suffer you to speak any such thing.*

Mr. Scot

Mr. Scot said, *I shall say no more but this, That it is a very mean and bad Cause that will not bear the Words of a dying Man; it is not ordinarily denied to People in this Condition* —

The Sheriff interrupted again, saying, *Sir, You had a fair Trial, and you were found guilty.*

Mr. Scot replied, *'Tis according to my Mind to speak what may be said* —

Here the Under-Sheriff interrupted, saying, *It hath been denied unto your Predecessors, and will be denied unto you.*

Then he pray'd; wherein he has this Expression, *I say again, to the Praise of the free Grace of God, I bless his Name, he hath engaged me in a Cause not to be repented of. I say, in a Cause not to be repented of.*

His Prayer being ended, he was turn'd off.

HUGH PETERS's Execution, the 16th of October, 1660, at the same Place.

MR. Peters, as is well known, was exercised under a great Conflict in his own Spirit, during the time of his Imprisonment, fearing (as he would often say) that he should not go thro' his Sufferings with Courage and Comfort; and said to Friends, that he was somewhat unprepar'd for Death, and therefore unwilling to die; something he said he had committed, and other things omitted, which troubled him; but tho' it was a cloudy and dark Day with him for a Season, yet the Light of God's Grace and Favour would break forth at last.

And surely the Favour of God did at the last appear, for a little before he went forth to Execution (as many can testify) he was well composed in his Spirit, and chearfully said, *I thank God now I can die, I can look Death in the Face and not be afraid.*

As for that slanderous Report which was took, much receiv'd by good People as well as bad, to wit, that he was guilty of Uncleanness; a Friend coming to him in Prison, put that Question seriously and soberly to his Soul. To which he reply'd, *That he blessed the Lord he was wholly clear in that Matter, and that he never knew any Woman but his own Wife.*

A Night or two before he suffer'd, two of the Episcopal Clergy, who, as some report, were the King's Chaplains, came to give him a Visit; they endeavoured to make Advantage of the Temptations wherewith he was then assaulted, and to persuade him to a Repentance and Recantation of his former Activity in the Parliament Cause, which they endeavoured to enforce upon him by a Promise of Pardon from the King, in case he would herein hearken to them. But tho' he was then much afflicted in his Spirit, yet the Lord did help him to bear up with much Courage against the Insinuations of that sort of Men, and told them he had no Cause in the least to repent of his adhering to that Interest; but rather, that he had in the Prosecution thereof done no more for God and his People in these Nations; and with Civility dismissing those Visitants, he applied himself to some other Ministers then present, whom he judged more able to speak a Word in Season to him under these great Trials, wherewith the Lord was then pleas'd to exercise him.

Being carried upon the Sledge to Execution, and made to sit therein within the Rails at Charing-cross, to behold the Execution of Mr. Cook,

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one came to him, and upbraided him with the Death of the King, bidding him (with opprobrious Language) to repent: He reply'd, *Friend, you do not well to trample upon a dying Man; you are greatly mistaken, I had nothing to do in the Death of the King.*

When Mr. Cook was cut down, and brought to be quarter'd, one they call'd Colonel Turner, calling to the Sheriff's Men to bring Mr. Peters near, that he might see it; and by and by the Hangman came to him, all besmear'd in Blood, and rubbing his bloody Hands together, he tauntingly ask'd, *Come, how do you like this, Mr. Peters, how do you like this Work?* To whom he reply'd, *I am not (I thank God) terrified at it, you may do your worst.*

When he was going to his Execution, he look'd about and espy'd a Man, to whom he gave a Piece of Gold (having bow'd it first) and desir'd him to go to the Place where his Daughter lodg'd, and to carry that to her as a Token from him, and to let her know that his Heart was as full of Comfort as it could be; and that before that Piece should come to her Hands, he should be with God in Glory.

Being upon the Ladder, he spake to the Sheriff, saying, *Sir, you have here slain one of the Servants of God before mine Eyes, and have made me to behold it, on purpose to terrify and discourage me, but God hath made it an Ordinance to me for my strengthning and Encouragement.*

When he was going to die, he said, *What, Flesh, art thou unwilling to go to God thro' the Fire and Jaws of Death? Oh (said he) this is a good Day, he is come that I have long look'd for, and I shall be with him in Glory, and so smiled when he went away.*

What Mr. Peters said further at his Execution, either in his Speech or Prayer, it could not be taken, in regard his Voice was low at that time, and the People uncivil.

The Execution of GREGORY CLEMENTS, the 17th of October, 1660, at the same Place.

MR. Clements was very silent both in the time of his Imprisonment at Newgate, and at the Time and Place of his Execution at Charing-Cross, only it is said, that he express'd his Trouble (to some Friends in the Prison) for yielding so far to the Importunity of his Relations, as to plead guilty to the Indictment: And tho' he spoke little at the Place of Execution, yet (so far as could be judged by some discerning Persons that were near him) he departed this Life in Peace.

The Execution of Colonel JOHN JONES, the 17th of October, 1660, at the same Place.

Speaking of the Sledge in which he was to be carried to Execution; it is (said he) like *Elijah's* fiery Chariot, only it goes thro' Fleet-street.

The Time of his Departure being come, this aged Gentleman was drawn in one Sledge, with his aged Companion Colonel Scroop, whose grave and graceful Countenances, accompanied with Courage and Chearfulness, caused great Admiration and Compassion in the Spectators, as they

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passed along the Streets to *Charing-Cross*, the Place of their Execution: And after the Executioner had done his Part upon three others that Day, he was so drunk with Blood, that like one surfeited, he grew sick at Stomach; and not being able himself, he set his Boy to finish the Tragedy upon Colonel *Jones*; who coming up the Ladder with the like Chearfulness as his Brethren did before him, and being placed fit for Execution, he proceeded to speak as followeth:

Colonel JOHN JONES's Speech upon the Ladder.

There are two things that are necessary now I am going thro' this narrow Gate or Passage to the eternal Majesty; I say, two things are necessary as to the occasion of my coming hither to receive my Father's good Pleasure.

First, *Peace with God.* Secondly, *Peace with Man.*

I shall speak something to each of these; and in the first Place, speak something of the Court wherein I receiv'd the Sentence: It hath been reported, as I was told, that I confess'd this Fact, and confess'd that I was guilty of Murder, as under those several Expressions that are in the Indictment, *viz.* —

I desire to clear myself before the Lord, and before the World, in that Particular; for should I grant that I was guilty in Reality and Truth of Murder and Malice, I should bely my own Conscience, and draw upon me a greater weight than I could bear. But thus far I do confess, I was willing to make the Work as short as I could; and because I would not stand so long, I told them I would take the first Jury that came; and when a Jury was call'd, then I did confess so much as I was convinc'd of, as to the Matter of Fact; I desire you will judge charitably of this that I speak at this time, as in the Presence of the Lord, that it is not so really, (*viz.* that I acknowledg'd myself guilty of Murder) I had no such thing in my Heart.

I must confess I very freely quit his Majesty, considering what he doth in this Case is the Part of a loving Son to a Father, especially the Judges telling him that it is the Law; and I conceive that the Court did nothing but what they, to their best Understandings, judged right as to Law; therefore I freely acquit the Court, tho' there was not enough said to satisfy such a poor Creature as I am, in so great and deep a Point as that was: As for all others, I do not know any Man on the Earth, to whom I do bear any Malice, but I am in perfect Charity with all Men, and I hope the Lord is in Charity with me: And therefore, as I desire to have Forgiveness myself from all those I have offended, even so I do freely forgive all those that have in any measure offended me.

The next thing is towards God, and it is that which should be last upon my Heart: It is not expected that I should give an Account here of my State and Condition, for that is betwixt God and my own Soul; and I do, thro' the Grace and Goodness of God, firmly believe that my Redemption is wrought, and my Pardon is sealed, and that I shall be immediately in my Father's Arms, and that I shall be translated and brought to behold the Lord Jesus Christ in Glory, with Comfort and Fulness of Joy.

Then he betook himself to his Prayers.

His Prayers being ended, he said, Mr. Sheriff, I must needs return you many Thanks for your Civility.

Sher. Repl. I am glad to hear such an ingenuous Confession, and that you make such an End, and that you have not gone into any reviling Language, as some others have done before.

After this he committed his Soul to God, and was turn'd off.

The Execution of Colonel DANIEL AXTEL, and Colonel FRANCIS HACKER, the 19th Day of October, 1660, at Tyburn.

THE Day of their Execution being come, several godly Ministers spent some time in Prayer with Colonel *Axtel* and Colonel *Hacker*; and many Friends coming in to pay their last Respects, Colonel *Axtel* seeing one of his familiar Friends and Companions, said, My dear Brother, thou art better than I am, and yet I must go to Heaven before thee for all that.

He very chearfully said to divers then with him, Dear Friends, rejoice, I am going where ye shall be also, yea, where we shall be for ever with the Lord, and never part, and be without any more Change; I beseech you follow the Lamb wherever he goeth, tho' he may lead you in a harsh, dismal and difficult Way; yet at last he will bring you into a pleasant Path, and cause you to lie down in green Pastures, in the Land of Rest; *Oh be faithful unto the Death, and he will give you a Crown of Life*, as he hath given to your suffering Brethren.

Oh! all that we have, or do suffer, is but to make Christ and Heaven more sweet, dear and glorious to us; all the sad Steps we shall tread on this Ladder, is but to mount us to Heaven, for at the Top are Angels ready to receive us, as was on *Jacob's Ladder*. All the things I meet with move me not, I bless my God, for I am sure to fight a good Fight, and finish my Course with Joy.

Afterwards taking his leave of his Son, embracing him in his Arms, he said, My dear Son, fare thee well, I must leave thee, get an Interest in Christ, and love him, nothing else will stand thee in stead but an Interest in him.

Then calling for his Bible, he hug'd it, saying, this hath the whole Cause in it, and I may carry this without Offence. And calling to a Friend, he desir'd him to remember his Love to the Congregation where he was a Member; and after took his leave of all his Friends, exhorting them with much Chearfulness to love the Lord Jesus Christ, and keep close to him, and so with great Joy address'd himself to go to his next Work.

Colonel *Francis Hacker* was a Man of few Words, and had not the Gift of Oratory to deliver himself as others could, yet was very sweetly borne up under his Suffering, and had a very comfortable Assurance that God had pardon'd and accepted him in the Blood of Christ; he had been a Professor of Religion many Years in the Presbyterian Way, and a great Lover of godly Ministers; a Man of just and honest Conversation amongst Men, and one that desir'd to walk blameless in the Sight of God; his Fellow-Prisoner did say, he did believe that Colonel *Hacker* had an Interest in Jesus Christ.

Colonel

Colonel *Hacker* declar'd to several of his own Friends, a little before he suffer'd, that the greatest Trouble he had upon his Spirit was, *That he had formerly borne too great a Prejudice in his Heart towards the good People of God that differ'd from him in Judgment.* And then broke forth into this Admiration, *O what am I, poor vile Worm, that God should count me worthy to suffer with such precious Souls as these are, against whom I have been formerly so much prejudiced!*

And thus these two gracious Persons having finish'd their Course, and the Time of their Departure being at hand, were both brought forth of Prison. The Sledge being ready for them, they took their Leave of some Friends that stood at the Door, and Colonel *Axtel* desir'd them to be at the Place of Execution; and both entering the Sledge, they cast up their Eyes towards that God to whom they were coming; then with a chearful Countenance, setting themselves down, they were drawn to *Tyburn*, the Place of Execution, where a Cart was set ready, into which they both ascended, their Countenance not at all chang'd, tho' now the King of Terrors stared them in the Face; the Ropes being then put about their Necks, and a burning Fire kindled before their Faces; and being ready to receive that Sentence which Nature would have sunk under, if Grace had not supported: First Colonel *Axtel* applies himself to the Sheriff in these following Words:

Mr. *Sheriff*, I am now, as you see, come to the Place of Execution, according to my Sentence, I desire your Leave that I may speak freely, and without Interruption; first to this People, and then to God, for it is the last that I shall speak in this World, and I hope it will redound to your Account.

Mr. *Sheriff's Reply*. Sir, you know what the Court prohibited you to speak, and what was spoken at the Bar of the Court was there decided, therefore it is needless to repeat it here. I hope you will keep to the present Business that concerns you, and not go out into Impertinencies; and because you have but a little Time, spend it to your best Advantage, and the Good of the People, and then you shall not be interrupted; or to the same effect.

Colonel *Axtel* begins. I say, the very Cause for which I have engaged is contain'd in this Book of God, (*having the Bible in his Hand*) both in the civil and religious Rights of it, which I leave to you (*giving the Book to Mr. Knowles.*)

You see a dead Man living, and yet I hope I shall live to all Eternity, thro' the Mediation of Jesus Christ, the Mediator of the Covenant of free Grace.

I must truly tell you, that before these late Wars, it pleas'd the Lord to call me by his Grace, thro' the Work of the Ministry; and afterwards keeping a Day of Humiliation in Fasting and Prayer, with Mr. *Simeon Ash*, Mr. *Love*, Mr. *Woodcocke*, and other Ministers, in *Laurence-lane*, they did so clearly state the Cause of the Parliament, that I was fully convinc'd in my own Conscience of the Justness of the War, and thereupon engaged in the Parliament-Service, which (as I did and do believe) was the Cause of the Lord, I ventur'd my Life freely for it, and now die for it.

Then Mr. *Sheriff* said to this purpose, Sir, remember yourself.

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Colonel *Axtel* proceeds: And after the Work of the Lord was done in *England*, my Lot cast me in the Service of *Ireland*, and I thank the Lord I was serviceable to the *English* Nation in that Country, and have discharged my Duty fully, according to the Trust committed to me there.

As for the Fact for which I now suffer, it is for Words, only for Words, and but for Words, and the Sentence is already reversed in my own Conscience, and it will be reversed by Jesus Christ by and by; I pray God, from the very Bottom of my Soul, to forgive all that have had any Hand in my Death, both Witnesses and Jury, and the Court that passed Sentence; for considering the Doctrine of our Lord Jesus Christ, as he hath laid it down, *Mat. v. 44. It hath been said of old time, love your Neighbours, and hate your Enemies; but I say unto you, love your Enemies, and pray for them that hate and despitefully use you, that you may be the Children of your Father which is in Heaven.*

I desire, according to this Doctrine, from the Bottom of my Heart, that God would give them true Repentance, and not lay their Sin to their Charge, nor my Blood, which by God's Law and Man's (I think) could not justly have been brought here to suffer: But I bless God I have some comfortable Assurance that I shall be embraced in the Arms of Christ, and have Cause to hope that his Spirit shall carry my Soul into the Father's Hands.

And if the Glory of this Sunshine be so great (*the Sun then shining bright*) how much more is the Glory of the Son of God, who is the Son of Righteousness?

I think it convenient to give you some Account of my Faith.

I believe all things written in the Old and New Testament, as the Principles and Doctrine of a Believer's Faith; I believe the blessed Ordinances of Christ, that it is our Duty to hear the Word preach'd, to seek unto God in Prayer, and to perform Family Duties, and to walk in the Communion of Saints; and for my own Part, I am a Member of a Congregation, which I judge to be the Way of Christ, (and were it for that only I were to die, I could witness to it) which is a Company of Men born again by his Grace, that walk in the Ways of Christ blameless and harmless. I believe Jesus Christ died for poor Sinners, of whom I am Chief, as the Apostle *Paul* saith, *This is a faithful Saying, and worthy of all Acceptation, that Christ Jesus came into the World to save Sinners, of whom I am Chief.* And if the Apostle might say so, much more may I.

My Friends and Countrymen, I have reason to bewail my own unprofitable Life, having been very unfruitful to the People of the Lord, the Lord knows I have much Fault upon my Heart; were it not for the Blood of Christ that cleanseth and washeth me, according to his Promise, saying, *I loved you, and washed away your Sins in my own Blood.* For there is no Remission of Sins without the Blood of Christ. I desire you all to loath and cast off Sin, it were better to suffer than to sin, it is better to die than to sin; nothing could grieve our Saviour but Sin, and therefore have a care of that: You and I must meet one Day at the Bar of Christ, and the Son of God shall be our Judge, for God hath committed all Judgment to the Son, *that all Men should honour the Son as they honour the Father.* This Day is

a Resemblance of that Day, therefore be serious; I beg as much Good to your immortal Souls as I expect to enjoy by and by. I beseech you beg of God that he would save your Souls, and omit no Opportunity thro' the Strength of the Lord to believe, and put your Trust in the Lord Jesus Christ; be sure to labour after Assurance of your Interest in him, or else you will be of all Men most miserable; for I of all Men were most miserable, if I had not believed to see the Goodness of the Lord in the Land of the Living.

Blessed be the Lord that brings me into this State, let the Way or Means be what it will; it is God's Sovereignty, who made these Creatures so, to dispose of them how he pleaseth, and God hath ordained this Death for me from all Eternity. The Lord Christ often pray'd, *Thy Will be done*; this is the Lord's Will. He hath numbred my Days, and my Times are in his Hand. Many seek the Rulers Favour, but every one's Judgment is from the Lord. When *Pilate* said unto Christ, *Knowest thou not that I have Power to crucify thee?* Christ answer'd him, *Thou couldest have no Power against me, except it were given thee from above.* Therefore I acknowledge the righteous Hand of God; he is righteous, but I am sinful; *Therefore will I bear God's Indignation, because I have sinned against him.*

It is said of Jesus Christ, *That for the Joy set before him he endured the Cross, and despised the Shame, and is set down at the right Hand of God,* where I hope to see him by and by in Glory and Majesty, and to see his Angels and Believers worshipping of him, and therefore I despise the Shame. Our Saviour died upon the Cross without Sin, I am a sinful Creature, a wretched Sinner, and shall I expect better than he that was my Master? He who was holy, and never had a sinful Thought in all his Life; and died not for himself, but for us, that we might live thro' his Death; that thro' his Poverty we might be made Rich. And Christ having done this for his People, it should not be in their Eyes thought a despicable Thing that we should suffer for him, having been engaged in the Work of God. But Christ must prevail in Righteousness, and he will prevail.

Now, Mr. *Sheriff*, I thank you for your Civility, and for this Leave.

After this Colonel *Hacker* spoke something privately to him, whereupon Colonel *Axtel* said, Mr. *Sheriff*, must we both die together?

Mr. *Sheriff* answer'd, Yes.

Then Colonel *Hacker* read a Paper which he had in his Hand, a Copy whereof followeth:

Friends and Country-men, all that have known me in my best Estate, have not known me to have been a Man of Oratory, and that God hath not given me the Gift of Utterance, as to others, therefore I have only this briefly to say unto you that are Spectators: As the Parliament stated the War, I did out of Judgment and Conscience join with them in the common Cause, and have thro' Grace been faithful to it according to my Measure. And as for that which now I am condemned for, I do freely forgive both Judges, Jury, and Witnesses, and all others; and I thank the Lord, to whom I am now going, at whose Tribunal I must render an Account, I have nothing lies upon my Conscience as Guilt whereof I am now condemned, and do not doubt but to have the Sentence reversed. I do now apply my-

self unto God by Prayer, and do desire the hearty Prayers of all that fear God, that I may have a sweet Passage from this mortal Life to that immortal Life, which God hath prepar'd for all that are in Christ Jesus.

FRANCIS HACKER.

After the reading of this, he desir'd that Colonel *Axtel* would be both their Mouths to God in Prayer.

And then Colonel *Axtel* said, I desire all that fear the Lord to hear with Patience, and to lift up their Hearts to seek the Lord with me, that we may have his Strength, and the Presence of his Spirit from this World to everlasting Life.

After he had ended his Prayer, he gave the *Sheriff* Thanks again for his Civility; and then turning to Colonel *Hacker*, they saluted and embraced each other in their Arms, and said, The Lord sweeten our Passage, and give us a happy Meeting with himself in Glory.

Then pulling his Cap over his Eyes, expecting, as is suppos'd, that the Cart should be drawn away; with his Hands lifted up, he utter'd these Words with a loud and audible Voice, *Lord Jesus, receive my Spirit*: But the Cart staying a little longer, he lift up his Hands the second Time, and with the like audible and loud Voice, said, *Into thy Hands, O Father! I commend my Spirit*: And yet in regard there was no Man found to put forward the Horse to draw away the Cart, until the common Hang-man came down out of the Cart himself to do it; the Carman, as many Witnesses affirm, saying, he would lose his Cart and Horse before he would have a Hand in hanging such a Man; by this Means he had Opportunity to lift up his Hands, and utter the like Words the third Time also.

The Execution of Col. ADRIAN SCROOP, October 17, 1660, at Charing-Cross.

WHEN the Time approach'd for his Execution, Mr. *Scot* and Mr. *Clements* were first carried away in the Sleds, and the same Sleds were afterwards to come and carry Col. *Scroop* and Col. *Jones*; during that time, says Col. *Scroop*, Well Brother *Jones*, do you spend your Time as the Lord shall direct you, I intend to take a little Sleep, for I slept not well last Night; and my Countenance is not so fresh as I would have it. Thereupon he laid him down, and slept so soundly, that he snored very loud, and so continued until the Sled came for him: Whereupon, being awaken'd, he riseth up; and a Friend taking him in his Arms, ask'd him how he did? He answers, Very well, I thank God, never better in all my Life.

And now, saith he, *will I wash mine Hands in Innocency; so will I compass thine Altar, O Lord*: And so with great Chearfulness went to Execution.

Being upon the Ladder he spake as followeth.

You see an Object here, that hath been in a better Place; but howsoever the Lord Jesus Christ hath sent me to this Place, that in this Place I should die. I have no Animosity nor Malice against any Man, nor ever had I; neither have I any evil Will to those that brought me hither, nor to the Jury that found me guilty, nor

nor Judges that passed Sentence; nor to him through whose means I was brought here to suffer. I say, once more, the Lord forgive him, I shall not name him; for I come not hither to reflect upon any Man's Person.

I will not tell you what my Breeding hath been, because it is not good for any Man (especially at such a time as this) to boast of his Lineage nor Breeding; but this I shall say, that I was born and bred a Gentleman.

As for my Carriage, it may be some that look upon me here, know what it hath been: Howsoever the Lord knows all, and the Lord God is Judge of all, and he will judge; I shall submit my self to his Judgment, which is a righteous Judgment. The Judgment of Men may go wrong, but God's Judgment is right, I shall submit to his Way. The Lord he is the *Rock of Ages*, and my Support under this great Weight that is now upon me: I look up to him alone, the Lord Jesus Christ is my Saviour and my Redeemer; I am going into his Arms, blessed be his Name, I follow him, he is gone before me the same way: Therefore it is no Reproach or

Shame to follow the Lord Jesus Christ, to die in his Cause; for that is it which I judge I am now going to do.

That which I do desire of you (here are a great many Spectators both on the Right Hand and on the Left) is, That this Day may represent to you the general Day of the Judgment of Christ, where you must appear, and there every Man must receive according to their Works: And at that time it will be known; I say, at that time it will be known and seen, whose Works are righteous, and whose are not: Therefore I would wish you, and desire you, to judge charitably of me.

His Speech being ended, he went to Prayers, after which he was turn'd off.

The others, who were Convicted, having Surrendered themselves upon the Proclamation in pursuance of 12 Car. 2. cap. 11. § 36. could not be Executed without Consent of Parliament, which never being askt, they sufferd only Imprisonment, and Confiscation of their Estates.

LVII. Proceedings against ARCHIBALD Marquiss of ARGYLE, 13 Car. II. 1661, for High-Treason.

N January 23, 1661, there was exhibited to the Parliament of Scotland, a Charge of High-Treason, &c. against Archibald Marquiss of Argyle, which was as follows.

CHARLES, by the Grace of God, King of Great-Britain, France, and Ireland, Defender of the Faith, To

Heralds, Pursuivants, and Messengers of Arms, *respectively*, conjunctly and severally, specially constituted, Greeting. Forsomuch as it is humbly mean'd and complain'd to US, by our trusty and well-beloved Counsellor, Sir John Fletcher Knight, our Advocate for our Interest, in the Action underwritten; and by Sir James Lamont of Inneryne Knight, for himself and in the behalf of his Kindred, Friends, Vassals, Tenants and Servants,

Parties grieved and damnified in manner after specified, upon Archibald Marquiss of Argyle; George Campbell, his Justice and Sheriff Deputy; James Campbell of Ardkinglas, Officer under the said Marquiss his command; Colin Campbell of Straquhir, Duncan Campbell of Ellangreg, Officer under the command of the said Marquiss; John Campbell Fiare of Dunstaffneich, Officer also under the said Marquiss's command; Dongal Campbell, alias Mackcomochie of Innerraw, Officer under the said Marquiss's command; Duncan Campbell, Uncle to the Laird of Lochnell, Officer under the said Marquiss's command; Robert Campbell of Auchimwilling, John Campbell of Ardtariche, Hew Campbell his Son; Colin Campbell of Otter, Patrick Campbell his Brother; Campbell

of Derburgh, Charles Campbell of Ballachyll, Ewer Campbell of Kilbryd his Brother; Duncan Glassel alias Campbell in Glendarowell, John Ger Campbell, there; John Mackeroes Officer to the said George Campbell, Donald Mackeroes of Glesfelloch, Andrew Macklauchlane, Uncle to Archibald Macklauchlane of Lethimoore, Angus Mackehoernock Son to Ewer Mackewernock of Obb, James Campbell of Ormsay, Dowgald Mackleriche of Bralychane, Duncan Macknileishe in Escog, Archibald Campbell in Evinnochane, Son-in-Law to the said Laird of Otter, Mr. Colin Macklawchlane, Minister at Lochgaylisheid; All or the most part of them, being the said Marquiss of Argyle his Friends, Followers, or Complices under his command, and such as he might have stopt or let.

That where notwithstanding by the 129 Act of the eighth Parliament of Our dearest Grandfather, King James the Sixth of Blessed Memory, His Majesty and His three Estates then Assembled in Parliament, ratified and approved the Royal Power and Authority, over all Estates, as well Spiritual as Temporal, within this Realm, in the Person of His Majesty, his Heirs and Successors; and did Statute and Ordinance, that his Highness and his Successors by themselves, and their Councils, were and should be Judges Competent to all Persons, his Highness's Subjects, of whatsoever Degree, Function, Estate, or Condition they should be of, in all matters wherein they, or any of them should be apprehended, summoned or charged to answer: And that none should presume, nor take upon hand, to decline the Judgement of his Highness, his Heirs and Successors, or their Council, in the Premises under the Pain of Treason: And sick-like,

like, by the first Act of the eighth Parliament of our said dearest Grand-father, King *James* the Sixth, His Majesty's Sovereign Authority, Princely Power, Royal Prerogative and Privilege of his Crown, over all Estates, Persons, and Causes whatsoever. And the whole Estates then conven'd in Parliament for them, and their Successors, faithfully promised, perpetually to acknowledge, obey, maintain, defend and advance the Life, Honour, Safety, Dignity, Sovereign Authority and Prerogative Royal of Our said dearest Grand-father, his Heirs and Successors, and Privilege of the Crown, with their Lives, Lands and Goods; and to withstand all Persons, Powers and Estates, who shall presume any ways to impugn, or prejudge the same. Which Act is ratified by the third Act, by the first Parliament of King *Charles* the First, of Blessed Memory, our dearest Father.

Likeas, by the third and fourth Acts of King *James* the First, his first Parliament, and by the 37 Act of the second Parliament of King *James* the First, and several other Acts, his Statute, that none Rebel against the King's Person or Authority; or if they do in the contrary, or make War against his Lieges, or reset any such Traitors, or supply them in Red or Council, or do favours to Rebels, or any ways assist them, or do not rise at His Majesty's command, being required; they being convicted thereof, are punishable as Traitors. Likeas by the 134 Act Parl. 8. the 10 Act of the 10 Parl. of King *James* the Sixth, All depravers of His Majesty's Laws, and medlars in His Majesty's Affairs, or Misconstructors of His Proceedings, whereby any mistake may be moved between His Majesty and his loving Subjects, are punishable by death. Likeas by the 1 Act of King *James* the Fifth, his 3 Parliament, and by the 51 Act of the 11 Parl. of King *James* the Sixth, All Burners of Folks in their Houses, all Burners of Houses and Corns, and willful fire-raising; As also all Murder or Slaughter of His Majesty's Lieges, where the Party slain is under trust, credit, assurance and power of the Slayer, the same is declared Treason and Læse-Majesty. Likeas by the 75 Act of Queen *Mary*'s Parliament 9, and divers other Acts, it is Statute, that no manner of Person or Persons, of whatsoever Quality, Estate, Condition or Degree they be, Lieges of this Realm, attempt to raise any bands of Men of War, on Horse, or Foot, without special Licence in Writ had and obtain'd of the Queen's Majesty for the Time, and Her Successors, under the pain of death, to be executed upon the Raisers and Risers in Arms. As also, by the 50 Act of the 11 Parliament of King *James* the Sixth, it is Statute and Ordain'd, that in case it shall happen, any landed Man to be convicted of the Crime of common Theft, resort of Theft, or Stealth, reift in time coming, they shall incur the Crime and Pain of Treason; that is to say, Tinsell and forfeiture of Life, Lands, and Goods. Likeas, by the common Law and practice of this Nation, all Committers of Murder, Man-slaughter, Robbery, Rapine, or Reif, is punishable by death; and who are Act, or Part of any such Crimes. As also by the same Laws, all private Imprisoners, Keepers of private Prisons, and false Impisoners, and all Oppression whatsoever, are punishable in the like manner.

Nevertheless the Persons above named com-

plain'd upon, having laid aside all Fear of God, Loyalty and Obedience to their Sovereign Lord and King, natural affection and reciprocal duty to their Countrymen and Fellow-Subjects, have most traitorously treacherously, perfidiously and cruelly committed the Crimes of High-Treason, and other Crimes, Murders, Oppressions, Robberies, Misdeeds and Malversations underwritten, contrary to our said Laws and Acts of Parliament; and thereby have incurred the respective Pains and Punishments therein contained. In so far as the said Persons above written, Defendants, particularly the said Marquiss of *Argyle*, *George Campbell* his Servant, and Justice, and Sheriff-Deputy; *James Campbell* of *Ardkinglas*, *Colin Campbell* of *Straquhir*, *Robert Campbell* of *Auchinwilling*, *John Campbell* of *Ardtariche*, *Master Colin Macklanchane*, *Duncan Campbell* of *Elangreg*, *John Campbell Fiare* of *Dunstafriche*, *Dongall Campbell*, alias *Mackconnochie* of *Innerraw*; Having from the beginning of the Insurrections and troubles in the Year of God 1639, 1640, 1641, and 1642, both secretly and avowedly appeared in constant opposition to Our dearest Father, his Royal Councils and Commands: And after His Majesty's most gracious Condescendencies to all the desires of his Lieges, how unreasonable soever; He having departed to his Kingdom of *England*, a contented Prince from a contented People. Nevertheless the aforesaid Persons continuing in their treasonable malice against their own Sovereign, did in the Months of *January*, *February*, *March*, *April*, *May*, *June*, *July*, *August*, *September*, *October*, *November*, *December*, or one or other of them, in the Year of God 1643, most traitorously without their Sovereign's Authority or Licence, and expressly against his Will, Pleasure and Service, at their own hand and by their own power, caused call and convocate a pretended Committee and Convocation of His Majesty's Lieges; wherein they themselves, or or one or other of them, did personally convene and meet; and in the said treasonable and unlawful Convocation did act and appoint treasonable Levies of His Majesty's own Subjects, in opposition to His Majesty's Person, Authority and express Command. And thereafter did actually invade and enter within His Majesty's Kingdom of *England* in open Hostility, taking His Majesty's Towns, killing his Subjects, wasting and destroying their Estates and Fortunes, joining with his Rebellious Subjects in *England* and an Army of Sectaries there, for destruction of His Majesty's Person, Royal Family, Authority and Government of these Nations, so far as in them lay. And thereafter in the Months above written, or one or other of them, in *Anno* 1646, the said *Archibald* Marquiss of *Argyle*, and the remnant Persons above named Defendants, or one or other of them, in an unheard-of way of Treachery and Treason, delivered His Majesty's Sacred Person into the hands of the said Rebels, who thereafter most treacherously Murdered him. For eschewing and preventing whereof, the whole Estates of this Nation finding it necessary and incumbent to them, for the relief of their Sovereign Lord from his Captivity, to raise an Army for that effect: The said Persons complained upon, or one or other of them, not only by subtle and clandestine means, by Declamations and familiar Conferences, and openly by Declarations and publick Speeches in face of Parliament,

Parliament, opened the same; but also the same being past into an Act in the Month of 1648 Years, publickly entered their *disaffent* or *Protestation* against the same, most treasonably and treacherously against the Authority of the King, our dearest Father, and the Estates of Parliament. And yet their Malice not resting satisfied, they did by themselves, their Friends and Adherents, in *October* 1648 Years, or thereby, convocate or raise in Arms great numbers of His Majesty's Lieges, without any Warrant from King or Parliament; and did in open Hostility march to His Majesty's Burghs Royal of *Edenburgh* and *Sterling*, prosecuting his said Army, killing His Majesty's good Subjects, wasting and destroying their Lands and Houses. And thereafter most basely and traitorously invited the late Tyrant and Usurper, *Oliver Cromwell*, to enter His Majesty's Kingdom of *Scotland*, with an Army of Strangers, Traitors and Sectaries; sustain'd him and his treasonable Army with all sorts of Provision, feasting and countenancing himself and prime Officers in the Metropolitan City of Our Kingdom, and within His Majesty's Fort and Strength thereof, the Castle of *Edinburgh*, where the most considerable Strength of the Kingdom was for the time: By these Means casting the Secresies of His Majesty's Kingdom and Forts thereof open to the view of those Strangers and Traitors: Which, by the Laws of this and all Nations, is High Treason; and in all Probability was the Kingdom's Bane and Ruin, and was the Act immediately preceding the cruel Regicide and Murder of their Sacred Sovereign Our Royal Father. At least they, or one or other of them, were either Aiders, Abettors, Assistants, Promoters, Divisers, or act and part, and particularly the said *Marquiss of Argyle*, of the aforesaid treasonable Crimes and others above libelled.

Secondly, The aforesaid Persons, and particularly the said *Archibald Marquiss of Argyle*, not having yet satisfied his Malice, treasonable Attempts and Purposes, not considering the Duty either he owed to God, his Prince, Country, Nobility of his Family, nor his own Honour or Reputation, after multiplicity of Honours and Offices graciously conferred upon him by Our Sacred Father, and the Dignity vouchsafed to him by Our Self, in allowing him the Trust and Honour of setting Our Imperial Crown upon Our Head, upon the Day of Our Coronation in *Scotland*, which was the First of *January* 1651 Years, in Presence of Our whole Nobility and Estates of Our said ancient Kingdom, putting the Crown upon Our Head, with bowed-down Knees, and up-lifted Hands, in Presence of God, Angels and Men, swore as follows, *By the Eternal God, who liveth and reigneth for ever, I shall support thee to my uttermost: And I swear to be a loyal and true Subject, and faithful to the Crown.* And thereafter also kneeling, and holding his Hands betwixt Our Hands, did swear these Words, *By the Eternal and Almighty God, who liveth and reigneth for ever, I become your Liege, and Truth and Faith shall bear to you, and live and die with you, against all manner of Folk whatsoever in your service.* Notwithstanding of all which, after the said *Archibald Marquiss of Argyle* had disloyally and basely deserted our Person and Army at *Sterling*, when We were on Our March to *England*, in the Year 1651, did in the Months

above-written, or one or other of them, *Anno* 1652, at the Desire of General *Dean* and Colonel *Overton*, Our known and publick Enemies, they having come to *Innerrarey* with a Regiment of Soldiers, and there the said *Marquiss* had Conference and Consultation with them, and did swear, at least subscribed and acknowledged the Government of Our Dominions, as it was then established by the said wicked Tyrant and Usurper *Oliver Cromwell*, and his said Adherents, in a Commonwealth, without King, or House of Lords; and obliged himself to live under it, and be obedient thereto. And conform thereto most perjuredly and infamously the said *Archibald Marquiss of Argyle*, after the said Army of Rebels and Sectaries under the Command of the said General, Major *Dean*, and *Overton*, were drawn to such a Streit in their Return from *Innerrarey*, they being in the Power of certain of the said *Marquiss* his Friends, and divers others of His Majesty's loyal Subjects then in Arms, standing in opposition against them; and they having taken in all Passes, the said *Marquiss* being then Our Justiciary in these Bounds, and Sheriff of *Argyle*, most traitorously and infamously against his said Oath and Duty, did interpose himself in favour of the Enemy, commanding and counselling Our said faithful Subjects, who stood in opposition to the said Enemy, did suffer them safely to pass without Opposition: And by the said *Marquiss* his Insinuation, there was a safe Pass given to the said Enemy from the foresaid Danger. Like as further to evince the said *Marquiss* his treasonable Compliance and Affection to the said wicked Tyrant and Usurper *Oliver Cromwell*, in all his wicked and treasonable Courses and Attempts, he in the Month of a thousand six hundred and fifty Years, upon a pretended Call from the said Tyrant and Usurper, to convene a pretended Parliament, without any Coaction or Necessity, did engyre himself in favour of some Shires, and dealt with them to elect him for their Commissioner; at least being elected, he voluntarily accepted thereof; and upon their said pretended Commission, he went to the said pretended Parliament at *Westminster*, and there most *perfidiously and perjuredly, treacherously, treasonably, and unworthily*, contrary to his own Dignity and Degree, sate, and acted by Voting, and otherwise, in the said pretended Parliament, as a Member of the House of Commons, for establishing the said Tyrant in his usurped Authority, and abolishing of Us and Our Royal Race from Our just Right and Title to Our Crowns of *Scotland, England, and Ireland*. And also the said *Marquiss*, in further Prosecution of his treasonable, rebellious Course and Designs, in the Months above-written, or one or other of them, in the Year 1653, or 1654, or either of them, sold and deliverd several Musquets and other Ammunition to the said Rebels, to the number of seventeen Cannon, and seven hundred Musquets, or thereabouts.

Thirdly, in the Year 1654, several of Our loyal Subjects having, for Vindication of Our Authority, and revenge of Our Royal Father of blessed Memory, his Murder, taken Arms under the Command of Our Trusty and right well-beloved Cousins and Counsellors *William* Earl of *Glencairne*, and *John* Earl of *Middleton*, then Our Commissioners for that Effect: Against whom, and Our Forces under their Command, the said Enemies

Enemies being about to transport eight hundred Men to the North, under the Command of Col. *Cobbet*, and being driven to the Isle of *Mule*, and ship-broken in their way, and so ready to perish, The said *Archibald* Marquiss of *Argyle*, and the remanent Persons above complain'd upon, or one or other of them, in the Months above-written, or one or other of them, in the Year 1654, or 1655, did gather together all their own Boats, and others, and therein did safely transport them to *Dunbarton*, from the said Isle of *Mule*, and to other safe Places. At least the said *Archibald* Marquiss of *Argyle*, and remanent Persons above complain'd upon, or one or other of them, were Authors, Aiders, Abettors, Assisters, Advisers, or art and part, of the foresaid Treasons, and other Crimes and Misdeeds above libelled.

Fourthly, The said *Marquiss*, and remanent Persons above complain'd upon, or one or other of them, in the Months above-written, or one or other of them, in the Year 1654, or 1655, most perfidiously, treacherously, and traitorously, went into the said *English* Rebels, without any Coaction or Necessity, to the Highlands in *Lochquhabar*, and several other Places; and joyned with the said Rebels, for suppressing of the said Earls of *Glencairne* and *Middleton*, then our Commissioners, and our Forces under their Command; and countenanced, counselled, and conveyed the said *Rebels* through divers Places in the Highlands, in their Expedition against our Forces. At least the said Persons Defendants, and particularly the said *Archibald* Marquiss of *Argyle*, were Authors, Actors, Aiders, Abettors, Assisters, and Countenancers of the said treasonable Crimes, and others above specified.

Fifthly, When the said Arch-Traitor and Regicide died, *Richard Cromwell*, his Son, was by order of his Father's traitorous Council, sitting at *London*, proclaimed Protector of our three Kingdoms, at the Market Cross of *Edinburgh*; which was done accordingly by a pretended Council sitting at *Edinburgh*, for the Time. At the doing whereof, the said *Archibald* Marquiss of *Argyle*, most traitorously, treacherously, and perfidiously, in the Months of a thousand six hundred fifty . Year, went up to the said Cross of *Edinburgh*, at the time of the said Proclamation, and did countenance and assist the same; by which our Authority was altogether abolished. And moreover, to further evidence the said *Marquiss* of *Argyle* his Willingness to serve the said Usurper in the accomplishing of all his treasonable Designs, and to extirpate us from our Royal Authority and Government, he endeavour'd by all means possible, when the foresaid Tyrant and Usurper had commanded Commissioners from Shires in *Scotland* to appear at *London*, in his pretended Parliament, for Establishing his Usurped Authority, and abolishing of Us and Our Royal Race from our just Right and Title to our Crowns of *Scotland*, *England*, and *Ireland*; and for suppressing of the Privileges, Laws and Liberties of this our ancient Kingdom of *Scotland*; the said *Marquiss* did, in obedience of the said Traitorous Command, obtain himself to be Elected Commissioner for the Sheriffdom of *Bamf*; and thereafter went up to *England*, and there sat as a Member of that Traitorous Convention and Meeting at *London*, wherein Declaration was made against Us and our Successors, debarring us for ever from our just and lawful

Right and Title, to the Crowns of these our three Kingdoms. Likeas thereafter the said *Marquiss* did embrace the Office of Sheriffship of *Argyle*, from the Enemy, and exercised the same under them for his own ends; and did several times swear, at least subscribe, in their Favours against Us, our Successors, Crown, Government and Sovereignty; and to be obedient and live peaceably under their Government of our Kingdoms in form of a Commonwealth, as it was then established by the said Traitor and Usurper. Of the which treasonable Deeds and Acts, and others afore said, the said Defendants, and particularly the said *Archibald* Marquiss of *Argyle*, or one or other of them, were Authors, Aiders, Abettors, Assisters, Contrivers, Promoters and Countenancers.

Sixthly, To further manifest the said *Marquiss* of *Argyle* his treasonable Deeds, Acts and Intentions against Us, contrary to his Oath and Duty, the same evidently appears by his treasonable Speeches following; in so far as he being present in a Provincial Assembly at *Innerrarey* in the Month of

or one or other of the Months above-written, in the Year 1652, or 1653, or one or other of them, some Ministers being then present, praying for His Majesty's Happiness and Welfare, the said *Marquiss* did openly say and declare before them, *That they were but Fools to pray for that wicked, false, malignant King, whom God had casten off, and would never restore again*; and certain other Words to this Purpose and Meaning; the said *Marquiss* having uttered the like treasonable Speeches at *London*, and elsewhere. And also in one or other of the said two Years above-written, in the Month of

or one or other of the said Months, the said *Marquiss* being within a Chamber of his Mansion-House at *Lochhead* in *Kentyre*, stamping with his Foot, did vaunt himself, saying, *That he was the only Man that plotted the rising of the Forces in the West*, terming the same the *Whig-rode*, which proved the main Cause of our Ruin. Moreover his Correspondence, Joyning, Acting and Consulting with the Enemy for our Ruin is more manifest, in so far as he did receive Precepts from the said Tyrant and Usurper, *Oliver Cromwell*, directed to his Council at *Edinburgh*, for Payment of the Sum of twelve thousand Pounds Sterling, for good and thankful Service done by the said *Marquiss*. Likeas he did keep correspondence with the Usurper *Richard Cromwell*, and *Charles Fleetwood* in the Year 1658, and 1659, by missive Letters and other ways. As also with Sir *Archibald Johnston* of *Wariston*, his Fellow-Traitor, in the said Year 1659, when he sate in that traitorous Meeting or Council of the Rebels at *London*, called the Committee of Safety, wherein the said *Wariston* sate as President; and did of new emit Declarations for abolishing of Us and Our Successors, from our just Right and Title to the Crowns of these our said Kingdoms. Of all which treasonable Acts and Deeds afore said, intended or committed in one or other of the Months of the respective Years above-written, contrary to our said Laws and Acts of Parliament, and several other Laws, the said Defendants, and particularly the said *Archibald* Marquiss of *Argyle*, at least they, or one or other of them, were Authors, Aiders, Abettors, Assisters, Promoters, Countenancers, Contrivers, or Act and Part.

Seventhly,

Seventhly, Our said deceas'd Sovereign Lord and dearest Father, having granted Commission upon the Day of *March*, 1643 Years, under his said Majesty's Hand, authorizing and giving express Order to the said Sir *James Lamond* to prosecute a War, and levy Forces in his Majesty's Name, against those in Rebellion, and particularly against the said *Marquiss of Argyle*, and to invade his Bounds and Lands, as he was the principal Promoter of these odious and rebellious Practices against His Majesty's Authority, as the said Commission by way of a missive Letter directed to the said Sir *James* at more length bears. In obedience whereunto the said Sir *James*, according to his Allegiance and bound Duty, levied all his Friends and Followers, and accordingly acted as became a good Subject in His Majesty's Service, for promoting whereof, till the Year 1646. That after His Majesty's coming to *Newcastle*, and casting himself upon the Trust of his Army lying there, the said Sir *James* did then lay down Arms, and with his Friends retreated in a peaceable manner, to his own Houses of *Towart* and *Escog*, there being no other Houses for the Shelter of his Friends, the Country having been formerly wasted and burnt. After which, in the Month of or thereabout, in the same Year, the said Defendants, or one or other of them, being commanded by the said *James Campbell* of *Ardringlas*, *Dougall Campbell* of *Innerraw*, and others their Officers, and others under the said *Marquiss* his Command, did in a hostile manner lay siege to the said two Houses, using all manner of Violence. And the said Sir *James*, after all legal means used for his own Defence, did bring them to a Treaty, wherein by Articles of Capitulation they did grant to him, and his said Friends and Followers, Indemnity in their Persons and Fortunes, with Power to pass freely where they pleased; as the said Articles, subscribed by the Hands of the said *James Campbell* of *Ardringlas*, *Colin Campbell* of *Straquair*, *John Campbell* Fiare of *Dunstaffneich*, *Duncan Campbell* of *Ellangreg*, *Dougall Campbell* of *Innerraw*, *Duncan Campbell* Uncle to the Laird of *Lochinell*, and *John Macklanchlane* Fiare of *Craigintareiff*, of the Date the third Day of *June*, at more length bear: Nevertheless the aforesaid Persons complain'd upon, or one or other of them, did most perfidiously, treacherously, and treasonably, shortly after the said Capitulation, plunder the said Houses of their whole Furniture and Goods therein; and did rob and take away from the Persons within the same, their whole Money and Cloaths, did drive their whole Cattle of all sorts, which together with the Wastations formerly done by them, to the said Sir *James*, his Friends, Vassals and Tenants, did exceed the Sum of *Fifty thousand Pound Sterling*. And in a most cruel and barbarous way, whilst some of his poor Friends were rescuing their own Goods, they barbarously murdered and massacred a number of innocent Women, as namely, *Marie Gilaspie*, *Marione Mackleish*, a young Maid, *Calcoch Breidmachfoyne*, *Margaret Crawford*, and certain others; and inhumanly left their Bodies, as a Prey to ravenous Beasts and Fowls. At the least, the said Persons, or one or other of them, and particularly the said *Marquiss of Argyle*, were Authors, Actors, Aiders, Abettors, Assisters, Contrivers, and art and part of the said cruel bloody Murders, Robberies,

Oppressions, and other Deeds and Malversations above libelled.

Eighthly, The said Persons Defendants, shortly after the said Capitulation, and contrary to the same, or one or other of them, and especially the said *James Campbell* of *Ardringlas*, *Dougall Campbell* of *Innerraw*, *Colin Campbell* of *Straquair*, *Duncan Campbell* of *Ellangreg*, *Duncan Campbell* Uncle to the Laird of *Lochinell*, *John Campbell* Fiare of *Dunstaffneiche*, did most treacherously, perfidiously, and traitorously felter and bind the Hands of near two hundred Persons of the said Sir *James* his Friends and Followers, who were comprehended within the said Capitulation; detaining them Prisoners with a Guard, their Hands being bound behind their Backs like Thieves, within the said Sir *James*'s House and Yards of *Towart*, for the space of several Days, in great Torment and Misery, they being His Majesty's free Lieges and People. Likeas most traitorously and perfidiously, contrary to the said Capitulation, they did carry the said Sir *James Lamond* Prisoner to the said House and Castle of *Escog*, and by that means, and for fear of the said Sir *James* his Life, the Keepers of the said Castle being the said Sir *James*'s Friends and Vassals, they did surrender the said House, upon Capitulation of Life, Fortune and Goods; which Capitulation was most traitorously and perfidiously broken. And in pursuance of their further Villany, after plundering and robbing of all that was within and about the said House, they most barbarously, cruelly and inhumanly murdered several, Young and Old, yea sucking Children, some of them not one Month old. And further, the said Defendants, or one or other of them, and particularly the aforesaid Subscribers of the said Capitulations, in the Month of

1646 Years, did most traitorously and perfidiously carry the whole People that was within the said House of *Escog* Prisoners, with a Guard, to the said Sir *James* his House of *Towart*, and shortly after their Removal from the said House of *Escog*, the said Defendants, or one or other of them, caused burn the same, destroying the whole Orchards and Plantings about the said House of *Escog*. And not being content with their former Cruelties, they shortly thereafter carried all the said Persons who were Prisoners in both the said Houses of *Escog* and *Towart*, bound Prisoners (being His Majesty's free Lieges) to several Boats, sending the said Sir *James Lamond*, his two Brethren, *Robert Lamond* of *Escog*, *Patrick Lamond* his only Son, *Duncan Lamond* his Brother, and *John Lamond* of *Auchingyille*, Prisoners to the said *George Campbell* Sheriff-Deputy to the said *Marquiss* his House of *Innerrarey*, at which time the said Persons, or one or other of them, most villainously, contrary to the said Capitulation, Laws, and Acts of Parliament aforesaid, burnt the said Sir *James Lamond*'s Mansion-House of *Towart*: Of the which cruel Crimes of Treason, Murders, Fire-raising, Burnings, Oppressions, Robberies, and other Crimes abovementioned, committed contrary to our said Laws and Acts of Parliament, and the Capitulation above-written, the said Defendants, and particularly the said *Marquiss of Argyle*, at least one or other of them, were Aiders, Abettors, Assisters, Countenancers, Contrivers, Promoters, and Counsellors of the same.

Ninthly, The said Persons Defendants, or one or other of them, contrary to the aforesaid Capitulations, Our Laws and Acts of Parliament, upon the Day of June, 1646, most traitorously and perfidiously did carry the whole People, who were in the said Houses of *Escog* and *Towart*, in the said Boats, to the Village of *Denoone*, and there most cruelly, traitorously, and perfidiously cause hang upon one Tree near the number of Thirty Six Persons, most of them being special Gentlemen of the Name of *Lamond*, and Vassals to the said Sir James, viz. *Neill Mackpatrick* alias *Lamond*, *Archibald Lamond* Son to Baron *Mackpatrick* of *Cowstoune*, *Robert Lamond* his Brother, *Duncan Lamond* Brother to the said *Robert*, and *Hugh Lamond* their other Brother, *Duncan Gerlamond* in *Kilmarnock*, *Gocie* and *John Lamonds* his Sons, *Ewen Lamond* in *Midtowart*, *Gilbert Lamond*, *Duncan Lamond*, *John Mackquein* alias *Lamond*, *Archibald Mackquein* alias *Lamond* his Brother, *Donald Mackquein* alias *Lamond*, *Duncan* and *John Lamonds* Sons to *Walter Lamond* Brother *Germain* to the Laird of *Escog*, *Hugh Lamond* in *Corro* of the *Carrie*, *Robert Lamond* in the *Carrie*, *Duncan Lamond* there, *Angus Lamond* there, *Donald Lamond* there, *Walter Lamond* there, *Duncan Lamond* called *Mackwalter* there, *Alexander Lamond* in *Ardyne* of *Nethercowall*, *William Lamond*, *John Mackquein* younger alias *Lamond*, *Patrick Boigle* Son to the deceased Mr. *John Boigle* Minister at *Rotbesay*, *Dougall Harper* alias *Mackalaster*, Servant to the said Sir James *Lamond*, *John Lamond* Son to *Gilbert Lamond* of *Knockow*, *Gilbert Macklay* in *Glendarowall*, *James Lamond* in *Ardyne*, *Donald Lamond*, *James Mackquein* alias *Lamond* in *Nethercowall*, *James Lamond* his Son, and *John Mackpatrick* alias *Lamond* in *Ardyne*. And also the said Persons Defendants, or one or other of them, upon the fore-said day of June 1646, most cruelly, barbarously, inhumanely and unchristianly murdered with Durks, and cut down with Swords and Pistols the Persons following, viz. *John Lamond* in *Auchinshallech*, who being about the Age of fourscore Years, having a Flux upon him, and being also pin'd away with Hunger and Thirst, they most cruelly and barbarously stabb'd him with Durks and Skanes at the Ladder-foot: and did also most barbarously murder, stab and cut down the Persons following, viz. *Thomas Brown*, *Neill Mackneill*, *Meldonich Mackmaw*, *John Mackmaw* his Brother, *Archibald Hamilton*, *Meldonich Mackilmichael*, *Robert Michael*, *John Mackinlay*, *John Hendry*, *Alexander Hendry*, *Patrick Hendry*, *John Lamond*, *Angus Mackilmune*, *John Mackynnes*, *John Macekdougall*, *John Henry*, *William Mackwilliam* alias *Wilson*, *Hew Mackcrow*, *John Mackcrow* his Brother, *John Mackperson*, *Donald Mackperson*, *Duncan Mackperson*, *Donald Mackilbreid Lamond*, *Duncan Lamond*, *Duncan Mackalaster*, *Thomas Menebryd*, *John Michaelson*, *John Moodie*, and *John Jamison* then Provost of *Rotbesay*, who being shot thrice through the Body, finding some Life in him, did thrust several Durks and Skanes in him, and at last did cut his Throat with a long Durk; the said *John Jamison* not only representing His Majesty's Authority, as a prime Magistrate of his Burgh Royal, was so cruelly murdered in Contempt thereof, and of the Statutes made in that behalf. And to manifest their further Cruelty, they did cast some of the aforesaid Persons into Holes

made for them, who were spurning and wrestling, whilst they were suffocated with Earth; having denied to them any time to recommend themselves to God; albeit earnestly desired and begg'd by the said murdered Persons. Inso-much that the Lord from Heaven did declare his Wrath and Displeasure against the foresaid inhumane Cruelty, by striking the Tree whereon they were hanged, in the said Month of June, being a lively fresh growing Ash-tree, at the Kirk-yard of *Denoone*, amongst many other fresh Trees with Leaves, the Lord struck the said Tree immediately thereafter; so that the whole Leaves fell from it, and the Tree withered, never bearing Leaf thereafter, remaining so for the space of two years: Which being cut down, there sprang out of the very heart of the Root thereof a Spring like unto Blood popling up, running in several streams, all over the Root, and that for several Years thereafter: Till the said Murtherers or their Favourers, perceiving that it was remarked by Persons of all Ranks (resorting there to see the Miracle) they did cause hock out the Root, covering the whole with Earth, which was full of the said Matter like Blood. Of the which cruel Murthers, the said Persons, and especially the said *Marquiss of Argyle*, or one or other of them, were Authors, Actors, Aiders, Abettors, Assisters, Contrivers, Countenancers and Promoters, many of the said Persons Defendants being Officers under the Command of the said *Marquiss of Argyle*.

Tenthly, Upon the Month of 1646, the said Sir James *Lamond*, his said Brethren and Friends, being detained Prisoners at the said *Marquiss's* House of *Innerary*, the said *George Campbell* Sheriff, and Justice-deputy to the said *Marquiss*, *James Campbell*, of *Ardkenglas* Col. under the Command of the said *Marquiss*, *Dougall Campbell* alias *Mackonnochie* of *Ennerraw* Major under the Command of the said *Marquiss*, and certain other Persons being met in a kind of Conventicle, who did enquire of the said Sir James, whether he would submit his Life and Fortune to them, or not? who answer'd, That he would not, pleading upon his Majesty's Commission, the Capitulation given to him, and that he being the King's Baron could not be judged by them, none of them being such. Whereunto the said *George Campbell* replied, that the said Sir James was a false Knave, and that he would judge him whether he would or not, and hang him as Justice-deputy of the said *Marquiss of Argyle*; at which time the said *George Campbell* did rob and seize upon the Sum of 1000*l.* belonging to *Archibald Lamond*, Brother to the said Sir James, and having within a little time hereafter searched the said Sir James for the said Capitulation, finding that he had it not, and they considering the Prejudice that might follow to them thereby, they caused the said Sir James to subscribe a Paper penn'd by the said *George*, declaring therein that his Quarrel was unjust, and that he repented thereof, as also that he did pass from the Capitulation; which Paper with certain other Articles therein was subscribed by the said Sir James, he being compelled thereto for fear of Death, having gotten notice at that very same time that his said Friends and Followers were cruelly murdered by them at *Denoone*, as is above mentioned; after subscribing of the which Paper, two Days after the said Sir James, his

his two Brethren, and four Friends aforesaid, were committed Prisoners, in several Houses, appertaining to the said *Marquiss of Argyle*, the said *Sir James* remaining Prisoner in the House of *Dunstaffnagh* for the space of four Years, thereafter being carried to the Castle of *Inchconneill*, where he remained Prisoner for the space of two Years or thereabout, until he was carried from thence to *Sterling*, by vertue of an Order from Us and Our Estates of Parliament, they having not time to take Trial of the matter at that time, by reason of our marching into *England*, sending the said *Sir James* up to the Castle of *Sterling*, for fear of the said *Marquiss's* Cruelty; in regard he often threatned, that if ever the said *Sir James* came in his Power, the World should not save his Life, and that he repented nothing more, than that he took not that bloody Knave's Life, whilst he had him in his Power; saying likewise, that all was but one fault: the which cruel Crimes of Oppression and others above specified, the said Defendants, particularly the *Marquiss of Argyle*, one or other of them, were Actors, Aiders, Abettors, Contrivers, Countenancers or Promoters.

Eleventhly, The said Persons Defendants, their Cruelty against the said *Sir James* is manifest, in so far as the said Month of 1651, *Donald Campbell* sent *John Campbell of Ardtarich* of the special causing, hounding out, and or under their Command or Direction, came accompanied with 30 Men, all armed with Guns, Swords, Pistols, and other Weapons, invasive to the Coast side of the Sheriffdoms of *Ayre* and *Ranfrew*, where they heard that the said *Sir James* had his Residence, and did search the House of *Southanon* belonging to my Lord *Sempell*, and the House of *Corsby* belonging to the Layrd of *Auchnames*, where the said Persons did make search for the said *Sir James*, two of them coming early in the Morning to the said House of *Auchnames*, the said *Donald* running up Stairs, with a drawn Durk and benden Pistol in either Hand, making search through the whole House and Beds, to have Murthered the said *Sir James*, who by Providence was in the Wood, not knowing any thing of the intended Murther. And the said Persons being disappointed of their Intentions, did retire to their Boats, the said *Sir James* flying at that time to the *Isle of Arron* to shelter himself under the Protection of the now Dutchess of *Hamilton*, who did reside there for the time. Likeas immediately thereafter the said *Marquiss of Argyle* and his Accomplices, failing of their said intended Murther, the said *Marquiss* did desire a Warrant from the Committee of Parliament, in the said Year 1651, for apprehending the said *Sir James Lamond*, intending thereby to prosecute the aforesaid Murther; which Warrant was then refused to be granted to him; at least the said Defendants, and particularly the said *Marquiss of Argyle*, or one or other of them, were Authors, Actors, Aiders, Abettors, Affilters, Contrivers, Countenancers, of the aforesaid Crimes of Murder and Oppression, and others aforesaid.

Twelfthly, And further to evidence the aforesaid Persons Defendants, and particularly the said *Marquiss of Argyle*, their Cruelty and Oppression against the said *Sir James*, the said *Marquiss* in the Month of 1647, or thereabouts, came to our House of *Dunstaffneiche*,

where the said *Sir James* had been kept most unjustly and unwarrantably Prisoner several Years before, and sending to him the late deceased *Archibald Campbell* Keeper of our said Castle under the said *Marquiss*, *Colin Campbell of Lochmell*, and *Dowgall Campbell* alias *Mackconnachie* of *Innerau*, as Commissioners, with certain Proposals following, viz. First, that the said *Sir James* should renounce and for ever overgive all Right, Title, and Interest, he had to his own Property, and his Vassals Superiority: And upon condition also, that the said *Sir James* should under his own Hand abjure *Scotland*, and never to be seen therein: which being done the said *Marquiss* said he would give to *Sir James* a considerable Sum, threatning also that if the said *Sir James* would refuse the said Offer, so long as the said *Marquiss* had an House in the World, the said *Sir James* should be Prisoner therein, and should torment him with Pain and Misery, till the Marrow should rot within his Bones. The said *Marquiss* declaring also, that he hath already possess'd himself of the said *Sir James* and his Vassals Estates, which he said he and his should possess, in despite of those who would or would not. Whereupon the said *Sir James* considering with himself, within some few Months thereafter, that what a Prisoner did was Null in Law, and being most desirous of his Liberty, from so miserable and so long Imprisonment, profess'd to be willing to grant some of the former desires; the said *Marquiss* hearing thereof, caused carry the said *Sir James* with a Guard to the Town of *Innerarey*, where the said *Sir James* did write some few Lines, the substance whereof contained the most part of the said *Marquiss's* Desires. Notwithstanding whereof, and the said Paper was delivered to the said *Marquiss*, he persisting in his former Cruelty and Oppression, did send back the said *Sir James* to Prison, where he remain'd at Our said House of *Dunstaffneich*, so that the said Papers so subscribed and delivered to the said *Marquiss* and *George Campbell* his Justice and Sheriff-Deputy (for which they and their Accomplices ought to be punished as Oppressors and as Actors and art and part of the aforesaid Crimes) and all following upon the said Writings and Papers ought to be declared void and null.

Thirteenthly, the said Persons Defendants, and particularly the said *Archibald Marquiss of Argyle* his Friend and Accomplices, persevering in their further Oppression, in the Month of 1649 years, caused the said deceased *Archibald Campbell*, then Keeper of our said Castle of *Dunstaffneich*, under Command of the said *Marquiss*, compel the said *Sir James* to grant a Band to the said *Archibald*, his Heirs, Executors, and Assignes, for payment of the Sum of four thousand four hundred Marks or thereabouts, for alledging 4 Years Entertainment in our said Castle, where the said *Sir James Lamond* was violently, traitorously, and illegally detained Prisoner: Unto the which Band the said *Marquiss* be assign'd, he did intend Action thereupon before the *English* Judges, and for that and certain other pretended Debts, which were paid, the said *Marquiss* took forth Caption against the said *Sir James*, intending thereby to prosecute his forethought Cruelties and Oppressions, and to incarcerat him, for obtaining his former Designs. And so the said *Marquiss* by Acceptation of the said Assignator

nation, pursued thereupon his Imprisonments, Threatnings and others above and after specified.

Fourteenthly, The said *George Campbell* Justice under the said Marquis, still continuing in his former cruelties and oppression, in the Month of 1647 Years, or thereabouts, not only contrary to his said Majesty's Commission, but also contrary to the Articles of Capitulation, our Laws and Acts of Parliament, having taken *Patrick Lamond* Fiare of *Escog*, and *John Lamond* of *Auchingylle* out of the said Castle of *Escog*, after they had rendred the said Castle upon the Capitulation above-mentioned, having detain'd them Prisoners, the one in the Castle of *Carnick*, and the other in the Castle of *Inchconeill*, for the space of a Year and three Quarters, till the day of *January* 1648 Years. At the which time the said Marquis, and the said *George* his Deputy, caused call a pretended Court of Justice at the said Town of *Innerrarey*; where having conven'd the said *Patrick Lamond* Fiare of *Escog*, and *John Lamond* of *Auchingylle*, at the said Town did call an Assize, consisting of Highland-men, under Power of the said Marquis, and his Deputy their Justiciary, being also their dependants and followers, and of the said *George* his making use of, for the most part, for Murthers and Oppressions. Which Assize having Convicted the said *Patrick Lamond* Fiare of *Escog*, and having absolved the said *John Lamond*, in respect of some favours done to them, the said *George Campbell* nevertheless caused the said pretended Inquest thereafter to meet, contrary to the exprefs Law and Act of Parliament; the said *George* saying, that it was not fit that one Young Man should die alone: Conform to the which unjust and illegal Command and Direction, the aforesaid Persons of the Assize did meet again, and did Convict the said *John Lamond* also, who by Vertue of the said *George* his unjust and unlawful Sentence, the said two Gentlemen were Hanged to Death at *Innerrarey*. Likeas the said Marquis of *Argyle* his concourse, countenancing and promoting of the said cruel Murthers and Oppressions, the said Marquis by himself, *James Campbell* of *Ardringlas*, and their Complices, have still possess'd the Lands of *Escog*, and *Auchingylle*, belonging to the said two Murthered Gentlemen; whereof they are yet still in Possession to this same very Hour: the said *John Lamond* leaving two Children behind him, the eldest of them not two Years old, to whom the said Marquis refused to give any Supply or Entertainment; they living still as yet upon the Charity of the People. Likeas the said Marquis of *Argyle* doth most violently, illegally and unjustly, possess the Lands belonging to *John Lamond* of *Auchinsbelloch*, who for Age and Infirmary, as said is, was cruelly murthered at the Ladder-foot in manner above-written. At least the said Persons Defendants, and particularly the said Marquis of *Argyle*, *George Campbell* his Justice and Sheriff-Deputy, *James Campbell* of *Ardringlas*, or one or other of them, were Authors, Aiders, Abettors, Assisters, Promoters, Counsellors, Contrivers and Art and Part of the said wicked Murthers, Oppressions, Burnings, Robbery, and other Deeds, and malvers Actions above-written. And further, to manifest the said Marquis of *Argyle*, *George Campbell* his said Justice and Sheriff-Deputy, and their Complices, their Cruelty and Oppression, they or one or other of them in the Month

of 1648 Years, having at that time Murthered the said *Patrick Lamond* younger of *Escog* as aforesaid, they caused immediately thereafter bring before them *Duncan Lamond* of *Stronabanoch* his Uncle and Old-Man, being then Prisoner at Castle *Lanchlane*, to the Town of *Innerrarey*; threatening him, that if he would not renounce and dispose his Right of the whole Lands of *Keames*, which he held of the Laird of *Lamond*, then they would cause Hang him, as his Nephew was immediately before. Likeas for safety of his Life, the said *Duncan Lamond* did grant a Disposition of his said Lands of *Keames*, to the said Marquis of *Argyle*, and did deliver to him the whole Writings thereof, conform whereunto the said Marquis remains still in Possession.

And in like manner the said Marquis of *Argyle*, *George Campbell* his Justice and Sheriff-Deputy, and their said Complices, by their Power and Warrant have possess'd and do possess the Lands belonging to the said *James Lamond*, viz. The Lands called *Archibald Roy-Stewart*, the Sixt-mark Land of *Ochrechewne*, the Lands of *Craignifroche*; on which Lands of *Craignifroche* the said Marquis had his own Bowmen and Heards, keeping thereon a number of his own proper Goods several Years: The said Marquis possessing also several other Lands both in Property and Superiority belonging the said Sir *James*, the Marquis having no right thereto, but possessing the same by meer opposition. Of the which crimes of Oppression and others above specified, the said Marquis of *Argyle*, *George Campbell* Justice and Sheriff-Deputy to the said Marquis, *James Campbell* of *Ardringlas*, Officer under the said Marquis's command, and remanent Defendants, were Authors, Actors, Aiders, Abettors, Assisters, Contrivers, Promoters, and Art and Part. And further, the said Marquis of *Argyle*, *George Campbell* his Justice and Sheriff-Deputy, and their Complices and remanent Defendants above-named, or one or other of them, in the Month of

1648 Years, or thereabout, did seise and apprehend the Person of *Dougall Mackdougall* of *Downaach*, after he had surrendred the House of *Dounolick*, upon a subscribed Capitulation under the Hands of Lieutenant-General *David Lesley*, for his Life, Liberty and Estate. Notwithstanding whereof the said Marquis and his said Servant, or either of them and their Complices, caused incarcerate the said *Dougall Mackdougall* in the House of *Inchconeill*, laying Irons upon him; who being in miserable Torment for the space of a Year and a half and above, was enforced at the said Marquis's desire, to be free of the woful Imprisonment and Torture, to grant to him a disposition and Renunciation of the said *Dougall's* Lands of *Barninggarr*; whereof the said Marquis is still in Possession since the said Year 1648. Of the which cruel Acts of Oppression, particularly the said Marquis of *Argyle* and *George Campbell* his Servant, or one or other of them, were Authors, Aiders, Abettors, Assisters, Countenancers, Promoters, and Art and Part. And in like manner, *Duncan Campbell* of *Elangreg* most treacherously, traitorously and perfidiously, after subscribing of the Capitulation by him granted to the said Sir *James*, his friends and followers, being a Member of the Conventicle, and meeting at the aforesaid cruel and wicked Murders committed at *Denoone*, was a main Author, Actor, Abettor, Assister,

Affister, Contriver and Promoter of the said wicked Murder committed there. Like as there-after the said *Duncan Campbell* did take unlawful Possession of *Leymont Lamond* of *Cowston's* Lands of *Stroan* and *Cowston*, and also the Lands of *Trowstonne* and *Ardbeg*, belonging to the said *Sir James* and *Leymount*. And also the said *Duncan Campbell* with certain of his Complices, in the Month of *March* 1646 Years, came from his own House to the said Lands of *Cowston*, and *Stroan*, and there Murdered early in the Morning of Men and Children to the number of forty Persons, viz. *Archibald Lamond* in *Auchinfoure*, *John Lamond* there, *Lamond* Son to *Ewen Lamond* there a Child, *Archibald Lamond* of *Rive*, *Coll Lamond* his only Son a Child, *Ewen Lamond* in *Midtewart*, *Duncan Lamond* his Brother, *Donald Mackneill* Servant to the said *Sir James Lamond*, *Donald Macklanblane* in *Kilmichael*, *Finlay Mackilbreid*, *Donald Mackilbreid* his Brother, two of the Name of *Mackalasters* Sons to *Archibald Mackalaster* in *Killennane*; *Macklelland* in *Knockmillie*, *Robert Moodie* in *Castle Towart*, *John Mackiller* Servant to the said *Sir James*, *Harry Lamond*, *Archibald Mackperson*, *John Mitchelson*, *John Leith*, *Dougall Leith*, and several others. As also the said *Duncan Campbell* most traitorously, treacherously and perfidiously, with the said Defendants his Complices, were main Actors, Abettors, Affisters, and art and part of the burning of the said *Sir James* his House of *Towart*, taking away the Goods and plenishing therein, destroying of the said *Sir James* his own Men, Tenants, Vassals and Servants; robbing and taking away of their Goods the foresaid Years 1645, and 1646, in one or other of the Months thereof. Of the which treasonable Deeds, Murders, Fire-raifings, Oppressions, Robberies, and other cruel Acts and Malversations above mentioned, the said Persons Defendants, and particularly the said Marquiss of *Argyle*, the said *Duncan Campbell* an Officer under the said Marquiss's command, *George Campbell* Sheriff and Justice-Deputy, or one of them, were Authors, Actors, Aiders, Abettors, Affisters, Contrivers and Promoters of the same. And in like manner *Robert Campbell* of *Auchinwilling*, and remanent Defendants aforesaid, or one or other of them, most basely and perfidiously, after the said Capitulation, and contrary thereto, and Our said Laws and Acts of Parliament above-written, in Month of _____ or one or other of the Months above-specified, in the Year of God, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, or one or other of the said Years, did violently reave and carry away several of the said *Sir James's* Household Plenishing, and did destroy and cut down the whole Plantings in and about the said *Sir James* his House of *Towart*, Orchards, Parks and Walks thereof; and did sell, use and dispoise thereupon, burning spales and branches of the said Trees, focutted upon the Roots of the same, that they might never grow thereafter; demolishing the Walls of the said House, taking away the great hewed Stones thereof, and building therewith Houses to himself. And also being present at the said bloody and cruel Murders committed at *Denoone*, and a main Actor, Aider, Abettor, Affister, Counsellor and Promoter thereof; as also was a main Actor, Aider, Abettor, Affister, and art and part of the great burnings,

hairships, and ryffs committed by the said Defendants, or one or other of them, of the said *Sir James* his own Men, Tenants, Vassals and Servants Houses, in the Year of God 1645, and 1646, in one or other of the Months thereof. Of the which cruel Crimes, Deeds and Malversations above witten the said *Robert Campbell* of *Auchinwilling*, and the said Defendants, or one other of them, were main Actors, Aiders, &c. And also the said *John Campbell* of *Ardrariche* and remanent Defendants above written, or one or other of them, in the said Month of *June* 1646 Years, most villanously, contrary to the said Capitulation, was accessory to the burning of the said *Sir James* his House of *Towart*, and in the said Month was present at the meeting, and a main Counsellor, Aider, Abettor or Affister of the said cruel and bloody Murthers, committed at the Village of *Denoone*. And to make the Premises manifestly appear, the said *John Campbell*, by meer Oppression having posselt the Lands belonging to the Deceas'd *Duncan Lamond* a Murthered Person, particularly the Lands of *Knockdaw*, *Innerchellane*, the Lands of *Lettingall* and *Towart-sleeming*; and in like manner having by Oppression also posselt himself of the Lands of *Gortamlesk*, *Kilmarnock* and *Brackleys*, pertaining to the said *Sir James*; taking away also, before the burning of his said House, several of the Household-stuff and plenishing therein. Of the which Deeds and other Crimes above written, the said *John Campbell* of *Ardrariche*, and remanent Defendants aforesaid, or one or other of them, were Authors, Aiders, &c.

And further *Mr. Colin Macklanblane*, Minister at *Lochgolisheed*, being present at the meeting in the said Village of *Denoone*, in the said Month of *June* 1646, most Villanously and Treacherously, contrary to the said Capitulation, was a main Counsellor, Actor, Author, Aider, Affister, Abettor, Promoter, and Art and Part of the foresaid cruel Murthers, committed at the said Village of *Denoone*. And further the said *James Campbell* of *Ardringlas* Officer under the said Marquiss's command, accompanied with his Regiment in the Low-lands, at the Village of the *Largis*, in the Month of _____ 1645, adding to his former Cruelties, one *Lamond* a Beggar coming to the said *James Campbell*, and craving his Charity, the said *James* caused Apprehend the said Beggar, and most cruelly caused Murther and Hang him, without any ground or Warrant. Of the which cruel Crime of Murther the said *James Campbell* of *Ardringlas*, and the said Defendants, or one or other of them, were Authors, Actors, Abettors, &c. And moreover the said *James Campbell*, of *Ardringlas*, Officer under the said Marquiss his command, and remanent Persons Defendants aforesaid, intending never to put a Period to their Cruelty, so long as any of the Name of *Lamond* and their Friends and Followers were left, in the Month of _____ 1646, the said *James Campbell* being accompanied with his said Regiment in the Lowlands, there being brought to him by *Angus Mackilvernock*, *Dermount Campbell*, and the Deceas'd *Francis Campbell* his Brother, one *John Mackpatrick* alias *Lamond*, the said *James Campbell* of *Ardringlas*, and remanent Defendants aforesaid, or one or other of them, caused cruelly Murther and Hang the said *John Mackpatrick* alias *Lamond*, and that without any ground or Warrant;

Warrant. Of the which crime of Murder, the said Defendants, or one or other of them, and particularly the said *James Campbell of Ardkinglas*, were Authors, Actors, Aiders, Abettors, Assisters, or Art and Part.

And also, *Alexander Campbell of Pennymoir*, with certain of his Followers and Complices, upon the Month of 1645 Years, did cease and apprehend, in the Isle of *Comeraw*, one *Robert Lamond* Merchant residenter in *Ireland*, from whence having come about his lawful Occasions, to the said Isle of *Comeraw*, the said Persons did most cruelly and villainously murder and shoot the said *Robert Lamond* to death, at the said Isle: of the which cruel Murder the said Defendants, or one or other of them, and particularly the said *Alexander Campbell of Pennymoir*, were Authors, Actors, Aiders, Abettors, Assisters, or Art and Part. And likewise the said *George Campbell*, Justice and Sheriff-Deputy to the said Marquiss of *Argyle*, still persisting in his wonted Cruelties and Murders, in the Month of 1645 Years, caused

murder and hang one *John Dow Maclauchlan* of *Ardnadanne*, at the said Town of *Inverary*, and that without any ground or Warrant. Of the which cruel Murder, the said Defendants, or one or other of them, and particularly the said *George Campbell*, were Authors, Actors, Aiders, Abettors, Assisters, or Art and Part.

And further, the said *Archibald* Marquiss of *Argyle*, and *George Campbell* his Justice and Sheriff-Deputy, likely never to make an End of their Cruelty, in the Month of 1647 Years, or thereby, did most barbarously, cruelly, and unchristianly murder and cut off *Hector Macallaster* of and his two Sons, at *Lochhead* in *Kintyre*, they being His Majesty's free Lieges, having received Capitulation from the said Lieutenant-General *David Lesley*, for Life, Lands, Estate and Goods; who according to the said Capitulation did go home to their dwelling House, living peaceably: Notwithstanding whereof the said *Archibald* Marquiss of *Argyle* and the said *George Campbell* his said Justice and Sheriff-Deputy, sending for the said *Hector Macallaster* and his said two Sons, coming and fearing nothing, they most traitorously and villainously, contrary to the said Capitulation, caused to murder and hang the said Persons at *Lochhead* in *Kintyre*. Of the which cruel Murders the said Defendants, or one or other of them, and particularly the said *Archibald* Marquiss of *Argyle* and *George Campbell* his Justice and Sheriff-Deputy were Authors, Actors, Aiders, Abettors, Contrivers, Assisters, and Promoters, or Art and Part thereof. As also *Archibald Campbell Evinnochan*, Son-in-Law to the Laird of *Otter*, in the Month of or one or other of the Months respective above written, in the Year 1646, was Accessory, Art and Part, and Aider, Abettor, and Assister of the foresaid cruel and wicked Murders, committed at the Lands of *Stroane*, and at the foresaid Village of *Denoan*, being accessory also to the robbing and taking away of the Household-stuff and plenishing of the said *Sir James* his said House of *Towart*, and of the Burning of the same. Of the which cruel Acts of Murders, Robberies, and fire-raising, the said *Archibald Campbell* was Actor, Author, Abettor, Assister, Contriver, Counsellor, Promoter, and Art and Part thereof.

And likewise the said Marquiss of *Argyle* and *George Campbell* his Justice and Sheriff-Deputy, or one or other of them in the Month of or one or other of the said Months above written, in the Year of God 1639, or thereby, caused seize upon and apprehend Col. *Mac Gillespy*, alias *Mac Donald*, he being then His Majesty's free Liege, incarcerate him in our said House of *Dunstaffneich*, where he remained Prisoner till the Year 1645, at which time being excambet after the Battel of *Inverlochrie* he was taken Prisoner in *Ila* in the Year 1647, being then in His Majesty's Service, and within few Days or Weeks thereafter, the said Marquiss and the said *George* caused most cruelly hang the said Col. *Mac Gillespy*, at our said House of *Dunstaffneich*. And further, the said *Archibald* Marquiss of *Argyle* and *George Campbell* his Sheriff and Justice-Deputy, or one or other of them, upon the Month of or one or other of the Months above written, in the Year 1647, or 1648, caused cruelly murther and hang *Ronald Macdonnald* Son to the said Col. at *Inverary*.

And also the said Marquiss of *Argyle* and *George Campbell* his Justice and Sheriff-Deputy, most treacherously, traitorously, and perfidiously caused cruelly murther and hang, in the Month of or one or other of the Months above written, in the Year of God 1647, *Alexander Maccoll Vickronnald* alias *Mackallaster* in *Kilmicbell* of *Largy*, notwithstanding of a Capitulation granted by the said Marquiss of *Argyle* and Lieutenant-General *Lesley*, or one or other of them: Of the which three cruel Murders immediately preceding, committed at *Inverary* and *Dunstaffneich* the said Defendants, or one or other of them, and particularly the said *Archibald* Marquiss of *Argyle*, and *George Campbell* his Justice and Sheriff-Deputy, were Authors, Actors, Aiders, Abettors, Assisters, Advisers, Countenancers, and Promoters, or Art and Part.

Of the which treasonable Crimes, Murders, Robberies, Oppressions, and all other Crimes, Misdeeds, and Malversations above mentioned, or one or other of them, the forenamed Persons above complained upon, and every one of them, at least one or other of them, were Actors, Authors, Abettors, Assisters, Contrivers, Devisers, Consulters, Advisers, or Art and Part. And thereby they and each one of them, at least one or other of them, have incurred the respective Pains and Punishments prescribed by our said Laws, and Acts of Parliament, viz. The forfeiture of Life, Lands, Dignity, Estates, and Goods, the benefit thereof to be applyed to our Use, or such Use as we and our said Estates of Parliament, or these impowered by Us for that effect, shall appoint; at the least have incurred such other Censure and Punishment, in their Bodies, Names, Fames, Estate, and Goods, as we and our said Estates of Parliament, or those Impowered or Authorized by us for that effect, shall think fit, to be applied, as said is, according to the nature and quality of their several Crimes, Misdeeds and Malversations, done and committed by them, which ought and should be inflicted upon them with all rigour, in example of others.

Our Will is herefore, and we charge you that you lawfully Summon, Warn, and Charge, the whole forenamed Persons, Defendants, above-named as followeth, viz. so many of them as are within

within this our Realm of *Scotland*, personally, if they can be apprehended, and failing thereof, at their Dwelling-Places, and by open Proclamation at the Market-Crosses of the Head Boroughs of our Sherifffdoms, or other Jurisdictions within the which they dwell; and so many of them as are without the same, by open Proclamation at the Market-Cross of our Burgh of *Edinburgh*, Peir and Shore of *Leith*, upon three-score Days Warning, to appear personally before us and our Estates of Parliament, or those empowered or authorized by us for that Effect, at *Edinburgh*, or where it shall happen them to be for the time, the Day of with Continuation of Days to answer at the Instance of our said Advocate, for our Interest, and at the Instance of the said Sir *James Lamont*, for himself, and in Name and Behalf aforesaid, for his Interest above-written. That is to say, the said Defendants, to hear and see it found and declared, verified and proved, in Presence of our said Estates of Parliament, or such as shall be authorized by us and them, that the said Defendants, and every one of them, at least one or other of them, have committed, and are guilty of, the Crimes of *High-Treason*, and other Crimes, *Murders*, *Robberies*, *Oppressions*, *Misdeeds*, and *Malversations*, respective above specified, or one or other of them; at least they, and every one of them, or one or other of them, were Authors, Abettors, Contrivers, Devisers, or Art and Part thereof: And the same being so verified and proved, to hear and see it found and declared, by us and our said Estates of Parliament, or those empowered or authorized by us for that Effect, that the forenamed Persons, and every one of them, have thereby incurred the respective Pains and Punishments, prescribed by our said Laws and Acts of Parliament; and to hear and see the Sentence and Doom of Forfeiture pronounced against them for the same, viz. the Forfeiture and Loss of *Life*, *Lands*, *Dignities*, *Estates* and *Goods*, and the Benefit thereof to be applyed to our Use, or such as we or our said Estates of Parliament, or those authorized by us for that Effect shall appoint; at least to hear and see themselves adjudged to be censured in their *Persons*, *Names*, *Fames*, *Estates* and *Goods*, as we and our said Estates of Parliament, or those empowered or authorized by us for that Effect, shall think fit, according to the Nature and Quality of their several Crimes, Misdeeds and Malversations, committed and done by them; and to hear and see the foresaid Pains and Punishments decreed to be executed, and inflicted upon them, with all Rigour, in example of others, at the Arbitrement and Determination of us and our said Estates of Parliament, or those empowered and authorized by us for that Effect: With Certification to the Disobeyers, if they be contumacious and appear not, we and our said Estates of Parliament, or those empowered and authorized by us, for that Effect, will then instantly proceed against the said Defendants, and every one of them, who does not appear, as *Rebels* and *Traitors*, and guilty of *High-Treason* against Us and our Crown, and the Estates of this our ancient Kingdom; to the forfeiting of their *Lives*, *Lands*, *Estates* and *Goods*, to be applyed, as said is; and that their Absence and Contumacy shall be holden, as a manifest Probation of their Guiltiness, without Necessity of any further Proba-

tion. But if they appear and remain present at the whole Dyets of the Procedure, that then we and our said Estates of Parliament, or those empowered and authorized by us for that effect, will proceed against the said Defendants upon lawful Probation, to the forfeiting of their said Lives, Lands, Estates, and Goods, to be applyed as said is; or otherwise by punishing and censuring of them, according to the Nature and Quality of their Crimes, Misdeeds, and Malversations, in their Persons, Estates, Goods, Name and Fame, or some other manner of way, as we and our said Estates of Parliament, or those empowered or authorized by us for that Effect, shall think fit and appoint, conform to our Sentence, Decree, and Determination to be given and pronounced by us against the said Defendants therein, according to Justice, to be called summarily without Diet, Table or Continuation of other Summons; because the aforesaid Action is for Crimes of *High-Treason*, and other Acts, Misdeeds and Malversations, committed and done by the forenamed Persons against us, and the Estates of this our ancient Kingdom, and the publick Good and Peace of the same; at least, whereof the forenamed Persons Defendants were Aiders, Abettors, Assisters, Consulters, Devisers, Advisers, or Art and Part. And therefore merits summary Process, conform to daily Practick, used in the like Cases, and a Deliverance granted by our Committee of Estates thereanent. Moreover, that you lawfully Summon, Warn, and Charge to appear before Us, and Our Estates of Parliament, or those empowered or authorized by us, for that Effect, the said Day and Place, with Continuation of Days to bear leill and soothfast Witnessing, in so far as they know, or shall be asked at them, in the said Matter, under all highest Pain and Charge that after may follow: As you will answer to us thereupon. The which to do we commit to you, conjunctly and severally, our full Power by these our Letters, delivering them by you duly executed, and indorsed again to the Bearer.

Given under our Signet at *Edinburgh*, the Twenty Eighth Day of *December*, and of our Reign the Twelfth Year, 1660.

Ex deliberatione commissionis Parliamenti sic subscribitur.
Edinburgh, Jan. 23, 1661.

Jo. Cunynghame.

Signed by Warrant from the Parliament.

Sic Subscribitur,
W. Sharp.

To which Charge the *Marquiss* put in the following Answer.

I. **T**HIS Libel may appear to any to be framed meerly out of Malice, because it takes in all things (either alledged, spoken, or done) since the Year of God 1638, notwithstanding his Majesty's Royal Father's and his own Acts of Oblivion and Approbation.

II. Because it does not so much as alledge any Reason or Motive for any thing hath been done, nor any End why, or to which any did drive, and so making any Man who was ingaged more malicious

malicious than the Devil, and more unreasonable than brute Beasts.

III. It repeats all that hath been done by Kirk or Kingdom, to be the Marquis of *Argyle's* Deeds, though he neither was at the beginning of the Business, nor very many of the Particulars mentioned, as the Narration of his Carriage can shew; he shews both the Reasons and Ends of his doing all he did, being meerly for Religion, King and Kingdom, according to the Covenant, never pressing any thing earnestly, but for the Covenant, nor opposing, but when it was refused.

1. Mr. *John Stewart's* Process will clear much of the Falshood of this Point; for though such a Discourse had been, it was but narratively of a Debate, which was before the sitting of the Parliament, 1640. Wherein Mr. *Alexander Henderson* used those very Words, though nothing to His Majesty's Disadvantage; and whether I related that Debate, no Man's Memory can be charged with such a thing, after so long a time, and a clear Act of Oblivion of his Majesty's Royal Father, 1641.

2. This is a great Mistake, when the Defender came to the House of *Airly*, *Montross* had put a Garrison in it for the Use of the Country, and when I came there with the Country's Order, *Sibbald*, who was in it, upon sight of my Commission did presently leave it; and the Earl of *Airlies* own Friends knows, except what Bushes were cut for Hutting to Soldiers, I had no Use to cut the Planting; and my Stay there a few Days was, expecting the Lord *Ogilby*, whose Friends were gone to him for that Purpose, and the flighting of the House was then a Favour, his Order being more strict, and I believe his Friends or Tenants had no Loss to my Knowledge: As for burning the House further in *Glenyla*, the Defender knew nothing of it at all, until some Days after it was done; and howsoever, it was included in the Act of Oblivion, 1641.

3. Some Men indeed, named under my Command, lay at *Dumbartan*, by order of Committee and Parliament; whereby that Garrison was loth to come abroad, and so many of them fell sick; whereupon Sir *John Henderson* sent for me, that I might come to the Castle and receive it from him upon honourable Terms, which I did, and suffered him to make his own Articles, for Matter of Honour: And I transported none of the Cannon, but when his Majesty was in *Scotland*, 1641, the Duke of *Richmond* did give the Defender two Cannon, this is known to many; this Business is likewise before the Act of Oblivion, 1641.

4. This is answered formerly, there is added a Promise of mine, which needed not been mentioned, for I acknowledge my many Obligations to his Majesty, as strong as that Promise could make it: And it were to wrong his Majesty, to say he desired any Promise to take away that, which his Majesty commends so much in the large Treaty, *Scotland's* Desire of Unity in Religion, and Uniformity in Church-Government, as a special Means for conserving of Peace betwixt the two Kingdoms; neither did *Scotland* at all joyn with any Army in *England*, in League and Covenant, but with the two Houses of Parliament.

5. I neither did burn, nor give Order to burn the House of *Menstre*, though I had great Provocations to it, the Day before *Menstre* was burnt, the whole Houses of two Parishes, whereof I was only Superior, was burnt, and many poor Families put to extreme Necessity by it: And a Son of the Earl of *Stirling*, who had *Menstre* in possession, by comprising, did concur with the Actors of so cruel a Fact, to poor People, that were not wronging them at all; himself, and his Father before him, not only holding the same of me, but in effect without Money; I and my Father gave them the Land; and when many Years few Duties had run on, I my self discharged that Lady of the same, amounting to a considerable Sum; so far do I abhor to be ungrate, though I have often met with such Dealing; howsoever the 30th Act, 1647, for liberating the good Subjects from the Pursuit and Actions of the Rebels, Civil or Criminal, would suffice.

6. This is answered formerly, and it is a most unjust Calumny.

7. There are three or four things in this Article, 1. Concerning the Men in Loathhead and Dunavarty. 2. An old Man begging his Son's Life denied. 3. Sending 200 Men from Yla, to starve in Jura. 4. The carrying of Col. Mac Gillespie from Leith Road, being brought there by order of Committee of Parliament. To these, I desire it may be known, that in May or June, 1646, his Majesty sent Orders to *Alexander Mac Donald*, and all under him, to lay down Arms; of the which Number these Men in Kintyre were a part, who continued in Arms contrary to his Majesty's Order. Next, I desire it may be known, they were lying under Engagements not to have joined with *Alexander Mac Donald*, notwithstanding all which they were in Arms, fighting against *David Lesly* and his Party; yea, after *Alexander* was beaten, they refused to come to him, when other Countrymen did; and went to the House of *Lochhead* and *Dunabarty*, out of which *David Lesly* took them, without any Capitulation, and disposed of them as the Council of War thought fit, which the Defendare cannot be charged with. For the Second, of the old Man's Request for his Son, he never heard of any such thing before he saw this Libel, so he conceives it to be a Fiction; and just so of the third, for the Defendare was never in *Yla* nor *Jura*, but with *David Lesly*, and he does not remember any Colour for such a Discourse. For the 4th, of Col. *Kittack's* bringing to *Leith Road* by order of either Committee or Parliament, is a meer Fiction, he was taken Prisoner in *Yla*, by the Party under *David Lesly*, and delivered to me; and I put him aboard of Captain *Brown's* Ship, who undertook to deliver him at *Dunstaffage*, but Captain *Brown* not being willing to lose the Opportunity of a fair Wind, did not go to *Dunstaffage*, but went streight to *Leith Road*, and immediately gave me Notice he had my Prisoner aboard, whom I received from him, and sent to *Dunstaffage*; Captain *Brown* I think lives at *Weymes*, who can declare this. One thing I shall add in general, that I thank the Lord, by his Grace helping me, I never took any Man's Life, but what was done in Conflict, or by Order of Law, for notorious Crimes, according to standing Acts of Parliament.

8. It

8. It is well known I was in *Ireland* by Commission for the getting Assistance of the *Scots* Army against those in Arms in *Scotland* when his Majesty came to the Army before *Newark*, so that his Majesty's Declarations anent his Majesty's gracious Intention and Resolution in coming to the *Scots* Army, was sent both to the Committee of Estates of *Scotland*, and to the two Houses of the Parliament of *England*, before I come to *Newcastle*; his Majesty's Declarations were all recorded in the Committee Books, and Printed, that his Majesty came not with any Intention to continue that unnatural War any longer, or to make any Division betwixt the Kingdoms, but to comply with his Parliaments, and those intrusted by him, in every thing for settling Truth and Peace; and that he would apply himself totally to the Councils and Advices of his Parliaments: Upon which the Committee of the Parliament of *Scotland*, and the General Officers of the *Scots* Army, declared to his Majesty himself, and the two Houses of the Parliament of *England*, their receiving his Majesty was upon these terms: All this was done before the Defender come to *Newcastle*, after his Majesty's coming there to the *Scots* Army: In this Article these, whom his Royal Majesty who then was, and his gracious Majesty who now is, calls his Parliaments, are called a Factious Party, and the Defender the Ring-leader. It is said in this Article, that I went to *London*, but omits to tell, by his Majesty's and Commissioners order at *Newcastle* as one of the Commissioners; and only carried Instructions to the rest of the Commissioners at *London*, for hastning the Propositions: And likewise from his Majesty was commanded to take the Advice of the Duke of *Richmond* and Marquiss of *Hartford*, anent what might concern his Majesty; and particularly, if it was adviseable that the *Scots* Army should declare for his Majesty, wherein they told me, and conjured me to tell it to his Majesty, that it was the only way at present inevitably to ruin his Majesty, and desired me to shew it to his Majesty in these Terms, that himself knew, neither the Nobility nor Gentry of *England*, who attended his Majesty at *Oxford*, desired him altogether to prevail over his Parliament by his Sword, much less would they indure the *Scots* Army to do it, that would make all *England* as one Man against his Majesty; therefore desired his Majesty might by any means give way to the Propositions, no other being left, which could be of Advantage to his Majesty. This very Advice he delivered to his Majesty at *Newcastle*, and told the same to his Majesty, who now is, when he was in *Scotland*, and intreated the Lieutenant of the Tower of *London* to propose for me that the Marquiss of *Hartford* then living, might be examined in this, but he put it off from time to time, because of other great Affairs in hand. It must likewise here be remembered, that at that time the two Houses of the Parliament of *England* was sitting fully and freely, and neither Independant nor Sectaries were able to carry one Vote in the Houses: And that the Houses declared fully their Resolution for Maintenance of his Majesty's Person and Authority; and such of them who attended his Majesty most, were most for the disbanding of the *Scots* Army, and his Majesty's staying in *England*. Next observe this Article, that it is a great mistake that any

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thing done at *London*, concerning leaving the King in *England*, when the Defendare was at *London*, that Alledgeance of a Discourse of mine in the Committee of both Kingdoms must be likewise forged; for as is said there was nothing moved at that time concerning his Majesty's Person, but meerly for the Army, and what concerned their Satisfaction; so that I think the Army, at least to my Knowledge, emitted no such Declaration. And though they had done it, I may say, I was never at any of their Consultations; let them answer for their own Deeds. And to what the Parliament did, no Man was ever yet made answer for such things, especially where the lawful King hath approved the Parliament as a lawful Parliament: No succeeding King will ever question his Predecessor's Acts, much less can a King in Honour question any Man for acting in a Parliament, which himself hath approved. And of such nature are the most part in this Libel; yea all of them except Words before 1651. So I may say without offence, it were more for his Majesty's Honour and this Kingdom, to think on a Declaration vindicating the Parliament of *Scotland* from such Acts, than so unjustly to lay such foul things on them, and call them a factious Party.

9. It is to be observed, that the meeting of Parliament, 1648, is called the Estates of Parliament met by his Majesty's special Authority, and it was so indeed, being one of the Sessions of Parliament, 1644. And in the first place there is a great Mistake; for no Proposition was made after the Vote of Parliament, the Protestation it self will clear this, as is said in the former Libel. I did not come to wait upon the Committee of Estates after *Preston*, but being called, and of necessity considering the times; neither went I unsent to *Mordington*, neither did the Invader *Cromwell* bring his Army into *Scotland*, only that he resolving to propose some things to the Committee, which the Books will clear, he brought a small Party with him to *Lothian*, and the stopping him from bringing in his Army, and that he did not require Pledges and the Strengths of the Kingdom, was thought a Mercy at that time both to those who returned out of *England*, and all the Nation: the Margine doubtless in one branch is mistaken, at least as to me, no Man can say he heard me; and neither his sayings nor doings was justifiable; for the Truth is, he declared always he would not remove until he had *Berwick*; and the Informers may imagine that was in my Power, and he did remove: and when that was done, what Instructions were sent to, or with Sir *John Cheesly* were neither of my Dyting or Writing.

10. Being well known how active and instrumental the Defendare was in every thing concerning his Majesty's Restitution to his Crowns and Royal Authority, this Clause or Article is purposely for soyling his faithful Service, but his Majesty both knows and hath acknowledged the contrary of this by Word and Write. And for what concerns the Marquiss of *Montrosse's* Death, I neither Consulted nor Voted in the manner nor matter of it, though it was done in Parliament. The next Point in this Article is corresponding with *Cromwell* after his Majesty came to *Scotland*, which is most false; the like was said and recanted by *Hamilton*, who was a Spy, and so was hanged at *Sterling*.

I i i

For

For any Declaration at the *West-kirk*, I had no hand in it by Word, Writ nor Message, but on the contrary I did deal with some Ministers who came from the Commission of the Kirk, to forbear pressing of his Majesty; and where some of his Majesty's Bed-chamber desired that I might deal with his Majesty to sign it, I told them I could not well press the King to a thing he said was so contrary to his Conscience, seeing it reflected as he thought on his Royal Father; but to speak to the King I would not refuse, and if the King had done for a Desire, I know no crime in it.

11. There are some things in this Note in the former Libel, as joining with Colonel *Twisleton* in his March up *Lochlomount*; he knows, and I hope will not deny, that before I went with him, he told me that one *Wakmsba* was with him, whether from the Earl of *Glencairn* himself, or from General *Monk*, concerning him, I do not remember; but he said the Earl of *Glencairn*'s Business was as good as ended, and except I went with him, I could not but miss General *Monk*, who had sent for me, who was upon March, but that he was to meet with him, or hear certainly from him the Day he was going, and all things did fall out accordingly, and being under a Capitulation, I did not know why I might not be in their Company, being resolved never to joyn with them in any Action.

As for having a Company of Foot under their Pay, it is a Mistake; the Shire of *Argyle* trusted me with a Watch for the Shire of *Argyle*, which is most ordinarily in all Places of the *High-Lands*, in broken Times; I made it known to General *Monk*, the poor Country not being yet well planted after the burning, could not be able to pay Cess and entertain the Watch; he was pleased to promise once Help for a hundred Men, but I hope his Grace will not say that ever he required any Engagement of them as Soldiers, nor ever employed he them at all; but because they did not oppose my Son, he would not continue his Assistance to the Shire any longer, and spoke against me what his Grace pleased for my Dissatisfaction to the *English*.

And for exchanging Prisoners, it is a Mistake; two Men, who had been in *Roseneth*, whereof I have Charge, come from thence, shortly after my Boat, in the *Twilight*; going up *Clyd* to see General *Monk*, whom I had never seen before, I staid for them, thinking it had been some poor Men flying from Abuses, but coming aboard, they alledged they were Men belonging to the Earl *Glencairn*, which I doubted; however, I chid them for coming that way, and for abusing the Country where they came; I told them I would only leave them at *Dumbarton* until I returned from *Kilsyth*, where General *Monk* was, and in the mean time, that they might not suffer any thing, desired they might deliver any Arms or Moneys they had to a Servant of mine, and all should be safely returned, as it was done at my return; and that they might not go as by way of any Exchange, I would not suffer them to be enrolled by Captain *Thompson*, who was exchanging some Prisoners at my Return, but got them from him, and sent them back, without any Capitulation or Exchange, though some Men, I have forgotten who it was, about that time, took out of *Dumbarton* some of my Boat-Men, and returned them to me, without any

Treaty or Capitulation for that Effect. Because it's said the Earl of *Glencairn* and *Middleton* were commissioned by his Majesty; I can say truly, I never knew it, neither did any of their Honours so much as by Word, Writ, or Message, intimate so much to me, if they had, I am confident I had satisfied them concerning my Carriage: And because of this, though there was some Hazard in it to me, I did desire to meet with his Grace the Earl of *Middleton*, in the Hills, but I got no Answer; whether the Messenger dealt faithfully I know not, but I believe his Grace knew so much, and the necessary Reasons I gave for the unseasonableness of that stirring, all which I am ready yet to declare, which doubtless will satisfy any.

As for my taking upon me to bring off any, it is certain a Mistake, for the Person mentioned, *John Mac-Dowgal* of *Downolleith* was not at all engaged in that Service, when the Earl of *Glencairn* and *Middleton* was in the Fields.

A Short Answer to the Libel and Dittay given in upon the 28th Day of January.

BEFORE I say any thing particularly, I must difference all can be said against me, first in these Heads, and that is before his Majesty's going out of *Scotland*, 1651, and since the *Cromwell* killed and took possession, until his Majesty's Happy Return, in *Anno* 1660.

These again, which were acted before His Majesty left *Scotland*, in *Anno* 1651, of Publick Concernment. 2. Of Private, relating to particular Persons: Now for these things wherein I was an Actor, in relation to the Publick Concernments, I never acted without the Approbation of Parliament and General Assemblies, ratified by his Majesty's Royal Father and Himself.

And so the Second, relating to particular Persons, I never had Accession to any thing but what is warranted by Act of Parliament approved by his Majesty and his Royal Predecessors, for my Acting, after his Majesty left *Scotland*, 1651, until his Majesty's Happy Return, 1660, I was still a Prisoner on Demand, and had no Agreement nor Capitulation with the *English*, after his Majesty went, until *August* 1652, being long after the Deputies had taken the *Tender*, and were gone to *London*, and all others in Arms had Capitulate, and that all the rest in *Scotland* were living peaceably at their own Houses, except my Kins-men and Vassals in *Argyle-Shire*, and the Invaders in full Possession of the Power and Government, and never did then Capitulate but out of Necessity.

An Answer to the particular Articles of the Libel.

1. The Commissioners for Conservation of the Peace, established by his Majesty in the Parliament, 1641, were to look to the keeping of the Articles of the large Treaty, whereof the Endeavours to procure an Uniformity in Religion was One; and that *Montross*, and others, censured by Parliament, should not have Access to his Majesty: And when these Commissioners

missioners found these Things slighted, and themselves unequal for such a Burden, they met with the Privy-Counsel, and they both, with the Committee of Common Burdens, and all of them together, invited a Convention of Estates, and what they did anent their Application to his Majesty, and their Desire of settling Differences betwixt Him and his People, and the League and Covenant, is set down particularly in the Ratification of Parliament, 1644, which Parliament was called and convened by his Majesty's special Authority, and which the said Parliament was never disclaimed, but owned by his late Royal Majesty, and is the Foundation of all that followed, even of the Parliament 1649, which is not only approved by his Majesty, but by it his Majesty was called home and Crowned, and from it the last Committee which met (before this Parliament) had then Power; so all that was done 1643, is fully ratified by his Majesty in Parliament.

2. For this it was done in publick Parliament where all the same Members who sat in 1648 were present, and it is likewise ratified by his Majesty, and it was conceived inevitable and best for his Majesty as matters stood for the time being, the least of two evils, and no Man then imagined his Majesty's Person nor Government in any hazard.

3. No Protestation 1648, against any Act of Parliament, the Protestation it self will witness, and it was before the Vote in Parliament, the difference then may be mentioned, for it was not as it is reported commonly.

4. The Defender was pursuing no Forces, but coming to meet with the Committee 1648, after the defeat at *Preston*, being to consult what was best, fearing no harm (being at *Sterling*) was invaded by *George Monro* and others, and some of his Friends who were with him were killed, and others taken Prisoners.

5. There was no Invitation, so far as the Defender knows, at all to *Oliver Cromwell* to come into *Scotland*, but on the contrary, an earnest endeavour was to keep him out by fairness, which could not be done by force, as the Acts of Committee and Treaty at *Sterling* can shew: And for *Cromwell's* visiting of *Edinburgh* and *Edinburgh Castle*, and of visiting of him in it, the Defender was no keeper of the said Castle.

6. The Defender acknowledges his Oath, and he did not desert either his Majesty or his Army, but his stay behind his Majesty in *Sterling* was by his Majesty's own allowance, because of his Wife's dangerous Sicknes.

7. The Defender's Capitulation is not as Libelled, for he agreed not to the Government, though he agreed to live peaceably under the Parliament of the Common-wealth of *England*, and mention not without King and House of Lords, which he particularly refused, as the Paper which he was prest to sign, yet extant, can shew; and never yielded to the same Articles which he signed, while he was a Prisoner in the Hand, and at such a time when he could not make any Escape, being heavily diseased, as *Dr. Cunningham* and many others know, who were with him the same time, it being, as in the Preface, in *August 1652*.

8. He was hardly able to come out of his Chamber when the Forces went out of *Argyleshire*, so he was not present; but I think hardly

could 200 or 300 Men stop the passing of two strong Regiments of Foot, *Overton* and *Read*, and about 300 Horse commanded by *Blackmore*, when that Year all his Hills and Bogs were as passable as the best Highways in that Country; and though the Defender had done it, it was but according to his Articles, which he could not then alter; and sure no Man can think it a Crime.

9. The Defender did not accept any Commission at that time, but refused to be in the Parliament, and was resolved to forbear still; if necessity had not compelled him afterward.

10. Did sell some Cannon to *Dean*, when he told him he would not suffer him to keep them.

11. There is a mistake, or call it what you will, in this Article, for *Col. Cobbet* had ended his Expedition when some of his Ships were broken in *Mull*, one Company went by Land and was not so much as challenged; and if the Defender had not given some way to go through the Country, it would have been accounted a breach of Articles, or if he had staid upon free Quarter in the Country, until he had sent to *Air* for new Provision, it would have ruined that part of the Country, for it was not so much want of Shipping, as Provision, made him go the Land way; and if I had betrayed him, I know no Man could like a Traitor, howbeit they had liked the Treachery, neither was *Glencarn* in the Fields, nor the Earl of *Middleton* in *Scotland* at that time, nor had any Man Commission from his Majesty, for any thing he knows.

12. It is a general only, so it cannot but have a general answer, that is, most false.

13. This Article is mistaken, it was at proclaiming *Oliver* that I was as present, being occasionally in Town, I was commanded by *General Monk* to wait on the Council, before I knew any intention of such a Proclamation.

14. This Article is mistaken also, I was desired by *Aberdeenshire*, to go for them to *London* in *Richard's* time. I had refused likewise to go then, as I had in *Oliver's* time, if I had not been driven by necessity to it out of respect to Religion, my native Country, and to preserve my self from utter ruin, not without hopes but something might have been thought upon for his Majesty, because of the freedom of Elections in *England*, and as nothing was so much as mentioned at that time to his Majesty's disadvantage; so the Breach was there made, by which his Majesty entered by the Lord's Blessing thereafter; this I told to several was most probable when I came back to *Scotland*, my endeavour to stop the Act of Union, until three things were first or jointly done, shews my Resolution for my Religion and Country; the Three things were, that our Laws and Judicatories might stand until they should be altered by common consent. 2. That our Religion in Doctrine, Worship, and Discipline, might stand according to the Covenant. 3. That the Asses of *Scotland* might be made proportionable with *England*. I did to several declare, the Union could not be without these, and I was told likewise, that these would never be granted; my own necessity was to get off a most unjust decreat of great Sums laid upon me, by that called the *Exchequer* in *Scotland*, which was impossible for me to Pay, this

I shall make clearly to appear: And beside all this, my going was not until the Invaders had been past seven Years in possession by consent, and that all the Lawyers did plead their Authority and Ordinances as Laws.

15. It was well known I was hard prest to accept that, and did it never, until the poor People in whom I was nearly concern'd, were in great Difficulties for want of Justice; and I would not then embrace it, but with a Protestation, though it was long after the Invaders possession, and that there was no other visible Power nor Authority.

16. I can say nothing to this, but it is a most false Calumny say it who will, and I hope when it comes to be particular in the Circumstances it will appear to be so, for ever when the *English* were at *Inveraray*, the Parish Minister Mr. *Alexander Gordonn*, my own Chaplain, in his Family prayed constantly for his Majesty, and my self in Company did always pray for such whom we were engaged to, by either natural, civil, or Christian Bonds.

17. I can say to this as to the former, and that it cannot be true, because that brake out only upon the Earl of *Calender's* marching to the West, whereof it is not said he was Privy; and though it were true, all that business is approved in Parliament, ratified by his Majesty.

18. This is a great mistake, I had no such Precept, but I had by Act of Parliament of *Scotland*, the half of Excise of Wines and Strong-waters in *Scotland* for Payment to me, for a great Sum laid out by me for the *Irish* Army, and by my Articles I was to enjoy my Liberty, and these Debts due to me; and when I craved performance of my Articles, 1657, the Protector would not let me have the Excise, but only so much yearly out of it, until I were satisfied, wherein I had not what I ought, so far was it from favour.

19. I did never correspond with *Richard Cromwell*, nor *Fleetwood*, except in order to my own Affairs, nor with Sir *Archibald Johnston*, either to the prejudice of King or Country, or to my Memory at all after the Committee of Safety met.

20, 21, 22, 23, 24, 25. To all these Answers, *Arch. Kinglas* had his Commission as Colonel from the Parliament, or Committee, and not from him, and if he pursued *Lamond* doubtless it was as a Rebel at that time to the Estate of the Kingdom, according to Act and Declaration of Parliament, approved of by his Majesty, and his Royal Father, and Predecessors; so what *Ard. Kinlas* or any other did to *Lamond*, let them answer for what they did unwarrantably, it cannot reflect on him, but he hopes they will clear themselves.

26. The Defender was in *England* when *Lamond* was brought out of his House, and knew nothing of the Business, until he received Letters shewing what had past, and that *Lamond* had refused to return *Alexander Mac-Donald*, according to his Capitulation, chusing rather to remain a Prisoner with the Defender, the Paper it self may be found if he deny, whereupon he was detained Prisoner, having no Security to give; and having so often sworn and promised and after failed, which will be shewn under his Hand, and having Murthered so many People, Men, Women and Children, several of them after quarter given, beside the Burning of

many Gentlemen his Neighbours Houses, and destroying their Goods and their Lands, and going in to *Alexander Mac-Donald*, notwithstanding he was in service against him with the Defender, not having fairly exonerated himself; This can be all clearly instructed, and if this was not cause to keep him a Prisoner, let any judge.

27. He knew not nor remembers not any such things, so it is but forged against him.

28. He caused no such thing, it was a thing done for his own entertainment, and the Defender being to secure *Lamond* for some just Debts due to himself, the Captain of *Dunstaffage* desired his bond likewise to be pursued in the Defender's Name, which the Gentleman himself can shew.

29. The Marquis is in Possession of none of their Lands to his knowledge, if he were, it is a legal civil process.

30. He never knew any such thing.

31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44. To all these let every Man answer as he is concerned, as he hopes they will clear so, but this he must say for himself and his depute, That it cannot be said they Murthered any of these Men with their own Hands, neither did they judge any Man to die by the Hand of Justice, but such who were notoriously guilty according to standing Laws; and no Man can justly say any Man was ever processsed before them who had received any Articles, though it was never conceived by any Judicatory in *Scotland* that any Man taking a Rebel could Pardon him, except the Person doer of it had particular Warrant for that effect, otherwise the Committee after *Philliphauge* had been much to blame for ordaining so many to be processsed, at which Committee were the sentencing of such who died at *Glasgow* shortly thereafter, at which the Defender was not present.

The Proceedings hereupon are thus related by Bishop Burnet in his History of his Own Times, Vol. I. p. 122, &c.

He had Council assigned him, who performed their part very well; the *Marquis* made a long Speech himself, wherein he chiefly insisted, that during the late Wars he was but one among a great many more: He had always acted by Authority of Parliament, and according to the Instructions that were given him, as oft as he was sent on any Expedition or Negotiation. As to all things done before the year 1641, the late King had buried them in an Act of Oblivion then passed, as the present King had also done in the Year 1651: So he did not think he was bound to answer to any particular before that time. For the second head, he was at *London* when most of the Barbarities set out in it were committed: Nor did it appear that he gave any orders about them. It was well known that great Outrages had been committed by the *Macdonalds*: And he believed his People, when they had the better of them, had taken Cruel Re-venges: This was to be imputed to the heat of the time, and to the tempers of the People, who had been much provoked by the burning of his whole Country, and by much Blood that was shed. And as to many Stories laid to the charge of his Men, he knew some of them were mere Forgeries, and others were aggravated much

much beyond the truth : But, what truth soever might be in them, he could not be answerable but for what was done by himself, or by his Orders. As to the third Head, of his Compliance with the Usurpation, he had stood out till the Nation was quite conquered: And in that case it was the received Opinion both of Divines and Lawyers, that Men might lawfully submit to an Usurpation, when forced to it by an inevitable necessity. It was the epidemical Sin of the Nation. His Circumstances were such, that more than a bare Compliance was required of him. What he did that way was only to preserve himself and his Family, and was not done on design to oppose the King's Interest. Nor did his service suffer by any thing he did. This was the substance of his Defence in a long Speech, which he made with so good a grace and so skilfully, that his Character was as much raised as his Family suffered by the Prosecution. In one Speech, excusing his Compliance with *Cromwell*, he said, What could he think of that matter, after a Man so eminent in the Law as his Majesty's Advocate had taken the Engagement? This inflamed the other so much, that he called him an impudent Villain; and was not so much as chide for that Barbarous Treatment. Lord *Argyle* gravely said, he had learned in his Affliction to bear Reproaches; but if the Parliament saw no Cause to condemn him, he was less concerned at the King's Advocate's railing. The King's Advocate put in an additional Article, of charging him with accession to the King's Death, for which all the proof he offered lay in a presumption: *Cromwell* had come down to *Scotland* with his Army in *September* 1648, and at that time he had many and long Conferences with *Argyle*; and immediately upon his return to *London* the Treaty with the King was broken off, and the King was brought to his Trial: The Advocate from thence inferred, that it was to be presumed that *Cromwell* and *Argyle* had concerted that Matter between them. While this Process was carried on, which was the solemnest that ever was in *Scotland*, the Lord *Lorn* continued at Court soliciting for his Father; and obtained a Letter to be writ by the King to the Earl of *Midletoun*, requiring him to order his Advocate not to insist on any publick Proceedings before the Indemnity he himself had pass'd in the Year 1651. He also required him, when the Trial was ended, to send up the whole Process, and lay it before the King, before the Parliament should give Sentence. The Earl of *Midletoun* submitted to the first part of this: So all farther enquiry into those Matters was superseded. But as to the second part of the Letter, it looked so like a distrust of the Justice of the Parliament, that he said, he durst not let it be known, till he had a second and more positive order, which he earnestly desired might not be sent; for it would very much discourage this Loyal and Affectionate Parliament: And he begged earnestly to have that Order recalled; which was done. For some time there was a stop to the Proceedings, in which Lord *Argyle* was contriving an escape out of the Castle. He kept his Bed for some Days: And his Lady being of the same Stature with himself, and coming to him in a Chair, he had put on her Cloaths, and was going into the Chair: But he apprehended he should be discovered, and his Execu-

tion hastened; and so his Heart failed him. The Earl of *Midletoun* resolved, if possible, to have the King's Death fastened on him. By this means, as he would die with the more Infamy, so he reckoned this would put an end to the Family, since no Body durst move in favour of the Son of one judged guilty of that Crime. And he, as was believed, hoped to obtain a grant of his Estate. Search was made into all the Precedents of Men who had been at any time condemned upon Presumption. And the Earl of *Midletoun* resolved to argue the Matter himself, hoping that the weight of his Authority would bear down all Opposition. He managed it indeed with more force than decency: He was too vehement, and maintained the Argument with a strength that did more honour to his Parts than to his Justice or his Character. But *Gilmore*, tho' newly made President of the Session, which is the supreme Court of Justice in that Kingdom, adhorred the Precedent of attainting a Man upon so remote a presumption, and looked upon it as less justifiable than the much decried Attainder of the Earl of *Strafford*. So he undertook the Argument against *Midletoun*: They replied upon one another thirteen or fourteen times in a Debate that lasted many Hours. *Gilmore* had so clearly the better of the Argument, that, tho' the Parliament was so set against *Argyle* that every thing was like to pass that might blacken him, yet, when it was put to the Vote, he was acquitted as to that by a great Majority: At which he expressed so much Joy, that he seemed little concerned at any thing that could happen to him after that. All that remained was to make his compliance with the Usurpers appear to be Treason. The debate was like to have lasted long. The Earl of *Lowdun*, who had been Lord Chancellor, and was counted the eloquentest Man of that time, for he had a copiousness in speaking that was never exhausted, (he was come of his Family and was his particular Friend,) had prepared a long and learned Argument on that Head. He had gathered the Opinions both of Divines and Lawyers, and had laid together a great deal out of History, more particularly out of the *Scottish* History, to shew that it had never been censured as a Crime: But that on the contrary in all their Confusions the Men, who had merited the most of the Crown in all its shakings, were Persons who had got credit by compliance with the side that prevailed, and by that means had brought things about again. But, while it was doubtful how it would have gone, *Monk* by an inexcusable baseness had searched among his Letters, and found some that were writ by *Argyle* to himself, that were hearty and zealous on their side. These he sent down to *Scotland*. And after they were read in Parliament, it could not be pretended that his Compliance was feigned, or extorted from him. Every Body blamed *Monk* for sending these down, since it was a betraying the Confidence, that they then lived in. They were sent by an Express, and came to the Earl of *Midletoun* after the Parliament was engaged in the debate. So he ordered the Letters to be read. This was much blamed, as contrary to the forms of Justice, since Probation was closed on both sides. But the reading of them silenced all farther debate. All his Friends went out: And he was condemned as guilty of Treason. The

Marquis of *Montrose* only refused to Vote. He owned, he had too much Resentment to judge in that matter. It was designed he should be hanged, as the Marquis of *Montrose* had been: But it was carried that he should be Beheaded, and that his Head should be set up where Lord *Montrose's* had been set. He received his Sentence decently, and composed himself to suffer.

The Day before his Death he wrote to the King, justifying his Intentions in all he had acted in the Matter of the Covenant: He protested his Innocence, as to the Death of the late King: He submitted patiently to his Sentence, and wished the King a long and happy Reign: He cast his Family and Children upon his Mercy; and prayed that they might not suffer for their Father's fault.

On the 27th of *May* the Day appointed for his Execution, he came to the Scaffold in a very solemn but undaunted manner, accompanied with many of the Nobility and some Ministers, when he spake as follows.

MANY will expect that I speak many things, and according to their several opinions and dispositions, so will their expectations be from me, and constructions of me; But I resolve to disappoint many, for I come not hither to justify myself, but the Lord, *Who is Holy in all his Ways and Righteous in all his Works, holy and blessed is his Name*; Neither come I to condemn others: I know many will expect that I will speak against the hardness of the Sentence pronounced against me; But I will say nothing to it. I bless the Lord, I pardon all Men, as I desire to be pardoned of the Lord my self: Let the Will of the Lord be done; That is all that I desire.

I hope ye will have more Charity to me now, than ye would have had at another time, seeing I speak before the Lord, to whom I must give an account very shortly. I know very well that my Words have had but very little weight with many: And that many have mistaken my Words and Actings both: Many have thought me to be a great Enemy to these great works, that have of late been brought to pass. But do not mistake me, good People: I speak it in the presence of the Lord, I entered not upon the Work of Reformation with any design of advantage to my self, or prejudice to the King and his Government; as my latter Will which was written 1655, and thereafter delivered to a Friend (in whose hands it still remaineth) can show. As for these Calumnies, that have gone abroad of me, I bless God, I know them to be no more: And as I go to make a reckoning to my God, I am free as to any of these, concerning the King's Person or Government. I was Real and Cordial in my desires to bring the King home, and in my Endeavours for Him when he was at home, and I had no correspondence with the Adversaries Army, nor any of them, in the time when his Majesty was in *Scotland*; Nor had I any accession to his late Majesty's horrid and execrable Murder, by Counsel or Knowledge of it, or any other manner of way. This is a Truth, as I shall answer to my Judge. And all the time his Majesty was in *Scotland*, I was still endeavouring his advantage; my Conscience beareth me witness in it. So much to that Particular. And (turning about he said) I hope, Gentlemen, you will all remember these.

I confess, many look on my Condition as a *Suffering* Condition: But I bless the Lord, that he that hath gone before me, hath trod the Wine-press of the Father's wrath; by whose Sufferings, I hope that my Sufferings shall not be Eternal. I bless Him that hath taken away the sting of my Sufferings: I may say that my Charter was Sealed to-day; for the Lord hath said to me, Son, be of good cheer, thy Sins are freely forgiven thee: And so I hope my Sufferings shall be very easy. And ye know the Scripture saith, the Captain of our Salvation was made perfect by Sufferings.

I shall not speak much to these things for which I am condemned, lest I seem to condemn others: It is well known, it is only for *Compliance*, which was the Epidemical fault of the Nation. I wish the Lord to pardon them: I say no more.

There was an Expression in these Papers presented by me to the Parliament, of the *Contagion of these times*; Which may by some be misconstrued, as if I intended to lay an Imputation upon the Work of Reformation: But I declare that I intended no such thing; But only related to the corruptions and failings of Men, occasioned by the Prevailing of the Usurping Powers. *At this he turned and took them all witnesses.*

Now, Gentlemen, concerning the Nation, I think there are three sorts of People that take up much of the World and of this Nation. There is, 1. The openly Prophane: And truly I may say, though I have been a Prisoner, I have not had mine Ears shut; I hear assuredly, that Drinking, Swearing, Whoring were never more Common, never more Countenanced than now they are. Truly if Magistrates were here, I would say to them, if they lay forth their power for glorifying of God, by restraining this, they should fare the better; if they continue in not restraining, they shall fare the worse. I say no more, but either let People shun Prophanity and Magistrates restrain it, or assuredly the wrath of God shall follow on it. 2. Others are not openly Prophane (every one will not allow that) but yet they are *Gallios* in the matter: If matters go well as to their Private Interest, they care not whether the Church of God sink or swim. But whatever they think, God hath laid Engagements upon *Scotland*: We are tyed by Covenants to Religion and Reformation: these that were then Unborn are yet engaged; and in our Baptism we are engaged to it. And it passeth the Power of all the Magistrates under Heaven to absolve them from the Oath of God: They deceive themselves, and it may be would deceive others that think otherwise. But I would caveat this, People will be ready to think this a kind of instigation to Rebellion in me; But they are very far wrong that think *Religion* and *Loyalty* are not well consistent. Whoever they be that separate them, Religion is not to be blamed, but They. It's true, it is the duty of every Christian to be Loyal, yet I think the Orders of things are to be observed as well as their Natures; the Order of Religion as well as the Nature of it. Religion must not be the Cockboat, it must be the Ship. God must have what is his, as well as *Cesar* what is his: And those are the best Subjects that are the best Christians. And that I am looked on as a Friend to Reformation, is my Glory.

3. There

3. There is another sort that are truly Godly: And to them I must say what I fear, and every one hath reason to fear (it's good to fear evil.) It's true the Lord may prevent it; but if he do not (and truly I cannot foresee any probability of it) Times are like either to be very *Sinning* or very *Suffering* Times: And let Christians make their choice: There is a sad *Dilemma* in the business, Sin or Suffer; and surely, he that would chuse the Better part would chuse to Suffer. Others that will chuse to Sin, shall not escape Suffering; They shall Suffer, but it may be, not as I do (*turning about and pointing to the Maiden*) but worse: Mine is but Temporal, theirs shall be Eternal; when I shall be Singing, they shall be Howling. Beware therefore of Sin whatever you are aware of, especially in such times.

Yet I cannot say of my own Condition, but that the Lord in his Providence hath mind of Mercy to me, even in this World: For if I had been more favourably dealt with, I fear I might have been overcome with Temptations, as many others are, and many more I fear will be; and so should have gone out of the World with a more polluted Conscience, than through the Mercy of God now I have. And hence my Condition is such now, as when I am gone, will be seen not to have been such as many imagined. It is fit God take me away, before I fall into these Temptations that I see others are falling into, and many others I fear will fall: I wish the Lord may prevent it. Yet blessed be his Name, that I am kept both from present evils and evils to come. *Here he turned about a little and spoke some words to Mr. Hutchison, when turning again to the People, he spoke as followeth.* Some may expect I will regrave my own condition: But truly I neither grudge nor re-

pine, nor desire any revenge. And I declare I do not repent my last going up to *London*; for I had always rather have Suffered any thing, than lie under Reproaches as I did. I desire not that the Lord should judge any Man; nor do I judge any but my Self: I wish, as the Lord hath pardoned me, so he may pardon them for this and other things; and what they have done to me, may never meet them in their accounts. I have no more to say, but to beg the Lord, that when I go away, he would Bless every one that stayeth behind.

His last Words, immediately before he laid his Head on the Block, after his Doublet was off, were these. I desire you, Gentlemen, all that hear me this day to take notice (and I wish that all who see me might hear me) that now when I am entering into Eternity, and am to appear before my Judge; and as I desire Salvation, and do expect eternal Salvation and Happiness from him, from my Birth to my Scaffold, I am free from any accession by my Knowledge, concerning Council or any other way to his late Majesty's death: And I pray the Lord to preserve his present Majesty, and to pour his best Blessings on his Person and Government; and the Lord give him good and faithful Counsellors. *Turning about to his Friends, he said,* Many Christians may stumble at this, and my Friends may be discontented; But when things are rightly considered, my Friends have no Discredit of Me, nor Christians no Stumbling-block, rather an Engagement.

When he had done speaking he took his leave of his Friends very decently, and after some time spent in his private Devotions, he was beheaded.

LVIII. *The Trial of Sir HENRY VANE * Kt. at the King's-Bench for High-Treason, June 2 and 6, 1662. Trin. 14 Car. II. Wrote by himself.*



SIR Henry Vane being committed for High-Treason, had prepar'd the following Argument for his Defence, before he knew how the Indictment would be laid.

[The Offence objected against me, is levying War, within the Statute 25 Ed. 3. and by consequence, a most high and great failer in the duty which the Subject, according to the Laws of England, stands obliged to perform, in relation to the Imperial Crown and Sovereign Power of England.

The Crime, if it prove any, must needs be very great, considering the circumstances with which it hath been accompanied: For it relates to, and takes in a series of publick action, of above twenty Years

continuance. It took its rise and had its root in the Being, Authority, Judgment, Resolutions, Votes and Orders of a Parliament, and that, a Parliament not only authorized and commissioned in the ordinary and customary way, by his Majesty's Writ of Summons, and the Peoples Election and Deputation, subject to Adjournment, Discontinuance, and Dissolution, at the King's Will; but which, by express Act of Parliament, was constituted in its continuance and exercise of its Power, free from that subjection, and made therein wholly to depend upon their own Will, to be declared in an Act of Parliament, to be passed for that purpose, when they should see cause. To speak plainly and clearly in this matter; That which is endeavoured to be made a Crime and an Offence of such an high nature in my person,

* Kelyng 14. 1 Lev. 68. 1 Sid. 84. 1 Keb. 304, 315, 324. Burn. Hist. own times, Vol. I. p. 163.

is no other than the necessary and unavoidable *Actings* of the Representative Body of the Kingdom, for the preservation of the good People thereof, in their Allegiance and Duty to God and his Law, as also from the imminent dangers and destruction threatened them, from God's and their own Enemies.

This made both Houses in their Remonstrance (May 26, 1642.) protest; If the Malignant spirits about the King should ever force or necessitate them to defend their Religion, the Kingdom, the Privileges of Parliament, and the Rights and Liberties of the Subjects, with their Swords; The Blood and Destruction that should ensue thereupon, must be wholly cast upon their account, God and their own Consciences telling them, that they were clear; and would not doubt, but that God and the whole World would clear them therein.

In his Majesty's Answer to the Declaration of the two Houses, (May 19, 1642.) he acknowledgeth his going into the House of Commons to demand the five Members, was an error: And that was it, which gave the Parliament the First cause to put themselves in a posture of defence, by their own Power and Authority, in commanding the Trained-Bands of the City of London to guard and secure them from Violence, in the Discharge of their Trust and Duty, as the two Houses of Parliament, appointed by Act, to continue, as above-mentioned.

The next Cause was, his Majesty's raising Forces at York, (under pretence of a Guard) expressed in the humble Petition of the Lords and Commons, (May 23, 1642.) wherein they beseech his Majesty to disband all such Forces, and desist from any further Designs of that nature, otherwise they should hold themselves bound in Duty towards God, and the Trust reposed in them by the People, and the Fundamental Laws and Constitutions of this Kingdom, to employ their Care and utmost Power to secure the Parliament, and preserve the Peace and Quiet of the Kingdom.

May 20, 1642, The two Houses of Parliament gave their Judgment, in these Votes.

First, That it appears, that the King (seduced by wicked Counsel) intends to make War against the Parliament, who in all their Consultations and Actions have proposed no other End to themselves, but the Care of his Kingdoms, and the Performance of all Duty and Loyalty to his Person.

Secondly, That whensoever the King maketh War upon the Parliament, it is a Breach of Trust reposed in him by his People, contrary to his Oath, and tending to the Dissolution of this Government.

Thirdly, That whosoever shall serve or assist him in such Wars, are Traitors by the fundamental Laws of this Kingdom, and have been so adjudged by two Acts of Parliament, and ought to suffer as Traitors.

Die Jovis, Octob. 8, 1642, In the Instructions agreed upon by the Lords and Commons about the Militia, They declare, That the King (seduced by wicked Counsel) hath raised War against the Parliament, and other his good Subjects.

And by the Judgment and Resolution of both Houses, bearing Date Aug. 13, 1642, upon occasion of his Majesty's Proclamation for suppressing the present Rebellion, under the Command of Robert Earl of Essex, They do unanimously publish and declare, That all they who have advised, de-

clared, abetted, or countenanced, or hereafter shall abet and countenance the said Proclamation, are Traitors and Enemies to God, the King and Kingdom, and guilty of the highest Degree of Treason that can be committed against the King and Kingdom, as that which invites his Majesty's Subjects to destroy his Parliament, and good People, by a Civil War; and by that means, to bring Ruin, Confusion and perpetual Slavery upon the surviving Part of a then wretched Kingdom.

The Law is acknowledged by the King, to be the only Rule, by which the People can be justly governed; and that, as it is his Duty, so it shall be his perpetual, vigilant Care, to see to it: Therefore he will not suffer either or both Houses by their Votes, without or against his Consent, to enjoin any thing that is forbidden by the Law, or to forbid any thing that is enjoined by the Law.

The King does assert in his Answer to the Houses Petition, (May 23, 1642.) That he is a Part of the Parliament, which they take upon them to defend and secure; and that his Prerogative is a part of, and a Defence to the Laws of the Land.

In the Remonstrance of both Houses, (May 26, 1642.) They do assert; That if they have made any Precedents this Parliament, they have made them for Posterity, upon the same or better Grounds of Reason and Law, than those were, upon which their Predecessors made any for them; and do say, That as some Precedents ought not to be Rules for them to follow, so none can be Limits to bound their Proceedings, which may and must vary, according to the different Condition of Times.

And for the Particular, with which they were charged, of setting forth Declarations to the People who have chosen and entrusted them with all that is dearest to them, if there be no Example for it in former Times, They say, it is because there never were such Monsters before, that attempted to disaffect the People towards a Parliament.

They further say; His Majesty's Towns are no more his Care than his Kingdom, nor his Kingdom than his People, who are not so his own, that he hath absolute Power over them, or in them, as in his proper Goods and Estate; but fiduciary, for the Kingdom, and in the paramount Right of the Kingdom. They also acknowledge the Law to be the Safeguard and Custody of all publick and private Interests. They also hold it fit, to declare unto the Kingdom, (whose Honour and Interest is so much concerned in it) what is the Privilege of the great Council of Parliament, herein; and what is the Obligation that lies upon the Kings of this Realm, as to the passing such Bills as are offered to them by both Houses, in the Name, and for the Good of the whole Kingdom, whereunto they stand engaged, both in Conscience and Justice, to give their Royal Assent.

First, In Conscience; in respect of the Oath that is, or ought to be taken by them, at their Coronation, as well to confirm by their Royal Assent all such good Laws as the People shall chuse, (whereby to remedy such Inconveniencies as the Kingdom may suffer) as to keep and protect the Laws already in being.

The Form of the Oath is upon Record, and asserted by Books of good Authority. Unto it relation is had, 25 Ed. 3. entitled, The Statute of Provisors of Benefices.

Here-

Hereupon, The said Commons prayed our said Lord the King, (sith the Right of the Crown of England, and the Law of the said Realm, is such, that upon the Mischiefs and Damages which happen to this Realm, he ought and is bound by his Oath, with the Accord of his People in Parliament, to make Remedy and Law, for the removing thereof) That it may please him to ordain Remedy.

This Right, thus claimed by the Lords and Commons, The King doth not deny, in his Answer thereunto.

Secondly, In Justice the Kings are obliged as well as in Conscience, in respect of the Trust reposed in them, to preserve the Kingdom by the making of new Laws, where there shall be need, as well as by observing of Laws already made; a Kingdom being many times as much exposed to Ruin for want of a new Law, as by the Violation of those that are in being.

This is a most clear Right, not to be denied, but to be as due from his Majesty to his People, as his Protection. In all Laws framed by both Houses, as Petitions of Right, they have taken themselves to be so far Judges of the Rights claimed by them, That when the King's Answer hath not been in every Point fully according to their Desire, they have still insisted upon their Claim, and never given it over, till the Answer hath been according to their Demand, as was done in the late Petition of Right, 3 Caroli.

This shews, the two Houses of Parliament are Judge between the King and the People in question of Right, as in the Case also of Ship-Money and other illegal Taxes; and if so, why should they not also be Judge in the Cases of the Common Good and Necessity of the Kingdom, wherein the Kingdom hath as clear a Right to have the Benefit and Remedy of the Law, as in any other Matter, saving Pardon and Grants of Favour?

The Malignant Party are they, that not only neglect and despise, but labour to undermine the Law, under colour of maintaining it. They endeavour to destroy the Fountain and Conservators of the Law, the Parliament. They make other Judges of the Law, than what the Law hath appointed. They set up other Rules for themselves to walk by, than such as are according to Law; and dispense with the Subjects Obedience, to that which the Law calls Authority, and to their Determinations and Resolutions, to whom the Judgment doth appertain by Law: Yea, though but private Persons, they make the Law to be their Rule, according to their own Understanding only, contrary to the Judgment of those that are the competent Judges thereof.

The King asserts, That the Act of Sir John Hotham was levying War against the King, by the Letter of the Statute, 25 Ed. 3. cap. 2.

The Houses state the Case, and deny it to be within that Statute; saying, If the Letter of that Statute be thought to import this; That no War can be levied against the King, but what is directed and intended against his Person; Or, that every levying of Forces for the Defence of the King's Authority, and of his Kingdom, against the Personal Commands of the King, opposed thereunto, (though accompanied with his Presence) is Treason, or levying War against the King; Such Interpretation is very far from the Sense of that Statute, and so much the Statute it self speaks, beside the Authority of Book-Cases. For if the Clause of levying War had been meant only against the King's Person, what need had there been thereof, after the other Branch in the

same Statute, of compassing the King's Death, which would necessarily have implied this? And because the former doth imply this, it seems not at all to be intended, at least, not chiefly, in the latter Branch, but the levying War against his Laws and Authority; and such a levying War, though not against his Person, is a levying War against the King; whereas the levying of Force against his Personal Commands, though accompanied with his Presence, and not against his Laws and Authority, but in the Maintenance thereof, is no levying of War against the King, but for him, especially in a time of so many successive Plots and Designs of Force against the Parliament and Kingdom, of probable Invasion from abroad, and of so great Distance and Alienation of his Majesty's Affections from his Parliament and People, and of the particular Danger of the Place and Magazine of Hull, of which the two Houses sitting, are the most proper Judges.

In proclaiming Sir John Hotham Traitor, they say, The Breach of the Privilege of Parliament was very clear, and the Subversion of the Subjects common Right. For though the Privileges of Parliament extend not to these Cases, mentioned in the Declaration of Treason, Felony, and breach of the Peace, so as to exempt the Members of Parliament from Punishment, or from all manner of Process and Trial, yet it doth privilege them in the way and method of their Trial and Punishment, and that the Parliament should first have the Cause brought before them, that they may judge of the Fact, and of the Grounds of their Accusation, and how far forth the manner of their Trial may or may not concern the Privilege of Parliament: Otherwise, under this Pretext, the Privilege of Parliament in this Matter, may be so essentially broken, as thereby the very Being of Parliaments may be destroyed. Neither doth the sitting of a Parliament suspend all or any Law, in maintaining that Law, which upholds the Privilege of Parliament, which upholds the Parliament, which upholds the Kingdom.

They further assert; That in some Sense, they acknowledge the King to be the only Person, against whom Treason can be committed, that is, as he is King, and that Treason which is against the Kingdom, is more against the King, than that which is against his Person, because he is King: For Treason is not Treason, as it is against him as a Man, but as a Man that is a King, and as he hath, and stands in that Relation to the Kingdom, entrusted with the Kingdom, and discharging that Trust.

They also avow, That there can be no competent Judge of this or any the like Case, but a Parliament; and do say, that if the wicked Counsel about the King could master this Parliament by force, they would hold up the same Power to deprive us of all Parliaments, which are the Ground and Pillar of the Subjects Liberty, and that which only maketh England a free Monarchy.

The Orders of the two Houses carry in them Law for their Limits, and the Safety of the Land for their End. This makes them not doubt but all his Majesty's good Subjects will yield Obedience to his Majesty's Authority, signified therein by both Houses of Parliament: for whose Encouragement, and that they may know their Duty in Matters of that nature, and upon how sure a Ground they go, that follow the Judgment of Parliament for their Guide; They alledge the true Meaning and Ground of that Statute, 11 Hen. 7. cap. 1. printed at large in his Majesty's Message, May 4; This Statute provides,

that none that shall attend upon the King and do him true Service, shall be attainted, or forfeit any thing.

What was the Scope of this Statute?

Ans^r. To provide, that Men should not suffer as Traitors, for serving the King in his Wars, according to the Duty of their Allegiance. But if this had been all, it had been a very needless and ridiculous Statute. Was it then intended (as they seem to make it, that print it with his Majesty's Message) that those should be free from all Crime and Penalty, that should follow the King and serve him in War, in any Case whatsoever, whether it were for or against the Kingdom, or the Laws thereof? That cannot be; for that could not stand with the Duty of their Allegiance, which, in the beginning of this Statute, is expressed to be, to serve the King for the time being in his Wars, for the Defence of him and the Land. If therefore it be against the Land, (as it must be, if it be against the Parliament, the Representative Body of the Kingdom) it is a declining from the Duty of Allegiance, which this Statute supposes may be done, though Men should follow the King's Person in the War. Otherwise, there had been no need of such a Proviso in the end of the Statute, that none should take benefit thereby, that should decline from their Allegiance.

That therefore which is the Principal Verb in this, is the serving of the King for the time being, which cannot be meant of a Perkin Warbeck, or any that should call himself King, but such a one, as (whatever his Title might prove, either in himself or in his Ancestors) should be received and acknowledged for such, by the Kingdom, the Consent whereof cannot be discern'd but by Parliament; the Act whereof is the Act of the whole Kingdom, by the Personal Suffrage of the Peers, and the Delegate Consent of the Commons of England. Henry 7th therefore, a wise Prince, to clear this Matter of Contest, happening between Kings de facto and Kings de jure, procured this Statute to be made, That none shall be accounted a Traitor for serving in his Wars, the King for the time being; that is, him that is for the present allowed and received by the Parliament in behalf of the Kingdom. And as it is truly suggested in the Preamble of the Statute; It is not agreeable to Reason or Conscience, that it should be otherwise, seeing Men should be put upon an Impossibility of knowing their Duty, if the Judgment of the highest Court should not be a Rule to guide them. And if the Judgment thereof is to be followed, when the Question is, Who is King? much more, when the Question is, What is the best Service of the King and Kingdom? Those therefore that shall guide themselves by the Judgment of Parliament, ought (whatever happen) to be secure and free from all Account and Penalties, upon the Ground and Equity of this Statute.

To make the Parliament Countenancers of Treason, they say, is enough to have dissolv'd all the Bands of Service and Confidence between his Majesty and his Parliament, of whom the Law says, a dishonourable thing ought not to be imagined.

This Conclusion then is a clear Result from what hath been argued; That in all Cases of such Difficulty and Unusualness, happening by the over-ruling Providence of God, as render it impossible for the Subject to know his Duty, by any known Law or certain Rule extant, his relying then upon the Judgment and Reason of the whole Realm, declared by their Representative Body in Parliament, then sitting, and adhering thereto, and pursuing thereof,

(though the same afterwards be by succeeding Parliaments, judged erroneous, factious and unjust) is most agreeable to right Reason and good Conscience; and in so doing, all Persons are to be free and secure from all Account and Penalties, not only upon the Ground and Equity of that Statute, 11 Hen. 7. but according to all Rules of Justice, Natural or Moral.]

Afterwards, in Easter Term, he was indicted of High-Treason, before the Middlesex Grand-Jury; and the Bill being found by them, he was upon Monday the Second of June, in Trinity Term, arraigned, to this Effect:

THAT you, as a false Traitor against his most Excellent Majesty King Charles the Second, your Supreme and Natural Lord, not having the Fear of God before your Eyes, and withdrawing that your Duty and Allegiance, which a true Subject ought to have and bear to our said Liege and Sovereign Lord, the thirteenth of May, in the eleventh Year of our said Sovereign Lord the King, at the Parish of St. Martin in the Fields, in the County of Middlesex, did Compass and Imagine the Death of our said Sovereign Lord the King, and the ancient Frame of Government of this Realm totally to subvert, and keep out our said Sovereign Lord from the Exercise of his Regal Government. And the same the better to effect, the said Sir Henry Vane, the said thirteenth Day of May, in the said eleventh Year, &c. at St. Martin's aforesaid, together with other false Traitors, to the Jurors unknown, did traitorously and maliciously assemble and sit together, and then and there consulted to bring the King unto Destruction, and to hold him out from the Exercise of his Regal Authority, and then and there usurped the Government, and appointed Officers, to wit, Colonels and Captains of a certain Army, raised against the King; against the Peace of our Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in that Case made and provided.

And the better to effect this, the twentieth of December, in the said eleventh Year, with a Multitude, to the number of a thousand Persons, to the Jurors unknown, in warlike manner assembled, and array'd with Guns, Trumpets, Drums, &c. did levy War against the Peace, &c. and contrary to the Form of a Statute.

Which being read, he pray'd to have it read a second time, which was granted him. He then pray'd to have it read in Latin, which all the Court deny'd, and Keeling the King's Serjeant said, That tho all Pleas and Entries are set down on Record in Latin, yet the Agitations of Causes in Court, ought to be in English.

The Prisoner moved several Exceptions to the Indictment, as that the 25 Ed. 3. is not pursued; that he had levied no such Force as amounted to a levying of War: Also the Place in which, Persons with whom, are both uncertain; and the particular Acts of levying War being not set forth, he thought therefore the Indictment was insufficient. Also he said, Here is a long time of Action for which I am charged, and I may be concerned for what I acted as a Member in

in that Sovereign Court of Parliament; and if any thing concerns the Jurisdiction of that Court, I ought not to be judg'd here. At which the Court and King's Counsel took great Offence.

He said also, There hath been an Act of general Pardon since that time, whereby all Treasons are put in utter Oblivion; and though Sir Henry Vane were excepted, yet none consent that he was that Sir Henry Vane. But the King's Counsel said, If he would plead that Plea, they would join that Issue with him, if he pleased; which, if it should be found against him, it would be too late to plead *Not guilty*.

But the Court said, In favour of Life a Man may plead a double Plea, and give in his Exception, and plead over to the Felony or Treason, *Not guilty*.

But as to the Exceptions taken to the Indictment, they gave little heed to them, but pressed him to Plead or Confess.

Whereupon he pleaded *Not guilty*; and had four Days, to wit, 'till Friday next, for his Trial.

[*Memorandums for and towards my Defence.*]

Upon hearing the Indictment read, and before Pleading.

FIRST, To lay before the Court the Impossibility that he humbly conceives is already in view, as to the having any such indifferent and equal Trial, as the Law intends him, and doth require and command on the Behalf of all the free People of England. The Rise for this Conception he takes from what hath been already done in relation to the Prisoner himself, unheard, unexamined, and yet kept close Prisoner for near two whole Years. This he shall leave to the Judgment of the Court, after that he hath made known the Particulars thereof unto them, as necessary to precede the thing demanded of him, in pleading *Guilty*, or *Not Guilty*.

Secondly, What is the Indifferency which the Law requires and appoints throughout, as well in Matters that go before the Trial, as in the Proceedings at the Trial it self?

Before the Trial, and in the first Step to it, which is the keeping and securing his Person, Magna Charta is clear, and gives this Rule, cap. 29. *Nullus liber homo capiatur, &c.*

No Free-man shall be taken or imprisoned, or be disseised of his Free-hold or Liberties, or Free Customs, or be Outlawed or Exiled, or any otherwise destroyed; Nor we will not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land: We will sell to no Man, we will not deny or defer to any Man either Justice or Right.

Out of this Chapter, as out of a Root (saith Sir Edward Coke) do many fruitful Branches of the Law of England spring. It contains nine Branches; some whereof I shall insist upon in my Case.

First, That no Man be taken or imprisoned but per Legem Terræ, that is, by the Common Law or Custom of England; which Words, per Legem

Terræ, though put last, refer to all the precedent Branches.

Secondly, The Goods of any Offender cannot regularly be taken and seized to the King's Use before Conviction, nor be Inventoried, nor the Town charged therewith, before the Owner be Indicted of Record.

Thirdly, No Man shall be Exiled or Banished out of his Country, nor be in any sort destroyed, but by the Verdict of his Peers.

This appears by Bracton and other ancient Writers, quoted by Coke, in the third Part of his Institutes, fol. 228.

Upon the whole Matter, saith Coke, these two Conclusions are manifestly proved.

First, That before Indictment, the Goods or other things of any Offender cannot be searched, inventoried or in any sort seized, nor after Indictment, seized, removed, or taken away, before Conviction or Attainder.

Secondly, That the begging of the Goods or Estate of any Delinquent, accused or indicted of any Treason, Felony, or other Offence, before he be Convicted and Attainted, is utterly unlawful; Stat. Ri. 1. cap. 3.

And besides, it maketh the Prosecution against the Delinquent, more precipitant, violent and undue, than the quiet and equal Proceedings of the Law and Justice would permit: Or else, by some under-hand Agreement, stops or hinders the due Course of Justice, and discourageth both Judge, Juror and Witnesses to do their Duty.

Thirdly, The Judges are not to give so much as their Opinion before-hand, concerning the Offence, whether it prove that Offence in that Case.

Coke in the Chapter of Petty-Treason, fol. 29, expressly saith; And to the end the Trial may be the more indifferent, seeing the Safety of the Prisoner consists in the Indifferency of the Court, the Judges ought not to deliver their Opinions before-hand, of any Criminal Case, that may come before them judicially. And he there cites Humphrey Stafford's Case, that Arch-Traitor, in which Hufley, Chief Justice, besought Hen. 7. not to demand of them their Opinions before-hand. And in the 4th of his Institutes, in the Chapter of the High Court of Parliament, fol. 37, he fully shews the Evil of asking the Judges Opinions before-hand.

But instead of this, The Judges being assistant in the Lords House, when all Acts of Parliament pass, and whose Advice is taken in them, (as appears by what is declared in the said Acts) prejudg'd by their Opinions, and the Opinions of the Parliament before-hand, the Merit of the Cause that now appears to be put upon the Issue in my Trial. Hereby the Judges are rendred ex parte, and the Indifferency the Law requires, impossible to be afforded.

Nor is this all; but by the Rules declared in the Act of Indemnity, all are disenabled to plead, or make use of the Ordinances, Orders and Votes of both, or either Houses of Parliament, that may have Occasion thereof; and then by excepting the Prisoner and his Fellows out of the said Act, and all Benefit thereby, a Door is left open to Arraign, bring to Trial and Sentence the whole Cause from the Beginning to the Ending, in the Person of the Prisoner, and at the same time, deprive him of all Means and Possibility of Justification and Defence.

Fourthly, It is observable how early hard measure appeared in the way wherein the Prisoner became excepted out of the Act of Indemnity, when the Commons, his proper Judges, declared him in their thoughts, not fit to be endangered in the point of Life; yet unto the Judgment of the Lords, (that ought not to judge Commoners, unbrought before them by the Commons, much less, in opposite Judgment to the Commons) the Commons were necessitated to yield, lest otherwise the Act of Indemnity to the whole Nation should stop upon this dispute and essential difference between the two Houses; A Competition, easily over-ruled; although (as it proves by the sequel) that Act of Indemnity is like to become *felo de se*, or a destroyer of it self, if your Lordships shall conceive your selves at liberty, (notwithstanding that Act) not only to bring anew into Memory upon the Stage, the state of all the passed differences, from first to last, but to try and judge the merit of them in my person, and therein call in question the validity of that whole Act, and make void the benefit intended by it, in case the War undertaken and managed by both or either of the Houses of Parliament be judged unlawful, and within the Statute of 25 Ed. 3. For this adjudges all the People of England morally guilty of the evil of a sin and offence against the Law of Nature, which once done, whatever promised Indemnity be granted for the present, the Evil of the Action remains upon Record; not only to the Infamy of the whole People of England, but their future danger, upon pretence they have forfeited the very Indemnity granted.

Fifthly, The length of time taken to search out matter against the Prisoner, and the undue practices and courses to find out Witnesses, do further evidence how unlike the Prisoner is to have an equal and indifferent Trial. He doubts not, this will appear in his two Years close Imprisonment, (six Months whereof was Banishment) during which time, he was never so much as once examined, or had any question put to him, whereby he might conjecture wherefore he was committed to Prison, any further than was expressed in the Warrants of Commitments.

Now these were so general, that nothing certain or particular could be gathered out of them. But upon the received opinion, that he was excepted out of the Act of Indemnity, and in the sense of both Houses a great Delinquent, his Estate was attempted to be Inventoried, his Rentals demanded, his Rents were actually seized in the Tenants hands, and they forbidden to pay them. His very Courts were prohibited by Officers of great Personages, claiming the Grant of the Estate, and threatening his Officers from doing their duty. By these kind of undue proceedings, the Prisoner had not wherewithal to maintain himself in Prison; and his Debts, to the value of above ten thousand Pounds, were undischarged, either Principal or Interest. The hopes of private lucre and profit hereby, was such in the Tenants and other Persons, sought out for far and near, to be Witnesses, that it is no wonder at last something by way of Charge comes to be exhibited.

And as this is the Case of the Person before his appearance at this Bar, with respect to the foresaid unequal Proceedings towards him, and the great disadvantages put upon him, and all these, as it were, in a continued series of Design; so, the matters and things themselves with which it now appears he is charged in the Indictment, make his Case still very extraordinary and unusual, involving him in difficulties that are insuperable, unless God's own

immediate Power do shew it self in working his deliverance.

The things done, are for many Years past, in a time of Differences between King and Parliament, and Wars ensuing thereupon. Many extraordinary Changes and Revolutions in the State and Government were necessitated in the course of God's Providence, for wise and holy ends of his, above the reach of human Wisdom.

The Authority by which they are done, is prejudged. The Orders, Votes and Resolutions of Parliament are made useless, and forbidden to be produced. Hereby, all manner of Defence is taken away from the Prisoner; and that which was done according to Law, as the Laws of those times were, is endeavoured to be made unlawful, and so the Persons, acting according to such Laws, are brought to Punishment.

The Judges (as hath been shewed) are forestalled in their Judgments, by the declared sense of Parliaments, given *ex post facto*. The Jurors are put upon difficulties never known before, for twelve Commoners to judge the Actions of all the Commons of England, in whom they are included, as to whose Judgment is the right, the one or the other's; and whether their Representatives be trusty.

The Party indicted is under an Incapacity to bring Witnesses, as well from the nature of the Place wherein the things were done, within the Walls of the House, as from the shortness of time, having heard nothing of his Charge, and being kept a close Prisoner, to the last day. His Solicitors and Persons employed in his Law-businesses, were also restrained from him.

It is also most evident, that the matters for which he is questioned, being the Product of so many Years Agitations of Parliamentary Councils and Arms, cannot be of a single concern, nor be reputed as the actions of a private Man, done of his own head, nor therefore come within any of the six Classes of Treason, contained in 25 Ed. 3.

It is a Case most unusual, and never happening before in this Kingdom; yet it is alledged in the Indictment to be a levying War within that Statute, and so comes to have the name of High-Treason put upon it, thereby (if possible) to deprive him of the use and benefit of Counsel, as also of competent time to prepare for his Defence, and all fitting and requisite means for the clearing of his Innocency. Unto this, unless some remedy be afforded by the justice, candor and favour of this Court, it may be better for the Prisoner (for ought he yet knows) to be immediately destroyed by special Command (if nothing else will satisfy) without any form of Law, as one to whom Quarter, after at least two Years cool blood, is thought fit to be denied in relation to the late Wars. This may seem better, than under a colour and form of Justice, to pretend to give him the benefit of the Law and the King's Courts, whose part it is, to set free the Innocent, upon an Equal and Indifferent Trial had before them, if their Cause will bear it: but it is very visible beforehand, that all possible means of Defence are taken and withheld from him, and Laws are made *ex post facto*, to forejudge the merit of the Cause, the Party being unheard.

And when he hath said all this, that as a rational Man does occur to him, and is fit for him to represent in all humility to the Court, he craves leave further to add; That he stands at this Bar not only as a Man, and a Man clothed with the Privileges of the most Sovereign Court, but as a Christian, that

that hath Faith and reliance in God, through whose gracious and wise Appointment he is brought into these circumstances, and unto this Place at this time, whose Will he desires to be found resigned up into, as well in what He now calls him to suffer, as in what He hath called him formerly to act, for the good of his Country, and of the People of God in it. Upon this bottom (he blesses the Name of his God) he is fearless, and knows the issue will be good, whatever it prove. God's strength may appear in the Prisoner's weakness; and the more all things carry the face of certain ruin and destruction unto all that is near and dear to him in this World, the more will divine Deliverance and Salvation appear; to the making good of that Scripture, That he that is content to lose his life in God's Cause and Way, shall save it, and he that instead thereof goes about to save his life upon undue terms, shall lose it.

Far be it therefore from me, to have knowingly, maliciously or wittingly offended the Law, rightly understood and asserted; much less, to have done any thing that is malum per se, or that is morally evil. This is that I allow not as I am a Man, and what I desire with steadfastness to resist, as I am a Christian. If I can judge any thing of my own Case, The true reason of the present difficulties and straits I am in, is because I have desired to walk by a just and righteous Rule in all my Actions, and not to serve the Lusts and Passions of Men, but had rather die, than wittingly and deliberately sin against God and transgress his Holy Laws, or prefer my own private Interest before the Good of the whole Community I relate unto, in the Kingdom where the lot of my Residence is cast.]

Friday, June 6, 1662.

ON this Day, the Sheriff returned forty-eight Freeholders of the County of Middlesex. After thirty-two were challenged by the Prisoner, he had a Jury of twelve Men sworn; to wit, Sir William Roberts jun. Sir Christopher Abdy, John Stone, Henry Carter, John Leech, Daniel Cole, Daniel Browne, Thomas Chelfam, Thomas Pitts, Thomas Upman, Andrew Bent, and William Smith.

† Sir Geoffrey Palmer. The † Attorney-General's Speech to the Jury.

The Indictment is, For traitorously imagining and intending, &c. the Death of the King. This very Imagination and Compassing, &c. is Treason. Yet forasmuch as the Intentions of the Heart are secret, the Law cannot take notice of them, till they are declared by Overt-Act. Therefore we shall give in Evidence, That for accomplishing of these Intentions, the Prisoner sat with others in several Councils, or rather Confederacies, incroach'd the Government, levy'd Forces, appointed Officers, and at last levy'd open and actual War, in the head of a Regiment. If any of these Crimes be proved, it is sufficient to make him guilty within this Indictment. And the open levying of War, and appearing in the head of a Regiment, is not only a Treason of itself, but an Evidence of all those other Treasons he stands charged with in the Indictment.

These things happening before the Act of Oblivion, you will take notice of that Act; and that the Prisoner being excepted by name from

the Benefit of that Pardon, though he be chargeable for any Crime of Treason since the beginning of the late War, yet we shall confine the Facts for which we charge him, to the Reign of his now Majesty.

After the House had voted the late King's Concessions in the Isle of Wight to be a good Ground for Peace, many of the Members were kept out by Force, others turn'd out; the Peers laid aside, and at last the King Murder'd. The first thing then that we shall lay to the charge of the Prisoner, is, That that very day wherein that horrid Act was committed, we find his Hand and Seal to a Warrant to the Officers of the Navy, to issue out Stores for a Summer's Guard of the Narrow Seas. This was the first Day of the Reign of his now Majesty. And so he enumerated all the Particulars which he intended to charge him with, and proved them, as followeth.

1. The Warrant of the 30th of Jan. 48. was proved to be the Hand of Sir Henry Vane, by Thomas Lewis and Thomas Turner, as they believe; neither of them affirming that they saw him write it, but knowing his Hand, believed it to be so.

2. Ralph Darnel, an Under-Clerk of the House of Commons, proved the Journal-Book of the House, and said, though he will not take upon him to say when Sir Henry Vane was there, and when he was absent, yet he said positively, That at what time soever he is set down in the Journal, to have acted or reported any thing, he was there. In which Book, Febr. 7. 1648, fol. 653, was the Order to set up a Council of State.

Fol. 684, Febr. 13, were the Instructions presented to the House, upon which the Council of State was to act.

1. The first was, That you, or any four or more, are to suppress all and every Person and Persons pretending Title to the Kingly Government of this Nation, from or by the late King; Charles Stuart, his Son; or any claiming from or by them, or either of them, or any other single Person whatsoever.

This, the Attorney said, was in the first part of that Instruction, to destroy the King's Person; and in the second part, the Kingly Government.

2. That you, &c. are appointed to direct the Forces of this Commonwealth, for the preventing and suppressing of Tumults and Insurrections at home, or Invasions from abroad; and for these Ends to raise Forces, &c.

3. That Febr. 14, 1648. fol. 695. Sir Henry Vane was chosen a Member of the Council of State, and acted upon these Instructions: which they proved thus; to wit,

First, That Sir Henry Vane, (as fol. 893.) 23d of March 1648, reported from the Council of State, an Estimate of the Number of Ships for the Summer's Guard of the Narrow Seas.

Secondly, March 30, 1649, Sir Henry Vane reports from the Council of State, That ten thousand Pounds, Parcel of the twenty thousand Pounds assessed upon South-Wales for their Delinquency, be allow'd towards the setting out of this Fleet, for the Service of the Parliament: which was ordered accordingly, and to be paid to Sir Henry Vane, as Treasurer of the Navy.

Thirdly, That Sir Henry Vane usually sat in Council; but this Deponent being never admitted to go in, after the Council was sat, proves, that

that he often saw him go in at the Fore-door and Back-door, and often continue there all the time the Council was sitting.

William Dobbins and *Matthew Lock* say, That they several times saw *Sir Henry Vane* sit in a Committee of the Council, in the Years 1651 and 1652, which consisted only of Members of the Council; and particularly at the Committee for *Scotish* and *Irish* Affairs, where *Sir Henry Vane* was often in the Chair, and produced several Orders of that Committee.

Fourthly, *Febr.* 12, 1649, a new Council of State was chosen, of which *Sir Henry Vane* was one: fol. 720.

Febr. 13, 1649. All the Instructions of the former Year were read and assented to.

Febr. 22, 1649, fol. 760. *Sir Henry Vane* reported the Form of an Oath of Secrecy to be administered to every of the Members of the Council; which was, to keep all things which should be transacted in Council secret, and to be true and faithful to their Instructions: which the Attorney said (since their first Instruction was, to suppress all Persons pretending Title from the King) was in effect an Oath of Abjuration.

Fifthly, *Anno* 1651, *Sir Henry Vane* was President of the Council of State, and several Warrants were produced, to wit, *May* 20, 1652, and *May* 22, 1652, to deliver to Major *Wigan* two hundred Firelocks and ten Drums. The other, for the delivery of five hundred Foot-Arms, for Recruit of Colonel *Ingoldsby's* Regiment: and these were subscribed, *By Order of the Council, H. Vane President.*

April 2, 1653. A Warrant of that date was produced by the Commissioners of the Navy, of which he was one, for furnishing out the *Hampshire-Frigate* with Provisions and Ammunition for the use of the State.

From this time to 1659, they charge him with nothing; and then the Journal-Book was produced, and attested by *Ralph Darnel*, wherein, *May* 7, 1659, an Order was made for appointing a Committee of Safety, (whereof *Sir Henry Vane* was one) *That they, or any four or more of them, should take care of the Safety of this Commonwealth, and they to sit for eight days and no longer:* fol. 36.

Die Ven. *May* 13, 1659. *Sir Henry Vane* reported, That they had conferred with all the Foreign Ambassadors: That the Commonwealth is in Amity with all Foreign Princes, but *Spain*.

Resolved, *That Ch. Fleetwood, J. Lambert, J. Desborough, James Berry, Arthur Haslerig, Edmond Ludlow, and Sir Henry Vane, be Commissioners to nominate Commission-Officers for the Army of this Commonwealth.* By vertue hereof, they proceeded, *June* 17, 1659, to nominate Commission-Officers, appointed *Robert Mosse* a Colonel, presenting a List of his Commission-Officers; and *John Mason* to be Governour of *Jersey*.

Die Ven. *May* 31, fol. 158. *Sir Henry Vane* reports concerning Affairs between the two Northern Kings in the *Sound*, wherein the Affairs of this Commonwealth are concerned.

Die Ven. *Sept.* 2, 1659. *At the Committee of State at Whitehall:* An Order was produced for the Re-delivery of the City-Horses to their respective Owners, signed *H. Vane President.*

A Warrant was produced under the Hand of *Sir Henry Vane*, proved by *Thomas Lewis* and

one *Falconer*, for so many Hangers to *Col. Thompson*, as he shall require for his Regiment.

Three several Letters, to deliver 1200 Arms for the use of my Regiment; to wit, to *Sam. Linn*, my Captain-Lieutenant, 30 Arms for my Company; to Major *Thomas Shurman*, Major of my Regiment, 4 or 5 Barrels of Powder

Then one *Marsh* was produced a Witness, who proves, That *Sir Henry Vane* proposed the new Model of Government, *Whitlock* being in the Chair, in these Particulars:

1. *That the Supreme Power, delegated by the People to their Trustees, ought to be, in some Fundamentals, not dispensed with.*

2. *That it is destructive to the People's Liberties (to which by God's Blessing they are restored) to admit any earthly King or single Person, to the Legislative or Executive Power over this Nation.*

3. *That the Supreme Power delegated, is not entrusted to the People's Trustees, to erect Matters of Faith or Worship, so as to exercise Compulsion therein.*

Thomas Pury proves, That he was at the debating of the two last of these Propositions, and believes they were proposed to the Chairman *Whitlock* by *Sir Henry Vane*; but affirms confidently, that *Sir Henry Vane* gave Reasons to maintain them.

Tho. Wallis produced, proves *Sir Henry Vane* and *Col. Rich* in the Head of a Company in *Winchester Park* in *Southwark*; and that the Captain-Lieutenant *Linn* said to the Soldiers, That *Sir Henry Vane* had given them Five Pounds to drink; That the said *Linn* sent home a Key to his Wife to send him four Pounds out of his Trunk, to give the Soldiers.

John Cook deposeth, That he was sent to the *Horshoe-Stairs* to meet *Sir Henry Vane* and *Col. Rich*, and that *Sir Henry Vane* delivered five Pounds to *Capt. Linn* to reward the Soldiers. This was all the Evidence given by the King's Counsel: To which *Sir Henry Vane* was required to make his Defence, and to go through with his Case all at once, and not to reply again upon the King's Counsel, who resolved to have the last word to the Jury.

Sir Henry Vane. Coke, in his *Pleas of the Crown*, fol. 6. saith, King is to be understood of a King regnant, and in actual Possession of the Crown, and not of a King when he is only *Rex de Jure*, and out of Possession. Now an *Interregnum* is confessed by the Indictment: All Ensigns of Authority, and Badges of Government, were visibly in another Name and Style; the King's best Friends suing, and being sued, in another Name.

The Court told him, he should first make his Case out in point of Fact, and it would be then seasonable to stand upon Matter of Law; for (say they) it is a good Rule, *in facto jus oritur*, and enjoined him to call his Witnesses, if he had any.

To which *Sir Henry Vane* desired Process of Court to summon them, and a further time to answer the Charge. But it was told him, the Jury were to be kept without Meat, Drink, Fire or Candle, till their Verdict was delivered in; and therefore that could not be granted.

He then cited the fourth Part of *Coke's Institutes* concerning the Privilege of Parliament, and that many of these things being transacted there—

The

The Court here interrupted him, and said, If the things charged, were done, justify them; if not, disprove them. So he went to give answer to the Fact.

And as to the first Warrant, *Jan. 30, 1648*, he said, That his Hand had been oftentimes counterfeited, and amongst other Occasions, for two great Sums, to the Value of Ten Thousand Pounds: and that he had great reason to believe, that this Warrant was forged, and produced two Witnesses to prove it.

Then said Justice *Windham*: It may be your Hand may have been forged for receiving of Money, but it is not to be conjectured, that it should be forged to set Ships to Sea; and directed to the Jury to consider of the Circumstances.

Sir *Henry Vane*. Neither of the Witnesses ever saw me set my Hand to either of these Warrants or Orders; nor doth one Witness prove that he ever saw me sit in the Council of State. He further said, That he absented from the House from *December 3, 1648*, till *February 7*. That he was chosen a Member of the Council of State without his Consent and Knowledge; and being demanded to take an Oath of Approbation of what had been done to the late King, he refused, and caused it to be expunged; That these Actings in Council, (if any were) were by Authority of Parliament, of a Parliament constituted in an extraordinary manner, made indissoluble but by Act of Parliament. He insisted much on the Preamble of that Act, so as that Parliament being co-ordinate with the King, (for the Government was in the King and the two Houses) whatever he acted by them or their Authority, cannot be Treason within the Statute of *25 Ed. 3*.

He cited an Ordinance of Parliament in *1642*, and said, That he hoped these things had been laid asleep by the Act of Oblivion; and if they should now rise in Judgment against him, he feared they would shake that Security which the People promised themselves under that Act. But if he should be now called in question for those things which were transacted in that Parliament, of which he was a Member, he shall have the Comfort and Peace of those Actions to support him in his greatest Sufferings. He added, That if he were excepted, then must he be judged for the Crime of the whole Nation, and that Crime must be ravelled into thro' him: That the Case is such as never yet fell out, to wit, That the Government being entrusted to three Estates, they should so fall out among themselves, as the People cannot tell which to obey; That where these great Changes fall out, it is not possible for any Man to proceed according to all Formalities of Law; That there was a political Power by this Act of *17 Caroli* co-ordinate with the King; and where these Powers are not in Conjunction, but in Enmity to each other, no Court inferior to the Parliament, by whose Authority these things were acted, ought to be Judges of this Case, which certainly never happened before.

He farther saith, he was not the first Mover in these Actions, and that he should be called in question for these Matters by a King that was out of Possession at a time when these things were acted, would be inconvenient, to say no more; That when the three Estates were dis-

joined, he thought it the best Policy to preserve the Government in its Root, to wit, the Commons; by whom it was preserved, and at last restored to its former Course: That as to the Regiment that passed under his Name, he disown'd it; That Reports of Messages are not the Fault of the Reporter; for his Judgment does not always go along with them, but he is bound to deliver his Message; That he always loved the Government as it is set forth in our antient Law-Books; and that that Parliament (so much decried) at last restored Affairs to the Posture in which they now are.

As to the Warrants signed by him, he said, they appear to be signed in the Name, and by the Order of the Council; and his Hand that subscribes, is not so much as active or passive to the Commands of the Council. If the Council, who commanded the signing, were unwarrantable, the Parliament who appointed the Council must be much more unwarrantable.

And here he offered these Points to be consider'd, and pray'd earnestly to have Council assigned him to speak to them.

1. Whether the collective Body of the Parliament can be impeached of High-Treason?
2. Whether any Person acting by Authority of Parliament, can (so long as he acteth by that Authority) commit Treason?
3. Whether Matters acted by that Authority, can be called in question in an inferior Court?
4. Whether a King *de Jure*, and out of Possession, can have Treason committed against him, he not being King *de Facto*, and in actual Possession? and pray'd it might be argued by Counsel.
5. Whether Matters done in *Southwark*, in another County, may be given in Evidence to a *Middlesex* Jury?

As to the last Exception, the Court said,

That he was indicted for compassing and imagining the King's Death in *Middlesex*; and any Overt-Act to prove this Imagination, may be given in Evidence, ^{Kelyng. 15.} wheresoever it be acted. To which Sir *Henry Vane* prayed the Benefit of a Bill of Exception, upon the Statute of *Westminster 2. cap. 31.* and prayed that the Justices might seal it; which they all refused, and held, it lay not in any Case of the Crown.

The King's Counsel desired he might call his Witnesses, (if any he had) for if they once came to reply to him, he must then be silent; and consented, that (if it would aid him) they would allow his Actings to be in the Name and by the Authority of the Council of State; and the Actings of the Council of State to be by Authority of what he called a Parliament.

Sir *Henry Vane* replied, Then what I acted in the Council of State, and Committee of Safety, constituted by the Parliament to endure for eight Days, you will allow me: Then you must prove that I ever acted in the other Council of State, after the Parliament was turned out.

Then the King's Counsel produced a Warrant, dated *November 3, 1659*, which was sent in pursuance of an Order of the Committee of Safety, by Sir *Henry Vane*, as Treasurer of the Navy. This Warrant was for the sending of divers Arms Northwards after Mr. *Lambert*, who was gone

gone down to oppose the now Duke of *Albemarle*.

Sir *Henry Vane* produced *William Angel, Brisco, Middleton, &c.* Officers of that Regiment which went under his Name; who having recourse unto him for Orders about *October 1659*, he bad them desist, and declared his Dis-satisfaction in their Proceedings: and this, after their several Importunities to have Orders from him. And thus he closed his Defence.

Sollicitor *Finch*. As to pretence of the Power of Parliament, it is to be known, that it was not the eighth part of the House of Commons; such as were let in to do all that hath been complained, and acting under Authority of such an End of a Parliament, under such a Violation, was no Excuse, but an Aggravation; but that the Parliament was, in Law, ended by the Death of the late King, notwithstanding that Act of 17 *Caroli primi*, appears thus:

First, The King's Writ for a Parliament is *ad tractandum nobiscum*; which is intended as well of the natural Capacity of the King, as of his politick.

Secondly, 'Tis absurd to say, That the Acts of Parliament of King *Charles* the First, should be his Acts in the time of King *Charles* the Second.

Thirdly, A Commission of Sewers, enacted to be on foot for Ten Years, expires by the Death of the King, and the Authority of the Commissioners is at an end.

Fourthly, It is not possible for one King to impose a Parliament upon a Successor. So much for his acting by Colour of Authority of Parliament.

And as to the Question, Whether an House of Parliament can commit Treason? If they depart from that Allegiance which they have sworn at their first Meeting, they are impeachable for it.

As to a Co-ordination in the Parliament, he denied it.

As to the Question, Whether the King being out of actual Possession, can have Treason committed against him? he affirmed it, and said, Otherwise, if Rebellion should be so prosperous as to depose or oppress the King in Battel, the Offenders are not to be called in question, because they prevailed. He said it was the Plea of *Watson* the Jesuit, who being indicted for compassing the Death of King *James* in *Scotland*, after he was declared King of *England*, and before his actual entring into this Realm, made this Defence, That the King was never in Possession of the Crown.

Justice *Windham*. As to the Act of 17 *Caroli* and the Preamble of that Act, so much insisted on by the Prisoner; 1. He held, that the Parliament had not greater Authority

Kelyng. 14. by it, but were only made more durable than other Parliaments have been: but he held, That the Parliament was absolutely dissolved by the Death of the King; and put this Case: If it should be enacted, that such a Marriage should continue till it was dissolved by Act of Parliament; if one dies, it is a Determination of it in Fact, so as no Man can say, but it is absolutely dissolved. 2. It must continue in the Degree and Dignity of a Parliament. If the House be under a Force, and some kept out, some let in, to serve a turn, whatever they act

is a Nullity in Law. For Freedom is the principal Essence and Honour of a Parliament; yet though the House be under a Force, the House is not dissolved by such Force, but the Proceedings are to be suspended, till it acquire its former Liberty; and this as well by the Common Law, as by the Civil and Canon Laws of all other Countries. 3. The Parliament is the King's great Council, the Peers are *Conciliarii nati*; if they be forc'd away, or laid aside, as here they were, all the rest is but *magni nominis umbra*.

Twisden held the same Opinion, That it is not the sitting of a few Members within those Walls, that will continue it a Parliament: And tho another Parliament, a great many Years after the King's Death, declared it to be at an end; yet that Act was but Declaration, it was at an end before.

Whether a Parliament may commit Treason, is not the Question; but whether a few of the House shutting out their Fellows, and usurping the Government, were not Traitors?

Foster held the same Opinion, and said, The Distinction between the Politick and Natural Capacity of the King, was the Treason of the two *Spencers*: That Privilege of the Parliament is no Shelter for Breach of the Peace, much less for Treason.

Twisden added, That to compass the Death of the King as a natural Person, was Treason; to compass his Death in his political Capacity, as to depose him, was Treason; and both provided for by the Act of 25 *Edw.* 3. That in the same instant the late King expired, in the very same his now Majesty was King Kelyng. 15. *de facto*; and affirmed the Cases of *Watson* and *Clark*, 1 *Jac.* If an Army be raised against the King, and the King is slain in the Battel, this Treason is questionable by the Successor, as *Storie's* Case is in *Dyer.* 298. b.

Thus ended the Questions of Law proposed.

The Solicitor spake after to the Jury concerning the Fact, which after they withdrew to consider; and being withdrawn about half an Hour, returned with their Verdict; which being delivered by the Foreman, in the name of his Fellows, with their Consent, found the Prisoner guilty of High-Treason from *Jan. 0*, 1648.

They not only found him guilty according to the Indictment, which was laid for what the Prisoner did, 1659; but for Kelyng. 16. a long Series of High-Treason (as they reckon) from *Jan. 30*, 1648.

A true Copy of the Prisoner's own Papers, containing the Substance of what he pleaded on the said Day of his Trial, June 6.

THAT without any seeking of mine, I was chosen by Writ under the Great Seal, to serve as Burgesses for the Town of *Kingston upon Hull*, in the Parliament that sat down on the third of *November 1640*, and having in pursuance thereof taken my Seat in the said Parliament, I was obliged by Law to give my Attendance upon the said Trust, as well as upon Grounds of Duty and Conscience.

The said Parliament was not only called and assembled aer the usual manner, and had the Power

Power and Privileges incident to that high Court, but was by exprefs Statute and Consent of the three Estates so constituted, as to its Continuance, Adjournment, Prorogation and Dissolution, that in none of these Particulars they were subject to Alteration, but by their own common Assent, declared by Act of Parliament, to be passed by themselves for that purpose, with the Royal Assent.

In the Preamble to the Act for Continuance of the said Parliament, these words are contained: *Whereas great Sums of Money must of necessity be speedily advanced and provided for the Relief of his Majesty's Army and People in the Northern Parts of this Realm, and for preventing the imminent Danger this Kingdom is in; and for Supply of his Majesty's present and urgent Occasions, which cannot be so timely effected as is requisite, without Credit for raising the said Monies; which Credit cannot be obtained until such Obstacles be first removed, as are occasioned by Fears, Jealousies and Apprehensions of divers his Majesty's loyal Subjects, That this present Parliament may be adjourned, prorogued or dissolved, before Justice shall be duly executed upon Delinquents, and publick Grievances redressed, a firm Peace between the two Nations of England and Scotland concluded, and before sufficient Provision be made for the Repayment of the said Monies so to be raised, &c.* By all which the very Work that was between the three Estates agreed to be done for the Good and Safety of the Kingdom, was in sundry Particulars declared and exprest; and not only so, but as is acknowledged by the late King himself in his Answer to the Nineteen Propositions, the Power which thereby was legally placed in both Houses, was more than sufficient to prevent and restrain Tyranny.

So that, by what hath been shewed, the Law it self is with me, and for me, enjoining my continued Attendance on the Trust which by this means was committed to me, and authorized me in particular to effect the things contained in the said Preamble; and to act in all Matters belonging to the high Court of Parliament, for the Good and Safety of the Kingdom in time of imminent Danger: I had been liable to great Punishment by the Law, for Dis-attendance and deserting my Station therein, till lawfully or by force dismissed therefrom; and this, whatever Occasions others might have, by a voluntary or forc'd Departure from Attendance upon that Trust.

The Actions therefore done by me in this Capacity, and according to the Law, Privileges, Customs and Power of Parliament, and that such a one as was thus extraordinarily constituted, neither are nor can be brought within the Statute of 25 Edw. 3. cap. 2. nor are to be questioned, tryed, much less judged and sentenced, in any inferior Court. Nay, so far is it from this, that by a Declaration and Resolution of Parliament, August 13, 1642, it is adjudged to be committing Treason in the highest degree, to bring both or either Houses of Parliament under that or such like Imputations.

Nor, till of late, have I ever heard but that those who took the Judgment of Parliament for their Rule and Guide, (however tortious or erroneous it might afterwards be accounted in succeeding times) and they that acted by and under the Countenance of their declared Judgments,

Orders or Ordinances, (ever acknowledged binding during the sitting of the Parliament) were safe and indemnified from all Punishment. And for Government-sake it self, it is requisite it should be so; because none are Judges of the Power and Privileges of Parliament but themselves. For admit once, that their Judgment may be called in question, and disputed by private Persons, or by inferior Courts, (whose Votes are included in theirs) the Fundamentals of Government are pluck'd up by the Roots. *Par in pares non habet imperium, multo minus in eos qui majus imperium habent*: An Equal has no Command over his Equal, much less over those that have a greater Command or Authority.

His late Majesty, in his Answer to the Nineteen Propositions, does very briefly and exactly state the Nature and Kind of Government that is exercised in this Kingdom, saying, *The Laws of this Kingdom are made by a King, a House of Peers, and a House of Commons, chosen by the People, all having free Votes, and particular Privilege. These three Estates making one incorporate Body, are they, in whom the Sovereignty and Supreme Power is placed, as to the making and repealing of Laws: And the Government, according to these Laws, is trusted to the King, who in the Interval of Parliament is sole in the Exercise of Government, which (the Parliament sitting) he is to exercise in conjunction with the two Houses.*

And his said Majesty asserting three sorts of Government, *Absolute Monarchy, Aristocracy and Democracy*, does most rightly distinguish the Monarchy of England from all those three, and commends the Constitution of this Kingdom, as it is a Mixture of all three, having the Conveniences of them all without the Inconveniences of any one, as long as the Ballance hangs even between the three Estates, that they run jointly on in their proper Channels, and that the overflowing of either on either side raise no Deluge nor Inundation.

By the passing of the aforesaid Act for the Continuance of the forementioned Parliament, the Intervals of Parliament were no longer, as before, at the Will and Pleasure of the King; but the Power to continue in the said Parliament, without Adjournment, Prorogation or Dissolution, resided in the two Houses with the King jointly, and in none of them severally: so that in effect, the Government of the Kingdom, during the Continuance of that Parliament, was in Conjunction of the three Estates, and in their common Consents and Agreements among themselves given in Parliament; the assembling and meeting whereof was appointed and fixed to a Place certain, by Law.

By reason hereof, it is not the Attendance of any of the Members in Parliament (for Discharge of the Trust reposed in them, confirm'd and enlarged by the said Act) that is faulty or censurable by the Law, but those that unwarrantably depart and desert that their Trust and Station, are to be blamed; 6 Hen. 8. 16.

The King in Conjunction with the Parliament, is *maxime Rex*, and is supported in the Throne and Exercise of his Regal Power by the joint Concurrence of both Houses. And because (as his late Majesty well observed) the Happiness and Good of the Constitution of this Government lies in keeping the Ballance even between the three Estates, containing them-

selves within the Bounds of their proper Channels, therefore in Attempts of either to overflow those Bounds, (they being co-ordinate) the Office of a Parliament is by the very fundamental Constitution of the Government, to keep this Ballance well poised. And to that end (as was before mentioned) his Majesty's own words are, in his said Answer to the Nineteen Propositions; *That there was legally placed in both Houses a Power more than sufficient to prevent and restrain the Power of Tyranny.* If so, then are they the legal Judges, when there is Danger of Tyranny; and have legal Power to require their Judgment and Resolves to be obeyed, not only when Arms are actually raised against them, but when they discern and accordingly declare a Preparation towards it; else they may find it too late to prevent the Power of Tyranny. There is no greater Attempt of Tyranny, than to arm against the Parliament; and there is no visible way for the restraining such Tyranny, but by raising Arms in their own and the Kingdom's Defence. Less than this is not sufficient, and therefore far from more than sufficient for the Punishment of Delinquents, and Restraint of Tyranny.

Unto the King, in Conjunction with his two Houses, according as is provided by the Law in this Capacity of his, as *maxime Rex*, was the Duty of Allegiance to be yielded by his Subjects during the indissolved State of that Parliament: For they were the King's great Council, and Supreme Court, exercising the known Power and Privileges, that time out of mind have appertained to them, and been put forth by them, as the Exigents of the Kingdom have required, when Differences have happened about the very Title of the Crown, in declaring the Duty of the Subject, by yielding their Allegiance to Kings *de facto*, when Kings *de jure* have been kept out of Possession. This our Chronicles, and the Histories of former times, do plentifully inform.

The Causes that did happen to move his late Majesty to depart from his Parliament, and continue for many Years, not only at a distance, and in Disjunction from them, but at last, in a declared Posture of Enmity and War against them, are so well known, and fully stated in Print (not to say, *written in Characters of Blood*) on both parts, that I shall only mention it, and refer to it.

This Matter was not done in a Corner: the Appeals were solemn, and the Decision by the Sword was given by that God, who being the Judge of the whole World, does right, and cannot do otherwise.

By occasion of these unhappy Differences thus happening, most great and unusual Changes and Revolutions, like an irresistible Torrent, did break in upon us, not only to the disjointing that Parliamentary Assembly among themselves (the Head from the Members, the Co-ordinates from each other, and the Houses within themselves) but to the creating such formed Divisions among the People, and to the producing such a general State of Confusion and Disorder, that hardly any were able to know their Duty, and with certainty to discern who were to command, and who to obey. All things seemed to be reduced, and, in a manner, resolved into their first Elements and Principles.

Nevertheless, as dark as such a State might be, the Law of *England* leaves not the Subject thereof (as I humbly conceive) without some Glimpses of Direction what to do: in the cleaving to, and pursuing of which, I hope I shall not be accounted nor adjudged an Offender; or if I am, I shall have the Comfort and Peace of my Actions to support me in and under my greatest Sufferings.

The Resolutions of all the Judges in *Calvin's Case*, entitled *Post-nati*, in the 7th Book of *Coke's Reports*, and the learned Arguments thereupon, afford me Instruction even in this Matter. It may be 'tis truly thence affirmed, That Allegiance is due only to the King, and how due, is also shewed.

The King is acknowledged to have two Capacities in him; one a *natural*, as he is descended of the Blood Royal of the Realm; and the Body natural he hath in this Capacity, is of the Creation of Almighty God, and mortal. The other is a *politick* Capacity, in respect of which he is a Body politick or mystical, framed by the Policy of Man, which is immortal and invisible. To the King, in both these Capacities conjoin'd, Allegiance is due; that is to say, to the natural Person of the King, accompanied with his politick Capacity, or the politick appropriated to the natural.

The politick Capacity of the King hath properly no Body nor Soul; for it is framed by the Policy of Man.

In all Indictments of Treason, when any one does intend the Death and Destruction of the King, it must needs be understood of his natural Body, the other being immortal. The Indictment therefore concludes *contra Ligeantiae suae debitum*, against the Duty of his Allegiance; so that Allegiance is due to the natural Body.

Admitting then, that thus by Law, Allegiance is due to the King (as before recited) yet it is always to be presumed, that it is to the King in Conjunction with the Parliament, the Law and the Kingdom, and not in Disjunction from, or Opposition to them; and that while a Parliament is in being, and cannot be dissolved, but by the Consent of the three Estates.

This is therefore that which makes the Matter in question, a new Case, that never before happened in the Kingdom, nor was possible to happen, unless there had been a Parliament constituted, as this was, unsubjected to Adjournment, Prorogation, or Dissolution, by the King's Will. Where such a Power is granted, and the Co-ordinates thereupon disagree and fall out, such Effects and Consequents as these that have happened will but too probably follow. And if either the Law of Nature or *England* inform not in such Case, it will be impossible for the Subjects to know their Duty, when that Power and Command which ought to flow from three in conjunction, comes to be exercised by all or either of them, singly and a-part, or by two of them, against one.

When new and never-heard-of Changes do fall out in the Kingdom, it is not likely that the known and written Laws of the Land should be the exact Rule; but the Grounds and Rules of Justice, contained and declared in the Law of Nature, are and ought to be a Sanctuary in such Cases, even by the very Common Law of *England*: For thence originally spring the unerring

ring Rules that are set by the Divine and Eternal Law, for Rule and Subjection in all States and Kingdoms.

In Contemplation hereof, as the Resolve of all the Judges, it was agreed;

1. *That Allegiance is due to Sovereignty by the Law of Nature*; to wit, that Law which God, at the Creation of Man, infused into his Heart for his Preservation and Direction, the Law Eternal. Yet is it not this Law, as it is in the Heart of every individual Man, that is binding over many; or Legislative, but as it is the Act of a Community, or an associated People, by the right Dictates and Persuasions of the Work of this Law in their Hearts. This appears in the Case of the *Israelites*, *Judges*, Chap. 20 & 21, cited in the 4th Part of *Coke's Institutes*, where mention is made of a Parliament, without a King, that made War, and that with their Brethren: They met as one Man to do it, in Vindication of that Justice unto which they were obliged even by the Law of Nature. This is that which Chancellor *Fortescue* calls Political Power here in *England*; by which, as by the Ordinance of Man, in pursuance of the Ordinance of God, the Regal Office is constituted, or the King's Politick Capacity, and becomes appropriated to his natural Person.

Thus Politick Power is the immediate Efflux and Offspring of the Law of Nature, and may be called a Part of it. To this, *Hooker* in his *Ecclesiastical Polity* agrees, and *Selden* on that Subject.

The Law of Nature, thus considered, is part of the Law of *England*, as is evident by all the best received Law-Books, *Bracton*, *Fleta*, *Lambard* upon the *Saxon Laws*, and *Fortescue* in the Praise of the Laws of *England*. This is the Law that is before any judicial or municipal Law, as the Root and Fountain whence these and all Governments, under God and his Law, do flow.

This Politick Power, as it is exercised in Conjunction with, and Conformity to the Eternal Law, partakes of its moral and immutable Nature, and cannot be changed by Act of Parliament. Of this Law it is that *Magna Charta*, and the *Charter of Forest*, with other Statutes rehearsed in the *Petition of Right*, are for the most part declaratory: For they are not introductive of any new Law, but Confirmations of what was good in all Laws of *England* before. This agrees with that Maxim, *Salus Populi suprema Lex*; that being made due and binding by this Law, which in the Judgment of the Community, declaring their Mind by their own free chosen Delegates and Trustees in harmony with the Eternal Law, appears profitable and necessary for the Preservation and Good of the whole Society.

This is the Law, which is put forth by the common Consent of the whole Realm, in their Representative; and (according to the fundamental Constitutions of this Kingdom) is that with which the Kings of this Land, by the joint Cooperation of the three Estates, do make and repeal Laws.

But through the Disorders and Divisions of the Times, these two Powers, the Regal and Political, (which, according to the Law of *England*, make up but one and the same supreme Authority) fell asunder, and found themselves in

Disjunction from and Opposition to one another. I do not say the Question is now, Which of these is most rightly (according to the Principles of the Law of Nature, and the Law of *England*) to be adhered unto and obeyed? but unto whether Power Adherence is a Crime in such an Exigent of State? Which, since it is such a new and extraordinary Case, evidently above the Track of the ordinary Rules, contained in the positive and municipal Laws of *England*, there can be no Colour to bring it within the Statute of 25 *Ed. 3. cap. 2.* forasmuch as all Statutes presuppose these two Powers, Regal and Political, in Conjunction, perfect Unity, and Subserviency, which this Case does not, cannot admit. So exceeding new and extraordinary a Case is it, that it may be doubted whether, and questioned how far, any other Parliament, but that Parliament it self that was privy to all its own Actings and Intentions, can be an indifferent and competent Judge. But however, the Point is of so abstruse and high Consideration, as no inferior Court can or ought to judge of it, as by Law-Books is most undeniable, to wit, *Bracton*, and others.

This then being the true State of the Case, and the Spring of that Contest that ensued, and received its Decision by the late War, the next Consideration is, How far I have had my Share and Part therein, that by the Laws is not warrantable, or by what appears in way of Proof to the Jury.

For the first, I shall crave leave to give you this Account of my self, who have best known my own Mind and Intentions throughout, and would not now, to save my Life, renounce the Principles of that righteous Cause, which my Conscience tells me was my Duty to be faithful unto.

I do therefore humbly affirm, that in the afore-mentioned great Changes and Revolutions, from first to last, I was never a first Mover, but always a Follower, chusing rather to adhere to Things than Persons, and (where Authority was dark or dubious) to do Things justifiable by the Light and Law of Nature, as that Law was acknowledged part of the Law of the Land; Things that are *in se bona*, and such as, according to the Grounds and Principles of the Common Law, as well as the Statutes of this Land, would warrant and indemnify me in doing them. For I have observed by Precedents of former Times, when there have arisen Disputes about Titles to the Crown, between Kings *de Facto* and Kings *de Jure*, the People of this Realm wanted not Directions for their Safety, and how to behave themselves within the Duty and Limits of Allegiance to the King and Kingdom, in such difficult and dangerous Seasons.

My Lord *Coke* is very clear in this Point, in his Chapter of *Treasons*, fol. 7. And if it were otherwise, it were the hardest Case that could be for the People of *England*: For then they would be certainly exposed to Punishment from those that are in Possession of the Supreme Power, as Traitors, if they do any thing against them, or do not obey them; and they would be punishable as Traitors by him that hath Right, and is King *de Jure*, in case they do obey the Kings *de Facto*: and so all the People of *England* are necessarily involved in Treasons, either against the Powers *de Facto*, or *de Jure*, and may

by the same Reason be questioned for it, as well as the Prisoner, if the Act of Indemnity and the King's Pardon did not free them from it. The Security then and Safety of all the People of *England* is by this means made to depend upon a Pardon, (which might have been granted or denied) and not upon the sure Foundations of Common Law: An Opinion sure which (duly weighed and considered) is very strange, to say no more.

For I would gladly know that Person in *England* of Estate and Fortune, and of Age, that hath not counselled, aided, or abetted, either by his Person or Estate, and submitted to the Laws and Government of the Powers that then were: And if so, then by your Judgments upon me, you condemn (in Effigies, and by necessary Consequence) the whole Kingdom.

And if that be the Law, and be now known to be so, it is worth Consideration, whether if it had been generally known and understood before, it might not have hindered his Majesty's Restoration.

Besides, although, until this Judgment be passed upon me, the People have apprehended themselves as free from Question, and out of Danger, by reason of the Act of Indemnity and General Pardon; yet when it shall appear to them that such their Safety is not grounded on the Common Law, nor upon the Law of Nature, but that against both these in their Actions they are found faulty, and tainted with a moral Guilt, and that as Principals also, (since in Treason there are no Accessories) what terrifying Reflections must this needs stir up in the Mind of every Man, that will be apt to believe his Turn will come next, at least once in two Years; as hath befallen me in my Person, who (however I have been misjudged and misunderstood) can truly affirm, That in the whole Series of my Actions, that which I have had in my Eye hath been to preserve the ancient well-constituted Government of *England* on its own Basis and primitive righteous Foundations, most learnedly stated by *Fortescue* in his Book made in praise of the *English* Laws. And I did account it the most likely Means for the effecting of this, to preserve it, at least in its Root, whatever Changes and Alterations it might be exposed unto in its Branches, through the blustrous and stormy Times that have passed over us.

This is no new Doctrine in a Kingdom acquainted with Political Power, as *Fortescue* shews ours is, describing it to be in effect the common Assent of the Realm, the Will of the People or whole Body of the Kingdom, represented in Parliament. Nay, though this Representation (as hath fallen out) be restrained for a Season to the Commons House, in their single Acting, into which (as we have seen) when by the inordinate Fire of the Times, two of the three Estates have for a Season been melted down, they did but retire into their Root, and were not hereby in their Right destroyed, but rather preserved, though as to their Exercise laid for a while asleep, till the Season came of their Revival and Restoration.

And whatever were the Intents and Designs of others, (who are to give an Account of their own Actions) it is sufficient for me that at a Time critical and decisive (though to my own Hazard and ill Usage) I did declare my Refusal

of the Oath of Abjuration, which was intended to be taken by all the Members of Parliament, in reference to Kingly Government, and the Line of his now Majesty in particular. This I not only positively refused to take, but was an occasion of the second Thoughts which the Parliament reassumed thereof, till, in a manner, they came wholly at last to decline it: A Proof undeniable of the Remoteness of any Intentions or Designs of mine, as to the endeavouring any Alteration or Change in the Government; and was that which gave such Jealousy to many in the House, that they were willing to take the first occasion to shew their Dislike of me, and to discharge me from sitting among them.

But to return to what I have before affirmed, as to my being no leading or first Actor in any Change; it is very apparent by my Deportment at the Time when that great Violation of Privileges happened to the Parliament, so as by Force of Arms several Members thereof were debarred coming into the House, and keeping their Seats there. This made me forbear to come to the Parliament for the Space of ten Weeks, (to wit, from the 3d of *December* 1648, till towards the middle of *February* following) or to meddle in any publick Transactions; and during that Time the Matter most obvious to Exception, in way of Alteration of the Government, did happen. I can therefore truly say, that as I had neither Consent nor Vote at first in the Resolutions of the Houses, concerning the Non-Addresses to his late Majesty, so neither had I in the least any Consent in, or Approbation to his Death: But on the contrary, when required by the Parliament to take an Oath, to give my Approbation *ex post facto* to what was done, I utterly refused, and would not accept of sitting in the Council of State upon those Terms, but occasioned a new Oath to be drawn, wherein that was omitted. Hereupon many of the Council of State sat, that would take the other.

In like manner the Resolutions and Votes for changing the Government into a Commonwealth or Free State were passed, some Weeks before my Return to Parliament: Yet afterwards (so far as I judged the same consonant to the Principles and Grounds, declared in the Laws of *England*, for upholding that Political Power which hath given the Rise and Introduction in this Nation to Monarchy it self, by the Account of ancient Writers) I conceived it my Duty, as the State of Things did then appear to me, (notwithstanding the said Alteration made) to keep my Station in the Parliament, and to perform my Allegiance therein to King and Kingdom, under the Powers then *regnant*, (upon my Principles before declared) yielding Obedience to their Authority and Commands. And having received Trust in reference to the Safety and Preservation of the Kingdom, in those Times of imminent Danger, (both within and without) I did conscientiously hold my self obliged to be true and faithful therein. This I did upon a publick Account, not daring to quit my Station in Parliament by vertue of my first Writ: Nor was it for any private or gainful Ends to profit my self, or enrich my Relations. This may appear as well by the great Debt I have contracted, as by the destitute Condition my many Children are

are in, as to any Provision made for them. And I do publickly challenge all Persons whatsoever, that can give Information of any Bribes or covert Ways used by me, during the whole Time of my publick Acting. Therefore I hope it will be evident to the Consciences of the Jury, that what I have done, hath been upon Principles of Integrity, Honour, Justice, Reason, and Conscience, and not, as is suggested in the Indictment, by *Instigation of the Devil*, or *Want of the Fear of God*.

A Second great Change that happened upon the Constitution of the Parliament, and in them of the very Kingdom it self, and the Laws thereof, (to the plucking up the Liberties of it by the very Roots, and the introducing of an arbitrary Regal Power, under the Name of *Protector*, by Force and the Law of the Sword) was the Usurpation of *Cromwell*; which I opposed from the Beginning to the End, to that Degree of Suffering, and with that Constancy, that well near had cost me not only the Loss of my Estate, but of my very Life, if he might have had his Will, which a higher than he hindered: Yet I did remain a Prisoner, under great Hardship, four Months in an Island, by his Orders.

Hereby, that which I have asserted is most undeniably evident, as to the true Grounds and Ends of my Actions all along, that were against Usurpation on the one hand, or such extraordinary Actings on the other, as I doubted the Laws might not warrant or indemnify, unless I were enforced thereunto by an over-ruling and inevitable Necessity.

The third considerable Change was the total disappointing and removing of the said Usurpation, and the returning again of the Members of Parliament to the Exercise of their primitive and original Trust, for the Good and Safety of the Kingdom, so far as the State of the Times would then permit them; being so much, as they were, under the Power of an Army, that for so long a time had influenced the Government. Towards the Recovery therefore of Things again into their own Channel, and upon the legal Root of the People's Liberties, to wit, their common Consent in Parliament, given by their own Deputies and Trustees, I held it my Duty to be again acting in publick Affairs in the Capacity of a Member of the said Parliament, then re-enter'd upon the actual Exercise of their former Power, or at least struggling for it. In this Season I had the Opportunity of declaring my true Intentions as to the Government, upon occasion of refusing the Oath of *Abjuration* before mentioned.

And whereas I am charged with keeping out his Majesty that now is, from exercising his Regal Power and Royal Authority in this his Kingdom; through the Ill-will borne me by that part of the Parliament then sitting, I was discharged from being a Member thereof about *Jan. 9, 1659*, and by many of them was charged, or at least strongly suspected, to be a Royalist. Yea, I was not only discharged from my Attendance in Parliament, but confined as a Prisoner at my own House, some time before there was any visible Power in the Nation that thought it seasonable to own the King's Interest. And I hope my sitting still will not be imputed as a Failure of Duty, in the Condition of a Prisoner, and those Cir-

cumstances I was then in. This I can say, That from the time I saw his Majesty's Declarations from *Breda*, declaring his Intentions and Resolutions as to his Return, to take upon him the actual Exercise of his Regal Office in *England*, and to indemnify all those that had been Actors in the late Differences and Wars, (as in the said Declaration doth appear) I resolved not to avoid any publick Question, (if called thereto) as relying on mine own Innocency, and his Majesty's declared Favour, as before said. And for the future, I determined to demean my self with that Inoffensiveness and Agreeableness to my Duty, as to give no just Matter of new Provocation to his Majesty in his Government. All this, for my part, hath been punctually observed, whatever my Sufferings have been. Nor am I willing in the least to harbour any discouraging Thoughts in my Mind as to his Majesty's Generosity and Favour towards me, who have been faithful to the Trust I was engaged in without any malicious Intentions against his Majesty, his Crown or Dignity, as before hath been shewed; and I am desirous for the future to walk peaceably and blamelessly.

Whatever therefore my personal Sufferings have been since his Majesty's Restoration, I rather impute them to the false Reports and Calumnies of mine Enemies, and Misjudgers of my Actions, than reckon them as any thing that hath proceeded from his Majesty's proper Inclination, whose Favour and Clemency I have had just Reason, with all Humility, to acknowledge.

First, With regard to his Majesty's Speech, made the 27th of *July, 1660*, in the House of Peers, wherein his Majesty expressly declared it to be no Intention of his that a Person under my Circumstances should be excepted out of the Act of Indemnity, either for Life or Estate.

And Secondly, However it was the Parliament's Pleasure (my self unheard, tho then in the *Tower*, and ready to have been brought before them) to except me out of the common Indemnity, and subject me to question for my Actions, yet they themselves of their own accord (admitting the Possibility that in such Questioning of me I might be attainted) made it their humble Desire to his Majesty, that in such Case Execution, as to my Life, might be remitted. Upon this his Majesty readily gave his Grant and Assent. And I do firmly believe, if the Houses had pleased to give me the Opportunity and Leave of being heard, they would never have denied me the Indemnity granted to the rest of the Nation.

That which remains of further Charge yet to me is the Business of a Regiment, an Employment which, I can in truth affirm, mine own Inclinations, Nature, and Breeding, little fitted me for, and which was intended only as honorary and titular, with relation to Volunteers, who, by their Application to the Council of State, in a Time of great Commotions, did propound their own Officers, and (without any Seeking of mine, or my considering any farther of it, than as the Use of my Name) did (among others) nominate me for a Colonel, which the Council of State approved, granting Commissions to my self, and all other Officers relating thereunto; and the Parliament confirmed my said

said Commission, upon Report thereof made to them.

This will appear by several Witnesses I have to produce in this Matter, that will be able to affirm how little I took upon me, or at all, to give any Orders, or make use of such my Commission, any otherwise than in Name only.

'Tis true, indeed, that at a certain Time, when I was summoned to appear at the Committee of the Militia in *Southwark*, whereof I was a Member, that which was called my own Company of Foot (from the Respect which they and their Officers pretended to me) were desirous to be in a Posture fit for me to see them; and as I passed by, I took the Opportunity, at their Desire, to shew my self to them, and only (as taking notice of their Respect) in some few Words, expressing the Reason I had to receive it in good part, I told them I would no longer detain them from their other Occasions. After I was gone from them, I appointed my Captain-Lieutenant to give them from me something to drink, as might be fitting on such an Occasion, which, to my best Remembrance, was five Pounds; and he laid it out of his own Money.

More than this (as I remember) was not done by me; so much as to the seeing any more the Companies of that Regiment gathered together, or giving Orders to them: Which I publicly and avowedly declined, persuading the Officers to lay down their Charges in mine own Example, so soon as I discerned the Intentions of the sitting down of the *Committee of Safety*, and the exorbitant Power committed to them to exercise, and the way of Proceedings by the Army, in interesting themselves in the Civil Government of the Nation, which I utterly disliked.

And although I forbore not to keep my Station, in reference to the Council of State, while they sat, or as a Commissioner of the Admiralty, during the time by them appointed to act by Parliamentary Authority, and so had occasion to be daily conversant with the Members of the Committee of Safety, (whereof my self, with others that would not accept, were named;) yet I perfectly kept my self disinterested from all those Actings of the Army, as to any Consent or Approbation of mine, (however, in many Things, by way of Discourse, I did not decline Converse with them) holding it my Duty to penetrate as far as I could into their true Intentions and Actions; but resolving within my self to hold true to my Parliamentary Trust in all Things wherein the Parliament appeared to me to act for the Safety and Good of the Kingdom. However, I was misinterpreted, and judged by them as one that rather favoured some of the Army, and their Power.

Upon the whole Matter, there is not any Precedent that ever both or either of the Houses of Parliament did commit Treason: For the Privilege of Parliament does not so hold in Treason, but that particular Members may be punished for it, yet it is unprecedented, that both or either Houses of Parliament, as a collective Body, ever did or could commit Treason.

All the Acts done in Parliaments have been reversed indeed, and repealed, as what was done 11 Ric. 2. was repealed 21 Ric. 2. and what was done 21 Ric. 2. was repealed 1 Hen. 4. 3. as ap-

pears by the printed Statutes: Yet I do not find that both or either House of Parliament were declared Traitors for what they did in those Parliaments; or that any which acted under them suffered for the same in any inferior Courts. And surely the Reason is obvious: For they had a Co-ordinancy in the Supreme or Legislative Power for the making, altering, and repealing Laws. And if so, *par in parem non habet imperium*. And by Authorities out of *Bracton*, *Fleta*, and others, it may appear what Superiors the King himself hath, (who yet hath no Peer in his Kingdom, *nisi Curiam Baronum*) God, Law, and Parliament.

And if either or both Houses cannot commit Treason, then those that act by their Authority cannot: For, *plus peccat Author quam Actor*, the Author offends more than the Actor. If those that command do not, nor can commit Treason, how can those that act by their Authority be guilty of it?

Further, I must crave leave to assert, by reason of what I see opened upon the Evidence, That what is done in Parliament, or by their Authority, ought not to be questioned in any other Court: For every Offence committed in any Court, must be punished in the same, or in some higher, and not any inferior Court. Now the Court of Parliament hath no superior Court, as is said in *Coke's Jurisdiction of Courts*. And the Reason there given that Judges ought not to give any Opinion in a Matter of Parliament, is, Because it is not to be decided by the Common Laws, but *secundum Legem & Consuetudinem Parliamenti*. This the Judges in divers Parliaments have confessed. And that Reason is not to be waved which the Lord *Coke* gives, That a Man can make no Defence; for what is said and acted there, is done in Council, and none ought to reveal the Secrets of the House: Every Member hath a judicial Voice, and can be no Witness.

June the 11th.

After the customary Formalities of the Court, The Clerk demanded of Sir *Henry Vane* what he had to say why Sentence of Death should not be passed upon him.

Sir *Henry Vane* first alledged, That he had not yet heard the Indictment read in *Latin*. The Debate upon this took up some Time: At length some of the King's Counsel desired that the Prisoner might be satisfied in that Point. Sir *Henry* desired that Council then might also be assigned him, to make Exceptions thereto, if they found Cause; otherwise he valued not the hearing of it read in *Latin*. This was over-ruled by the Court: He soon therefore desisted from any further urging it.

The next Thing Sir *Henry* offered in his own Defence was the Bill of Exceptions, which he brought with him ready drawn, and offered it to the Judges, desiring them, according to the Statute of *Westm.* 2. 31. made 13 *Edw.* 1. to sign it. This he urged so home, that the Statute was consulted and read in open Court, running in favour of the Prisoner to this effect, *That if any Man find himself aggrieved by the Proceedings against him before any Justices, let him write his Exception, and desire the Justices to set their Seals to it.* This Act was made (says *Coke*)

that

‘ that the Party wronged might have a Foundation for a legal Process against the Justices by a Writ of Error, having his Exception entered upon Record in the Court where the Injury is done, which through the Justices over-ruling it, they could not before procure, so the Party grieved was without Remedy; for whose Relief this Statute was made. The Justices refusing to set to their Seals, the Party grieved may have a Writ grounded on this Statute, commanding them to set their Seals to his Exception. This Exception extends not only to all Pleas dilatory and peremptory, &c. but to all Challenges of any Jurors, and any material Evidence, given to any Jury, which by the Court is over-ruled.’ As in this Prisoner’s Case, the Testimony about falsifying of his Hand to Writings, &c. was, by what was offered to the Jury by Justice *Windham*.

Further, says *Coke* on this Statute, ‘ If the Justice (or Justices) die, their Executors or Administrators may be proceeded against for the Injury done. And if the Judge (or Judges) deny to seal the Exception, the Party wronged may in the Writ of Error take Issue thereupon, if he can prove by Witnesses the Judge or Judges denied to seal it.’

Notwithstanding all this, the Judges over-ruled this Plea also, by such Interpretation as themselves put upon that Statute, *Kelyng. 15.* to wit, That it was not allowable in criminal Cases for Life. This makes the Law less careful for the Preservation of a Man’s Life, than any Particulars of his Estate, in Controversies about which this Statute is affirmed by them to hold. Whereas Life is the greater, and innocent Blood, when spilt, is irreverfible; as to the Matter, it cannot be gathered up again: The Estate is the lesser; and if an erroneous Judgment pass about it, ’tis reverfible upon Traverse, Writ of Error, or otherwise.

The Reason they alledged for their pretended Opinion was this, That if it be held in criminal Cases for Life, every Felon in *Newgate* might plead the same, and so there would be no Goal-Delivery.

Sir *Henry* answered, His Case was not the Case of common Felons, alledging the Grant of his Majesty to the Petition of both Houses for his Life, in case he should be attainted. There is no need therefore sure (said he) of fearing the Consequence of spinning out the Time a little with a Person in his Circumstances. Besides, (he said) he had been a Prisoner two Years, and never called on to give any Account of himself and his Actions, (so is it not with Felons;) which, with other Considerations, may sufficiently evince that there is no need of such hastening his Death. He told them withal, That he desired not this for his own Sake only, but for theirs, and for Posterity; that they might, on a more leisurely and unprejudiced hearing of what may be said on all hands, prevent the bringing of innocent Blood upon themselves and the Land.

But being in this also over-ruled by the Court, (say what he would) he only desired he might understand whether they would all give it as their common Judgment they would stand to, That what he desired was not his Due by the Law? By this means they were all put upon it, one by one, to declare themselves in that

Point, unanimously denying him the Benefit of that Act. To the By-standers their chief Reason seemed to be, That it had not been practised this hundred or two of Years.

The third Thing Sir *Henry* desired was, That the Petition of both Houses, with his Majesty’s Answer thereunto, might be read in the Court; which, after some Dispute, was concluded to be a Thing they were not bound to take notice of, not being an Act of Parliament. Yet what is any Act of Parliament, but a Bill presented with the Petition of both Houses to his Majesty, with his Royal Assent thereto, upon publick Record? At length they condescended to read it; and that was all.

The fourth and last Thing Sir *Henry Vane* offered to the Consideration of the Bench was this, That in regard there were Questions touching Matter of Law in his Case, which must receive their Determination in Parliament, he desired he might have Counsel assigned him, to argue them before their Lordships. Some of these Points he instanced in, to wit,

1. Whether a Parliament were accountable to any inferior Court?

2. Whether the King, being out of Possession, and the Power Regent in others, —

Here they stopp’d him, not suffering him to proceed, nor admitting that the King was ever out of Possession. To which Sir *Henry* replied, The Words of his Indictment ran thus, *That he endeavoured to keep out his Majesty*; and how could he keep him out of the Realm, if he were not out?

But when he saw they would over-rule him in all, and were bent upon his Condemnation, he put up his Papers, appealing to the Righteous Judgment of God, who (he told them) must judge them as well as him, often expressing his Satisfaction to die upon this Testimony; which *Keeling*, one of the King’s Counsel, insultingly answered, *So you may, Sir, in good time, by the Grace of God.* The same Person had often before shewed a very snappish Property towards the Prisoner; and Sir *Henry* sometimes answered him according to his Folly: For when he would have had the Book out of the Prisoner’s Hand, wherein was the Statute of *Westminster*, 2d. C. 31;

Sir *Henry* told him, *he had a very officious Memory, and when he was of Counsel for him, he would find him Books.* (Whereby was verified what was said to be spoken by him, at first, in answer to one of his Brethren, on the Arraignment-Day, *Though we know not what to say to him, we know what to do with him.*)

[The Bill of Exceptions, translated out of the best Latin Form the Prisoner could procure; no Council learned in the Law daring to assist him in those Circumstances, without Assignment from the Court, which was denied.

First, Concerning my Imprisonment.

(1.) I Shall here mention my Entrance into this new Scene of Sufferings under the present Power (after my having been handled at Will and Pleasure, under the six Years Usurpation of *Cromwell*)

Cromwell) which I conceive not to have been at all according to the Law of the Land, as may appear by the 29th Chap. of *Magna Charta*, and *Coke* upon it, with many other Statutes and Law-Books: In all which it appears that the Law of *England* is so tender, not to say curious, in providing for the Subject's Liberty, that he is not to suffer the least Restraint, Confinement or Imprisonment, but by the lawful Judgment of his Peers, or by the Law of the Land. Contrary to all which, I was committed at mere Will and Pleasure, and have been detained close Prisoner these two Years, without any Cause specified, or any particular Crime laid to my Charge.

Secondly, *Concerning Transactions at the Grand Jury.*

(2.) The Grand Jury of *Middlesex*, without my Privy, Knowledge or Presence, (after I had been kept a close Prisoner two full Years) did meet, take the Depositions of Witnesses, and find the Bill against me, which inevitably exposed me to a Trial at the King's-Bench Bar, for I knew not what: whereas Major *Rolf* and others have had the Right of *Englishmen* granted them, to be present at the Grand Jury's Proceedings; yea, and to have Counsel also present to plead any thing in a way of Reason or Law, for invalidating the Testimony, or disabling the Witnesses, whereby the Indictment hath been immediately quash'd; and so the Party accused delivered from any Shadow of Infamy, by so much as appearing in the Circumstances of a Malefactor at any publick Bar of Justice.

That this Prisoner had great need of that Privilege of being present himself, or having Counsel and other Friends present at the Grand Jury, will appear hereafter, by the subdolous and injurious handling of Matters there.

Thirdly, *Concerning the Jurisdiction of the Court.*

(3.) The Offences supposed to be committed by me, are things done not of my own Head, but as a Member of the *Long Parliament*, or in pursuance of their Authority. The Matters done by me, in the one respect or other, if they be deemed Offences, are punishable only in Parliament; and I ought not to be questioned for them in any inferior Court, as *Coke* shews in the 4th Part of his *Institutes*, chap. 1. concerning the High Court of Parliament. For the Parliament is not confined in their Actings by the Law, which inferior Courts are tied up to; but in divers Cases are privileged to act extraordinarily and unaccountably to any but themselves, or succeeding Parliaments. Moreover, that Parliament was extraordinarily commissioned, qualified and authorized by express Act of Parliament, beyond all preceding Parliaments, for the Causes and Ends declared in the Preamble of the Act for their Establishment, accorded and passed by the joint Consent of King, Lords and Commons, whereby they became unsubjected to Adjournment, Prorogation or Dissolution, but by their own respective voluntary Consents, to be by them expressed and passed for that purpose, with the Royal Assent; which occasioned his late Majesty in his Answer to the Nineteen Propositions, to say, *That the Power hereby legally*

placed in both Houses, was more than sufficient to prevent and restrain the Power of Tyranny.

And further, the bringing of this Case under the Jurisdiction of this Court, or of any other but a Parliament, may prove of very dangerous Consequence, in point of Precedent, and most disagreeing to all Rules of Justice. For,

First, By the same Reason that I am questioned in this Court, not only every Member of Parliament, but the very Houses themselves, with all their Debates, Votes and Orders, may not only be questioned, but referred to a Petty-Jury, and so come to be judged and sentenc'd by a Court inferior to themselves; which Judges in all times have disclaimed and acknowledged to be out of their power, according to the known Rule, *Par in pares non habet imperium, multo minus in eos qui majus imperium habent.*

Secondly, In such case the Parties accused will be debarred of Evidence or Witness for their Justification and Defence. For no Members, &c. present at Debates in Parliament, (who are the only Eye and Ear-Witnesses of what is said and done there) ought to discover the Counsels of the House.

Fourthly, *Concerning the Indictment.*

1. I have not been permitted to have a Copy or Sight of the Indictment, nor so much as to hear it read in *Latin*, which is the original Record of the Court, and ought to be the Foundation of their whole Proceeding with me. I often desired these things of the Court; yea, or at least to have but the Transcripts of some particular Clauses in the Indictment, to enable me to shew the Deficiencies thereof in Law, (all which, others in such Cases have often obtained) but nothing would be granted herein.

This then was my hard Lot and Usage; I was put (after two Years close Imprisonment) to answer for my Life to a long Indictment read in *English*, which whether it were rightly translated how should I know, that might not hear the original Record in *Latin*? Counsel also learned in the Law were denied me, though pressed for by me again and again, before I pleaded. And had they been granted, what could they have said as to Defects of Law in the Indictment, unless they might have a Copy of it? What can any Counsel say to any petty Business concerning any part of a Man's Estate that's in Controversy, unless they may have a leisurely View and Perusal of the Writings thereabouts? Much more sure will it appear requisite to the Reason of all Mankind, when a Man's whole Estate, Life and all, are at stake. 'Tis true, before I pleaded, this Court promised I should have Counsel assigned me after pleading, (*God forbid else*, said the Lord Chief Justice) but 'tis as true, I never could yet see that Promise made good. All things tending to a fair Trial were promised me in general before pleading, but every material Particular for the just Defence of my Life, hath been denied me ever since. And my Trial for Life was huddled up the next Day of my appearing before you: The Jury (as was told me) must not eat nor drink till they had done their Work: (so the more than forty Jewry-Men that resolved to kill *Paul*, Acts xxiii. 21.) But why such Hasten and Precipitancy for a Man's Life, that's

that's more than Meat or Estate, when you can let Civil Causes about Mens Estates depend many Years? And if an erroneous Judgment be passed in such Matters, 'tis reversible; but if innocent Blood be spilt, it cannot be gathered up again, as the wise Woman of Tekoah said, 2 Sam. 14.

2. But Secondly then, as to Defects in the Indictment, which I was in some measure enabled to observe from that broken hearing thereof, that was afforded me here in the Court; I say there are many, and those very considerable: and by the Law of England I ought not to have been urged to plead or make answer to such an illegal and defective Indictment.

1. There is no sufficient Overt-Act therein alledged of the Prisoner's imagining the King's Death, or that he had any the least Intention that way.

2. The Levying of a War is alledged in *Southwark*, and cannot therefore be tryed by a Jury of *Middlesex*; *Dyer*, fol. 234. and the 3d Part of *Coke's Institutes*, fol. 34.

3. There is Uncertainty and Obscurity in the main thing alledged against me in the Indictment; to wit, *That I, together with a Multitude of Persons, to the Number of a Thousand, unknown to the Jury, &c.* whereas no criminal Act can be tryed that is not certain; *Certa res debet esse, quæ deducitur in Judicium.*

4. The Treason laid to my charge, is alledged to have been committed with a Multitude of other false Traitors, which were pardoned by the Act of Indemnity: such supposed Crimes therefore of theirs cannot be remembred or alledged, without a manifest Breach of the Act of Indemnity and Oblivion.

The Indictment is, or ought to be founded on some Clause or Branch of 25 *Edw. 3. chap. 2.* but no such Overt-Act is alledged in the Indictment, or proved by Witnesses, as doth discover that I had any Intention to kill, depose, or hold out the King from the Possession and Exercise of his Regal Power.

Whereas I am accused of *compassing or imagining the Death of the King*, this must be understood of his natural or personal, not politick Capacity; for in this latter Sense the Law says, *The King cannot die.*

First then, to compass only the Deposition of the King, is not within the words of that Statute, (several Kings have been deposed by Parliaments since the Conquest) and as to my compassing or designing the natural Death of the King's Person, with what Colour can I be accused of such Intentions, in the Circumstances the King at that time was in beyond the Seas?

Secondly, The assembling of Men together, without any Hostility or Injury offered to any Person, but for a Man's own Security and Defence in a time of Confusion and Distraction, is not levying War, or Treason at the Common Law, or by that Statute. Yea, in this Case, and at the Season wherein such an Act as this is alledged, it might be supposed to be done for the King's Restoration, as well as in opposition thereunto; and the most favourable and advantageous Construction ought to be made and put upon the Prisoner's Actings or Words, where there is Ambiguity, so that they may be taken or interpreted divers ways. For the Law always presumeth Actions to be innocent, till the

contrary be manifestly proved. However, in a time of Vacancy or an *Interregnum*, when the Foundations of Government are out of course, by the Law of Reason, Nature, and common Prudence, every Man may stand upon his own Guard, endeavouring his own Security and Protection from Injury and Violence.

Thirdly, To be adherent to the King's Enemies within his Realm, &c. cannot, ought not to be understood of any Adhesion to a Parliament, wherein the King by Law is supposed always present, as a Part thereof. Nor can the *Long Parliament* be called the King's Enemies, without overthrowing the Act of Indemnity, which the King hath declared to be the Foundation of the Nation's present Peace and Security.

Lastly, The Treasons alledged in the Indictment are said to have been committed when the King was out of Possession: So the Indictment runs, *To keep out the King, &c.* Now my Lord *Coke* in the third Part of his *Institutes*, fol. 7. saith, *A King de jure, and not de facto, is not within the Statute; against such a one no Treason can be committed. For if there be a King regnant in Possession, though he be Rex de facto, and not de jure, yet he is Seigneur le Roy, within the Purview of this Statute; and the other that hath Right, and is out of Possession, is not within this Act.* Nay, if Treason be committed against a King de facto, & non de jure, and after the King de jure cometh to the Crown, he shall punish the Treason done to the King de facto.

And after, in the same Place he saith, *That by Law there is always a King, in whose Name the Laws are to be maintained and executed, otherwise Justice would fail.* The Act also of 11 *Hen. 7.* was made for Security of the Subject on this behalf. The word *King* also may and ought to be taken largely for any Sovereign Power in a King or Queen, as *Coke* in the place fore-quoted shews; and why not by the same Reason, in a Protector, though an Usurper, or any other Persons, one or more, in whom Sovereignty is lodged, or that have all the Badges of Sovereignty; as the calling of Parliaments, enacting of Laws, coining of Money, receiving foreign Ambassadors, &c. His Majesty that now is, is granted by the very Indictment to have been then out of Possession: If so, then was there either some other King, or what was equivalent, some Sovereign Power in actual Possession and Exercise, or none. If the former, then was there a King de facto, so no Treason could be committed against him that was King de jure only: if the latter, then the Government was dissolved, no Allegiance was due to any Persons, and so no Offence could be properly Treason within the Statute.

But had the late Protector had the Name and Style of a King, no Treason could have been committed against the King de jure only. Now God forbid that you should give away my Life upon such Niceties, because an usurping Protector was not clothed with the Title as well as Power of a King. The Protector or any Usurper's taking or not taking the Title of a King, in case he have the Power, cannot alter the State of my supposed Crime. You ought not to be biassed by popular Reports concerning me. 'Tis easier to be innocent, than so reported: the one is in our own power, not the other.

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Fifthly,

Fifthly, *Concerning the Evidence.*

1. No Allegation was directly proved by two positive lawful Witnesses, as in this Case it ought to be.

2. One of the Witnesses for the King confessed in open Court, That to his knowledge my Hand had been counterfeited, to my Prejudice and Damage, in great Sums of Money; yet Orders pretended to be signed by me, (wherein my Hand may as well be counterfeited) are taken as Evidence against me.

3. The Issue of the whole Cause depended on the Solution of some difficult Questions of so high a Nature, and great Importance, as could not safely be determined but in the high Court of Parliament: As,

1. *Whether the Long Parliament called in November 1640, were dissolved by the late King's Death?*

2. *Whether the successive remaining Powers that exercised the Royal Supreme Authority from 1648, to the Restoration of his now Majesty, were not within the true Sense and Meaning of 25 Edw. III. and 11 Hen. VII.]*

[Reasons for an Arrest of Judgment, writ by the Prisoner, but refused to be heard by the Court.]

I. I Have been denied so much as to hear the Indictment read in *Latin*, as it is the original Record of the Court; yea, so much as a Copy of it in *English* hath been denied me during the whole Time of my Trial; by the Sight whereof I might be able to assign the Defects of Law that may be in it.

Counsel also hath been denied, not only before I pleaded, but after, and all Points by me offered in Law to the Judges of the Court have been over-ruled, without admitting me Counsel to argue the same, and better inform the Judgment of the Court. I have demanded that I might put in a Bill of Exceptions upon the Statute of *Westminst. 2. cap. 31.* This likewise is denied me, over-ruled, and judged as out of that Statute. Neither will Counsel be allowed me in this, to shew Cause why it ought to be admitted as of Right. And as no Counsel was allowed, so neither were the Judges Counsel to me, as they said themselves they would and ought to be, but rather suffered me to wrong and prejudice my self; some of them saying, *Let him go on, the worst will be his own at last.* And they neither checked nor restrained the King's Counsel in their high and irritating Expressions to the Jury, to find me guilty: one of whom was seen to speak privately with the Foreman of the Jury, immediately before the Jurors went from the Bar, after he had spoken openly, *That the Prisoner was to be made a publick Sacrifice, in reference to the Actions done against his Majesty that now is.*

All this is very far from that Indifferency in Trial, and from that Equality which the Law requires, and they are bound by their Oath to afford me; besides the undue Proceedings in the Business of the Petty Jury. A List of forty eight Persons was presented to me, who being

to me unknown, and no Time allowed me to gain any Knowledge of them, though I was permitted to challenge and refuse three Juries, without shewing Cause, yet could not that Refusal be upon such rational Grounds as the Law supposes, which doubtless intends substantial Relief to the Prisoner, in allowing him the Liberty of such Refusal; whereas, through my Ignorance of the Persons, I might refuse the best, and chuse the worst, as to my Safety. And then, whereas the Law further allows me the Refusal of any other beyond the thirty five, on just and exceptionable Cause shewn, what just Exception was I capable to alledge in a sudden Hurry against Persons to me altogether unknown, unless it would be taken for a just one, That they were unknown to me?

All these Things being so contrary to the Right which the Judges stand obliged to do to every one, as they are for that purpose intrusted by God and the King, is just Cause for an Arrest of Judgment, and a good Reason why they should yet at length allow me a Copy of the Indictment, and assign Counsel to argue for the Prisoner against the Defects in Law that may be found therein. Without this, Law is denied me, which is my Birthright and Inheritance; the best Birthright a Subject hath, says *Coke on Magna Charta*: for thereby (says he) his Goods, Lands, Wife, Children, his Body, Life, Honour, and Estimation, are protected from Injury. The Life, Birthright, or Inheritance, we have from our Parents, may soon be gone, if this Fence thereof be broken down. How great a Wrong then it is for the Court to withhold it from me, is manifest. Are they not therefore in effect chargeable with my Blood, by such unequal Proceedings as I have had in my Trial?

II. My second Reason for an Arrest of Judgment, is drawn from the Issue that is joined in my Case, which seems to depend chiefly upon Matter of Law; and that in such tender and high Points, as are only determinable in the High Court of Parliament.

For it is become the Question, Whether I am guilty or not guilty, according as these Propositions following are truly or erroneously resolved.

1. *Whether the Parliament, that began Novemb. 3. 1640. were dissolved by the King's Death? And whether this Court may judge things done in Parliament?*

2. *Whether the Powers regnant, and de facto, that successively were in being, from Jan. 30. 1648, to Decemb. 20. 1659, were such Powers de facto, as are the King, or Seigneur le Roy, within the Purview of the Statute of 25 Edw. 3. having the Exercise of Regal Power in all the Particulars of it, though not the Name?*

3. *Whether during that time fore-mentioned, his Majesty that now is were properly King de facto? Or whether he were not out of Possession, and without all Exercise of his Regal Authority within the Realm?*

4. *Whether the Case now in question be a Treason literally within the words of the Statute 25 Edw. 3. or at most, any other than an interpretative and new Treason, not declared before the very time of my Trial; and that only by the Judgment of the Court, or Opinion of my Judges, eleven Years after some of the things charged*

charged on me, are alledged to have been committed?

As for the first of these, the Act for Continuance of the *Long Parliament* is exprefs; *That all and every thing or things whatsoever, done or to be done, for the Adjournment, Proroguing, or Dissolving of that Parliament, contrary to that Act, shall be utterly void and of none effect.* I then thus argue:

The Judges do upon occasion of this Trial resolve, That the King's Death dissolv'd that Parliament. No Act of Parliament hath yet declared it to be so; and the Judges ought to have some Law for their Guide, as *Coke* well says. To be sure, if in process of time the Parliament shall expressly declare, That not the King's Death, but the Act for the Dissolution of that Parliament, did dissolve it; in such case, these Judges Resolution by vertue of such Act is absolutely void. But innocent Blood in the mean time may be shed, and an Estate wrongfully taken away. And in case what the Judges assert herein, were Law, 'tis Law not known or declared till many Years after the Fact committed. At this rate, who is secure of Estate or Life?

As to the second and third Queries or Propositions, it does appear out of the third part of *Coke's Institutes*, fol. 7. and the Statute 11 *Hen. 7. cap. 1.* that Actings for the King *in Fact*, are not to be question'd by the King *in Right*. If it be said, That there was no King in this case; it may be replied, That they who had the Power and Exercise of the Royal Jurisdiction, as to Peace and War, Coinage of Money, Power of Life and Death, &c. which are the highest Ensigns of Regal Authority, must needs be the Powers regnant, though not under the name of King, as are within the Statute of 25 *Edw. 3. cap. 2.* as a Queen also is adjudg'd, and any Sovereign Prince, though under the Title only of Lord, as was the Case of *Ireland* before it was a Kingdom. And if so, why not in more such Persons as well as one, that *de facto* exercise the Royal Power and Sovereign Authority, under what Name or Title soever? If upon this Nicety, Judgment be given against me, because the Powers regnant wanted the Name and Formality of a King, I shall doubtless have very hard measure. For the Reason and Equity is the same, if the Powers regnant had the Thing, though not the Title. And where there is the same Reason, there is the same Law, as is a known Rule. Now there is the same Reason the Subject should be equally indemnified, that acteth under any Sovereign Authority that hath not the Name of a King, as if it had. If there had been many Kings, as a Heptarchy hath been in *England* heretofore, those would have been understood to be within the Statute; and the Reason and Equity of the Statute is the same in all cases. For the Law is made for the Benefit and Security of the Subject, whom the Law requires not to examine the Right of Sovereignty. Nor is the Danger less under one Government than another.

The Statute is, for securing the Subjects from all dormant Titles, that they may safely pay their Allegiance when they receive Protection, and that they may not be in danger of being destroy'd by two Powers at the same time. For that Power which is supreme and *de facto*, will be obey'd, and make it Treason to do other-

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wise, be it right or wrong. And if the Subject be at the same time in danger of committing Treason against the Power *de jure*, then is he in a miserable Condition, and State of unavoidable Necessity, which is provided against by the Laws of the Land. Otherwise, if he be loyal to the King *de jure*, he shall be hanged by the King *de facto*; and if he be faithful to the King *de facto*, he shall die by the King *de jure*, when he recovers Possession.

Against this it was, that the Statute of 11 *Hen. 7.* was provided, in the Difference betwixt the two Houses of *York* and *Lancaster*. My Case is either the same with that, and then I desire the Benefit of that Statute; or else it is new, and then I desire, as is provided 25 *Edw. 3.* that it be referred to the Parliament. So that it is either within the Equity of the Statute 11 *Hen. 7.* or else it is a new Case, and not to be judged by this Court.

If the Judges in the Resolves by them delivered, upon any of the Particulars before alledged, have not declared that Law that ought to guide them, but their particular Judgments or Opinions, as undertaking to guide the Law, and that in Points of so grand Concern as touch the Subjects Life, in case their Judgments after should prove erroneous, the Verdict given upon such Errors must needs be illegal and void. Judgment therefore ought to be suspended, till such time as the Truth and Certainty of the Law may be fully argued and cleared, and that in the proper Court for the hearing and judging of this Case. If this be not done, but I be forthwith proceeded against (notwithstanding any thing however rationally or legally alledged to the contrary) by such undue Precipitation and given Sentence, I am (contrary to *Magna Charta*, or Law of the Land) run upon and destroy'd, without due Form and Course of Law. And I am like to be deprived of Estate and Life upon no Law or certain Rule, which was declared before the Fact; no, nor before the Trial.

Upon these Considerations, I desire an Arrest of Judgment, and that Counsel may be assigned me, and competent time allow'd to make good my Averments.

As an Argument to press this, I desire leave of the Court, That the Petition of the two Houses, and the King's Assent to it, may be read in open Court, attested by one that is present, who examined and compared it with the Book of Record in the Lords House; by which it evidently appears, that as well the King as both Houses of Parliament were agreed, that admitting I were attainted, yet Execution, as to my Life, should be remitted. And if so, there is no cause to precipitate the passing Sentence; especially when also such weighty Points in the Law are yet to be argued and cleared, unless the Judges will evidently charge themselves with my innocent Blood.

III. My third Reason for an Arrest of Judgment, is the manifest Newness of this Case, being such as never happen'd before in the Kingdom; which withal is of so vast a consequence to People of all Sorts and Conditions within this Realm, as nothing more. And being so, (as I doubt not with your Lordships patience I shall make it appear) it is the known

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Law,

Law, witnessed by *Bracton*, and antient approved Law-Books, That in such Cases the Judges in the inferiour Courts ought not to proceed, but bring it before the High Court of Parliament.

To prove therefore the Newness of this Case, (besides what I have already alledged in my Defence, before the Verdict) give me leave to add that, which yet further shews the Newness and Extraordinariness thereof. And I beseech your Lordships to let me go on without interruption, in my endeavouring to make it out as clearly as God shall enable me, and as briefly also, not to spend too much of your Time.

In general, I do affirm of this Case, That it is so comprehensive, as to take in the very Interests of Heaven and Earth: First, Of God the Universal Sovereign and King of Kings: Secondly, That of earthly Sovereigns, who are God's Vicegerents: As also the Interests of all Mankind, that stand in the Relation of Subjects to the one or both those sorts of Sovereigns.

This in general. More particularly: Within the Bowels of this Case is that Cause of God, that hath stated itself in the late Differences and Wars, that have happen'd and arisen within these three Nations, and have been of more than twenty years continuance: which for the greater Certainty and Solemnity, hath been recorded in the form of a *National Covenant*, in which the generality of the three Nations have been either implicitly involved, or expressly concern'd, by the signing of their Names.

The principal things contained in that Covenant, were the known and commonly-received Duties, which either as Men or as Christians we owed and stood obliged to perform either to God, the highest and universal King in Church or State, or to our natural Lord and Sovereign, the Kings of this Realm, in subordination to God and his Laws.

Again, It contains as well the Duties which we owe to every particular and individual Person, in their several Stations and Callings, as to the King in general, and our Representative Body in Parliament assembled. These Duties we are thereby obliged to yield and perform, in Consistency with, and in a just Subordination and manifest Agreeableness to the Laws of God, as is therein express'd: And this also, in no Disagreement to the Laws of the Land as they then were.

By this *Solemn Covenant and Agreement* of the three Nations, giving up themselves in subjection to God and to his Laws, in the first place, as the Allegiance they owe to their highest Sovereign, (as the Creator, Redeemer, Owner and Ruler of all Mankind) they have so far interest-ed the Son of God in the supreme Rule and Government of these Nations, that nothing therein ought to be brought into practice, contrary to his revealed Will in the Holy Scriptures, and his known and most righteous Laws.

This Duty which we owe to God, the universal King, Nature and Christianity do so clearly teach and assert, that it needs no more than to be named. For this Subjection and Allegiance to God and his Laws, by a Right so indisputable, all are accountable before the Judgment-Seat of Christ.

It is true indeed, Men may *de facto* become open Rebels to God and to his Laws, and prove such as forfeit his Protection, and engage him to

proceed against them as his professed Enemies. But (with your Lordships favour) give me leave to say, that that which you have made a Rule for your Proceedings in my Case, will indeed hold, and that very strongly, in this; that is to say, in the sense wherein Christ the Son of God is King *de jure*, not only in general, over the whole World, but in particular, in relation to these three Kingdoms. He ought not to be kept out of his Throne, nor his visible Government (that consists in the Authority of his Word and Laws) suppressed and trampled under foot, under any pretence whatsoever.

And in the asserting and adhering unto the Right of this highest Sovereign, (as stated in the *Covenant* before mentioned) the Lords and Commons jointly, before the Year 1648, and the Commons alone afterwards, to the very times charged in the Indictment, did manage the War and late Differences within these Kingdoms. And whatever Defections did happen by Apostates, Hypocrites, and time-serving Worldlings, there was a Party amongst them, that continued firm, sincere and chaste unto the last, and loved it better than their very Lives; of which number I am not ashamed to profess myself to be: not so much admiring the Form and Words of the Covenant, as the righteous and holy Ends therein expressed, and the true Sense and Meaning thereof, which I have reason to know.

Nor will I deny, but that, as to the Manner of the Prosecution of the Covenant to other Ends than itself warrants, and with a rigid oppressive Spirit, (to bring all dissenting Minds and tender Consciences under one Uniformity of Church-Discipline and Government) it was utterly against my Judgment. For I always esteem'd it more agreeable to the Word of God, that the Ends and Work declared in the Covenant should be promoted in a Spirit of Love and Forbearance to differing Judgments and Consciences, that thereby we might be approving ourselves *in doing that to others, which we desire they would do to us*; and so (though upon different Principles) be found joint and faithful Advancers of the Reformation contained in the Covenant, both publick and personal.

This happy Union and Conjunction of all Interests in the respective Duties of all Relations, agreed and consented to by the common Suffrage of the three Nations, (as well in their publick Parliamentary Capacity, as private Stations) appear'd to me a Rule and Measure approved of, and commanded by Parliament, for my Action and Deportment, though it met with great Opposition, in a tedious, sad, and long War; and this under the Name and Pretext of Royal Authority. Yet, as this Case appeared to me in my Conscience, under all its Circumstances of Times, of Persons, and of Revolutions inevitably happening by the Hand of God and the Course of his wise Providences; I held it safest and best to keep my Station in Parliament to the last, under the guidance and protection of their Authority, and in pursuance of the Ends before declared in my just Defence.

This general and publick Case of the Kingdoms, is so well known by the Declarations and Actions that have passed on both sides, that I need but name it; since this matter was not done in a corner, but frequently contended for in the high places of the Field, and written even

with Characters of Blood. And out of the Bowels of these publick Differences and Disputes, doth my particular Case arise, for which I am called into Question. But admitting it come to my Lot to stand single, in the Witness I am to give to this Glorious Cause, and to be left alone, (as in a sort I am) yet being upheld with the Authority before asserted, and keeping my self in Union and Conjunction therewith, I am not afraid to bear my Witness to it in this great Presence, nor to Seal it with my Blood, if called thereunto. And I am so far satisfied in my Conscience and Understanding, that it neither is nor can be Treason, either against the Law of Nature, or the Law of the Land, either *malum per se*, or *malum prohibitum*; that on the contrary, it is the Duty I owed to God the universal King, and to his Majesty that now is, and to the Church and People of God in these Nations, and to the innocent Blood of all that have been slain in this Quarrel. Nothing it seems will now serve, unless by the Condemnation passed upon my Person, they be rendered to Posterity Murderers and Rebels, and that upon Record in a Court of Justice in *Westminster-Hall*. And this would inevitably have follow'd, if I had voluntarily given up this Cause, without asserting their and my Innocency; by which I should have pulled that Blood upon my own Head, which now I am sure must lie at the Door of others, and in particular, of those that knowingly and precipitately shall embrue their Hands in my innocent Blood, under whatever Form or Pretext of Justice.

My Case is evidently new and unusual, that which never happen'd before; wherein there is not only much of God and of his Glory, but all that is dear and of true Value to all the good People in these three Nations. And (as I have said) it cannot be Treason against the Law of Nature, since the Duties of the Subjects in relation to their Sovereigns and Superiours, from highest to lowest, are owned and conscientiously practised and yielded by those that are the Assertors of this Cause.

Nor can it be Treason within the Statute of 25 *Edw. 3.* since besides what hath been said of no King in possession, and of being under Powers regnant, and Kings *de facto*, as also of the Fact in its own Nature, and the Evidence as to Overt-Acts pretended; it is very plain it cannot possibly fall within the Purview of that Statute. For this Case, thus circumstantiated (as before declared) is no Act of any private Person, of his own Head, as that Statute intends; nor in relation to the King there meant, that is presumed to be in the Exercise of his Royal Authority, in conjunction with the Law and the two Houses of Parliament, if they be sitting, as the fundamental Constitutions of the Government do require.

My Lords, if I have been free and plain with you in this matter, I beg your pardon: For it concerns me to be so, and something more than ordinarily urgent, where both my Estate and Life are in such eminent Peril; nay, more than my Life, the Concerns of thousands of Lives are in it, not only of those that are in their Graves already, but of all Posterity in time to come. Had nothing been in it, but the Care to preserve my own Life, I needed not have staid in *England*, but might have taken my Opportunity to with-

draw myself into foreign Parts, to provide for my own Safety. Nor needed I to have been put upon pleading, as now I am for an Arrest of Judgment; but might have watch'd upon Advantages that were visible enough to me, in the managing of my Trial, if I had consulted only the Preservation of my Life or Estate.

No, my Lords, I have otherwise learned Christ, than to fear them that can but kill the Body, and have no more that they can do. I have also taken notice, in the little reading that I have had of History, how glorious the very Heathens have rendred their Names to Posterity, in the Contempt they have shew'd of Death, (when the laying down of their Life has appeared to be their Duty) from the Love which they have owed to their Country.

Two remarkable Examples of this, give me leave to mention to you upon this occasion. The one is, of *Socrates* the divine Philosopher, who was brought into Question before a Judgment-Seat, as now I am, for maintaining that there was but one only true God, against the Multiplicity of the superstitious Heathen Gods; and he was so little in love with his own Life upon this Account, (wherein he knew the Right was on his Side) that he could not be persuaded by his Friends to make any Defence, but would chuse rather to put it upon the Conscience and Determination of his Judges, to decide that wherein he knew not how to make any Choice of his own, as to what would be best for him, whether to live or to die; he ingenuously professing, that for ought he knew, it might be much to his Prejudice and Loss, to endeavour longer Continuance in this bodily Life.

The other Example is that of a chief Governour*, that (to my best Remembrance) * *Codrus* had the Command of a City in *Greece*, which was besieged by a potent Enemy, and brought into unimaginable Straits. Hereupon the said Governour makes his Address to the Oracle, to know the Event of that Danger. The Answer was, *That the City should be safely preserved, if the chief Governour were slain by the Enemy*. He understanding this, immediately disguised himself, and went into the Enemies Camp, amongst whom he did so comport himself, that they unwittingly put him to death; by which means, immediately Safety and Deliverance arose to the City, as the Oracle had declared. So little was his Life in esteem with him, when the Good and Safety of his Country required the laying of it down.]

As to other pertinent Queries, thou mayest see them, Reader, in other Parts of this Trial.

That which remains as an *Appendix to the Bill of Exceptions*, is to lay before thee the Grounds which plainly shew that there was a downright Conspiracy in *Sir Henry Vane's* Tenants and others, to prosecute him for Life and Estate, under colour and pretence of Justice.

1. Presently after I was committed to the Tower for High-Treason, and made a close Prisoner, Mr. O-Neale, Sir *William Darcy*, and Dr. *Cradock*, obtained an Order from the King to seize and take into their Possession all the Estates of

of such Persons that were already, or should be forfeited to his Majesty.

Hereupon the said Mr. O-Neale and Sir William Darcy appointed some under them, in the Bishoprick of *Durham*, (by Name, *Thomas Bowes* Esquire, now deceased, and Captain *William Darcy*) to join with the said Dr. *Cradock*, to put in execution the said Warrant, as their Deputies; who thereupon went to *Raby-Castle*, and demanded the Rent-Books of *Thomas Mowbray* my Steward, offering him his Place under them, which he refused.

Contrary to this Proceeding, Sir *Edward Coke* expressly declares, 'That before Indictment, the Goods or other things of any Offender, can not be searched, inventoried, or in any sort seized; nor after Indictment, seized, moved or taken away before Conviction or Attainder, *Instit. Part. 3. Chap. 133*, concerning the Seizure of Goods, &c. for Offences, &c. before Conviction.'

2. At the Instance and Prosecution of my Tenants and others, an Order was made by the House of Commons (not of the Lords) requiring the Tenants of such Persons as were excepted out of the *General Pardon*, to detain their Rents in their own Hands. By pretence of this Order, (though that Parliament that made it, were dissolved) the Tenants refused to pay their respective Rents as they grew due, contrary to all Law and Equity; and joined together in open Defiance and Conspiracy against their Landlord.

3. The said Tenants (when legally prosecuted in his Majesty's Courts at *Westminster*, for the Recovery of the said Rents out of their Hands) did petition the late House of Commons to put a Stop to such legal Prosecution and Suits, which Motion of theirs put the House into a great Heat and Violence against me, inso-much as that they had almost passed a Vote to sequester all my Estate, though unheard or unconvicted.

4. *William Watson* of *Cock-field*, and other of the said Tenants, have continued in *London* to carry on this Conspiracy against me; by whose Means, with others, the King hath been importuned to send for Men from the Isle of *Scylly*, in order to this Trial.

5. By common Fame (which at least affords a strong Presumption) my Goods and Estate have been long begg'd by several Persons, and granted: whereas the begging of the Goods and Estate of any Delinquent, accused or indicted of Treason, before he be convicted and attainted, is utterly unlawful; because till then nothing is forfeited to the King, and so not his to dispose of; as Sir *Edward Coke* shews in the fore-mentioned Chapter about the Seizure of Goods, &c.

6. I am credibly informed, that about *December* last a certain Captain came from the Duke of *Albemarle* to Captain *Linn*, with threatening Language, that if he would not confess things against Sir *Henry Vane*, he should be fetched up before the Council, and made to do it. *Linn* answered, He knew nothing against Sir *Henry Vane*, nor had any Orders from him, but from the Parliament and Council.

The same Captain came again, about a Fortnight after, from the Duke of *Albemarle*, with a Parcel of fine Words, That if he the said *Linn* would testify, That Sir *Henry Vane* was in the

Head of his Regiment, and that he received Orders from him, the Duke of *Albemarle* would gratify him with any Civility he should desire. *Linn* replied, he knew no Regiment Sir *Henry Vane* had; but that it was the Parliament's and Council of State's Regiment. The same Captain came again to him from the Duke of *Albemarle*, and told him, the Duke desired him to testify Sir *Henry Vane*'s being in the Head of his Regiment, and that he received Orders from him to fight Sir *George Booth*. *Linn* replied, He knew no such things. The Captain told him as from the Duke, he should have any Place or Office in the Court: Be not afraid to speak, said he, I warrant you we shall hang Sir *Henry Vane*, for he is a Rogue.

7. I am credibly informed, That one of the Grand Jury declared, That after the Bill of Indictment against me was brought in, some from the King's Counsel came to desire them, they would please to come into the inward Court of Wards: Upon which, one of the Jury said, They were there to judge of Matters brought before them, and ought not to go in thither; but if the Counsel had any thing to say, they ought to come to them. This was seconded by some; others said, They were the King's Counsel, and it was but Matter of Civility to grant them their Request. Whereupon they went into the inward Court of Wards, where the King's Counsel were, to wit, Attorney-General *Palmer*, Solicitor-General *Finch*, Serjeant *Glynne* and Serjeant *Keeling*. After a while they caused all to withdraw but the Jury. Then the Clerk read the Indictment in the usual Form for levying War from 1659. After it was read, one of the Counsel told them, It was a Bill of High Treason against his Majesty, and they were to consider of it according to their Evidence. Then they proceeded to examine their Witnesses.

Jefford said, Sir *Henry Vane* offered him a Commission to go against Sir *George Booth*; which, said Serjeant *Keeling*, was to go against the King.

Wright being examined, Whether he saw Sir *Henry Vane* in the Council, said, Yes. The Attorney-General replied, That if he was amongst them, they might find the Bill upon that.

Upon this the Jury withdrew, and were by themselves. Then Sir *John Cropley*, the Foreman, said, *We must pass this Bill*: at which all the Jury were silent. At last, one stood up and said; 'This Bill contains Matter of Fact, and Matter of Law. Some of this Jury, to my Knowledge, were never of any Jury before, as well as I, therefore ignorant of the Law, (in so difficult and unusual a Point as this is) and consequently could not give in their Verdict, as to Law, but only Fact.' Several others of the Jury seconded him in this; and protested against giving in their Verdict, as to Matter of Law: Notwithstanding all which, the Bill was carried up to the King's-Bench.

8. On the Day of my Arraignment, an eminent Person was heard to say, I had forfeited my Head, by what I said that Day, before ever I came to my Defence: What that should be, I know not, except my saying in open Court, *Sovereign Power of Parliament*, which the Attorney-General writ down, after he had promised, at my Request, no Exceptions should be taken

at Words. And whole Volumes of Lawyers Books pass up and down the Nation with that Title, *Sovereign Power of Parliaments*.

9. Six moderate Men that were like to consider of what they did, before they would throw away my Life, were summoned to be of my Petty-Jury; which the King's Counsel hearing, writ a Letter to one of the Sheriffs not to summon them: And a new List was made the Night immediately before the Day of Verdict, on purpose that the Prisoner might not have any Knowledge of them, till presented to his View and Choice in *Westminster-Hall*. Yet one of the Forty-eight of this List, (who said, He would have starv'd himself before he would have found Sir *Henry Vane* guilty of Treason) was never called, though he walked in the Hall all the while. And in that Hurry of those that compassed him about, he being alone, stripp'd of all Assistance, Sir *William Roberts*, Foreman, and Sir *Christopher Abdy*, were sworn by the Court, before I was aware; so my challenging them, might seem a personal Disobliging, and Exasperation of them against me, after they were sworn and fixed.

The Solicitor also had a long Whisper with the Foreman of the Jury in the Court, before they went to Verdict, telling him, *The Prisoner must be sacrificed for the Nation, &c.*

Suddenly after which, I am here called to receive my Sentence.

10. After the Day of my Trial, the Judges went to *Hampton-Court*.

11. None were more forward to absolve the King from his Grant about my Life, than they that had appeared most forward in promoting the Bill by way of Petition to the King for it. This Grant being upon Record, may seem to have the same Validity that other Acts of Parliament have; which are still but the two Houses Petition to the King for his Assent to the Bills by them drawn up and passed. They used this as a Means to induce the King to exempt me from all Benefit of the Act of Indemnity and Oblivion; and then at last persuade and absolve him from making good this Grant also, thereby depriving me of all visible Relief for my Life. I conceived my Life as secure by that Grant, as others Lives or Estates are by the Act of Indemnity it self; for what is that, but the Bill of both Houses, with the King's Assent to it, upon their Petition?

The Petition of both Houses of Parliament to the King's most Excellent Majesty, on the behalf of Sir Henry Vane, and Colonel John Lambert, after they left them incapable of having any Benefit of the Act of Indemnity.

To the King's most Excellent Majesty;

The humble Petition of the Lords and Commons assembled in Parliament,

Sheweth,

‘**T**HAT your Majesty having declared your gracious Pleasure to proceed only against the immediate Murderers of your Royal Father: We your Majesty's most humble Sub-

jects, the Lords and Commons assembled, not finding Sir *Henry Vane* nor Col. *Lambert* to be of that Number, are humble Suitors to Your Majesty, that if they shall be attainted, That Execution, as to their Lives, may be remitted.

And as in Duty bound, &c.

The said Petition being read, it was agreed to, and ordered to be presented to his Majesty by the Lord Chancellor.

The Lord Chancellor reported, That he had presented the Petition of both Houses to the King's Majesty, concerning Sir *Henry Vane* and Col. *Lambert*, and his Majesty grants the Desires in the said Petition.

John Brown, Cler. Parliamentorum.]

Whereupon the usual Sentence was pronounced against him.

After Sentence, Chief Justice *Forster* endeavour'd to persuade the King, that he lay under no Obligation by Granting the Petition of both Houses, saying, *That God, tho' full of Mercy, yet intended his Mercy only for the Penitent.*

By which means the King was wrought on, (notwithstanding his Engagement to the contrary,) to Sign a Warrant for his Execution, that he should be Beheaded on *Tower-Hill* the 14th of *June*.

The Day before his Execution his Friends had liberty to visit him, he receiv'd them with very great Chearfulness; and when they would have persuaded him to make some Submission to the King, and to endeavour the obtaining of his Life; he said, *If the King did not think himself more concern'd for his Honour and Word, than he did for his Life, he was very willing they should take it. Nay, I declare (said he) that I value my Life less in a good Cause, than the King can do his Promise.* And when some others were speaking to him, of giving some thousands of Pounds for his Life; he said, *If a thousand Farthings would gain it, he would not give it: And if any should attempt to make such a Bargain, he would spoil their Market: For I think the King himself is so sufficiently obliged to spare my Life, that it is fitter for him to do it, than my self to seek it,*

On Saturday, the Day of his Execution, he said to a Friend, God bid *Moses* go to the top of *Mount Pisgah* and die: So he bid him go up to the top of *Tower-Hill* and die.

Several Friends being with him in his Chamber this Morning, he oft encouraged them to Chearfulness, as well by his Example as Expression. In all his Deportment, he shew'd himself marvellously fitted to meet the King of Terrors, without the least Affrightment. But to shew where his Strength lay, he said, He was a poor unworthy Wretch, and had nothing but the Grace and Goodness of God to depend upon. He said moreover, Death shrunk from him, rather than he from it. Upon the Occasion of parting with his Relations, he said, there is some Flesh remaining yet, but I must cast it behind me, and press forward to my Father.

Then one of the Sheriff's Men came in and told him, There was no Sled to come, but he was to walk on Foot.

He

He told his Friends, the Sheriff's Chaplain came to him at Twelve of the Clock that Night, with an Order for his Execution, telling him, he was come to bring him that fatal Message of Death. I think, Friends, that in this Message was no Dismalness at all. After the Receipt of which, I slept four Hours so soundly, that the Lord hath made it sufficient for me, and now I am going to sleep my last, after which I shall need Sleep no more.

Then Mr. Sheriff coming into the Room, was friendly saluted by him, and after a little Pause, communicated a Prohibition that he said he had receiv'd, which was, That he must not speak any thing against his Majesty, or the Government. His Answer to this he himself relates on the Scaffold. He further told Mr. Sheriff, he was ready; but the Sheriff said, he was not, nor could be this half hour yet; Then, Sir, it rests on you, not on me (said Sir Henry) for I have been ready this half hour. Then the Sheriff, at his Request, promised him his Servants should attend him on the Scaffold, and be civilly dealt with; neither of which were performed; for (notwithstanding this Promise) they were beaten and kept off the Scaffold, till he said, What, have I never a Servant here?

After this, one of the Sheriff's Men came and told him, there must be a Sled; to which Sir Henry replied, Any way, how they please, for I long to be at home, to be dissolved and to be with Christ, which is best of all. He went very chearfully and readily down the Stairs from his Chamber, and seated himself on the Sled, (Friends and Servants standing about him) then he was forthwith drawn* away towards the Scaffold. As he went, some in the Tower (Prisoners as well as others) spake to him, praying the Lord to go with him. And after he was out of the Tower, from the tops of Houses, and out of Windows, the People used such Means and Gestures as might best discover, at a distance, their Respects and Love to him, crying aloud, The Lord go with you, the great God of Heaven and Earth appear in you, and for you; whereof he took what Notice he was capable in those Circumstances, in a chearful manner accepting their Respects, putting off his Hat and bowing to them. Being ask'd several times, how he did, by some about him, he answer'd, Never better in all my life. Another replied, How should he do ill that suffers for so glorious a Cause? To which a tall black Man said, Many suffer'd for a better Cause; And may for a worse, said Sir Henry; wishing, That when they come to seal their *better Cause* (as he call'd it) with their Blood (as he was now going to seal his) they might not find themselves deceiv'd; and as to this Cause, said he, it hath given Life in Death to all the Owners of it, and Sufferers for it.

Being pass'd within the Rails on *Tower-hill*, there were loud Acclamations of the People, crying out, The Lord Jesus go with your dear Soul, &c. One told him, That was the most glorious Seat he ever sat on; he answer'd, It is so indeed, and rejoiced exceedingly.

Being come to the Scaffold, he chearfully ascends, and being up, after the Crowd on the Scaffold was broken in two pieces, to make way for him, he shew'd himself to the People on the

front of the Scaffold, with that noble and christian-like Deportment, that he rather seem'd a Looker on, than the Person concern'd in the Execution, insomuch that it was difficult to persuade many of the People that he was the Prisoner. But when they knew that the Gentleman in the black Suit and Cloak (with a scarlet silk Waistcoat, the victorious Colour shewing itself at the Breast) was the Prisoner, they generally admir'd that noble and great Presence he appeared with. How chearful he is! said some; He does not look like a dying Man! said others; with many like Speeches, as astonished with that strange Appearance he shined forth in.

Then (Silence being commanded by the Sheriff) lifting up his Hands and Eyes towards Heaven, and resting his Hands on the Rails; and taking a very serious, composed, and majestick View of the great Multitude about him, he spake as follows.

Gentlemen, Fellow-Countrymen, and Christians,

WHEN Mr. Sheriff came to me this Morning, and told me he had receiv'd a Command from the King, that I shou'd say nothing reflecting upon his Majesty or the Government; I answer'd, I shou'd confine and order my Speech, as near as I could, so as to be least offensive, saving my Faithfulness to the Trust reposed in me, which I must ever discharge with a good Conscience unto Death; for I ever valued a Man according to his Faithfulness to the Trust reposed in him, even on his Majesty's Behalf, in the late Controversy. And if you dare trust my Discretion, Mr. Sheriff, I shall do nothing but what becomes a good Christian and an *Englishman*; and so I hope I shall be civilly dealt with.

When Mr. Sheriff's Chaplain came to me last Night about twelve of the Clock, to bring me, as he call'd it, the fatal Message of Death, it pleased the Lord to bring that Scripture to my Mind in the third of *Zechary*, to intimate to me, that he was now taking away my filthy Garments, causing my Iniquities to pass from me, with intention to give me change of Rayment, and that my Mortal should put on Immortality.

I suppose you may wonder when I shall tell you that I am not brought hither according to any known Law of the Land. It is true, I have been before a Court of Justice (and am now going to appear before a greater Tribunal, where I am to give an Account of all my Actions) under their Sentence I stand here at this time. When I was before them, I could not have the Liberty and Privilege of an *Englishman*, the Grounds, Reasons, and Causes of the Actings I was charg'd with duly consider'd; I therefore desir'd the Judges that they would set their Seals to my Bill of Exceptions; I press'd hard for it again and again, as the Right of my self and every free-born *Englishman*, by the Law of the Land, but was finally deny'd it——

Here Sir John Robinson (Lieutenant of the Tower) interrupted him, saying; Sir, you must not go on thus, and (in a furious manner, generally observ'd even to the Dissatisfaction of some of their own Attendants) said that he rail'd against the Judges, and that it was a Lye, and I am here, says he, to testify that it is false.

* A Circumstance very singular, and never used to those, who die at that place.

Sir *Henry Vane* replied, God will judge between me and you in this Matter. I speak but Matter of Fact, and cannot you bear that? 'Tis evident the Judges have refus'd to sign my Bill of Exceptions——Then the Trumpets were order'd to sound or murre in his Face, with a contemptible Noise, to hinder his being heard: At which Sir *Henry* (lifting up his Hand, and then laying it on his Breast) said, What mean you, Gentlemen? Is this your usage of me? Did you use all the rest so? I had even done, as to that, could you have been patient, but seeing you cannot bear it, I shall only say this, *That whereas the Judges have refused to seal that with their Hands that they have done, I am come to seal that with my Blood that I have done.* Therefore leaving this Matter, which I perceive will not be borne, I judge it meet to give you some Account of my Life.

I might tell you I was born a Gentleman, had the Education, Temper, and Spirit of a Gentleman, as well as others, being (in my youthful Days) inclin'd to the Vanities of this World, and to that which they call *Goodfellowship*, judging it to be the only means of accomplishing a Gentleman. But about the fourteenth or fifteenth Year of my Age (which is about thirty-four or five Years since) God was pleas'd to lay the Foundation or Ground-work of Repentance in me, for the bringing me home to himself, by his wonderful, rich, and free Grace, revealing his Son in me, that by the Knowledge of the only true God, and Jesus Christ whom he hath sent, I might (even whilst here in the Body) be made Partaker of eternal Life in the first Fruits of it.

When my Conscience was thus awaken'd, I found my former Course to be Disloyalty to God, Prophaneness, and a way of Sin and Death, which I did with Tears and Bitterness bewail, as I had cause to do. Since that Foundation of Repentance laid in me, through Grace I have been kept stedfast, desiring to walk in all good Conscience towards God and towards Men, according to the best Light and Understanding God gave me. For this I was willing to turn my Back upon my Estate, expose myself to Hazards in foreign Parts; yea, nothing seem'd difficult to me, so I might preserve Faith and a good Conscience, which I prefer before all things; and do earnestly persuade all People rather to suffer the highest Contradictions from Men, than disobey God, by contradicting the Light of their own Conscience. In this it is I stand with so much Comfort and Boldness before you all this Day, and upon this Occasion, being assur'd that I shall at last sit down in Glory with Christ, at his right Hand. I stand here this Day to resign up my Spirit into the Hands of that God that gave it me. Death is but a little Word, but 'tis a great Work to die, it is to be but once done, and after this cometh the Judgment, even the Judgment of the great God, which it concerns us all to prepare for. And by this Act I do receive a Discharge once for all out of Prison, even the Prison of the mortal Body also, which, to a true Christian, is a burdensome Weight.

In all respects, wherein I have been concern'd and engag'd, as to the Publick, my Design hath been to accomplish good Things for these Nations. Then (lifting up his Eyes, and spreading his Hands) he said, I do here appeal to the great

God of Heaven, and all this Assembly, or any other Persons, to shew wherein I have defiled my Hands with any Man's Blood or Estate, or that I have sought myself in any publick Capacity or Place I have been in.

The Cause was three times stated.

First, In the Remonstrance of the House of Commons.

Secondly, In the Covenant, the Solemn League and Covenant——Upon this the Trumpets sounded, the Sheriff catch'd at the Paper in his Hand; and Sir *John Robinson*, who at first had acknowledg'd that he had nothing to do there, wishing the Sheriff to see to it, yet found himself something to do now, furiously calling for the Writers Books, and saying, He treats of Rebellion, and you write it. Hereupon six Note-Books were deliver'd up. The Prisoner was very patient and composed under all these Injuries, and Soundings of the Trumpets several times in his Face, only saying, 'Twas hard he might not be suffer'd to speak; but, says he, my Usage from Man is no harder than was my Lord and Master's; and all that will live his Life this Day, must expect hard Dealing from the worldly Spirit——The Trumpets sounded again, to hinder his being heard. Then again *Robinson*, and two or three others, endeavour'd to snatch the Paper out of Sir *Henry's* Hand; but he kept it for a while, now and then reading part of it; afterwards, tearing it in peices, he deliver'd it to a Friend behind him, who was presently forc'd to deliver it to the Sheriff. Then they put their Hands into his Pockets for Papers (as was pretended) which bred great Confusion and Dissatisfaction to the Spectators, seeing a Prisoner so strangely handled in his dying Words.

The Prisoner suspecting beforehand the Disorder aforementioned, writ the main Substance of what he intended to speak on the Scaffold in that Paper they catch'd at, and which he tore in pieces, delivering it to a Friend, from whom the Sheriff had it, as abovesaid; the true Copy whereof was, by the Prisoner, carefully committed to a safe Hand before he came to the Scaffold, which take as follows.

The Work which I am at this time call'd unto, in this Place (as upon a publick Theatre) is to die, and receive a Discharge once for all, out of Prison, to do that which is but once to be done; the doing or not doing of which well, and as becomes a Christian, does much depend upon the Life we have been taught of God to lead, before we come to this: They that live in the Faith do also die in it; Faith is so far from leaving Christians in this Hour, that the Work of it breaks forth then into its greatest Power, as if till then it were not enough at freedom to do its Office, that is, to look into the things that are unseen with most Stedfastness, Certainty, and Delight, which is the great Sweetner of Death and Remover of its Sting.

Give me leave therefore, in a very few words, to give you an Account of my Life, and of the wonderful great Grace and Mercy of God, in bringing me home to himself, and revealing his Son in me; that by the Knowledge of the only true God, and Jesus Christ whom he hath sent, I might (even whilst here in the Body) be made Partaker of eternal Life, in the first Fruits

of it, and at last sit down with Christ in Glory at his right Hand.

Here I shall mention some remarkable Passages and Changes of my Life; in particular, how unsought for by myself I was call'd to be a Member of the *long Parliament*, what little Advantage I had by it, and by what Steps I became satisfied with the Cause I was engag'd in, and did pursue the same.

What the Cause was, did first shew itself in the first *Remonstrance of the House of Commons*.

Secondly, In *The Solemn League and Covenant*.

Thirdly, In the more refin'd pursuit of it by the *Commons House*, in their *Actings single*; with what Result they were growing up into, which was in the Breast of the House, and unknown; or what the three Proposals, mention'd in my Charge, would have come to at last, I shall not need now to say; but only, from all put together, to assert, That this Cause, which was owned by the Parliament, was the Cause of God, and for the promoting of the Kingdom of his dear Son Jesus Christ, wherein are comprehended our Liberties and Duties, both as Men and as Christians.

And since it hath pleased God, who separated me from the Womb to the Knowledge and Service of the Gospel of his Son, to separate me also to this hard and difficult Service at this time, and to single me out to the Defence and Justification of this his Cause, I could not consent, by any Words or Actions of mine, that the Innocent Blood that hath been shed in the Defence of it, throughout the whole War (the Guilt and moral Evil of which must and does certainly lie somewhere) did lie at my Door, or at theirs that have been the faithful Adherers to this Cause. This is with such Evidence upon my Heart, that I am most freely and chearfully willing to put the greatest Seal to it I am capable, which is, the pouring out of my very Blood in witness to it; which is all I shall need to say in this Place and at this Time, having spoken at large to it in my Defence at my Tryal, intending to have said more the last Day, as what I thought was reasonable for Arrest of the Judgment, but I was not permitted then to speak it; both which may, with Time and God's Providence, come to publick View.

And I must still assert, that I remain wholly unsatisfied that the Course of Proceedings against me at my Trial were according to Law, but that I was run upon and destroy'd, contrary to Right, and the Liberties of *Magna Charta*, under the Form only of Justice; which I leave to God to decide, who is the Judge of the whole World, and to clear my Innocency; whilst in the mean time I beseech him to forgive them, and all that have had a Hand in my Death; and that the Lord, in his great Mercy, will not lay it to their Charge.

And I do account the Lot of mine no other, than what is to be expected by those that are not of the World, but whom Christ hath chosen out of it; for the Servant is not greater than his Lord: And if they have done this to the green Tree, they will do it much more to the dry.

However, I shall not altogether excuse myself. I know, that by many Weaknesses and Failures, I have given occasion enough of the ill Usage I have met with from Men, tho' in the main, the Lord knows the Sincerity and Integrity of

my Heart, whatever Aspersions and Reproaches I have or do lie under. I know also that God is just in bringing this Sentence and Condemnation upon me for my Sins; there is a Body of Sin and Death in me deserves this Sentence; and there is a Similitude and Likeness also, that, as a Christian, God thinks me worthy to bear with my Lord and Head, in many Circumstances, in reference to these Dealings I have met with; in the Good I have been endeavouring for many Years to be doing in these Nations, and especially now at last, in being numbred among Transgressors, and made a publick Sacrifice, thro' the Wrath and Contradictions of Men, and in having finished my Course, and fought the good Fight of Faith, and resisted in a Way of Suffering, (as you see) even unto Blood.

This is but the needful Preparation the Lord hath been working in me, to the receiving of the Crown of Immortality, which he hath prepar'd for them that love him. The Prospect whereof is so chearing, that thro' the Joy (in it) that is set before the Eyes of my Faith, I can, thro' Mercy, *endure the Cross, despise this Shame*, and am become more than Conqueror, thro' Christ that hath loved me.

For my Life, Estate and all, is not so dear to me as my Service to God, to his Cause, to the Kingdom of Christ, and the future Welfare of my Country; and I am taught, according to the Example, as well as that most Christian Saying of a noble Person, * that lately died after this publick Manner in Scotland; *How much better is it to chuse Affliction and the Cross, than to sin or draw back from the Service of the living God, into the Ways of Apostacy and Perdition?*

That noble Person, whose Memory I honour, was with myself at the beginning and making of the *Solemn League and Covenant*; the Matter of which, and the holy Ends therein contain'd, I fully assent unto, and have been as desirous to observe; but the rigid Way of prosecuting it, and the oppressing Uniformity that hath been endeavour'd by it, I never approv'd.

This were sufficient to vindicate me from the false Aspersions and Calumnies which have been laid upon me, of *Jesuitism* and *Popery*, and almost what not, to make my Name of ill Savour with good Men; which dark Mists do now dispel of themselves, or at least ought, and need no Pains of mine in making an Apology.

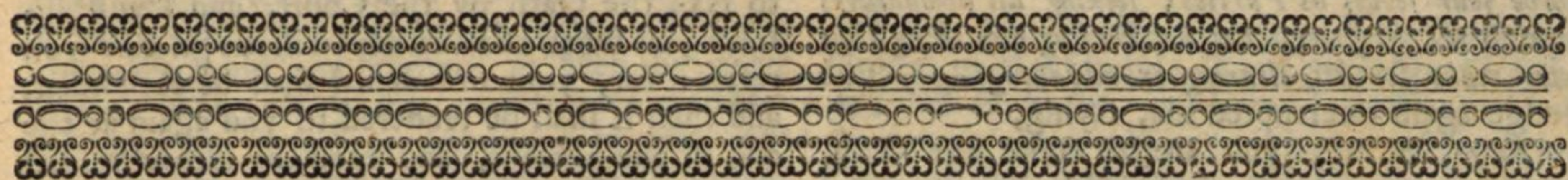
For if any Man seek a Proof of Christ in me, let him read it in this Action of my Death, which will not cease to speak when I am gone; *And henceforth let no Man trouble me, for I bear in my Body the Marks of the Lord Jesus.*

I shall not desire in this Place to take up much time, but only, as my last Words, leave this with you: *That as the present Storm we now lie under, and the dark Clouds that yet hang over the reformed Churches of Christ, (which are coming thicker and thicker for a Season) were not unforeseen by me for many Years past (as some Writings of mine declare): So the coming of Christ in these Clouds, in order to a speedy and sudden Revival of his Cause, and spreading his Kingdom over the Face of the whole Earth, is most clear to the Eye of my Faith, even that Faith in which I die, whereby the Kingdoms of this World shall become the Kingdom of our Lord, and of his Christ. Amen. Even so, come Lord Jesus.*

* He seems to intend the Marquis of Argyle, who spake to that effect.

Before the Stroke, he spake to this Effect: *I bless the Lord, who hath accounted me worthy to suffer for his Name. Blessed be the Lord that I have kept a Conscience void of Offence to this Day. I bless the Lord I have not deserted the righteous Cause, for which I suffer.*

When he had laid his Neck on the Block he concluded his Life with these Words; *Father, glorify thy Servant in the Sight of Men, that he may glorify thee in the Discharge of his Duty to thee and to his Country.* Upon which the Executioner did his Office.



LIX. *The Trial of JOHN CROOK, ISAAC GREY and JOHN BOLTON, Quakers, at the Old Baily, for refusing to take the Oaths of Allegiance and Supremacy, June 25, 1662. 14 Car. II. Related by John Crook.*

BEING in *John's Street, London*, about the 13th day of the 3d Month called *May*, with some others of the People of God to wait upon him, as we were sat together, there came in a rude Man called *Miller* with a long Cane in his Hand, who laid violent hands upon me, with some others; who having no Warrant were not willing to meddle, but as his threatnings prevailed, they being afraid of him, joined with him to carry us before Justice *Powel*, who the next Day sent us to the Sessions at *Hicks's-Hall*, where after some discourse several times with them, manifesting to them the Illegality both of our Commitment and their Proceedings thereupon, yet notwithstanding they committed me, together with *Isaac Grey* and *John Bolton*, to *New-Prison*, where we continued for some Days, and were then removed to *Newgate*, where we remained until the Sessions at the *Old Baily*; when I was brought to the Bar.

* Sir Robert Forster.

* Chief Judge. *John Crook*, when did you take the Oath of Allegiance?

J. Crook. I desire to be heard.

Chief Judge. Answer to the Question, and you shall be heard.

J. Crook. I have been about six Weeks in Prison, and am I now called to accuse my self? For the answering to this Question in the Negative is to accuse my self, which you ought not to put me upon; for, *nemo debet seipsum prodere*. I am an *Englishman*, and by the Law of *England* I ought not to be taken nor imprisoned, nor disseized of my Freehold, nor called in question, nor put to answer, but according to the Law of the Land; which I challenge as my Birth-right, on my own behalf, and all that hear me this day (or words to this purpose.) I stand here at this Bar as a Delinquent, and do desire that my Accuser may be brought forth to accuse me for my Delinquency, and then I shall answer to my Charge (if any I be guilty of.)

Chief Judge. You are here demanded to take the Oath of Allegiance, and when you have done that, then you shall be heard about the

other; for we have power to tender it to any Man.

J. Crook. Not to me upon this occasion, in this place; for I am brought hither as an Offender already, and not to be made an Offender here, or to accuse my self; for I am an *Englishman*, as I have said to you, and challenge the benefit of the Laws of *England*; for by them, is a better Inheritance derived to me as an *Englishman*, than that which I receive from my Parents; for by the former the latter is preserved: and this the 29th Chapter of *Magna Charta*, and the *Petition of Right*, mentioned in the 3d of *Car. I.* and in other good Laws of *England*; and therefore I desire the benefit and observance of them: And you that are Judges upon the Bench ought to be my Counsel, and not my Accusers, but to inform me of the benefit of those Laws; and wherein I am ignorant you ought to inform me, that I may not suffer through my own ignorance of those advantages which the Laws of *England* afford me as an *Englishman*.

Chief Judge. We sit here to do Justice, and are upon our Oaths, and we are to tell you what is Law, and not you us: Therefore, Sirrah, you are too bold.

J. Crook. Sirrah is not a Word becoming a Judge; for I am *no Felon*; neither ought you to menace the Prisoner at the Bar: for I stand here arraigned as for my Life and Liberty, and the Preservation of my Wife and Children, and outward Estate, (they being now at the stake;) Therefore you ought to hear me to the full what I can say in my own Defence, according to Law, and that in its season, as it is given me to speak: Therefore I hope the Court will bear with me, if I am bold to assert my Liberty as an *Englishman* and as a *Christian*: and if I speak loud, it is my Zeal for the Truth, and for the Name of the Lord; and mine Innocency makes me bold—

Judge. It is an evil Zeal. [Interrupting *John Crook*.]

J. Crook. No, I am bold in the Name of the Lord God Almighty, the everlasting Jehovah, to assert the Truth, and stand as a Witness for it:

Let my Accuser be brought forth, and I am ready to answer any Court of Justice——

Then the Judge interrupted me, saying, *Sirrah*, with some other Words I do not remember: But I answered, *You are not to threaten me, neither are those Menaces fit for the mouth of a Judge: for the Safety of a Prisoner stands in the Indifferency of the Court; And you ought not to behave your selves as Parties; seeking all advantages against the Prisoner, but not beeding any thing that may make for his clearing or advantage*——The Judge again interrupted me, saying,

Judge. *Sirrah*, you are to take the Oath, and here we tender it you [*bidding me to read it.*]

J. Crook. Let me see mine Accuser, that I may know for what Cause I have been six weeks imprisoned; and do not put me to accuse my self by asking me Questions; but either let my Accuser come forth, or otherwise let me be discharged by Proclamation, as you ought to do——*Here I was interrupted again.*

Judge Twisden. We take no notice of your being here otherwise than of a Stragler, or as any other Person, or of the People that are here this day; for we may tender the Oath to any Man. *And another Judge spake to the like purpose.*

J. Crook. I am here at your Bar as a Prisoner restrained of my Liberty, and do question whether you ought in Justice to tender me the Oath on the account I am now brought before you, because I am supposed to be an Offender, or else why have I been six Weeks in Prison already? let me be cleared of my Imprisonment, and then I shall answer to what is charged against me, and to the Question now propounded; for I am a lover of Justice with all my Soul, and am well known by my Neighbours where I have lived, *to keep a Conscience void of Offence both towards God, and towards Man.*

Judge. *Sirrah*, leave your Canting.

J. Crook. Is this Canting, to speak the words of the Scripture?

Judge. It's Canting in your mouth, though they are *St. Paul's* words.

J. Crook. I speak but the Words of the Scripture, and it is not Canting though I speak them, but they are Words of truth and soberness in my Mouth, they being witnessed by me, and fulfilled in me.

Judge. We do ask you again, whether you will take the Oath of Allegiance? it is but a short Question, you may answer it if you will.

J. Crook. By what Law have you Power to tender it? *Then, after some Consultation together by whispering, they called for the Statute-Book, and turning over the leaves, they answered,*

Judge. By the 3d of King James.

J. Crook. I desire that Statute may be read; for I have consulted it, and do not understand that you have Power by that Statute to tender me the Oath, being here before you in this place upon this Occasion, as a Delinquent already; and therefore I desire the Judgment of the Court in this Case, and that the Statute may be read.

Then they took the Statute-Book and consulted together upon it, and one said; We are the Judges of this Land, and do better understand our Power than you do, and we do judge we may lawfully do it.

J. Crook. Is this the Judgment of the Court?

Judge. Yes.

J. Crook. I desire the Statute to be read that impowers you to tender the Oath to me upon this Occasion in this Place; for, *Vox audita perit, sed litera scripta manet*, therefore let me hear it read.

Judge. Hear me.

J. Crook. I am as willing to hear as to speak.

Judge. Then hear me: You are here required to take the Oath by the Court, and I will inform you what the Penalty will be in case you refuse: for, your first denial shall be Recorded; and then it shall be tendered to you again at the end of the Sessions, and upon the second refusal you run a *Premunire*, which is the forfeiture of all your Estate (if you have any) and Imprisonment during Life.

J. Crook. It is Justice I stand for; let me have Justice, in bringing my Accuser face to face, as by Law you ought to do, I standing at your Bar as a Delinquent; and when that is done, I will answer to what can be charged against me, as also to the Question; until then I shall give no other Answer than I have already done, (at least at present.)

Then there was a Cry in the Court *Take him away*, which occasioned a great interruption, and *J. Crook* spake to this purpose, saying, Mind the Fear of the Lord God, that you may come to the knowledge of his Will, and do Justice; and take heed of oppressing the Innocent, for the Lord God of Heaven and Earth will assuredly plead their Cause: and for my part, I desire not the hurt of one of the Hairs of your Heads, but let God's Wisdom guide you. *These words he spake at the Bar, and as he was carrying away.*

On the sixth Day of the Week in the forenoon, the Court being sate, John Crook was called to the Bar.

Chief Judge. Friend Crook, We have given you time to consider of what was said yesterday to you by the Court, hoping you may have better considered of it by this time: therefore, without any more Words, will you take the Oath? *and called to the Clerk, and bid him read it.*

J. Crook. I did not, neither do I deny Allegiance, but do desire to know the Cause of my so long Imprisonment; for, as I said, I stand at your Bar as a Delinquent, and am brought hither by Force, contrary to the Law; therefore let me see my Accuser, or else free me by Proclamation, as I ought to be, if none can accuse me: For the Law is grounded upon right Reason, and whatsoever is contrary to right Reason, is contrary to Law; and therefore if no Accuser appear, you ought to acquit me first, and then I shall answer, as I have said, if any new Matter appear, otherwise it is of force, and that our Law abhors, and you ought not to take Notice of my so being before you; for what is not legally so, is not so; and therefore I am in the condition, as if I were not before you: and therefore it cannot be supposed in right Reason, that you have now Power at this time, and in this place, legally to tender me the Oath.

Judge. Read the Oath to him. [*And so the Clerk began to read.*]

J. Crook. I desire Justice according to the Laws of England: for you ought first to convict me concerning the Cause of my so long Imprisonment: for you are to proceed according to

Laws

Laws already made, and not to make Laws; for you ought to be Ministers of the Law.

Judge. You are a saucy and an impudent Fellow; will you tell us what is Law in our duties? *Then said he to the Clerk, Read on; and when the Clerk had done reading,*

J. Crook said, Read the Preface to the Act; I say again, read the Title and Preamble to the Act; for Titles to Laws are *Claves Legum*, as Keys to open the Law; for by their Titles Laws are understood and known, as Men by their Faces. *Then the Judges would have interrupted me, but I said as followeth,* If you will not hear me, nor do me Justice, I must appeal to the Lord God of Heaven and Earth, who is Judge of quick and dead, before whom we shall all appear to give an account for the deeds done in the Body; for he will judge between you and me this day, whether you have done me Justice or not.

These Words following (or the like) I spake as going from the Bar, being pulled away, *viz.* Mind the Fear of the Lord God, that you may do Justice, lest you perish in his Wrath: For sometimes the Court cryed, *Pull him away*, and then said, *Bring him again*; and thus they did several times, like Men in confusion and disorder.

The same day in the afternoon, Silence being made, *John Crook* was called to the Bar before the Judges and Justices aforesaid: the Indictment being read, the Judge said,

Mr. Crook, You have heard your Indictment, what say you, are you Guilty, or Not Guilty?

J. Crook, I desire to speak a few Words in Humility and Soberness, in regard my Estate and Liberty lyes at stake, and am like to be a Precedent for many more; therefore I hope the Court will not deny me the right and benefit of the Law, as being an *Englishman*; I have some Reason, before I speak any thing to the Indictment, to demand and tell you, that I desire to know mine Accusers; I have been kept this six Weeks in Prison, and know not, nor have seen the Faces of them.

Judge. We shall afford you the Right of the Law as an *Englishman*, God forbid you should be denied it; but you must answer first, Guilty, or Not Guilty, that so in your Trial you may have a fair Hearing and Pleading; but if you go on as you do (and will not answer Guilty, or Not Guilty) you will run your self into a *Premunire*, and then you lose the benefit of the Law, and expose your self, Body and Estate, to great Hazards; and whatever Violence is offered to your Person or Estate, you are out of the King's Protection, and lose the Benefit of the Law, and all this by your not answering Guilty, or Not Guilty: if you plead Not Guilty, you may be heard.

J. Crook. It is recorded in the Statutes of the 28 *Edw.* 3 and 3. and 42 *Edw.* 3, and 3. in these Words, *No Man is to be taken, or imprisoned, or be put to answer without Presentment before Justices, or matter of Record, or by due Process, or Writ original, according to the old Law of the Land; and if any thing from henceforth be done to the contrary, it shall be void in Law, and holden for Error:* and also in the 25 of *Edw.* 1. 2. and the 3 *Car.* 1. and the 29 cap. *Mag. Chart.* *No Freeman shall be taken and imprisoned but by the Law of the Land;* These words [*The Law of the Land*] are explained by the Statute of 37 *Edw.* 3, 8. to be

without due process of Law: and if any Judgments be given contrary to *Mag. Chart.* they are void; 25 *Edw.* 1, 2.

Judge. *Mr. Crook*, you are out of the way, and do not understand the Law; though you adore the Statute Law so much, yet you do not understand it.

J. Crook. I would have you tell me the right way.

Judge. *Mr. Crook*, hear me. You must say, Guilty, or Not Guilty; If you plead Not Guilty, you shall be heard, and know how far the Law favors you. And the next thing is, there is no Circumstance whatsoever that is the Cause of your Imprisonment that you question, but you have, as a Subject, your Remedies, if you will go this way, and wave other Things, and answer Guilty, or Not Guilty; and what the Law affords you, you shall have, if you do what the Law requires you, or else you will lose the Benefit of the Law, and be out of the King's Protection.

J. Crook. Observe how the Judge would draw me into a Snare, *viz.* by first pleading Guilty, or Not Guilty; and when I have done so, he and his Brethren intend suddenly to put me (as an Out-law'd Person) out of the King's Protection; and how then can I have remedy for my false Imprisonment? Therefore first clear me, or condemn me for my false Imprisonment, while I am in a capacity to have the Benefit of the Law, and not to Out-law me for an Offence created by your selves; and then to stop my Mouth, you tell me, that if I have been wronged or false imprisoned, I may have my Remedy afterwards; this is to trapan me, and contrary to both Law and Justice, &c.

Judge. You must plead Guilty, or Not Guilty.

J. Crook. I do desire in Humility and Meekness to say, I shall not, I dare not betray the honesty of my Cause, and the honest Ones of this Nation, whose Liberty I stand for as well as my own, as I have cause to think I shall, if I plead to the present Indictment before I see the Faces of my Accusers; for truly, I am not satisfied in my Judgment and Conscience that I ought to plead to a created Offence by you, before I be first acquitted of the Cause of my being brought Prisoner to your Bar, and therefore it sticks with me to urge this further, *viz.* That I may see my Accusers. — *Interruption.*

Judge. The errantest Thief may say he is not satisfied in his Conscience.

J. Crook. My Case is not theirs, yet they have their Accusers; and may not I call for mine? and therefore call for them, for you ought to do so, as Christ said to the Woman, (*Woman, where are thine Accusers?*) so you ought to say to me, (*Man, where are thine Accusers?*) — *Interrupted.*

Judge. Your Indictment is your Accuser, and the Grand Jury hath found you Guilty, because you did not Swear; what say you, *Mr. Crook*, are you Guilty or Not Guilty? If you will not answer, or what you have said be taken for your Answer, as I told you before, you lose the Benefit of the Law; and what I tell you is for your good.

J. Crook. What is for good I hope I shall take it so.

Judge. If you will not answer, you run your self into a *Premunire*, and you will lose the Benefit

nefit of the Law, and of the King's Protection, unless you plead Guilty, or Not Guilty.

J. Crook. I stand as brought forcibly and violently hither, neither had I been here but by a violent Action, and that you should take no Notice of it, seems strange to me; and not only so, but that you should hasten me so fast into a course that I should not be able any ways to help my self, by reason of your so hasty and fast Proceedings against me to put me out of the King's Protection, and the Benefit of all Law; was ever the like known or heard of in a Court Justice!

Judge. Friend, this is not here in Question, whether you are unjustly brought here, or not; Do you question that by Law, but not disable your self to take Advantage by the Law; if brought by a wrong hand, you have a Plea against them, but you must first answer Guilty, or Not Guilty.

J. Crook. How can I help my self when you have Out-lawed me? Therefore let Proclamation be made in the Court, that I was brought by Force hither, and let me stand cleared by Proclamation, as you ought to do; for you are *discernere per Legem, quid sit justum*, and not to do what seems good in your own Eyes. [Here I was interrupted again, but might have spoken Justice Crook's Words in Hamden's Case, who said, *That we who are Judges speak upon our Oaths, and therefore must deliver our Judgments according to our Consciences; and the fault will lye upon us if it be illegal, and we deliver it for Law: and further said, We that are Judges must not give our Judgments according to Policy, or Rules of State, nor Conveniencies, but only according to Law.* These were his Words, which I might have spoken, but was interrupted.]

Judge. What though no Man tendred the Oath to you when you were committed (as you say) it being now tendred to you? From the time you refused it, being tendred to you by a lawful Authority, you refusing, are Indicted; We look not upon what you are here for, but here finding you, we tender you the Oath, and you refusing it, your Imprisonment is now just and according to Law.

J. Crook. How came I here, if you know not? I have told you it is by Force and Violence, which our Law altogether condemns; and therefore I not being legally before you, am not before you; for what is not legally so, is not so; and I not being legally brought to your Bar, you ought not to take Notice of my being here.

Judge. No, no, you are mistaken: so you may say of all the People gazing here, they not being legally here, are not here. I tell you a Man being brought by Force hither, we may tender him the Oath, and if he take it not, he may be committed to Prison; Authority hath given us the Power, and the Statute-Law hath given us Authority to tender the Oath to any Person, and so have we tendred it you, and for your not taking of it, you are Indicted by the Grand Jury; Answer the Accusation, or confute the Indictment, you must do the one or the other; answer Guilty, or Not Guilty.

[*J. Crook.* Here I was interrupted, but might have said, that the People that were Spectators, beholding and hearing the Trials, are not to be called Gazers, as the Judge terms them, because

it is their Liberty and Priviledge as they are *Englishmen*, and the Law of *England* allows the same, so that they are not to be termed Gazers upon this account, but are legally in that place, to hear Trials and see Justice done, and might have spoken (if occasion had been) any thing in the Prisoner's Defence, tending to clear up the Matter in difference, and the Court must have heard them or him, and this as a Stander-by, or *Amicus curiæ*, so saith *Coke*.]

J. Crook. The Law is built upon right Reason, or right Reason is the Law; and whatever is contrary to right Reason, is contrary to Law, the Reason of the Law being the Law it self. I am no Lawyer, and my knowledge of it is but little, yet I have had a love to it, for that Reason I have found in it, and have spent some leisurable hours in the reading thereof; and the Law is that which I honour, and is good in its Place; many Laws being just and good (not all) but I say a great part of it, or much of it, and that is not my intention in the least to disparage or derogate from.

Judge. Mr. Crook, You have been told you must plead Guilty, or Not Guilty, or else you will run your self into a *Premunire*; be not your own Enemy, nor be not so obstinate.

J. Crook. I would not stand obstinately before you, neither am I so; if you understand it otherwise, it is a mistake indeed.

Judge. Will you speak to the Indictment? and then you may plead: if you will not answer Guilty, or Not Guilty, we will Record it, and Judgment shall go against you. Clerk, enter him.

Recorder. Mr. Crook, If you will answer you may plead for your self, or will you take the Oath? The Court takes no Notice how you came hither; What say you, will you answer? For a Man may be brought out of *Smithfield* by head and shoulders, and the Oath tendred to him, and may be committed, without taking Notice how he came here.

J. Crook. That kind of Proceeding is not only unjust but unreasonable also — (*here was some interruption*) and against the Laws aforesaid, which say, *No Man shall be taken, or imprisoned, but by Warrant, or due Process of Law*; so that this Speech of the Recorder's favours more of Passion than Justice, and Cruelty than due observance of Law: for every forcible restraint of a Man's Liberty is an Imprisonment in Law. Besides, this kind of practice, to take Men by Force and Imprison them, and then ask them Questions, the answering of which makes them Guilty, is not only unrighteous in it self, but against Law, and makes one evil Act the ground of another, and one Injury offered to one the Foundation of another; and this is my Case this day — *Interruption.*

Judge. Mr. Crook, you must not be your own Judge, we are your Judges; but for our parts we will not wrong you: will you answer Guilty, or Not Guilty? if not, you will run yourself into a *Premunire* unavoidably, and then you know what I told you would follow; for we take no Notice how you came hither, but finding you here we tender you the Oath.

J. Crook. Then it seems You make the Law a Trapan to ensnare me, or as a Nose of Wax, or what you please: Well! I shall leave my Cause with the Lord God, who will plead for me

me in Righteousness. But suppose I do take the Oath [now] at this time, you may call me again [to-morrow] and make a new Tender; or others may call me before them.

Judge. Yes, if there be new Matter; or if there fall out any emergent occasion, whereby you minister on your part new occasion: Mr. Crook, will you swear?

J. Crook. If I do take it to-day, it may be tendred me again to-morrow, and so next Day, *ad infinitum*; whereby a great part of my time may be spent and taken up in taking the Oath and Swearing.

Chief Judge. When you have [once] sworn, you may not be put upon it again, except you minister occasion on your part.

J. Crook. Is this the Judgment of the Court, that the Oath [once] taken by me is sufficient, and ought not to be tendred a second time, without new Matter ministred on my part?

Judge. Yes, you making it appear you have [once] taken it.

J. Crook. Is this the Judgment of the whole Court? for I would not do any thing rashly.

Judges. Yes, it is the Judgment of the Court; *to which they all standing up, said, Yes.*

J. Crook. Then it seems there must be some new occasion ministred by me after I have [once] taken it, or it ought not to be tendred to me the second time?

Judges. Yes.

J. Crook. Then by the Judgment of this Court, if I make it appear that I have taken the Oath [once] and I have ministred no new Matter on my part, whereby I can be justly charged with the Breach of it, then it ought not to be tendred me the second time; but I am the Man that have taken it [once] being a Freeman of the City of London, when I was made free, witness the Records in Guild-hall, which I may produce, and no new Matter appearing to you on my part, if there do, let me know it; if not, you ought not by your own Judgment to tender me it the second time; for, *de non apparentibus, & non exstantibus eadem Ratio est*—Interrupted by the shout of the Court, when these last words might have been spoken.

Judge. Mr. Crook you are mistaken, you must not think to surprize the Court with Criticisms, nor draw false Conclusions from our Judgments.

J. Crook. If this be not a natural Conclusion from the Judgment of the Court, let right Reason judge; and if you recede from your own Judgments in the same Breath (as it were) given even now, what Justice can I expect from you? for, if you will not be just to yourselves and your own Judgments, how can I expect you should be just to me?

Judge. Mr. Crook, If you have taken it, if there be a new Emergency, you are to take it again; as for Instance, the King hath been out of England, and now is come in again; there be many have taken it twenty, thirty, or forty Years since, yet this new Emergency requires it again; and although you have taken it, yet you must not make it appear before you answer Guilty, or Not Guilty; therefore do not wrong yourself, and prejudice yourself and Family: Do you think that every fellow that comes hither shall argue as you do? we have no more to do but to know of you whether you will answer (Guilty, or Not Guilty) or take the Oath, and

then you shall be freed from the Indictment; if you will not plead, Clerk record it; what say you? are you Guilty, or Not Guilty?

J. Crook. Will you not stand to your own Judgments? did you not say even now, that if I had [once] taken the Oath, it ought not to be tendred to me the second time, except I administred new Matter on my part that I have not kept it, &c. but no such Matter appearing, you ought not to tender it to me the second time by your own Confession, much less to Indict me for Refusal.

Judge. If you will not plead, we will record it, and Judgment shall be given against you; therefore say, Guilty, or Not Guilty, or else we will record it. *(The Clerk beginning to record it.)*

J. Crook. Before I answer, I demand a Copy of my Indictment; for I have heard it affirmed by Counsel learned in the Law, that if I plead before I have a Copy, or have made my Exceptions, my Exceptions afterwards against the Indictment will be made void: Therefore I desire a Copy of the Indictment.

Judge. He that said so, deserves not the name of a Counsel: for the Law is, You must first answer, and then you shall have a Copy. Will you plead Guilty, or Not Guilty?

J. Crook. If my pleading Guilty, or Not Guilty, will not deprive me of the Benefit of quashing the Indictment for Insufficiency, or other Exceptions that I may make against it, I shall speak to it.

Judge. No, it will not. Will you answer, Guilty, or Not Guilty? If you plead not, the Indictment will be found against you: Will you answer? we will stay no longer.

J. Crook. I am upon the point: Will not my pleading deprive me of the Benefit of the Law? for I am tender in that respect, because it is not my own Case [only] but may be the Case of [thousands] more; therefore I would do nothing that might prejudice others or myself, as a Christian, or as an *Englishman*.

Judge. Understand your self, (but we will not make a bargain with you, said another Judge) you shall have the Right done you as an *Englishman*, the way is to answer, Guilty, or Not Guilty: If you plead, and find the Indictment not good, you may have your Remedy; answer, Guilty, or Not Guilty.

J. Crook. As to the Indictment it is very large, and seems to be confused, and made up of some things true, and some things false; my Answer therefore is, what is true in the Indictment I will not deny, because I make Conscience of what I say, and therefore, of what is true, I confess my self Guilty, but what is false I am Not Guilty of that.

Judge. That is not sufficient: either answer Guilty, or Not Guilty, or Judgment will be given against you.

J. Crook. I will speak the Truth as before the Lord, as all along I have endeavour'd to do, I am Not Guilty of that which is false contained in the Indictment, which is the Substance thereof.

Judge. No more ado, the form is nothing, Guilty, or Not?

J. Crook. I must not wrong my Conscience, I am Not Guilty of what is false, as I said before, what is true I am Guilty of; what is not true, I am Not guilty of that, which is the Substance thereof, as I said before.

Recorder.

Recorder. It is enough, and shall serve turn.
Enter that, Clerk.

Isaac Grey being call'd to the Bar.

Judge. Will you take the Oath of Allegiance?

Grey. I have been near five Weeks in Prison, I desire to know for what.

Judge. We take no notice of your Imprisonment, nor how you came here; will you take the Oath?

Grey. I desire to know for what I am imprison'd, and then I am ready to answer; for no man (in this particular) hath received so much wrong as my self, having received a Wound, whereby I was in Jeopardy of my Life.

Judge. If any have wronged you, take your Course in Law. Will you swear?

Grey. I am a Man of a tender Conscience, and do desire time to consider.

Judge. Take him away. Which was accordingly done.

The next Day *Isaac Grey* was called to the Bar, and asked by the Judge, if he would yet take the Oath? *Recorder* speaking unto him on this wise; Mr. *Grey*, you a wise understanding Man, and a Scholar; be advised what you do, and do not ruin yourself, but take the Oath.

Grey. I desire time to consider, and to do nothing rashly.

Then in the Afternoon were all three again called to the Bar, and the Indictment read.

Judge. Mr. *Grey*, will you take the Oath? *Cryer*, hold him the Book.

Grey. I desire to know the Cause of my first Imprisonment, and to discharge me of the same before I give my Answer to the Oath; for I do not know my self guilty of any Crime.

Judge. The Law supposeth you to be disaffected to the present Government, and therefore the Oath is tendred to you.

Grey. I understand that the fundamental Law of *England* alloweth no Man to be accused or condemned upon Supposition: I do further affirm, and that in the Light of God, that I am not an Enemy to the King, nor to any Man living upon the Face of the Earth.

Judge. Will you answer, Guilty, or Not Guilty?

Grey. I desire Time to consider of the Truth of this Matter; the Indictment being large, and having much contained in it which indeed I do not well understand.

Judge. Will you yet swear, or plead to the Indictment?

Grey. I have told you, and that for Conscience sake, I dare do nothing rashly.

Judge. What do you talk to us of Conscience! every Fellow may plead Conscience.

Grey. Do you use to swear such as make no Conscience?

Judge. Guilty, or Not Guilty? When you have answer'd to this, you may plead what you can in your own Defence; but first answer, Guilty, or Not Guilty: The Rule of the Law is, you must first answer.

Grey. Would you have Men swear whether they will or nay, especially when against their Conscience?

Judge. We have Consciences as well as you: If there be any thing as to Matter of Conscience, it is nothing! you must plead Guilty, or Not Guilty, that we may not spend time any longer.

Grey. Truly, I desire not that the time should be taken up in any thing that may not advantage the good of the People; therefore before I plead, give me a Copy of the Indictment, and then I shall plead.

Judge. Sirrah, Guilty, or Not Guilty?

Grey. I desire first to be heard as a Christian, and then as an *Englishman*.

Judge. Do not I tell you (Sirrah) if you will plead, Not Guilty, you shall be heard; but if you will not, you will run yourself into a *Premunire*?

Grey. I appeal then to God Almighty, for I shall not wrong my Conscience.

Judge. It is no Matter of Conscience: Guilty, or Not Guilty?

Grey. Not Guilty.

John Bolton having made the same Objections, was at last oblig'd to plead Not Guilty.

The seventh Day of the Week, called *Saturday*.

Silence being made, *Isaac Grey*, *John Bolton*, and my self, were brought to the Bar.

The Clerk of the Sessions read something concerning the Jury, which was empanell'd on purpose (as was said) the Jury being discharged, who were Eye-witnesses of what passed between us and the Court: And this Jury being divers of them Soldiers, some of whom did by Violence and Force pull and hale Friends out of their Meetings, and some of us out of our Houses; and these were of the Jury by whom we were to be tried. The Clerk reading the Indictment (as I remember.)

J. Crook. I desire to be heard a few Words, which are these, That we may have Liberty till the next Quarter-Sessions to traverse the Indictment, it being long, and in *Latin*, and like to be a Precedent; and I hope I need not press it, because I understood that you promised, (and especially the Recorder, who answered (when it was desired) *You shall*) that we should have Counsel also, the which we cannot be expected to have had the Benefit of, as yet, the time being so short, and we kept Prisoners, that we could not go forth to advise with Council, neither could we tell how to get them to us: We having no Copy of the Indictment before this Morning, and because so suddenly hurried down to the Sessions, we cannot reasonably be supposed to be provided (as to Matter of Law) to make our Defence.

C. Judge. We have given you time enough, and you shall have no more; for we will try you at this time, therefore swear the Jury.

J. Crook. I desire we may have Justice, and that we may not be surprized in our Trial, but that we may have time 'till the next Quarter-Sessions, our Indictment being in *Latin*, and so large as it is; and this is but that which is reasonable, and is the Practice of other Courts: for, if it be but an Action above Forty Shillings, it is not ordinarily ended under two or three Terms. And in the Quarter-Sessions, if one be Indicted for a Trespass, if it be but to the Value of Five Shillings, he shall have Liberty to enter his Traverse, and, upon Security given to prosecute, he shall have Liberty 'till the next Sessions, which is the ordinary Practice; which Liberty we desire, and we hope it is so reasonable it will not be denied, especially upon this Occasion, we being

ing like to be made a Precedent; and Courts of Justice have used to be especially careful in making of Precedents, for we are not provided according to Law to make our Defence at this time, and therefore if we be put upon it, it will be a surprizal.

Judge. There is no great matter of Law in the Case, it is only matter of Fact, whether you have refused to take the Oath or not; that is the Point in issue: And what Law can arise here?

Record. Mr. Crook, the Keeper of the Prison was spoken to, to tell you that we intended to try you this Day, and therefore ordered him that Counsel might come to you if you would, and also that the Clerk should give you a Copy of your Indictment: This is fair, therefore we will go on to swear the Jury; for the Matter is, whether you refuse the Oath or not? And that is the single Point, and there needs neither Law nor Counsel in the Case; and therefore we considered of it last night, when we sent you word and did determine to try you, and therefore it is in vain to say any thing, for the Court is resolved to try you now, therefore swear the Jury, Cryer.

J. Crook. I hope you will not surprize us: Then the other Prisoners (who also were indicted) cryed out (having spoke something before) Let us have Justice, and let not the Jury be sworn till we be first heard; so there was a great Noise, the Court being in a Confusion, some crying, Take them away; others, Stay, let them alone; others saying, Go on to swear the Jury, which the Cryer in this Uproar and Confusion, did do something, as if he had done it; then we all cried out for Justice, and Liberty till the next Sessions; the Court being in a Confusion, some crying one thing, and some another, which now cannot be called to mind, by reason of the great Distraction that was in the Court, neither what we said to them, nor they to us, the Noise was so great, and the Commands of the Court so various to the Officers, some commanding them to take us away, others, to let us alone, others, to bring us nearer, others cried, put them into the Bail-Dock, others, to put them within the furthest Bar where the Felons used to stand, where we were forced into accordingly; and in this Hurliburly and Confusion that was among them, some Men were sworn to testify that we refused to take the Oath, which we never positively did; other Officers of the Court, whom they would have sworn, refused to swear, though pressed to it by the Chief Justice, they desiring to be excused. Then spake one of the Prisoners again pretty much, but could hardly be understood by reason of the Noise in the Court, but the People, to whom he spake with a loud Voice by way of Exhortation, might hear the Substance of what he said, which cannot now particularly be called to Mind; but it was to express the Presence and Love of God to himself, and to exhort others to mind his Fear, that they also might be acquainted with God, &c.

Judge. Stop his Mouth, Executioner; which was accordingly done.

Prisoners. Then we cryed out, Will you not give us leave to speak for our selves? We except against some of the Jury, as being our Enemies, and some of them who by force commanded us to be pulled out of our Meetings, con-

trary to Law, and carried us to Prison without Warrant, or other due Process of Law; and shall these be our Judges? We except against them.

Judge. It is too late now, you should have done it before they had been sworn Jury-men. Jury, go together, that which you have to find, is, whether they have refused to take the Oath or no, which hath been sworn before you that they did refuse? you need not go from the Bar; and like Words said the Recorder and others, there being a Confusion and Noise in the Court, many speaking together.

Prisoners. Then we cryed for Justice, and that we might be heard, to make our Defence before the Jury gave their Verdict: but the Judge and Recorder said, we should not be heard, (making good by their practice what the Chief Judge had said the Day before, viz. That if we had liberty to speak, we would make our selves famous and them odious) crying again, Stop their Mouths, Executioner; which was done accordingly with a dirty Cloth, and also endeavoured to have gagg'd * me, striving to get hold of my Tongue, * *J. Crook.* having a Gag ready in his Hand for that Purpose, and so we were served several Times; then I called out with a loud Voice, Will you condemn us without hearing? This is to deal worse with us than *Pilate* did with *Christ*, who though he condemned him without a Cause, yet not without hearing him speak for himself; but you deny us both.

Grey. I desire to know whether according to Law and the Practice of this Court, my self, and my Fellow-Prisoners, may have Liberty to put in Bail to prosecute our Traverse at the next Sessions?

Court. No, we will try you presently.

Judge. Stop their Mouths, Executioner: And this was the Cry of many upon the Bench, they being still in a continued Confusion, some crying to the Jury, Give in your Verdict, for we will not hear them; with other Words which could not be heard for the Noise, the Court being in Confusion.

J. Crook. You might as well have caused us to have been murder'd before we came hither, as to bring us hither under Pretence to try us, and not give us leave to make our Defence; you had as good take away our Lives at the Bar, as to command us thus to be abused, and to have our Mouths stopt: Was ever the like known? Let the righteous God judge between us. Will you hear me? You have often promised that you would.

Judge. Hear me, and we will hear you; then he began to speak, and some others of the Bench interrupted him, sometimes they speaking two or three at a time, and a Noise amongst the Officers of the Court; but the Judge said, we may give you Liberty till the next Sessions, but we may chuse; and therefore we will try you now.

J. Crook. I bade the People take notice of their Promise, that I should have Liberty to speak, saying, see now you be as good as your Words.

Judge. The Law of *England* is not only just but merciful, and therefore you shall not be surprized, but shall have what Justice the Law allows—Interruption.

J. Crook. I remember what the Judge said even now, that the Law of *England* was a Merciful Law, that the Court had said before, they might, if they would, give us liberty till the next Sessions, but they would not; and the Maxim of the Law also is, *Summum Jus, est summa Injuria*, therefore I hope your practice will make it good, that it is a Merciful Law, and not to execute *Summum jus*, &c. upon me, and thereby condemn your selves out of your own Mouths.

Judge. Jury, give in your Verdict.

J. Crook. Let me have liberty first to speak, it is but few Words, and I hope I shall do it with what brevity and pertinency my understanding will give me leave, and the occasion requires, it is to the point in these two Heads, viz. Matter of Law, and Matter of Conscience: to Matter of Law I have this to say, first, as to the Statute it self, it was made against the Papists, occasioned by the Gunpowder-Plot; and is Entituled, *For the better discovery and suppressing of Popish Recusants*: but they have Liberty, and we are Destroyed, what in you lyes — (*Interrupted by the Judges and disturbance of the Court.*) As to Conscience, I have something to say, and that is, It is a tender thing, and we have known what it is to offend it, and therefore we dare not break Christ's Commands, who hath said, *Swear not*

at all; and the Apostle *James* said, *Above all things, my Brethren, swear not* — (*interrupted*) the Court calling again to the Executioner to stop my Mouth, which he did accordingly with his dirty Cloth as aforesaid, and his Gag in his hand.

Judge. Hear the Jury: who said something to him, which was supposed to give in the Verdict according to his Order, for they were fit for his Purpose, as it seems, they beginning to lay their Heads together before we had spoke any thing to them, only upon his Words.

Judge. Cryer, make Silence in the Court; then the Recorder taking a Paper into his Hand, read to this purpose, viz. *The Jury for the King do find that John Crook, John Bolton and Isaac Grey are Guilty of Refusing to take the Oath of Allegiance, for which you do incur a Premunire, which is the forfeiture of all your real Estates during Life, and your personal Estates for ever, and you to be out of the King's Protection, and to be imprisoned during his pleasure: and this is your Sentence.*

J. Crook. But we are still under God's Protection.

Recorder. Adjourn the Court; which was done accordingly, and we remanded to *Newgate*, where we remain Prisoners.

LX. *The Trial of JOHN JAMES, at the King's-Bench, for High-Treason, November 14, 1662. Mich. 14 Car. II. Wrote by his Friends.*



BEING carried in a Coach to *Westminster* by the Under-Sheriff, and brought to the *King's-Bench* Bar, Chief-Justice *Forster*, Justice *Mallet*, Justice *Twisden*, and Justice *Windham*, being Judges upon the Bench; he was commanded, according to Custom, to hold up his Hand: and he did so, and told them he did hold up his Hand to signify he was there to answer to what should be laid to his Charge. But he held up his Hand with his Glove on, which some were offended at, and told him he must pull it off. *John James* answered, it was all one to him, to hold up his Hand with it off or on; and then he did pull off his Glove, and held up his Hand, and then his Charge was read.

The Substance of the Indictment.

HE stood indicted by the Name of *John James*:

1. For compassing and imagining the Death of the King.

2. For endeavouring to levy War against the King.

3. For endeavouring a Change of the Go-

vernment. And in this his Compassing, Imagining, and contriving the King's Death, he had maliciously, traitorously, and by Instigation of the Devil, not having the Fear of God before his Eyes, declared these Words. (1.) That the King was a Bloody Tyrant, a Blood-sucker, and Blood-thirsty Man, and his Nobles the same. (2.) That the King and his Nobles had shed the Blood of the Saints at *Charing-Cross*, and the Blood of the Covenanters in *Scotland*. (3.) That the King was brought in to this end, to fill up the Measure of his Iniquity; and that the King's Cup of Iniquity had filled more within this last Year than in many Years before. (4.) That he did bemoan that they had not improved their Opportunity when they had Power in their Hands; and that he did say it would not be long before they had Power again, and then they would improve it better; and that he did bewail the Apostacy of the People of God, and say, They had not fought the Lord's Battels thoroughly; but when the Lord should give Power to them again, and give his Work into their Hands, they would do it better. (5.) That the Death and Destruction of the King drew very near.

The Indictment being read, the Clerk called upon *John James* to answer to his Charge, and plead Guilty, or Not Guilty.

John James desired, before they did proceed, that he might have a Copy of his Charge, and Time to consider of it.

The Lord Chief Justice answered, That a Copy of the Charge was not allowed in Cases of *High-Treason*; and he told him he must plead Guilty, or Not Guilty, or else a worse thing would follow.

John James answered, He humbly conceived it was his Privilege as an *Englishman*; and till he had that, he was not free to plead one way or other. He alledged that Chief Justice *Coke* had declared it good Law; and that Judge *Heath* had declared it also good Law; and that he did at *Oxford* give *John Lilburne* a Copy of his Charge, being arraigned there for *High-Treason*.

Then one of the King's Counsel told him, That the Law would not grant him a Copy of his Charge in case of *Felony*, much less in case of *High-Treason*; and told him, If he would not plead, they would proceed against him as a Person contemning the Court, and look upon him a Mute.

John James made answer, Seeing he was over-ruled, he pleaded *Not Guilty*, neither in Form nor Matter.

The Clerk asked him how he would be tried?

He answered, By the Law of God. At which the Lawyers gave a great Hiss.

And it was answered thus, or to this effect; It was not a Place or Time to talk of the Laws of God. But *John James* was willing to urge it again, That seeing the Judge did sit there as Judge of the Law, and of God's Law, as they thought, it was meet they should give him Liberty to appeal to God's Law.

Whereupon the Judge told him he must proceed according to their Law, or else a worse Thing would follow; and say, By God and the Country.

John James answered, He was ignorant of their Law, and knew not what Snare there might be in it, never having been at any Bar before; and therefore desired him he would open the Terms, what they meant by God, and what they meant by the Country.

The Judge answered, God forbid but he should open the Terms: By God (says he) is meant your first Demand, to wit, the Law of God.

John James asked him, Why then his first Demand was not granted?

The Judge said, God forbid but that you should so be tried; but you must use the Form of the Court.

John James said, If it were so, he was satisfied.

And by the Country, (saith the Judge) twelve *Middlesex* Men, Men of Truth, that would judge impartially between the King and him.

John James said, If that be the Meaning, he put himself upon the Trial of God and the Country.

When this was done, *John James* was sent by a *Habeas Corpus* to the King's-Bench Prison in *Southwark*, and there continued till the 19th Day of *November*, and then was brought again to the King's-Bench Bar at *Westminster*, to his further Trial.

In this Interval betwixt the Commitment and

Trial, upon the first Day of the Week, being the 18th of *November*, *John James* received a Letter from a Person of Note, to advertise him that there was such a Jury of Life and Death impannelled to proceed upon him, as had not been for many Years before, being all pick'd Men, and most of them Knights and Gentlemen; and that if he did not except against them, or most of the chief of them, he was a dead Man.

The second Day.

UPON the 19th of *November* he appeared the second Time at the King's-Bench Bar, according to the Order of the Court, where were present,

The Judges;

Sir *Robert Forster* Chief Justice.

Sir — *Mallet* Justice.

Sir *Thomas Twisden* Justice.

Sir *Wadham Windham* Justice.

Sir *Jeoffry Palmer* Attorney-General.

Sir *Heneage Finch* Solicitor-General.

The King's Counsel;

Serjeant *Maynard*.

Serjeant *Wilde*.

Serjeant *Glynne*.

Serjeant *Keeling*.

The Witnesses Names appearing in the Court;

Alderman *Chard*. *John Tipler*. *Bernard Osburn*.
The fourth Witness's Name not yet known.

The Names of the Jury.

Charles Pitfield.

Humphry Higgens.

Ralph Halsaye.

Thomas Snow.

Thomas Eglesfield.

William Cole.

Daniel Charlwood.

Thomas Upnel.

Ambrose Hanbrough.

Gilbert Mese.

Anthony Hall.

William Blunt.

The Witnesses and Jury being called into the Court, *John James* having excepted against divers Knights and Gentlemen pick'd for his Jury, and the afore-named standing for his Jury, the Clerk bid *John James* hold up his Hand as before. He did so; and again told them it was to signify he was there; (and then they laughed) and the Judge said, O ho, are you come?

Afterwards, the Indictment being read again, the Clerk proceeded to tell the Court for what he was indicted and arraigned; and that he pleaded Not Guilty, and had put himself upon God and the Country for Trial; and therefore told the Jury they were to judge between the King and him in that Matter.

Serjeant Keeling's Speech.

Hereupon Serjeant *Keeling*, one of the King's Counsel, stepp'd up, and said, My Lord, and you Gentlemen of the Jury, *John James*, Prisoner at the Bar, stands indicted for High-Treason; for that he, with other disaffected Persons, Enemies unto the Government of the King, being assembled at *Bulstake-Alley* in *White-Chappel*, not having

having God before his Eyes, but being moved by the Instigation of the Devil, spake and published these Words, *viz. That King Charles was a Blood-thirsty Tyrannical King; and that the Nobles of England were Blood-thirsty and Tyrannical Men; and that the Cup of their Iniquity was begun to be filled by the shedding of the Blood of the Covenanters in Scotland; and that it was almost filled by the shedding of the Blood of the Saints this time Twelve-month; and that the Time of their Destruction was near at hand: And did condole the Neglect of the Opportunity and Price they had put into their hands; and that if ever the like Occasion were administred unto them again, they would fight the Lord's Battel more effectually than they had done before.* And (said he) if we prove that these Words were spoken by John James, you are to find him Guilty of High-Treason; (and so he sat down.) Then stood up Sir Jeffry Palmer, Attorney-General.

The Substance of Sir Jeffry Palmer's Speech.

First, he spake of the Antiquity of Monarchy, and did fully assert the present Government. Then, by way of Reflection, he reviewed the twenty Years Troubles that had passed over our Heads in these Nations; and that the Vessel of this Commonwealth had been beaten and blown upon the Waves and Billows of a tempestuous raging Sea, being almost broken to pieces, and like utterly to be lost, unless God by a miraculous Providence had restored his Majesty Charles the Second to his Crown and Dignity; for which (he said) ever blessed be his Name. Then he observed that the beginning of our Sorrows was by the seditious preaching of some discontented Ministers in this Nation, and about this City. Then he told them how much Care the Law had taken for the Preservation of his Majesty's Person and Government; and that it was as much Treason in the Heart, as in the Act, *Mens rea facit reum.* Then he did descant upon the Words of the Indictment, and 13 Car. 2. c. 1. opened them, and told the Jury, that according to the Law of England they were Treason, for which he ought to die: and then sat down.

Then the Court called John Tipler, the first Witness, the Judge bidding him look upon the Prisoner. Serjeant Glynne asked him, what he could say concerning the Words spoken by John James? Who said, at the Time the Indictment alledged, (which was on Saturday) he was at a House near adjoining unto the Place where they usually did meet; and that about Two of the clock in the Afternoon he stood at a Window in a Yard, next adjoining to the Meeting-place, and saw John James, the Person at the Bar, preaching, (as they call it, *said he*) and repeated the Words that were opened by Serjeant Keeling exactly; only further, That he did wonderfully adore Oliver Cromwell, saying, *That every Finger of his was a Champion; and that when they had Power again, they should do the Work more thoroughly.* And said, That thereupon he told it presently to a Justice, and afterwards to a Neighbour of his, who was in an extreme Fright and Horror, and so they both went together to Alderman Chard Justice, who then came immediately,

and surprized and seized upon them; the Women only they let go, but the Men the Justice did commit to Prison that would not take the Oath of Allegiance: That they seized John James in the Pulpit, where he was preaching when they came in. The Court asked him, what Time of the Day it was? And he said it was about Two of the clock in the Afternoon. And they asked him, where he stood? And he said he stood directly opposite in a Window, in a Yard next adjoining to the Meeting-place; and that he could easily discern him. Demanding of him some other Questions, that might induce the Jury to believe the Evidence given was neither with Thought of Malice to the Prisoner, nor Hope of Reward; then the Court gave the Prisoner leave to ask Tipler what Questions he pleased.

The Exception that John James took unto the Witness, was, That it was a hard thing for him to swear that he was the Person that was then preaching, he being without the Window, which might intercept his Sight. To which he answered, That he knew him very well; and that he was not deceived.

Another Witness was Alderman Chard, the Justice; who said, He could say nothing as to the Words that were spoken; but so soon as John Tipler came to him, and informed him of the Words spoken by John James, he enquired the Place where it was, and immediately he and his Clerk and the Constable hastened thither, where they found John James preaching, and about thirty or forty assembled there to hear him. And said, He there seized John James, and pulled him out of the Pulpit where he was preaching; and all those Men that would not take the Oath of Allegiance, he committed, but the Women he let go. So the Court asked him, if it were at the Time alledged in the Indictment? And he said, Yea.

Another Witness was a Yorkshire Man, whose Name we know not: Who coming into the Court, was commanded to look upon the Prisoner at the Bar, and declare what he heard him say. Who answered, He was at Tipler's House, and heard very loud Speaking, which caused him to come out, and hearken, and he heard very dangerous Words. The Judge asked him, what those dangerous Words were? He said, He could remember no more than this, that one said, *That the Lord had a great Work to do for his People; and that they were the People that must do it.* The Judge asked him if he heard nothing concerning the King's Cup of Iniquity? To which he answered, No. And they bid him look upon the Prisoner at the Bar, and asked if that were the Man? He answered, He could not say that he was the Man.

Whereupon John James desired the Judge to ask him, if he was the Man? And he turned his Face towards John James, as if he directed his Speech to him, and said, He could not say he was the Man.

Another was Bernard Osburn, whom the Judge commanded to look upon the Prisoner at the Bar, and tell the Court what he heard him say concerning the King, and the Powers that were now in being.

Hereupon John James told Osburn, He hoped he was a Man of some Conscience and Integrity, and that he feared wrongfully to take away the Life of a Man; and how great a Sin it was, especially

especially to shed the Blood of them that feared the Lord.

Then the Court asked the Witness, where he was when the Words were spoken? He said he was in the Meeting-Place: And he said he heard *John James* say, *That King Charles was a blood-thirsty tyrannical King; and that the Nobles of England were blood-thirsty: That he had drank pretty deep of the Blood of the Saints already, in that he had shed their Blood twelve Months ago at Charing-Cross, and the Blood of the Covenanters in Scotland; and that God had brought him in to that end, to fill up the Measure of his Iniquity, and he had filled it up more in twelve Months, than in many Years before.* They asked him if he heard nothing concerning the Lord's Battels? And he told them (as though he had forgot it) that he heard him say, *That they should have Power in their Hands; and that they should fight the Lord's Battels more thoroughly.* And they asked him if he heard any thing concerning the Ruin of the King? He answered, Yes, he heard him say, *That the Ruin of the King was very near.* Then they asked him if those were the Words? He said, He could not say they were the same Words, but to the same Substance.

Having done this, the Judge told *John James* he had Liberty to speak for himself.

Whereupon he desired the Favour of the Court to those Witnesses he had attending the Court, in respect of *Bernard Osburn*. Whereupon four Witnesses were called into the Court, that gave Evidence that this *Bernard Osburn* confessed to them he had sworn against *John James* he knew not what. One of them declared further and more largely, (that was near Marriage to *Bernard Osburn*) That he had told her *he did not only swear he knew not what, but that he was affrighted into what he swore.* He did say, That what he swore to, was first sworn to by another Man, and then brought to him in Writing. The former Witnesses declared, That moreover they desired to know of *Bernard* what he had sworn against *John James*: And he told them, *He could not tell, except he heard the Words repeated.* (Though *Bernard Osburn* denied in the Face of the Court that ever he said any such Things.) *John James* then told the Court, he had several Witnesses attending the Court, that were free, if they pleased, to prove that the Words charged upon him were not spoken. The Judge told him he might call in as many Witnesses as he would. Whereupon *John James* called in four Witnesses more; all which did testify in the Face of the Court, That the Words charged upon him were not spoken. And the Court did, as before, give them the Hearing.

Then the Judge bid the Jury take notice what had been spoke by the King's Witnesses and his. And then the Court told *John James* that now he had free Leave to speak for himself, as much and as long as he pleased, if he had called all his Witnesses; and told him, That when the King's Council had concluded, he could speak no more; but now he might say as much as he pleased. Then he spake with much Liberty and Freedom, the Court and all present giving Attention to what he said, which was to this purpose:

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John James's Defensive Speech.

HE said he had somewhat to say, first, as to the Form of the Charge, viz. *That he had maliciously, wickedly, traitorously, and by the Instigation of the Devil, not having the Fear of God before his Eyes, &c.* He told them, That in the Fear of God he did deny it; and told them he had not a malicious Thought against the Person of the King, but desired the Salvation of his Soul, as of his own; that he had not dealt maliciously against the King, neither was instigated thereto by the Devil; and that by the Goodness of the Lord, what he had done, he had done it in the Fear of God. Neither could he be judged, as he told them, as a malicious Person against the King, in regard he never had any publick Employment in the Nation, either against this King in being, or his Father, being a Man of no account in the World, having not worn a Sword this eleven Years; and therefore desired they would in their Understanding clear him from this Charge, as a Person malicious against the King. And further he said, He was a Person that could not be supposed to have in his Eye any thing of Advantage in the World in so acting against the King. And as to the Matter of the Charge, whereas it runs, *That I John James had compassed, imagined, and contrived the Death of the King;* *John James* told the Court he did not well understand what they meant by *compassing the Death of the King*, as *compassing* and *imagining* is ordinarily taken: He had not, neither was he capable of endeavouring the King's Death, nor the Change of the Government; being a mean inconsiderable Person, a Man that had lived upon his Calling. And as to those Particulars lastly charged upon him, he said he was not guilty of them: He did not say *the King was a Bloody Tyrant, a Blood-sucker, a Blood-thirsty Man;* that in the Fear of the Lord he did utterly deny; neither did he say any thing tending thereto. He further said, He did not say *the King had shed the Blood of the Saints at Charing-Cross this time Twelve-month:* He did not say, *They, when they had Power in their Hands, would improve it more thoroughly for God; and that we did not fight the Lord's Battels thoroughly.* And whereas he was charged for contending for *Cromwell*, and that Power, (that God had so eminently wiped off from the Stage) he said he did declare against that Power, and was averse to it, and did suffer under it in his measure; and told them he did not stand there as *Cromwell's* Advocate. Then did he endeavour to speak more particularly to the Jury, letting them know that in a secondary way his Life was in their Hands; and it was, in the Eye of Reason, in their Power to save or destroy him, and wished them to have a care of shedding innocent Blood: and told them, Because of innocent Blood the Land did mourn, to wit, for the Blood shed in *Queen Mary's* Days, and *King Henry the Eighth's*; and if there were any innocent Blood shed since, he desired no more may be added to it. He told them he did desire they would act conscientiously, and not be over-awed by any Man. He told them they were his Judges in Law of Matter of Fact, and desired them to be tender of his Blood. He said, He should say very little more for himself, but one Word for the

Lord;

Lord, and therefore desired he might have his Fear before him; and although he was the poorest and meanest for such a Work, yet he was called forth, and did declare, *That the Lord Jesus Christ was King of Nations as well as King of Saints; and that the Government of Kingdoms did of Right belong to him.* And he quoted Rev. xi. 15. *And the seventh Angel sounded, and there were great Voices in Heaven, saying, The Kingdoms of this World are become the Kingdoms of our Lord, and of his Christ, and he shall reign for ever and ever.*

And when he had so spoke, the Lord Chief Justice Forster interrupted him, saying, *Hold, Sirrah; Sirrah, you think you are in the Conventicle in White-Chappel, preaching.* And thereupon commanded the Clerk to read the Act of Parliament, entitled, *An Act for the Preservation of the King's Person and Government;* wherein was express'd to this purpose, *That whosoever shall contrive or endeavour to levy War against the King or Government, &c. or endeavour to compass or contrive the Death of the King, his Wound or Maim; or that by Printing, Preaching, Writing, or other Speaking, endeavour the same; then every such Person or Persons shall be looked upon as Traitors to the King, and shall be proceeded against as in the Case of High-Treason, &c.* Which when the Clerk had read,

John James desired Liberty to speak, desiring the Court to produce a Statute that would reach his Case, for that did not, but the Case of such as had endeavoured to levy War against the King, or had compassed or contrived his Death or Maim: But he had not contrived or compassed the Death of the King, or the Change of the Government within or without his Dominions; and therefore desired a Statute might be produced that might reach his Case, for he conceived that was short.

The Judge told him it fully reached his Case. And one of the King's Counsel made answer, That it reached him in every Case.

And another of the Counsel said, Treason was the first Conception and the first evil Thought in the Heart; and Treason was made visible by Preaching, or Printing, or Speaking, &c. which was a Manifestation of the Things that were in the Heart.

This being spoken, the Judge asked him if he had any more to say for himself; and told him, if he did not speak now, the King's Counsel would enter upon their Plea, and then he must speak no more for himself.

He told them he had one Word to the Jury, which he desired to lay before them: It was a Scripture written in the 29th of *Isaiah*, ver 21. *That make a Man an Offender for a Word, and lay a Snare for him that reproveth in the Gate.*

Whereupon the Judge told him it was not to be borne; for he did inveigh against the Parliament.

Though he said, He had not the least Thought of the Parliament; but he spake it to let the Jury know, that if he were guilty of those Words, there was no Law of God to take away a Man's Life for Words.

Hereupon the King's Counsel spake severally one after another.

First Serjeant Glynne stood up, and said, Brother Maynard, shall we not answer something to

what the Prisoner hath objected? So Glynne began.

The Substance of Serjeant Glynne's Speech.

He told the Jury, That if they proved the Words alledged in the Indictment substantially, though it were not adequate thereunto in every Tittle and Iota, yet it was sufficient to satisfy their Consciences, and to find the Prisoner guilty of High Treason.

First, He began with the Exception taken unto the first Witness, That he stood without the Window, and therefore could not easily discern the Visage and Physiognomy of the Prisoner that was there a preaching. He told them he had sworn expressly it was the same Person; and that as he came into the Yard he was there a preaching, and as he went away to the Justice of Peace he saw him: and the Justice did seize the same Person, and find him preaching when he came; and therefore it must be him, and no other. And told them, That the Witness could have no end in discovering of it; for if he had kept Silence, he had consented, and so been guilty of Misprision of Treason.

Then said he, As to the Exception taken against the fourth Witness, That he said he swore he knew not what, and could not tell what he had sworn to:

He said, This was no Cause to reject this Evidence; for peradventure he could not well call to mind the several words that were spoken; or peradventure he would not tell them, because he might suppose that they were sent to ensnare him in his Evidence, that they might make it void.

Then as to the Witnesses that were brought on the part of the Prisoner, to testify that no such words were spoken; he said, As to that he must refer it unto the Consciences of the Jury. But he said, he conceived that it was altogether immaterial; for the Question is not, what he did not say, but what he did say. They say that he did not say these words, but they do not say what he did.

Then stepped up Serjeant Maynard, and said, That as to the Evidence of those three Persons, his Brother Glynne had spoken so much, and so well, that he could add no more, or very little: And urged the same things that Serjeant Glynne did. And further said, That the Prisoner spoke much of his Integrity and Innocency; I believe (saith he) Gentlemen of the Jury, never was there any Offender, or the vilest Miscreant in the World, that would ever have received the Reward of his Doings, if his own Excuse and Protestation might have saved him.

Then he said, As for the Blood of the Saints that was spilt this time twelvemonth, he said they were sad Saints, such Saints (said he) as would have cut all our Throats.

Then John James desired to be heard one Word, that that Gentleman had untruly alledged against him; but the Court refused to allow him the Liberty.

Then stood up Sir Heneage Finch, Solicitor-General.

The Substance of Sir Heneage Finch's Speech.

My Lord, and you Gentlemen of the Jury, be it known unto you, and to all that hear me this Day, that the Prisoner at the Bar is not arraigned for his Conscience or Religion, but for Treason and Rebellion, for horrid Treason and Rebellion, for spurning against the meekest King in the Earth. His Majesty, to the great and inexpressible Grief of his Heart, did not think there was a Person so unworthy left within his Dominions, that would have lifted up the Heel against him, after twenty Years rejecting of his Majesty and his Royal Father; and having also conferred his Grace upon us, to reduce us to a State of Innocency, he could not think there was any Gall left in our Hearts, or any Guile to be found in our Mouths.

He then press'd his Treason upon the Consciences of the Jury, who, as he told them, would affright their Consciences with his Innocency. And told them, how that the Punishment of this Offender might affright the like Malefactors for the future: And said, that there were a People, that under the pretence of Religion had the Liberty of Conscience allow'd by the King for a time, 'till they were better informed; but this Man, and those of his Mind, are none of those Men: but they endeavour not only to destroy the Monarch, but Monarchy itself; not only in *England*, but all the World over. This is the Principle that they are of, therefore I desire the Jury to take notice, what may be their Duty upon that account. And that when the Prisoner was preaching that pernicious Sermon, he press'd it with the Peril of their Salvation, and now would affright you upon the account of innocent Blood: but you shall find, if his Blood be rightly and swiftly pursued, it may be a means of preventing the shedding of the Blood of thousands, for the time to come. And withal did desire them to consider further, That the great Trouble this Nation had undergone for these twenty Years last past, sprung from Pulpits, Conventicles, and seditious Preaching; and therefore if these Causes were taken away, it might prevent such evil Effects for the future. And said, That as to the Evidence he had produced, it had been well spoke to by the two Serjeants that spoke last: And as to that Evidence by the Women, he said they had no reason to tell what was said by *John James*, for thereby they would make themselves guilty of Misprision of Treason; which is to be punished with perpetual Imprisonment, Confiscation of Goods, and the Loss of the Profits of Lands during Life.

That's well observed, said my Lord to the Solicitor.

Then Judge *Forster* endeavoured further to inform the Jury, and to incense them against his Principle, telling them, that he was of the same Spirit with those that did endeavour heretofore to put all the Nation in a Flame, and to set every one against each other; and said, No Treason was comparable to that Treason that was covered with a Pretence of Religion.

This being done, and the Jury ready to go forth, *John James* desired the Court to favour him with one Word to the Jury.

They told him he had had a great deal of Liberty, and time to speak; but now he should speak no more.

Then *John James* reply'd, That if they would not suffer him to speak to his Jury, they had as good have hanged him at *Bull-stake-Alley Gate*, before he came there, and not brought him thither to cover over the Matter with the Pretence of Law.

This being spoken, the Judge gave him a fore Rebuke, and told him he was not to be Judge in the Case.

Then my Lord and the Judges laid their Heads and conferred together, whereupon my Lord said thus to the Jury, or to this effect; You have heard the Evidence, you are to find the Matter of Fact as it is laid before you, whereof you are the proper Judges, and I pray God direct you.

Then the King's Counsel and the Jury departed from the Bar; and at the Return of the Jury, being about a Quarter of an Hour, the Attorney and Solicitor-General came back into the Court with them.

Whereupon the Cryer called them all by name, and the Clerk asked them if they were all agreed, and they answered, Yes.

Then the Clerk of the Crown commanded the Prisoner to hold up his Hand, and asked the Jury, How say you, is *John James*, who hath been arraigned and try'd, Guilty of the Treason alleged in the Indictment, or Not guilty?

And the Foreman, which was *Charles Pitfield*, said, Guilty according to the Indictment.

Then the Attorney-General pray'd Judgment for the King. To that the Court answered, Never the same Day he is arraigned, but appoint what Day the Prisoner shall be brought, and it shall be granted. Then the Attorney and Solicitor conferred together, and the Attorney said, On Friday next. 'Till which time he was remanded to the *King's-Bench Prison* in *Southwark*.

His Wife's Application to the King, after her Husband was cast.

In the Interval, betwixt his Casting and Condemnation, upon the fourth Day of the Week in the Evening, his Wife, by Advice of some Friends, endeavoured to make Address to the King, to acquaint him with her Husband's Innocency, and the Condition of those loose Persons who had falsely accused him; which she put in writing, lest she might either want an Opportunity, or not have Courage enough to speak to him. And with some Difficulty at last she met with the King as he came out of the Park, going into the Gallery; where she presented him with the Paper, which on the Back-side was endorsed, *The Humble Request of Elizabeth James*: acquainting him also by Word who she was, to whom he held up his Finger, and said, *Oh Mr. James, he is a sweet Gentleman!* But following him for some further Answer, the Door was shut against her; which was all she could obtain at that time. The next Morning she came again to the same Place, where she had not long been, but the King came out of the Gallery to go into the *Park*, whom she follow'd down

down the stairs, imploring his Answer to her Request, who then replied, *That he was a Rogue and should be hanged.* One of the Lords attending him, asked her of whom she spake; whereunto the King answered, *Of John James, that Rogue: he shall be hanged, yea he shall be hanged.* And so she came away, satisfied in her Conscience, that what she had done was but her Duty.

The Third Day, Novemb. 22.

BEING this day brought to the Bar, according to former Order, the Clerk proceeded according to their manner, and told the Court, that *John James* had been arraigned and try'd, &c. and had committed himself to God and the Country for Trial, and by the Country was found guilty of the Crimes and Treasons alledged against him in the Indictment. And then it was demanded of *John James*, what he had to say for himself why Sentence of Death should not be passed upon him according to the Law? To which *John James* answered, That he had not much to say, only two or three Scriptures he would leave with them. The first Scripture was *Jer. xxvi. 14, 15. As for me, do as seemeth good unto you; but know ye for certain, that if ye put me to death, you shall surely bring innocent Blood upon yourselves, and upon this City, and upon the Inhabitants thereof.*

The second Scripture was *Psal. cxvi. 15. Precious in the sight of the Lord is the Death of his Saints.* He also minded that good Word of the Lord, *He that toucheth the Lord's People, toucheth the Apple of his Eye.* He told them he had not more to say for himself, only one word for the Lord, and so he had done: *That Jesus Christ the Son of God was King of England, Scotland, and Ireland, and of all the Kingdoms of this World.* Which being spoken, they silenced him, and the Court proceeded to Sentence, and the Judge pronounced Sentence according to the Law, and said thus:

'John James, thou hast been here indicted, arraigned, and tried as a false Traitor to his Majesty, his Crown and Dignity, and hast put thy self upon the Trial of God and the Country, and the Country have found thee guilty; and therefore, John James, thou art to be carried from hence to Prison, and from thence to the Place of Execution, and there to be hanged by the Neck, and being yet alive, to be cut down, and thy Bowels to be taken out, (a Fire being prepared) and to be burnt before thy face; and thy Head to be sever'd from thy Body, and thy Body to be quartered, and thy Head and Body to be disposed according to the King's Pleasure.'

This being done, *John James* had only time to say, *Blessed be God; whom Man hath condemned, God hath justified.* He was executed in pursuance of the Sentence, *Nov. 26.*

A Little before his going forth, seeing some of his Friends come in who had particularly desired to accompany him to the Place of Execution, he said, *Here come my Bride-men, embracing them with much Joy.* But, said he,

Must not the Sacrifice be bound? One answer'd, Yea, it must be bound with Cords: He rejoicing, said, so he had heard.

Soon after the Keeper came into the Room, and calling him down to deliver him to the Sheriff, he told him he was a welcome Messenger, he had waited long for him; and so he came with Joy after the Keeper, from his Chamber into the Press-yard, where hearing the Noise of the Multitude without, said to a Friend, *There would be by-and-by as many Hallelujahs, as Shoutings of the People without;* and there they bound him about the Back with a new Cord, and so had him into the Street; and being placed upon the Sled, drawn by a Team of Horses, attended by the Sheriffs Men, and a Company of Foot-soldiers, was drawn along to *Tyburn*; the Way out of the Town being very foul, he was drawn thro' very much water and dirt, besides the very much flapping of the Horses that went besides him.

Being come to the Place of Execution, he ask'd Mr. *Sterling* the Sheriff, whether he might not have Liberty to speak to the People? He told him he might, if he would not speak seditiously, (or Words to that purpose.) Then *John James* address'd himself to speak as followeth:

First of all, that which I have to say before I go out of this World, is, to remove that which hath been thrown upon me by way of Aspersions, as if I were a Jesuit. * Here at this Place, at this Time, are some that knew me from my Childhood, and can clear me in this Particular: and therefore I shall only say this to it, That I am an *Englishman*, never was out of the Nation in all my Life; never had any Knowledge of any other Tongue but the *English* Tongue, therefore altogether incapable of such Work and Employment as Jesuits are usually put upon, they being commonly Men of great Parts and Learning, which I am not. I shall only speak this in respect of my Parentage and Education; I came of a very mean Family; I may truly say, as once *Gideon* did, *My Family is the least in all Manasseh, and I am the least in the Family:* And in truth I may justly say, my Family, the Family that I came of, it was a very mean Family, the meanest among all the Families of the People of the Lord at that Day, as I knew of; and for my Parents, they were People fearing God, those that durst not for their Lives, I say, they were those that durst not for their Lives stain their Consciences in respect of Idolatry and Superstition that was up at that day.

I shall not need to speak any more to that, I came not here to boast of my Parentage; I declare I came of a mean Family, only my Parents were People fearing God, and did, to their utmost, endeavour what they could to bring me up in the Nurture and Admonition of the Lord; and I hope my Father at his Death had not ought to be charged with by way of Blame: And my Mother is yet alive, and attained to a good old Age, and I trust so she is. But I shall not trouble you more about this Matter; for I only speak this, to take off that which was cast upon me, wherein I judged the Name of God would have suffer'd, had I not cleared myself.

* This Vindication was occasion'd by the coming of a Courtier, (and, as some said, one of the Bed-chamber) two or three Nights before he suffer'd, to know if he was not a Jesuit, and if he had not been beyond the Seas.

The second thing that I shall say, is, what I am in my Principles, what I am in respect of my Religion and Judgment, and I shall be brief as to that. I do own the Title of a *Baptized Believer*, I do own the *Ordinances* and *Appointments* of Jesus Christ, I do own all the Principles in *Heb. vi. 1, 2.* about the *Doctrine of Faith towards God*, and *Repentance from dead Works*, the *Doctrine of Baptism*, and *laying on of Hands*, the *Resurrection of the Dead*, and *eternal Judgment*. These are the Principles that I desire to own, and have in some weak measure been found walking in: I do not only own the Principles and Doctrines declared in the sixth of the *Hebrews*, but I do own the Commandments of God, the *Ten Commandments*, as they are expressed in the 20th of *Exodus*. I do here, as before the Lord, testify, I durst not, I durst not willingly break the least of those Commandments to save my Life; I do declare that the rather, because I would inform Persons that I do own the Lord's holy Sabbath, the *seventh Day* of the Week to be the *Lord's Sabbath*; you know the Commandment, *Remember that thou keep holy the Seventh Day*. I shall forbear to speak any more to that.

Again, further, in respect of my Principle (as that for which I judge I am here this day to suffer) That I do own the Kingdom of our Lord Jesus Christ, (to wit) the *visible Kingdom of Jesus Christ here on Earth*, and I do desire to declare it humbly and in the Fear of the Lord, *That JESUS CHRIST the Son of God is King of all the Nations in the World*, according to that in *Rev. xi. 15.* upon the sounding of the seventh Trumpet there was a great Voice in Heaven, *The Kingdoms of this World are become the Kingdoms of our Lord, and of his Christ; and He shall reign for ever and ever.* There needs no more to be said, tho' many more Scriptures might be brought to prove that it is so. It cannot be a spiritual Kingdom, the Text cannot be allegorical; for the Text saith expressly; *The Kingdoms of this World*, &c. I shall endeavour not to tire you with many Words; I do not come here (the Lord knows) to sow Sedition, I have it not upon my Heart, it hath not been my Practice, tho' this be the pretended Cause of bringing me hither; but the Lord knows, before whom I stand, and with whom I shall shortly be, that whatever I am accused of, as to Matter of *Fact*, I am free from it; I desire you may hear it, and take notice of it, the Things charged upon me are notoriously false, I speak it as my last Words, the Lord that knows all Hearts, and one Day will call all Men to an Account, knows I speak true, both in respect of the Manner of the thing charg'd upon me, and in respect of the Matter, notwithstanding that several Witnesses took the Boldness to swear it in Court. I do in the fear of the Lord also tell you, that I bless the Lord I have not the least hard Thought of them that swore against me, I have not the least hard Thought upon that account, nor the least rising of Spirit against either Judge, or Jury, or Witnesses, or any other, the Lord knows it, but have sought their Pardon upon my bended Knees, and I hope further shall do it, if God permit. I have one Word to say to the People of God, and that is this; I would entreat you not to think ever the worse of the Ways of God, because you see such a poor

Worm as I brought hither to suffer upon that Account. Let not the assembling of your selves together be any way a burden to you: know that Word, *for sake not the assembling of your selves together, as the manner of some is, but be instructing one another so much the more as you see the Day approaching*, *Heb. x. 25.* and let not any of the Ways of God, any of the Ordinances of God, any of the Commandments of God be ever the worse in your Eyes, because a poor Worm that has professed them, and has in some poor measure tasted in them of the Love of God, is brought hither, do not think the Words and Commandments of God are the worse for that; and I would entreat you that you would stick close to them, whatever Dispensation may be at the Door, which no Man here knows one or other: But I say, whatever the Ways and Dispensations of God may be, tho' you may expect to suffer more and more, yet know that was the Way that our Lord did go, the Captain of our Salvation was made perfect through Sufferings, and the Apostles and holy Christians of old counted it great Joy, they accounted it great Joy to be filling up the Measure of Christ's Sufferings that are behind. And now, my dear Friends, for Jesus Christ's sake, be exhorted in the Fear of God, not only to stick to those Ordinances and Commandments of God, wherein you are enlightned, but take that good Word of God, in *1 Chron. xxviii. 8.* it was *David's* Advice to *Solomon*, the Words are, *Solomon my Son, keep and seek for all, &c.* do not content your selves with what you do already know, but endeavour, in the Fear of the Lord, to be seeking after more. I would further charge every one of the People of the Lord, to have a care of defiling themselves with any Idolatry, with any Superstition, by treading in By-paths that may not suit the Mind of God, however it may be accepted in the Land.

I shall not trouble you with much more, only a Word to those that have not yet an Interest in Jesus Christ, that cannot call God *Father*, I beseech such to consider, it may be that God hath a mind, by the Words of a dying Man, to do their Souls good, and I would add a Word; I beseech you consider, though you may not go the same Way I go, you do not know how soon God may call for you by Death; and therefore I speak to them that are young ones in the first place, *That they remember their Creator in the Days of their Youth, before the evil Day is come*, and the Days wherein they themselves shall say, *they have no Pleasure in them.* And to those that are ancient, that have spent the greatest part of their Time here, in sporting in their own Lusts, I would only say this to 'em, There is yet a Day of Grace, *To-day if you will hear his Voice.* Jesus Christ is held forth in the Gospel freely; He holds forth his Blood freely; for the worst of Sinners are not too old, nor too wicked, nor too great, they are not too unclean for Jesus Christ to pity; and therefore, Friends, consider in the Fear of the Lord whereabouts you are, and how the Case stands with your poor Souls. I have said what I have to say, only I would desire that I might have liberty to wait upon God, to commit my Soul, and the Concernments of each other to the Lord in Prayer. Then he address'd himself to the Lord in Prayer.

His Prayer being ended, he said he could not speak more, being very much tired, and his Body brought very low. The Hangman said, *The Lord receive your Soul.* He reply'd, *I thank you.* Then another said, *This is a happy Day.* He said, *I bless the Lord, it is so.* The other said, *The Lord make your Passage easy.* He said, *I trust he will so.* One ask'd if he had any thing to say to the Sheriff? He said, *No, but only thank him for his Civility.* Then the Hangman having prepared him for his Death, drew away the Cart, *John James* said aloud, (lifting up his Hands) *Father, into thy Hands I commit my Spirit, and so finished his Course.*

The Sheriff and Hangman were so civil to him in his Execution, as to suffer him to be dead before he was cut down; the Hangman taking out his Heart, and burning his Members and Entrails, return'd his Head and Quarters back to *Newgate*, put in a Basket in a Cart, and from thence were disposed by the King, viz. his Quarters to the Gates of the City, and his Head first upon the Bridge, but afterwards (by Appointment) taken down thence, and put upon a Pole in *White-Chappel*, over-against the Passage to the Meeting-place, where he and his Company were apprehended.



LXI. *The Trial of THOMAS TONGE, GEORGE PHILLIPS, FRANCIS STUBBS, JAMES HIND, JOHN SELLERS, and NATHANIEL GIBBS, * at the Old-Bailey, for High-Treason, Decemb. 11. 1662. 14 Car. II.*



HE Commission of Oyer and Terminer being read, and Proclamation made, the Grand Jury were sworn: whose Names are,

*Arthur Jourdan,
John Freestone,
Thomas Fawson,
Thomas Coney,
George Compere,
Isaac Rutter,*

*Chr. Rigby,
Rowland Steed,
William Standen,
John Worth,
John Rigby,
Leonard Staples.*

And several Witnesses being called, there appeared *William Hill, Edward Riggs, Tyler, Godolphin, Bonfoy,* and several others; who being all sworn, were directed up to the Grand Jury.

After some hours Examination of the Witnesses, and Consultation, the Grand Jury returned the Indictment *Billa Vera.*

Clerk of the Peace. You good Men of the City of *London*, summoned to appear here this day, to inquire between our Sovereign Lord the King and the Prisoners that are and shall be at the Bar, answer to your Names as you shall be called, every one at their first call, upon pain and peril that shall fall thereon. Good Men of the Ward of, &c.

Serjeant *Glynne*, Serjeant *Maynard*, his Majesty's Serjeants at Law; Sir *Jeoffry Palmer*, Attorney-General; Sir *Heneage Finch*, his Majesty's Solicitor; Serjeant *Keeling*, his Majesty's Serjeant; Sir *Edward Turner*; taking their Places in Court.

The Prisoners were commanded to be set to the Bar.

Clerk of the Peace. *Thomas Tonge*, hold up thy Hand; *George Phillips*, hold up thy Hand; *Francis*

Stubbs, hold up thy Hand; *James Hind*, hold up thy Hand; *John Sellers*, hold up thy Hand; and *Nathaniel Gibbs*, hold up thy Hand.

Which they severally doing, their Indictment was read, the Substance whereof is as followeth, viz.

‘YOU the Prisoners that were last called to the Bar, stand indicted in *London* by the Names of *Thomas Tonge* late of *London* Distiller, *George Phillips* late of *London* Yeoman, *Francis Stubbs* late of *London* Cheesemonger, *James Hind* late of *London* Gunner, *John Sellers* late of *London* Compass-maker, and *Nathaniel Gibbs* late of *London* Felt-maker; for that you six, together with divers others, particularly in the Indictment mentioned, and others not yet taken, as false Traitors to the Illustrious, Serene, and most Excellent Prince, *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. minding and with all their Force intending the Peace and Tranquillity of this Kingdom of *England* to disturb, and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 31st Day of *October* in the fourteenth Year of the Reign of our said Sovereign Lord King *Charles* the Second, traitorously did compass, imagine and intend the killing of our said Sovereign Lord the King, and the antient Government of this Kingdom of *England* to change;’ [as in the Indictment more particularly was mentioned.]

What sayest thou, *Thomas Tonge*, art thou guilty of this High-Treason in Manner and Form as thou standest indicted, or not guilty?

Tonge. Not guilty.

Clerk. How wilt thou be try'd?

* Kelyng's Reports, p. 17.

Tonge. By God and my Country.

Clerk. What sayest thou, *George Phillips*, art thou guilty? &c.

Phillips. I am guilty in hearing and not discovering of it.

Clerk. Art thou guilty of this High-Treason whereof thou standest indicted?

Phillips. I am guilty, but not in Manner and Form as I stand indicted; I have heard the Words, as I formerly confessed to *Sir Richard Brown*: Not guilty, as to the Manner and Form.

Clerk. How wilt thou be try'd?

Phillips. By God and my Country.

Clerk. How sayest thou, *Francis Stubbs*, art thou guilty? &c.

Stubbs. Not guilty.

Clerk. How wilt thou be try'd?

Stubbs. By God and my Country.

Clerk. What sayest thou, *James Hind*, art thou guilty? &c.

Hind kneeling down, and discovering much Penitency, answered, I am guilty, and humbly beg Mercy of his Majesty.

Court. Record his Confession.

Clerk. How sayest thou, *John Sellers*, art thou guilty? &c.

Sellers. Not guilty.

Clerk. How wilt thou be try'd?

Sellers. By God and the Country.

Clerk. How sayest thou, *Nathaniel Gibbs*, art thou guilty? &c.

Gibbs. Not guilty.

Clerk. How wilt thou be try'd?

Gibbs. By God and the Country.

Court. Carry up *Hind* to the Goal.

And the rest standing at the Bar, Silence was commanded.

Clerk. *Thomas Tonge*, *George Phillips*, *Francis Stubbs*, *John Sellers*, and *Nathaniel Gibbs*; you the Prisoners that were last called to the Bar, those Men that you shall hear called are to pass upon Trial for your several Lives and Deaths: if you or any of you will challenge them or any of them, you must challenge them when they come to the Book to be sworn, before they be sworn.

Edmond Butler.

Tonge. I challenge him. [But afterwards admitted him.]

Clerk. *Edmond Butler*, *Clement Punge*, *George Dixon*, *Samuel Paine*, *John Bagnal*, *John Gourney*, *William Gayler*, *Ralph Silvertown*, *William Dudley*, *Joseph Drake*, *John Peake* and *Robert Morrice*, were severally sworn in this manner: Lay your Hand on the Book, look upon the Prisoner; You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in charge, according to your Evidence. So help you God.

Clerk. Count these, Cryer. *Edmond Butler*; Cryer, One. *Clement Punge*, Two, &c. Twelve good Men and true, stand together, and hear your Evidence.

Clerk. Cryer, make Proclamation.

Cryer. O Yes! If any one can inform my Lords the King's Justices, the King's Serjeants, or the King's Attorney, before this Inquest be taken, let them come forth, and they shall be heard; for now the Prisoners stand at the Bar upon their Deliverance: and all others that are

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bound by Recognizance to give Evidence against any of the Prisoners at the Bar, come forth and give Evidence, or else you forfeit your Recognizance. And all manner of Persons that were summoned upon the Jury, and have not yet been sworn, they are discharged, and may depart the Court.

Clerk. *Tho. Tonge*, hold up thy Hand; [and so to the rest of them at the Bar.] You of the Jury, look upon the Prisoners, and hearken to their Cause; you shall understand that they stand indicted in *London* by the Names of *Tho. Tonge*, late of, &c. [and so as in the Indictment aforementioned] who together with *James Hind*, who stands convicted by his own Confession, and the rest also aforementioned: [and so reads the Indictment again.]

Upon which Indictment they have been arraigned, and thereunto have severally pleaded, Not guilty; and for their Trial have put themselves upon God and the Country, which Country you are: Your Charge is to inquire whether they be guilty of the High-Treason in Manner and Form as they stand indicted, or not guilty; if you find that they, or any of them are guilty, you shall inquire what Goods and Chattels, Lands and Tenements, they or any of them had at the time of committing the said Treasons, or at any time sithence; if you find that they are not guilty, you shall inquire whether they or any of them did flee for it; if you find that they fled for it, you shall enquire of their Goods and Chattels, &c. as if you had found them guilty; if you find that they were not guilty, nor that they did flee, say so, and no more, and hear your Evidence.

Sir Edward Turner. May it please your Lordships, and you Gentlemen that are sworn of this Jury, the five Prisoners at the Bar, by the name of *T. Tonge*, *G. Phillips*, *F. Stubbs*, *J. Sellers*, and *N. Gibbs*, do stand indicted, for that they as false Traitors, together with several other Persons mentioned in the Indictment, the 31st of *October* last, did, in the Parish of *St. Michael's* in the Ward of *Cornhill*, *London*, assemble and meet together, consult, contrive, and design to levy War against the King, to subvert and change the Government as it is now established, to depose and kill the King: And in order to effect this, they did likewise then and there agree and design to seize and take in their hands the King's Royal Palace called *Whitehall*, where the King resides. For this they have been indicted, arraigned, and all these five have severally pleaded Not guilty: if we prove them guilty, you must find them so.

Serjeant Maynard. Gentlemen of the Jury, you have heard the Indictment read, you have heard the Substance of it opened, it is short in words, but of as high consequence as any thing can be. I shall open the Particulars of that Evidence, that we conceive will be made good by the Oaths of Witnesses to be produced to you. You see here what the Indictment is: I shall insist upon these Particulars, which I shall open and make good to you: First, What was their Design; Next, What was their Means of Accomplishment, what Encouragements they used one to another, and what Colours they put upon this wicked Action. For the first, Gentlemen, I shall begin at the highest, higher no Man can

go in this World, that is, to design and compass, to contrive to put the King himself to death, to seize his Person; some of them called it *securing*, you know the *English* of that, a King secured. We will go further, for we shall prove to you the Person that with his own wicked Hand undertook the Slaughter and Murder of the King; he did contrive how he might do it, sometimes when the King was performing an Office of Piety to visit his Mother, other times when he should recreate himself by Hunting: higher than this they could not go, and this they coloured over with Religion. This merciful King that had pardoned his People beyond their own Desires, and contended to do it; this King they would murder. Had there been no more, it had been exceeding heinous; but they went further, their Malice rested not upon his Person, but the Family, the Noble and Excellent Duke of *York* is design'd to be secured likewise, and used like his Brother: not they only, they went further, the whole Nobility was in design; not (Gentlemen) that every one of these before you used these Expressions, but they and their Complices, some one and some another Expression: but all joined in this, to destroy the King and his Family, Root and Branch, that was their Expression. King, his Family, Nobility, nay, go down to the Gentry, and it ceased not there, they go to the Clergy, as one of the Prisoners at the Bar (as you will hear) did express himself, I think it was *Stubbs*, That there should be never a Lawn-Sleeve, never a Surfinger should have a hole to hide his head in.

Stubbs. I never opened my Mouth to that purpose.

Serj. *Maynard*. That will be left to Proof: I undertake not of myself to prove this, but to open it, let the Witnesses speak. In discourse some went further than that, whosoever would not join with them in their Design (it was one *Strange*) was an Enemy; and thereupon one *Cole*, who is gone, deserted them, though he was contented to have the King murdered, the Nation ruin'd, yet would not agree in that Principle. To accomplish this, we shall prove to you they did treat of levying a War, that among themselves it was given out that Arms were provided, some delivered; and their Designs to raise Money, seizing all the Treasury at *Whitehall*, *Worcester-house*, and the Chamber of *London*; to seize the Person of the noble Duke of *Albemarle*, and all about him, and Quarter to be given to none; that was their Expression. They did give out among themselves, (for a while there was some difference among these *Foxes*, whose Tails were tied together, and had fire in them) and *Tonge* told them (as we shall prove) that all Parties were now agreed, and would join: they had framed Declarations to justify their Proceedings, framed Papers to raise a Mutiny among the Mariners, and encouraged them to join with them, this will be proved. For their Means, *Phillips* at the Bar undertakes to procure the Word that the Guard in the City had, so to betray them. There was a Design made for seizing the *Tower*, several Men appointed for that purpose, they and their Complices were to come there with Papers in their Hands, as if they were Mariners and had Accompts to make up, these were to go up to those that sat there to finish Accompts. To encourage them-

elves, they gave out that they had dealt with the Soldiers at *Windsor*, and secured that Castle; if this be proved to you, there can nothing be higher. There was this one Pretence, it was given out (and perchance the Rumours of the City are come to your ears) that they had design'd a Day for the Execution of this Mischief; several Days were appointed, one on the Lord Mayor's Day, another on *Alballows Eve*. They gave out by a feigned Letter, that there would be a Massacre by the *French* and Papists, of the Protestants; this was to raise a Fear and Discontent among the Nation, to induce them to join when this Design should be attempted. Gentlemen of the Jury, had they gone on in this wicked Purpose, having possessed the People with these Fears, who could have told how to behave himself? And it seems strange and wonderful, especially looking upon the Persons, Men of little Consideration, despicable Men, and who live under the Mercies of so good a Sovereign, that they should take such a Design in their Hearts, and undertake the Performance. Though the Spear hath not entred into the Sides of our Sovereign, yet it must needs crown his Head with abundance of Thorns, that such People should be so desperately wicked. But we shall call our Witnesses, and when you have heard this proved, we cannot be so uncharitable to think you shall need any further Aggravation, or doubt of your giving a Verdict against such Miscreants as these are.

Sir *Jeoffrey Palmer*, *Attorney-General*. These few Prisoners at the Bar were not all in this Contrivance, tho we have not all their Names; but in the Evidence you will hear, there was a Council of Forty, and then of Six, but none discovered. These Six acted and infused into these and divers others what they intended, and then broke up, and gave out all was ready, and would be done on such a Day. We shall not trouble the Jury with giving Evidence particularly against these Men, they are joined and knit together in one Cause. But hear the Evidence.

William Hill, *Edward Riggs*, and one *Bradley* were sworn.

Counsel. Mr. *Hill*, speak your Knowledge in this Business, to my Lords and the Jury.

Mr. *Hill*. May it please your Lordships, about the middle of *October* last, I met *John Baker*, one that is now indicted, he was a Captain formerly called; I met him in *Cheapside*: he meeting me (after a Salutation) invites me to drink with him; I went into a House with him. When I was with him, he began to ask me what News there was in the Country; I told him I had little to inform him. He told me, if I would stay a while he would tell me some. I asked him of what nature. Says he, Not long ago the King went a hunting, sent some Stags to Sir *John Robinson*, now the Lord Mayor, and went but with a small Guard, and I could have been one of the twenty that would have slain that Outlandish Dog. Then said I, Mr. *Baker*, that's nothing to me; but what other News have you? Says he, I know thou art right, and I know your Father; there is something on foot in the City, and if you will meet to-morrow, I will bring some Persons to you that will give you Information. Sir, said I, (understanding it of dangerous consequence, and willing to get it out,) I

I will meet you: and we agreed to meet the next Morning. That Morning three Persons came early to my Quarters, *Hill* the Cloth-drawer, *Mr. Bradley*, and this *Mr. Riggs*; he appointed them to meet him there, but failing himself, they being Strangers said nothing to me then, and so I departed, and left them a drinking. The Morrow after, he himself came to my Lodgings, fetches me out of my Bed, and tells me he had appointed some Persons on the *Exchange* to give me an Account. I went with him thither, and there we met with some Persons that were his Acquaintance; and from thence we went to the *Ship* in *Leadenhall-street*; and among us was *Hind*, that confessed himself guilty: and there the Business was fully discouraged of, what their Intention was, that all Interests were agreed, *Fifth-Monarchy-Men*, *Anabaptists*, *Independents*, and *Fighting Quakers*; and the Congregational Churches were consenting, and were resolved to endeavour their Deliverance from Adversaries at *Whitehall*: many Passages more. On the Morrow after we met again, and there met with us *Hind*, and *Brown*, and *Baker*. There we were acquainted of their Magazine and Arms provided, and about their Correspondence in the several Counties, that they were sure of *Windsor-Castle*, that the head Gunner and Serjeant there were privy. We had Information concerning this *Tonge*, as an active Person in this Design; I studied to know this *Tonge*, and I was brought to him at his House; and there I met one *Ward*, *Stubbs*, and *Hind*, and some others, and there we had discourse concerning the Business. *Tonge* told us something of the Business of *Windsor-Castle*, and proposed something in reference to the taking the *Tower*, what Arms and Men they had for this Design. We met many times at the *Ship*, that *Gibbs* we met at *Bridewell-Dock*, and there was *Stubbs* and one *Beazley* with me; there we waited for a Brother of this *Gibbs's*, to give us Intelligence when the Day of the Insurrection would be: we waited not long, but in came his Brother and two Persons more, one *Thomas* a Bridler or Bit-maker in *Shoe-Lane*, and another Person in a handsom Garb came along with him. His Brother was somewhat shy (because I was a Stranger) to speak any thing, but calls for this *Gibbs* and *Stubbs*, and had some private Discourse with them, and away departed: After they were gone, we desired to know the Intelligence; they told us that the Council of Six was broken up, all Business was settled, *Ludlow* was Commander in chief, and *Alballows-Eve* was the time, that Horse and Arms were provided. For *Phillips*; that Day that the Meetings were intercepted, that the Trained-Bands did surprize them, that Day this Gentleman and I (pointing to *Riggs*) came to the Main-Guard at the *Exchange*; where Serjeant *Phillips* was with a Buff Coat and a Halbert; and this Gentleman (meaning *Riggs*) saluted him, and thanked him for his Service in sending down notice to the Meeting to be gone, for he was coming with the Trained-Bands to surprize them. He asked him, what was the occasion of the Bustle: says he, they say——

Sir Robert Forster, Chief Justice. Who is that he?

Hill. That *Phillips* said, They say they were

up in the West, and if they were not, I would they were, and here too, for a few would do the Work. Upon the Monday after, we met him near the *Exchange*; and so likewise *Riggs* thanked him for his Service, and then he (*Phillips*) promised his further Service when the time of the Insurrection would be.

For *Sellers*, I was by Agreement to have thirty Arms delivered me, and I was very pressing to have the Arms out of the Magazine. *Sellers* met with this Gentleman (*Riggs*) and he urging *Sellers* about the Arms, *Sellers* told him that they were all delivered out the Night before, about five or six hundred; and that forty of their Friends went away without Arms, but that within two or three Days there would be more laid in.

Sir Heneage Finch, Solicitor-General. *Mr. Hill*, I will ask you one Question, (with my Lord's favour;) as you have given a general Account, I will keep you to one particular Person, *Tonge*: Did *Tonge*, in any Discourse with you, tell you of one *Strange* that was gone into the Country?

Hill. One night he told us he had spoke with *Strange*; that he was gone into the Country, and would come back the Morrow, and then we should have more Intelligence.

Sir Heneage Finch. What concerning the *Tower* and *Windsor-Castle*?

Hill. He talked of the good Service that he had done in being at *Windsor-Castle*, with the Serjeant and Gunner, for the securing of that Castle; that near five hundred of their Friends were in and about *Windsor*, ready to assist for surprizing that Castle.

Court. Who told you this?

Hill. *Tonge* told me himself, That he was instrumental in it.

Finch. Did he tell you any thing of the *Tower*?

Hill. Only he said, it was fit some care should be taken to surprize the *Tower* at the time.

Finch. Any thing of *Alballows Eve*?

Hill. He did not fix the very instant time, but said, he look'd for Intelligence from *Strange*.

Sir Jeoffry Palmer. What Day of the Month was that?

Hill. I cannot remember the very Day.

Serj. Maynard. What did he say concerning Declarations?

Hill. The Declaration was read, *Stubbs* acquainted us, against Popery, and Monopolies, for Liberty of Conscience, and a Free Commonwealth.

Finch. Any thing of the Popish Massacre?

Hill. Yes, I had this Paper of them, a Copy of a Letter.

Sir R. Forster. How many Copies of that Letter were to be dispersed in the City?

Hill. About five thousand.

Sir Jeoffrey Palmer. These things were to be dispersed, to possess the People that the Papists about that time would massacre the Protestants, that so they might draw all against that Party to join with them; a brave Colour, when in truth there was no such thing, but only to carry on their Design of killing the King, and altering the Government.

The Letter was read by the Clerk, and follows in his verbis.

S I R,
 ' OUT of the Respect which I bear to you
 ' in particular, and to the Protestant Party
 ' in general, I give you notice of this Passage:
 ' About a fortnight since, a Woman, which
 ' you must be ignorant where, who had it from
 ' a Correspondent of the Papists, that they in-
 ' tend to make use of their Army (which all the
 ' World sees they have provided) against *Alhal-*
 ' *low*-Eve next; it was thought good therefore,
 ' in as prudent way as may be, to give notice to
 ' our Friends in remote Parts, that they may do
 ' what Piety to God, Loyalty to their Prince,
 ' Love to their Country, and Self-preservation
 ' should direct them. Sir, I call the Eternal
 ' God to witness, that this is not to trepan, to
 ' put a trick upon you, but a sober Truth; and
 ' also communicated to a Justice of the Peace,
 ' and by him to the Privy-Council: And what
 ' the Issue of it is, I have not heard; I hope
 ' you will inquire, and tell us.

' From *Yexford* in *Suffolk*,
 ' Octob. 31. 1662.'

Serj. *Keeling*. Do you (Mr. *Hill*) remember any Discourse of the Way of taking *Whitehall*? Name who were there, and who spoke.

Hill. There was *Hind*, and one Captain *Browne* a Shoe-maker in the *Strand*, and some other Persons.

Counsel. Was *Stubbs* there?

Hill. Not at this Discourse: but we talked of taking *Whitehall* at *Stubbs's* House, when a Sea-Captain was there, that was to go to *Surinam*, and *Stubbs* invited him to stay at home to assist them; who was to come down with a Party by *Charing-Cross*, and another Party to come up by the *Cock-Pit*, and to kill my Lord Duke of *Albemarle*, and to slay Sir *Richard Brown* in the City, and the Party in the City to keep a Drum beating, &c. And *Tonge* said, That their main Care must be to keep down Sir *Richard Brown*, and the Trained-Bands, or else they should never be able to stand.

Counsel. What concerning the *Privy-Garden* Way?

Hill. They discoursed concerning the getting down the Door and the Wall, and so get the sooner to *Whitehall*.

Counsel. What was *Stubbs's* Opinion at that Communication?

Hill. His was at *Blackfryars*, the last Tuesday Night before they were taken, this *Stubbs*, *Thomas*, and *Gibbs*.

Court. Which *Gibbs*?

Hill. This black *Gibbs* at the Bar: They discoursed that they would be sure to make an end of Kings, Princes, and Dukes, that they might have a Free State, and be troubled no more with any such kind of Persons, neither Lawn-Sleeves nor Surfinglers,

Counsel. Do you remember that *Stubbs* proposed any other Way to *Whitehall*?

Hill. No, Sir.

Maynard. Did they say what Number was provided, Ten, or Twenty Thousand?

Hill. *Stubbs* assured us, that there was a great Party in *East-Smithfield* right for the Work, and had their Arms.

Counsel. What Employment had *Sellers* about delivering the Arms?

Hill. He said, the Arms were delivered out at *Crutchedfryars*, about six hundred; and that forty of their Friends went away last night for lack of Arms; that within two or three Days there would be more.

Counsel. Did he name a Magazine?

Hill. Yes, the Magazine in *Crutchedfryars*.

Counsel. Did you know any thing touching the Discovery of the Word, and by whom?

Hill. No, Sir: But I understood that *Tonge* was assured by *Phillips*, that *Phillips* would get him the Word that very Night that they intended the Insurrection.

Counsel. What was propounded, if they had taken the King, what would they do?

Hill. He should have the same Quarter as *Ludlow* was to have.

Court. Who said that?

Hill. *Stubbs*, and *Gibbs*, and *Tonge*.

Counsel. That's three of the Prisoners at the Bar: Lord have Mercy upon us!

Court. Were you not acquainted of a Council of Six?

Hill. Yes, they named several at a venture, but they believed some of them were of the Six: That they met not twice in a place, sometimes here, and sometimes in another place.

Counsel. Who did they name?

Hill. Colonel *Danvers*, *Phillips*, *Nye* the Minister, *Lockyer*, and one *Cole* of *Southampton*, that these five were part of the six.

Counsel. What Discourse touching the Distance of Place where they engaged any?

Hill. Forty Miles about the Town.

Counsel. Did *Tonge* tell you that *Strange* had lodg'd any Horse?

Hill. He said, he had taken out the Horse that were provided for a time; but *Gibbs* and *Stubbs* at *Blackfryars* assured us of the Horse coming in to the Town the night before.

Counsel. Did *Tonge* tell you of any Back, Breasts, Blunderbusses?

Hill. Not he, Sir. It was talked of that night at the *Blackfryars*.

Counsel. What did you hear concerning sending into *Dorsetshire*, to spread Rumours there?

Hill. That they had four hundred of their Friends there, that they were sure of, and several Cases of Pistols were sent down by the Carrier.

Court. Who said that?

Hill. I know not what particular Person, but at that Meeting, and in that Company.

Counsel. Who was present?

Hill. *Gibbs* and *Stubbs*.

Counsel. None of the rest? Was *Tonge* or *Phillips* there?

Hill. No, Sir.

Counsel. Did you hear of any other Country, either *Kent*, or *Worcestershire*, or *Derby*, or *Leicestershire*?

Hill. *Tonge* informed us of the Faithfulness of Col. *Kendrick* in *Kent*, to bring him some Arms.

Court. If the Prisoners will ask him any Questions, they may.

Sellers. Friends, all that are here present, I did ever abhor such an Action. Ask him whether he did hear me speak those Words, that I should say, *That there was Arms delivered out, and that forty went away lacking, and in one or two Days there would be more*: Which Words I never did speak in my Life, or any such thing, only what I heard from *Wapshot*, as *Wapshot* declared

clared to my Lord Mayor he told me, to whom I appeal. It's true, meeting with that *Wapshot*, says he, *We hear there will be a Rising, and there are some Arms delivered out.* Said I, *I would advise you to have a care of such a Business.*

Sir *Orl. Bridgman*. I would not interrupt you, you will be admitted to make your Defence afterwards; but if you will, ask him any Question.

Sellers. My Lord, I shall come to that: *Wapshot* told me there were Arms delivered, but further told me, he knew not of the Certainty of these things; that at night he should go to a House where he should know. I bid him have a care. At night, as I was passing along, I met *Riggs* at *Stubbs's* Door; he asked me, What News at London? I said, I was told there would be a Rising, and that Arms were deliver'd. Is there, says he? Said I, I do not believe it, but I shall know certainly to-morrow. I did call the next Morning, and asked, Is the Story true? No, says he, I was there, and there was no Arms; that was all that I know of the Business. Friend, did I tell you any such thing?

Counsel. Tell him, and upon what occasion.

Hill. Upon occasion of *Riggs's* asking him for thirty Arms for me, (this upon the *Exchange*) *Sellers* took him a little aside, and told him, they were all delivered out, that forty went away lacking, that more would be there within two or three Days.

Sellers. That which I said to *Riggs*, was the Message I received from *Wapshot*; but that I inquired, and there was no Arms there; so that it was but a Fallacy: for I advised him not to meddle with any such thing. Mr. *Hill* never saw my Face, till I was apprehended upon the *Exchange*, and brought before Sir *Richard Brown*.

Hill. I saw him upon the *Exchange* with this Man, (*Riggs*.)

Counsel. Did he say that any Arms were deliver'd before, and what number?

Hill. About five or six hundred.

Sellers. He never heard me speak a word.

Counsel. How long before he was apprehended?

Hill. Never but that time with *Riggs* upon the *Exchange*, about nine Days before his Apprehension; and he confessed upon his Examination, That he did see me with *Riggs*.

Court. Have you, or any other the Prisoners, any Questions more?

Sellers. I have more: Whether he will positively affirm that he spake with me upon the *Exchange*?

Hill. No, Sir, you answered the Question to *Riggs*.

Counsel. You heard the Answer?

Hill. Yes, Sir.

Sellers. May be at the second hand.

Counsel. Did you hear the Prisoner answer it, or had you it at the second hand?

Hill. I heard it from *Sellers* himself, answering *Riggs*.

Sellers. Did you hear me?

Hill. Yes, to Mr. *Riggs*.

Sir *Hen. Finch*. He swears it, and you wonder at it, and so we do all.

Sellers. Who was there then?

Hill. It was upon the *Exchange*, when almost full.

Sellers. What Day of the Month?

Hill. I cannot remember the Day.

Sellers. I do declare before this Honourable Bench, Gentlemen of the Jury, and this great Auditory, That I never saw this Man's face till I was apprehended. That which I told Mr. *Riggs*, was what I heard *Wapshot* say. I never till then saw this Man's face, nor exchanged one word with him; whereas he says, he heard me. I do not believe Mr. *Riggs* saw him near me, when I gave him the Answer.

Hill. Seeing he doth invalidate my Testimony, Mr. Adjutant *Carent* took him upon the *Exchange*, I shew'd him the Person; and therefore certainly I must see him before.

Sellers. It was not he, but the other in the white Clothes, that came and took me, that knew me.

Court. Will any of the rest ask him any Question?

Sellers. Here is that that I am accused of, That I delivered Arms, which is altogether false: my Lord Mayor can bear witness, *Wapshot* confessed he told me such a thing. I did ever abhor any such thing; I was always serviceable to his Majesty upon all occasions, and all times: my Neighbours can witness my civil Conversation.

Court. Have you any thing more to ask him?

Sellers. I would fain know whether the Bench and Jury are satisfied with this Evidence.

Court. That you will hear anon: What else will you ask him?

Stubbs. What he accuses me, you have all heard: I do in the presence of God, and this Honourable Bench, and the Jury, deny it; for it is very false, and believe none will verify the same upon Oath.

Court. Have you any Questions?

Gibbs. We all stand in the presence of God; and I am very conscientious of what I say and do; I must give account of all things before the Lord. This Gentleman, Mr. *Hill*, has asserted concerning me, That I should deliver divers Cases of Pistols, as knowing the Delivery of them: if Mr. *Hill*, who stands likewise in the presence of God, can produce any Man to prove, that I delivered to any Man any Pistols, or that any were so delivered by my Order, or that I convey'd or sent them away into the Country; do this in the sight of the Lord and his own Conscience, I expect not Mercy. But I would have him speak no more of me, but what he knows of me, or by me; whether he knows I ever received any Pistols, or delivered any at any time, for such an End as he is pleased to speak: which my Soul abhors, and God can witness.

Stubbs. This Mr. *Hill* was the Man that mentioned this, and that he had four Horses and Arms himself, and had two hundred Pound in order to it. I was never any Plotter, nor contrived any thing, but am as innocent as the Child unborn; but being by an accident at *Tonge's* House, a Strong-water-Man: Ask the other Witnesses, whether he speaks Truth—

Sir *Orl. Bridgman*. I would have put you in a right Way: You shall be all heard at large, when you make your Defence. But will you ask him any Questions?

Gibbs. I propounded one; I desire an Answer: Whether I received or delivered any Pistols to such a Use?

Hill. I did not say he did: But at that Meeting at *Black-Fryars* it was discoursed among them, That

That several Arms were sent to *Dorsetshire*, to several Friends there; and he was there then: I believe he cannot deny it.

Stubbs. There was Arms spoken of; but that Man (*Mr. Hill*) spoke of them, and upon this Consideration, That there were Arms delivered to every Hall, Ammunition and Powder. *Riggs* knows he spoke it at that time.

Hill. Sir, that was spoken after the Question was put, What was the occasion of sending the Powder and Ammunition to the Halls? These Arms were spoken of in reference to the Design. I do acknowledge I told them I had some Arms my self; and said, I had two hundred Pound for carrying it on. And I know the grounds of my speaking; and so do some of this Honourable Bench.

Stubbs. *Hill* advised, That they fall upon Sir *Richard Brown* as an Enemy to all honest Men.

Gibbs. This *Hill* says that I should say these Things; there were more there, and had Ears as well as he, let them speak.

Hill. There was *Riggs*, *Stubbs*, my self, and I know not the other Names.

Gibbs. This *Hill* and *Mr. Riggs*, whose Face I never saw, came to my Neighbour's House, where I was alone, found me plotting with no Man.

Hill. We were brought into his Company by one *Beazly*: He had been at *Tower-Hill*, about Two or Three a-clock, to give some Intelligence to some Persons there about the Design. *Riggs* and I took a Coach, and went after him; and *Stubbs* told us we might meet him at a Baker's House near the *Tower*. We found *Beazley*, and he said he could not signify any thing to us, but would carry us to *Black-Fryars*, to one *Gibbs*: And there he brought us to this very Man. First enquiring at a House for him, *Beazley* was told he was at a Tavern at *Bridewell-Stairs*: We went there, and found him. He told us he could tell us little himself, till his Brother came; and accordingly he presently after came. That was the occasion that I came into his Company.

Gibbs. He says that I spoke of Pistols delivered, and a Number; but how many he knows not: And that I should talk of the Death of the King; which is as false as God is true. Again, I knew not of his coming, never appointed him, never was privy to any such Plot; I abhor it in my Soul. I never engaged in any such Design with any Man at any time —

Court. You do your self much wrong, and take away that Time which you may happily spend better.

Stubbs. I desire to know of *Mr. Hill* who was present at that Meeting that I should say, The King should have such Quarter as *Ludlow*.

Hill. It was spoken at that Meeting at *Black-Fryars*: After his Brother and the other Persons were gone, it was there spoken, That the Council was broke up, and all ready; *Alballow's-Eve* the Time, and then the same Quarter to be given as *Ludlow* should have, if taken.

Stubbs. You do not answer the Question: Who was there besides your self?

Hill. There was *Riggs*, and that *Gibbs* there.

Stubbs. You have only his Evidence.

Tonge. Who was in Company when I talked of 300 Men at *Windsor*?

Hill. It was at your own House; and there was *Ward*, *Stubbs*, *Riggs*, *Hind*, and my self.

Phillips. Whether did he ever see my Face at any Meeting?

Hill. I never saw you before that Time in *Cornhill*.

Phillips. Upon what account did I speak to *Riggs* then?

Hill. When you came off the *Exchange*, you told him you could not stay, your Captain was coming. *Riggs* thanked you for your Favour, in sending Word to the Meeting to be gone to a certain Quaker.

Phillips. I never sent to any Quaker to that purpose. I did not see this Man upon the Sabbath-day: But *Riggs* came down to me, and thought I had sent notice to *Anchor-Alley*; but I did not.

Sellers. He affirmed that there was several Meetings of forty, and then of six; ask *Mr. Hill* whether I was in either of those Numbers at any time.

Counsel. He did not chage you with any such Thing, of being in that Number: He asks a Question about Things not laid to his Charge. Let *Mr. Riggs* speak.

Edward Riggs. About three and twenty Weeks since I became acquainted with *Mr. Tonge*, upon this occasion: Captain *Baker* did say that he was a Man of Intelligence, but *Mr. Tonge* did not care for him; and told me that I might be acquainted with him. A while after I came acquainted with him accidentally, when I came to his House.

Court. Whose House?

Riggs. *Tonge's* House. *Mr. Stubbs* was there. He said, That he had been at *Windsor*, spoken with the Gunner and Serjeant; and that they promised it should be ready upon some certain notice given. That Night he had received a Letter of some Business concerning a Suit of Law, he said; in which there was a mystical Meaning, which he did not tell me of. But this he said, That he had made sure of *Windsor* by the Gunner and Serjeant's Promises. This is that I know of him.

Counsel. Is this all of *Tonge*?

Riggs. This likewise he has told me, That he had sometimes met with a certain Company; he did not say thirty or forty, but a pretty many there was. He named *Mr. Cole*, Captain *Elton*, Captain *Leigh*, that they had often met, but could not well agree. But at last *Mr. Strange* did meet with them, give them one Meeting; they could not agree neither. They went away, and said these Words, to the best of my Remembrance; *Mr. Strange* did refuse to join with them; but when God did bid him go, he would go, whether this Day, or next Week, or next Year, matters not; but when God bids him go, he would go. *Mr. Cole* was somewhat troubled to hear it: But says *Mr. Cole*, If you will go, give me but notice, if I cannot go so fast as you ride, I will hold by your Horse-tail. A little while after he told me, They had not met again; that *Mr. Cole*, because they could not agree about this Business, was gone beyond-Sea; but before he was gone, he did tell me of some Considerations that were drawn, as he judged, about a Government by Master *Cole*; and gave me in a Paper some certain Propositions, three

three or four concerning Seamen: The Substance was this, What great Benefits they had by a Commonwealth.

Court. Who gave you them?

Riggs. Tonge: But it came from Mr. Cole, as he said. In general, they were to declare against the Misgovernment of Church and State: In particular, to Seamen; what great Advantages there would be to them. And three or four Things propounded in order to them: 1. That no Seamen should pay Custom for any Commodity that he did bring under the Value of ten Pounds; upwards they must. And likewise there should be Care taken upon our own Coasts, and beyond Sea, that where any of our *English* Ships should be cast away, there should be Care taken out of the Customs that might keep them, in their travelling homewards, either from begging or starving. But Mr. Cole, when they met, as *Tonge* said, would not agree; and therefore went beyond-Sea. After he was gone, within a Week or a Fortnight they had another Meeting.

Court. They: Which they? Name them.

Riggs. I did not hear him name many, unless *Leigh* and Captain *Elton*; I remember no more. And there, he said, they had under Consideration the Government of a Commonwealth; and so to declare against the Misgovernment of the Church and State: and that there was to be a Meeting at *London-Wall* in a little time after; and he was there. He afterwards told me he missed that Meeting; but had Intelligence brought him, That that Time that he missed, thirty or forty, I know not the certain Number, had referred it to six Men: They called it, *The Council of Six*; but the Names of them I never heard from him; and indeed, he said he knew them not, by reason of his Absence from that Meeting. But what I gathered from him was this, That he judged Captain *Elton* was one of them.

Counsel. He told you there was a Council of Six?

Riggs. Yes; That he heard there was, but knew them not.

Sir Heneage Finch. To make Things short: Were you ever at any Meeting where there was a Discourse touching surprizing the King, altering the Government? And who was there, upon your Oath?

Riggs. That Friday immediately before we were taken, I think *October 24*, there was some Discourse in general concerning *Whitehall*; what might be done as to the procuring of that, and likewise concerning the *Tower*.

Counsel. Who was present that Friday?

Riggs. My self, *Hill*, *Tonge*, *Stubbs*, *Ward*, *Hind*, and *John Baker*: And then, to the best of my Knowledge, there was this Discourse in general. Concerning the taking of the *Tower*, there was some Propositions on all hands concerning the taking of that. Mr. *Hind*, he only mention'd, but did not say he would undertake it, the righting of Gunners Accompts. Mr. *Tonge*, he said that the Way that he thought convenient might be this; When *Sir John Robinson*, now Lord Mayor, did late in the Evening go into the *Tower*, there should be a Party following his Coach in, and so might do it. And *John Baker*, at that present Instant of Time did say, That it was necessary the King should be surprized: And likewise said then, That there

should be no Quarter; he would give nor take none.

Counsel. Who was present?

Riggs. Mr. *Hill*, my self, *Bradley*, *Hind*, Captain *Brown*, and *Baker*, and another *Hill*, the Drawer, I think.

Counsel. Was not *Tonge* and *Stubbs* there then at that Time?

Riggs. Yes; they were there.

Sir Heneage Finch. I ask you this; I do not desire large Stories, but firm and close Answers: Were you present at any Meeting when the securing the King, *Tower*, or *Whitehall*, was discoursed of, or no?

Riggs. Sir, that Friday, *October 24*, immediately before we were taken there was this Discourse: *Tonge* did propound such a Way for surprizing the *Tower*, by following *Sir John Robinson's* Coach in at Night; and *Baker* did say, That it was necessary to undertake the securing of the King's Person, and assaulting *Whitehall*; and that if there were five hundred Horse and Foot, they would undertake it, by going into the *Privy-Garden*, and *Back-stairs*.

Counsel. Were you present when *Stubbs* did advise the assaulting of *Whitehall* by the *Privy-Garden*?

Riggs. No: But *Baker* did say he would undertake it.

Counsel. Who was present?

Riggs. Mr. *Hill*, *Bradley*, *Stubbs*, and *Hind*, was there: But that *Stubbs* undertook it, I cannot say; but he was there.

Sir Heneage Finch. Did *Tonge* ever tell you any thing of *Phillips*, or that he had Hopes of the Word?

Riggs. I came acquainted with *Phillips* presently after I was acquainted with Mr. *Tonge*. *Phillips* once met me, and I carried him to *Tonge's*; and then *Phillips* freely said, That there was three hundred Arms at the *Artillery-Garden*; he being one of the Artillery, knew where they lay, and could tell them how they might come by those Arms. And that for the Word, it was necessary to be got. And if in case that it so fell out, that the *White Regiment* was then out, or he then in Office, he would endeavour to procure it. But afterward, meeting him several times, he declared he would not meddle any more with it.

Sir Heneage Finch. Were you upon the *Exchange* with *Sellers* when there was a Discourse about delivering out of Arms? And what did *Sellers* say?

Riggs. Mr. *Hill* saying that he had two hundred Pound to buy Horses, and that he had four already, and wanted Swords, and had Friends in Town wanted Arms, asked me if I knew if any were given out. I told him, that one Mr. *Sellers* told me, That he had heard some Arms were given, and to be given out that Day. Upon the *Exchange*, Mr. *Hill*, and *Bradley*, and I being together, Mr. *Hill* said, Ay, there is the Person that told me of the Arms: I will go and ask him if there be any such thing. Whether Mr. *Hill* heard the Discourse, I cannot tell; but he said, says he, I have enquired, and some Arms are delivered, and forty went without; but within two or three Days there would be more.

Sir Heneage Finch. Did *Hill* see *Sellers* upon the *Exchange* at that Time?

Riggs. Yes; but whether he heard him, I cannot tell.

Sir Robert Forster. What induces you to believe he did see him?

Riggs. We were close together.

Sir Robert Forster. What about *Nathaniel Gibbs*?

Riggs. For *Gibbs*, I brought Mr. *Hill* acquainted with Mr. *Stubbs*; and he said he knew one at *Fleet-Bridge*, that sells Plumbs and such Things, and if we would go along with him, he would tell us News. *Hill*, *Stubbs*, and I, that Day I was taken, went to *Beazley*. *Stubbs* asked him, What News? Says he, I hear the Business goes on; but if you will go to one *Gibbs*, meaning him that is fled, he has Intelligence. So we went to an Alehouse near him, but he was not at home; and we were told, if we would go to *Bridewell*, they said they would send for his Brother, meaning him at the Bar; and so should have an Account. *Gibbs*, at the Bar, being with us, he told us he knew little himself; but when his Brother came, we should hear. Three quarters of an Hour after came *Gibbs* that is gone, *Thomas*, and another Man; I knew him not; and *Gibbs* called this Brother. *Beazley*, *Stubbs*, and *Hill*, and I, sat still. When this *Gibbs* came, he said his Brother knew little, hoped we were honest Men. The News was this, That he heard that *Ludlow* was in Town; and that now the Council was broken up.

Court. What Council?

Riggs. The Council of Six was broken up; and that they had sent Messengers into the Country to give notice, and to make their Interests good abroad. This is that he said there, or as much as I remember.

Finch. Now I will ask you in general: Did you ever hear of any Discourse at any time of these Meetings touching a Rising by the Papists, and a Massacre of the Protestants?

Riggs. Being upon the *Exchange*, *Hill*, *Bradley*, and I, there was a Lieutenant came to me, and ask'd me whether I heard of the Massacre to be? I said, No. Says he, I can let you see a Copy of a Letter to that purpose; and gave it me. *Hill* going to the *Ship*, I told him of this, and he was desirous of having a Copy. And this was the Copy that was this Day read in Court.

Sir Jeoffry Palmer. What did you hear concerning the surprizing of the King at *Camberwell*, when he came from his Mother? And what did *Phillips* say?

Riggs. *Phillips*, *Tonge*, *Stubbs*, and my self, being together, they were discoursing concerning the King's going abroad: and at that *Phillips* said the King was to come from *Hampton-Court*, to see the Queen Mother at *Greenwich*, and hinted that he might be surprized. *Tonge* said it need not; there might be such an Opportunity twice every Week.

Court. Prisoners, will you ask the Witnesses any Question?

Phillips. Did you not meet me on a Sabbath-day? You may remember I met you in *Cheapside*; we walked to *Birchin-Lane* End. You asked me of a Rising that should be: I said, What Rising? Says you, To surprize the King coming from *Hampton-Court* to *Greenwich*. And I came and spoke it openly in my Family, as News that I heard. This Gentleman had me to *Tonge's* House; and there grew the Discourse. *Riggs* told me *Tonge* could tell further: And *Riggs* told

me, That the Reason why the Time for it was not appointed, was because the Fifth-Monarchy-Men and Anabaptists were not agreed. *Riggs*, did not I disclaim this Business, and declared I would have nothing to do with it?

Riggs. This is certain, That afterwards he did say he would not have any thing to do with it; and I did not see him a great while after that. Concerning *Baker's* surprizing the King, it is true, he did say before *Hill*, and I, and *Bradley*, That the King was a Hunting, and came through the City; and said, He would have been one of the Fifty would have surprized him, and pulled him out of the Coach.

Court. Who said that?

Riggs. *Baker*.

Court. Who present?

Riggs. *Bradley*, Mr. *Hill*, and the other *Hill*, *Brown*, and others.

Finch. Do you remember no Discourse concerning the coming in at the Privy-Garden?

Riggs. I have under my Hand to the Grand-Jury declared, That *Baker* said he knew the way to the Back-stairs through the Privy-Garden better than any. And *Bradley* did once, and but once, say, That he knew it as well as any, and would undertake to do the same, in the Presence of *Stubbs*, *Tonge*, *Hill*, and the rest of them that were there that Friday Night.

Court. Who were the rest?

Riggs. *Hill*, my self, *Ward*, *Stubbs*, *Hind*, and *John Baker*, at *Tonge's* House.

Sir John Maynard. We do conceive that these two Witnesses have given Evidence against all of them; if any thing stick with the Jury, let them speak.

Counsel. Here, *Bradley*. This Witness that we call, he was no Conspirator; but when there was Notice of the Design, he was employed to find it out, and to give us an Account of it.

Sir Heneage Finch. Mr. *Bradley*, were you present at any Debate?

Gibbs. Whether did *Riggs* hear me say, That *Ludlow* was in Town; or that the Council was broke up, and the Business went forward?

Riggs. This I said, That *Hill*, *Stubbs*, and *Beazley*, were present; and he said he knew nothing himself, but from his Brother: This was the News, That he heard that *Ludlow* was in Town, Council broke up, and that there was sent out Messengers to give Notice to prepare for the Business; that it would be on *Alballows-Eve*, or the latter end of the Week, being Saturday the next Day.

Gibbs. I never spake these Words; and do desire that the Honourable Bench will enquire of the Persons then present, whether they will avouch the same; whether I said it from my Brother? These Words I did not speak; and others being present, had Ears as well as he.

Tonge. Mr. *Riggs* told me *Ludlow* was in Town; and told me he would enquire after him.

Riggs. I confess I did so.

Tonge. And that he was like to be taken in *Cheapside*. He was continually at my Shop, and would not let me alone, prompting and inducing me to these Things.

Counsel. Mr. *Bradley*, were you at any Meeting touching Discourse of surprizing *Whitehall*?

Bradley. I was one Friday Night at *Tonge's* House, a Strong-water-Man on *Tower-Ditch*, where there was these two Gentlemen with me, (pointing

(pointing to Mr. Hill and Mr. Riggs) and there was Mr. Stubbs, and John Baker, and another Gentleman, one Ward; and we had some Discourse about surprizing of *Whitehall*, which way it might be done. Some said that a Party might go through the Guard, and so surprize General Monk's Guard; others said they might come down by *Charing-Cross*: But *Tonge* said, There was no coming down by *Charing-Cross*, because there was two great Guns planted at the bottom, and commanded all that way: But said, The only way he conceived, was to bring a Party thro *King's-Street*, and, if it were possible, to get into the *Privy-Garden*, and so into the Lodgings that way. This is all that I remember.

Serjeant Keeling. Do you know any thing about the Ship at the *East-India House*?

Bradley. I went to this Ship sometimes; and with Riggs, Hill, Brown, Hind, and one Hill a Cloth-Drawer; we had divers Discourses concerning the Design, and the News on foot.

Court. What Design? Express it.

Bradley. To alter the Government; the surprizing the King, the Duke, and the General, and as many more of the Council as they could lay Hands on.

Counsel. What about the Guards, surprizing *Whitehall*?

Bradley. At another Meeting they discoursed about the bringing down Forces to *Whitehall*.

Counsel. Who were present then? Which of the Prisoners at the Bar?

Bradley. None, unless Hind be there.

Counsel. At what other Meetings were you?

Bradley. I was never at any other, but twice at *Tonge's House*. The Friday Night we had a Discourse about taking *Whitehall*. And the Day before we were taken, I met this Mr. Riggs upon the *Exchange*. He asked me to go home, and dine with him; and we intended to go and see a Ship. His Dinner not being ready, we went over to *Tonge's Shop*, and had a Quartern of Strong-waters; and I took a Pipe of Tobacco. Riggs went away, and said he would not stay: Hind staid with me the whilst. After we had taken a Pipe of Tobacco, he came again, and said he heard the Business was near at hand, and that there would be speedy Action. Hill was at the Shop. And after Dinner, Riggs and I, Mr. Hill and Hind, went all out together to *Stubbs's House*. Riggs and Hill went in; Hind and I staid. Standing there a little, said I to Hind, What mean these Gentlemen to stay so long? Riggs said he staid for a Friend; but I will go and meet him. Said I, Will you not go on board a Ship with Master Hind and I? Says Riggs, No, I will go to meet my Friend: Do you go on board the Ship, and come to my House; if I am not there, pray stay a little. We asked Mr. Hill if he would go with us; but he went with Riggs: And they told me coming back, That Gibbs had informed them the Design was ready, Council broke up, and Messengers sent to give Notice; and Ludlow in Town, and to be General.

Court. Who told you this?

Bradley. Riggs did, when he returned from *Bridewell*.

Tyler sworn.

Sir Heneage Finch. Mr. Tyler, do you know *Tonge*?

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Tyler. I know him very well.

Sir Heneage Finch. Have you ever been in his Company, and spake of any Design about securing the King?

Tyler. Often.

Counsel. Tell what you have heard.

Tyler. I have met Mr. *Tonge* and others in three or four several Places: At the *Wheat-Sheaf* at *Lion's* once, if not twice; at the *Half-Moon*, *Widow Jordan's*, within *Bishopsgate*, twice at the least. Near *Duke's-Place*, at the *Shears*, I have heard several Things, and have noted it down, to be sure to deliver the Truth. I have heard them speak about *Whitehall*, and securing of it, and of the two Guns there. *Elton* and he said, That they might come with a Party backwards, breaking through a Barber's Shop in *King's Street*, and dismount the two Guns. But as touching the King, the Duke, and the Noble Duke of *Albemarle*, they proposed what excellent Service it would be to secure these Persons: He said it was not a Thing that would admit of much Debate, inasmuch as he had a Friend a Courtier, (I know not his Title) that would give him Notice at any time when the King was gone a hunting, or his Progress; and that it was easy to take it. *Tonge* said he served the *Tower-Suttlers*, and was acquainted there; and said, There was no way to surprize that but this, either about Ten or Eleven a-clock, I will undertake we may do it with Forty Persons thus, says he; Some to go in dropping, one by one, or two together, and others to be at several Alehouses near, to be ready; and they within seizing on the Guard by a private Sign, we should secure those without; and the Soldiers, being of the old Army, will readily comply. And said, There was a Person that lived nigh him, wears Ropes about him, is a Porter when off the Guard, and believes he can command the whole Company, and would undertake it. For *Windfor-Castle*, there was an old Gunner that he kept a Correspondence withal; and he served the Suttlers of that Castle also with Tobacco, I think he named Strong-water; and that the Soldiers were many of them his Acquaintance; and that he had received Letters from this Gunner under some strange Title. And said it was easy; and knew that at any time, when the Word was given, let him go, or send by such a Token, and that Place were our own.

Court. Who said this?

Tyler. Mr. *Tonge*. As to the other Person, *Phillips*, I can only say this of him: There is one Lieutenant *Chapman*, so formerly, now a Prisoner in the *Tower*. This Lieutenant was a Carrier of *Norwich*. I went to his Inn, the *George* in *Lombard-Street*, and asked for him: I was told he was at Captain *Foster's House*, in *Leaden-Hall-Street*, and there I might find him. I went to Captain *Foster's*; and Captain *Foster* told me he was at Supper there with his Master. I went up: There was this Lieutenant *Chapman* and *Phillips*, which was the first time I laid my Eyes on *Phillips*. My Business was to speak with Mr. *Chapman* the Carrier; but I perceived by some Discourse of Mr. *Phillips*, there was something driving on: But I must say that Captain *Foster* walked about the Room as if he minded not the Discourse. There was *Chapman*, *Phillips*, *Elton*, and a Man looking a-squint; I heard *Phillips* call him Muster-Master, but I know not the Man. I heard them discourse very promiscuously about Ships,

Ships, and something wildly. I tarried while I spent Two-pence, and came away with Mr. *Chapman*, and asked him, what that young Blade was that talked so promiscuously? *Chapman* told me he was a Serjeant, belonging to the Trained-Bands. Tell me his Name? His Name is *Phillips*. Do you know his Trade or Dwelling? He is a Gilder, I think. Then this is the same Person I have heard of at a Coffee-House; which was thus: A Perfumer in *Southwark*, he heard of great Rumours about a new Commonwealth; and pressing this Perfumer how he came to be thus informed, says he, There is one *Phillips*, that lives in *Abchurch-Lane*; this Man knows of it: For, says he, he hath said himself, that he has gone from Committee to Committee, where Officers met about these Things; and he named Captain *Foster* for one that was engaged in the Business. Said I, This is strange! I hastened back again in the Morning to Captain *Foster*'s: Sir, said I, do you know that *Phillips* that was here last Night? Yes, says he. What is he, said I? He answered, A Serjeant. The thing is this, this Man does talk abroad, That there is a Meeting of the old Officers, and that you are engaged. At which Captain *Foster* seemed to be troubled that he should be so aspersed, answered, I know nothing, no not one Word of this; I do declare an Abhorrence thereto, or of any Action against his Majesty; and thereupon presently went to *Phillips*, and charged him with this Report: and soon after this Perfumer comes to my House, and desired me to go over to the *Cross-Keys* where *Phillips* was. When I came there, says *Phillips*, Sir, I saw you the last Night, when we were talking of Ships, I hope you do not mind the Report about Captain *Foster*, for I am troubled such a thing is mentioned: for my part, I know not that I said so; I am sure I knew no such thing. This was all as to *Phillips*; but for *Tonge*, I must needs say, in all the Meetings where I was, the several Places that I formerly named, and the *Whalebone* behind the *Exchange*, he still discoursed of this Business.

Counsel. What was done there concerning chusing the Council of Six?

Tyler. He was spoke to, to be at the *Shears*, but he sent a Note sealed and directed, in which was inclosed either Nine or Eleven of the Rump-Parliament Names of Persons: And, says he, for my part, I cannot come this Day, because the Hamlets are to go out into the Field; (it was when Sir *John Robinson* marched with his Regiment) that I may avoid Suspicion, I must go with him.

Counsel. What were those Names?

Tyler. I cannot tell; but they were Nine or Eleven of those in the *Tower*: and he promised he would get a Note of those Men's Names in the *Tower*; for he was confident of it, that they would sit as Members, and do good Service upon the account of a Commonwealth; and said, there were some that had a Correspondence with them in the *Tower*.

Counsel. What Correspondence had they in the Country?

Tyler. *Tonge* told me at the *Wheat-sheaf*, That if a Rising should be, it were necessary that the old Commanders up and down the Country should head them: And therefore, says he, what Forces can be raised, should go under that Conduct, or to that effect. He and *Elkin* did propose several

Colonels, I think most that are now living, both in *England* and beyond the Seas.

Counsel. Can you tell any thing of the Rumours abroad, expecting this Design?

Tyler. *Tonge* told me this, That there was one that they called the Lord *Lockhart*; he said he was Governour of *Dunkirk*; That he had thirty or forty Servants about him; That these Persons expected a Rising; and that they and himself would engage. We heard that Col. *Rossiter*, not particularly from *Tonge*, but there in Company, was expected to be at *Sturbridge-Fair*, to head fifteen Hundred Horse, to be at *London*. Also he asked me this Question at his House, Whether I was acquainted with Captain *Leigh*, a Man with one Arm, a stout honest Fellow, and an active Fellow, of his Acquaintance?

Counsel. Speak your Knowledge both of Persons and Things.

Tyler. There was one Mr. *Cole* of *Southampton*; *Swetnam*, *Gibbs* a Hatmaker, not he at the Bar, *Tonge*, *Thomas Elton*, *Elkin*, *Pryor*, and one *Cox* a Gardiner, and *Ward* now a Prisoner in the *Tower*, and one *Ward* a *Southwark* Man, and *Dyer* a young Scholar; there was one *Rose* of *Chesterfield*, and the Perfumer I spoke of, I know not his Name, he lives in *Southwark*; and there was a Quaker, I know not his Name: the great Business was to unite all Interests. *Elkin* said, There were several Meetings in *St. Martins*, and other Places.

Tonge. If there be any one of the Six in *London*, I believe this Mr. *Tyler* is one.

Tyler. To clear that I am none of them, I will name those whom I said were the six; *Thomas* of *Shoe-Lane* the Coppersmith, one *Elton* in *White-Chappel*, one *Raddon*, Captain *Spurway* of *Triverton*, a West-country Gentleman, Dr. *Ward* in *Southwark*, and *Jones* a Minister.

Sir *Hen. Finch*. Did *Tonge* tell you that the time was appointed when the Rising should be?

Tyler. I know nothing of that.

Maynard. What about *Leicester*?

Riggs. *Hill* said, he dwelt there, and came from some that dwelt there, and others in *Gloucestershire*; but there was another Person with *Stubbs* and *Tonge*, and said, There was a Report in the Country, That there would be some Rising; and he came to Town to bring his Child to put him Apprentice with his Brother, and would go down again, and carry the Certainty of the News: He was one of *Lambert's* Soldiers.

Phillips. Mr. *Tyler*, did not you come in with the Carrier of *Norwich* to Capt. *Foster's*?

Tyler. No, I did not.

Phillips. I am sure I came accidentally to Captain *Foster's*, and going, I saw you there.

Gibbs. Did I tell you, Mr. *Riggs*, that my Brother said *Ludlow* was in Town, and there would be a Rising shortly?

Riggs. Mr. *Hill*, *Beazley*, *Stubbs*, and I and you were together; Mr. *Thomas* and your Brother came in: your Brother, *Beazley*, *Stubbs* and *Thomas* were private in Discourse. When you came again to us, we asked you what News? You said, Before we came you knew not much, but your Brother could tell; but then you said, *Ludlow* was in Town, the Council was broke up, and that Messengers were sent to give Notice to the Country.

Gibbs. I deny that I or my Brother said so.

Maynard. Know you any thing of surprizing the King's Council, or *Whitehall*, or any thing of that, or altering the Government?

Tyler. As for altering the Government, that must needs be designed; for *Tonge* said, It was debated, and thought convenient, as being the Desire of several in the Country, that the old Parliament should be chosen again: that was to say, That so many of them that had approved themselves faithful from first to last, to a Commonwealth's Interest, especially in the Times of Declension. Secondly, That none should have Power to elect, or be elected, but such also as have approved themselves faithful, as aforesaid. Thirdly, This House was to be filled up within a Month. Fourthly, That it should continue one Year, and no more. Fifthly, That they should not have Power in things of an Ecclesiastical Nature, to impose any thing upon the Consciences of the People. Sixthly, That it should be High-Treason amongst them to assert the Interest of a King, House of Lords, or single Person. Seventhly, That they should not appoint any Salary-Officers. Eighthly, That while they keep to this, it should be High-Treason to disturb them. As touching Arms, and things of that nature, the Truth is, the Business which was very much urged, is this; That there should be an Uniting of all Interests together, Quaker, Fifth-monarchy-Men, Anabaptist, Independent, Presbyterian, and Leveller; to which purpose every one was obliged at the Meeting to see what Interest they could make among the Presbyters, because they looked upon them as Persons that had most Money and Strength. I think there was no Presbyterian spoken of, except one, who is lately secured in the *Tower*: He said, that if so be that Colonel *Beanes* was at liberty, he could engage him. There was one Man that was there, which was one *Prior*, I suppose *Tonge* knew him; he said, He had very much Acquaintance with the Presbyters, knew many in the Country; and that there they did not meet with any Difficulties, as here; for all Interests, Quakers and Presbyterians, and the rest, are all agreed.

Sir Hen. Finch. Very well, you see *Tonge* was at all these Meetings at the *Wheat-Sheaf* and *Shears*; and there were the Colonels proposed. Did you hear of any Orders given out, in any of these Consultations, to make the Rising in the Country at the same time as in *London*?

Tyler. Mr. *Gibbs's* Brother told us, That he kept a Correspondence in the Country; that in *Essex* he knew there were divers Horse ready there; and I my self spoke with one who is lately secured, who said, There were divers Horse ready thereabouts. I remember there were several at the *Half-Moon* at *Bishopsgate*, one *Smith*, a *Northamptonshire* Man, and one *Elose* of *Chesterfield*, and *Tonge*; and we heard, that at *Mansfield* and *Nottingham* there was a Rising intended; and it was assured, that the Country was very ripe and forward for Action. We were informed that there were two hundred Horse at *Bristol*, one Person, not yet secured, did affirm to us, That one Colonel *Templar* in *Essex* had two or three thousand Men ready, his Name was *Thomas*; That *Templar* was now in Town, if we would, we might go and speak with him. Said I, surely he doth but tell you this. Saith he, His Lieutenant-Colonel gave me this Information, and assures me, that his Colonel had converted his E-

state into Money to pay his Soldiers. Upon this, having occasion to go down into *Essex*, I promised *Tonge* I would enquire further there; and understanding that one *Thornback* a Glover was one of this *Templar's* Men formerly, I went to his House, and being not at home, I rode to *Holsted Fair*, and riding there, the Man pulled me by the Coat, for he knew me; saith he, Mr. *Tyler*, my Servant said you were at my House to speak with me. Yes, said I, I understand your Name is *Thornback*; That you can give me some Account concerning Colonel *Templar*; we hear in *London* that he hath two or three thousand Men in readiness, I pray inform me. Saith he, I do not believe any such matter; I have served him long, and if Occasion were, he would be for you. I asked him the News: saith he, We all dread a Massacre; we understand by a Letter from *Ipswich*, That the Papists intend a Massacre of all Protestants about *All-hallontide*, and that that Country was in great fear about it. This *Thomas* the Copper-smith told us another Story about some Roman Catholics in *Southwark*, that had a Purpose to rise and take off all Fanaticks.

After this the Court directed, that *Phillips's* Examination should be shewed him at the Bar, and he acknowledged his Hand thereto; and was read as followeth.

The Examination of George Phillips, Serjeant and Bringer-up to Col. Sir William Wales's Company of Trained-Bands in the City of London, taken this 29th of October 1662, before me Richard Brown.

Who saith,

THAT he knoweth one Parson *Riggs*, late Chaplain to *Blake*, who is now Clerk to one *Friend* a Brewer in *Cat's-Hole*, near the *Iron-gate* in *St. Catherine's*; which said *Riggs* told him, this Examinant, That there would be a Rising of divers godly People in Arms, for Preservation of Religion, about the time the Queen came to Town; and that they intended to seize the King's Person about *Camberwell*, in his Passage to see the Queen Mother at *Greenwich*: but after the Queen was come to Town, This Examinant asked the said *Riggs*, why it was not done according to their Intendment? who replied, They were not then ready, because the Congregational Churches and they were not fully agreed; but now they were come all to an Agreement, and the Work would be done in a short time; That all things were now near ready both in Country and City; and that a Frigate or more would revolt from the King to them. Not long after, the said *Riggs* carried him the said *Phillips* to the House of one *Tonge*, an old Army Captain, but now a Seller of Tobacco and Strong-water in *Tower-Ditch*; where he heard *Tonge* say unto *Riggs*, That he had been at *Windsor-Castle*, and had made a Captain, two Serjeants and a Gunner to be of their Party; and that they had undertaken to deliver up the said Castle to that Party which were now to rise. To which *Riggs* replied, You have done well: And further said, I am going now to surprize two Castles in *Kent*; one of them, as this Deponent remembreth, was to be *Deal-Castle*; and this he would and could do, for that he had some Correspondence therein, and much Acquaintance near, where he formerly used to preach.

preach. And further saith, That *Tonge* asked *Riggs*, Who should lead the Men that were to rise, and who commanded in chief? To which *Riggs* replied, That *Ludlow* was appointed for that Work.

He further saith, That he asked *Riggs* and *Tonge*, how this Business might be carried on with Safety and Secrecy? *Riggs* told him, That there was a Council of Six which managed the Design, who sat but one Day in a Place, and would not be spoken with, but by the Agitators of each County, who were employed by them to and fro in this Work, to prepare and make ready all Parties in the several Counties; and that these Six were of several Congregations and Opinions, to the end that all Parties might unite. And further saith, That one *Wade*, or some such Name, whom he heard *Riggs* and *Tonge* say was a Ship-Chandler in *East-Smithfield*, did furnish Powder to carry on this Design, in whose Company he once was, and heard himself say as much; which said Person he believes he knows when he seeth him again. He also saith, That *Riggs* told him all the Congregational Churches were now agreed to join in this Design; and that *Riggs* and *Tonge* desired this Examinant to furnish what Men and Arms he could: which, he saith, he never intended to do it, though they earnestly requested it of him. Only he saith, In some things he was too faulty, which he prayeth Pardon for; which was, in sending word to the several Meetings on Sunday last, That the Trained-Bands were coming to seize them: Upon which the chiefest of them made their escape before the Soldiers Arrival; and that he being deluded by their fair Speeches, did promise to give them the Word when the general Rising was to be; in which Rising all the Churches aforesaid promised to join, and the Fifth-Monarchy-men to lead the Van. And further saith, That *Riggs* told him, They had a Declaration ready to fling among the People, against *Bishops* and *Common-Prayer*; and that *Liberty of Conscience* was held forth therein. But first, before this Declaration, they would seize on the King's Person, and that then their Declaration would take with the People. And also saith, That one Capt. *Baker*, one *Bradley* and *Tonge*, were privy to all these Transactions which were debated by them in his Presence; and that the said *Baker* came afterwards to this Examinant, and discoursed all the aforesaid Particulars, and incited him to help on with the Work; and told him, their Arms and Powder were distributed, and that a Porter, which was formerly a Soldier, carried the Powder to several Places in a Sack. And further saith, That *Riggs* told him they had divers Friends both in *London* and the Country, who had, and would help them to Money; and that all their Friends were now ready in all Countries, waiting only for the Day when they were to act; and that the Treasure in the *Guild-hall* was likewise to be seized.

And that the said *Riggs* also told him, That they intended to surprize the *Tower*, which they could easily do, having some therein that would assist: and this was to be put in execution in some Evening when Sir *John Robinson* came home late, by following close after his Coach with a Party of Men, which should lie ready for that purpose.

George Phillips.

Sir William Morice, and Sir Henry Bennet, Principal Secretaries of State, sworn.

Sir William Morice. I have had Intelligence, and several Advertisements from several Parts of the Kingdom, that there was a Design of Rising, and an Insurrection, that it was the general Expectation and common Discourse of the discontented and disaffected Party; nay, it was likewise preached about, that the Papists had a Design to rise and cut the Throats of the Protestants. I had four or five Letters to that effect sent and brought me; and these Rumours were spread to excite others to join with these.

Sir Henry Bennet. Divers Letters of mine were to the same effect, That there was an Insurrection intended at that time, and calling upon one another to be ready at that time.

Sir John Talbot sworn.

Sir John Talbot. I suppose that the Evidence that I can give in relation to the Prisoners, is only the Consequences of this Report, which they had rumoured about the Papists massacring the Protestants: the Consequence was this, That it made a very great Disturbance in *Worcestershire* and *Warwickshire*, insomuch that many Gentlemen that lived in the Country in very good Repute, came under a very great Suspicion of all their Neighbours; and the Lieutenants wrote to one another to secure many: there were Guards set to satisfy the Fears of the Country. Friday Night, which the Rising should have been on, they would not intrust the Catholics to be in Arms, but other Volunteers.

Mr. Hodges sworn.

Mr. Hodges. In *Dorsetshire* the 23d of October last, there was a Discovery made by some of the Town, of an Intention of a general Rising; and some of the Town were engaged in it: one Mr. *Harvey* a Justice of the Peace examined divers Persons; four that were privy to it were sent to the Goal, and an Express sent to Mr. Secretary *Morice*. Sir *John Weld* the younger gave such an Account of *Shrewsbury*.

Stubbs. My Lord, the Occasion of my going that Friday-Night, was by Mr. *Hill* and Mr. *Riggs* suggesting the Papists rising; I was never known to be a Plotter; I had not gone forth that Night, but only by their Persuasions: I never heard of any Arms, but only the Rumours of the People.

Sellers. I would fain know of Mr. *Riggs* what Number of Arms I told him was delivered?

Riggs. I know not the Number.

Major Thomas Bonfoy (at his desire) was sworn.

Major Bonfoy. I do not remember that I ever saw *Phillip's* Face, but I did understand it was his Custom to come to the *Exchange* to insinuate himself into my Officers, making merry with them, and endeavouring to get the Word; and I believe it was his common Practice.

Phillips. He may remember I came on the *Exchange* and spoke to him, and was looking for one of his Serjeants; I asked no Man the Word, but

but presently went to the *Black-Lion* in the new Alley, and from thence I went home; I did not ask the Word of any one. I have confessed before the Council, that at the beginning of *August* I met Mr. Riggs in *Cheapside*; he then came and closed with me, and walking along, said he, Do not you hear of a Rising which should have been on Friday? No, said I; and then I asked him where? He said, At *Camberwell*: and I thinking nothing of it, came home and spoke of it in my Family, as News from Mr. Riggs. On Tuesday I met Mr. Riggs on *Tower-Hill*, and he brought me to the House of Mr. Tonge; Tonge told Riggs he had been at *Windsor*, and made some Party to secure the Castle. Riggs said he could go down to *Kent*, and secure *Deal* and another Castle; for he had been a Preacher there. As for Mr. Tyler, one Night coming near Captain Foster's Door, and having not seen him in three Years before, he asked me, if I would not drink? I said, Yes: Then came in the Carrier of *Norwich*, I never saw this Carrier 'till then: Then came Mr. Tyler, and there was talking of a Frigate, and the time of the launching of it, and how it was to be mann'd; but a little after Captain Foster came and charged me with a Report, That I should say he was engaged. I told him I knew it not, nor said it not: I have often declared I would have nothing to do in it. It's true, Mr. Riggs came and thanked me that I sent Notice to the Meeting to be gone; and I told him I would do the People any Good I could; but Mr. Riggs knows I told him it was a dangerous Business, and I would not meddle with it: I am sure in the time of the Fifth-Monarchy Insurrection I was faithful to the King, ventured my Life as far as any Man; Sir William Wales put trust in me, and I did that Service there, that the Colonel himself did not venture to do. But that I was engaged in this Business, it is a Trouble to me, and I hope the King will be merciful to me; I did not think that such a thing would be disclosed in so short a time. For my part, I did not mind it, I knew nothing the Night I was taken, I was in Bed, and did not offer to escape; I hope the King will look upon me as one drawn in.

Stubbs. I never had any Meeting with any of the Council; most of the things I heard at Mr. Tonge's House, meeting with Mr. Riggs by chance. For those Gentlemen Mr. Tyler speaks of, the Council of Forty, and of Six, I never knew them: I am sorry I should be concerned in such Discourse, and I hope his Majesty will have Mercy on me.

Gibbs. My Lord, I was at a Neighbour's House at that time, and went to drink a Cup of Beer alone in their Kitchen, not knowing of Hill, Riggs, or Stubbs coming there: I never appointed them any Meeting, they came in, and when they came in, they asked if there was not one Gibbs there; so the People of the House told them there was. They came and told me, there were some Gentlemen would speak with me; whereupon, they being strange Faces, I stood up and said, Gentlemen, what is your Business with me? Said they, We would drink a Cup of Beer with you. Then said I, Sit down. They had a Desire to be private, and to go up. Whereupon, not knowing their Business, I went up, supposing they meant some Matters of my Trade; but we sitting down, Mr. Riggs said to me,

Mr. Gibbs, what is the best News? And Mr. Hill also did urge and ask for News. Said I, Gentlemen, I know no News, nor none I can tell you. So they made Enquiry then for my Brother: Said I, I cannot tell where my Brother is, may be your Business is most with him: I will send for him: And I sent the Maid for him, and directed her, that if he was not at home, she should leave word for him to come. Again they urged for News, and I told them I knew none but only this, That the Meeting was seized upon the last Sunday by armed Soldiers: But to tell them there would be any Rising, or of any Arms delivered, or Pistols, as Mr. Hill has related it, was a thing I was wholly ignorant of. I speak as in the Presence of God, and I know I must one Day give an Account before the great Assizes of the World; and I fear that which they have said, is out of some Fear lying upon them, being guilty of some Fact, and so to shroud themselves under false Lyes. They, nor no other can prove that ever I received or delivered any Arms, or that any were delivered by my Order; these Men speak falsely.

Sir Orl. Bridgman. You mistake yourself, they do not charge you with receiving or delivering Arms, but you related it: your Brother speaks such things had been done, and if you know of this, and do consent and conceal it, you are equally guilty.

Gibbs. After they had asked me the News, in a short time my Brother came into the Room, and I rose from the Table, and went towards my Brother; and then my Brother asked me what those Gentlemen were? I said they were Strangers to me, and knew not what they came for. Says he, they are Strangers to me also. Immediately we arose, paid our Reckoning, and went away. But that ever I said my Brother told me, *The Council of Six was broke up, all is ready, Ludlow to be General, and Alhallow-Eve the time, or that things went on well*; I deny it: my Brother said no such thing to me, nor I to any Man. When there was an Insurrection by the Fifth-Monarchy Men, I was then presently ready at Beat of Drum, went out in my own Person to serve his Majesty at Twelve a-clock at Night, tho I had Servants of my own. My Affections were such, that I have always, ever since his Majesty's Restoration, been an obedient Subject to all his lawful Commands. I belonged then to Major Kilby's Company, and did continue marching in the Company 'till the whole Business was over, and ventur'd my Life, and never did contrive any Plot, or knew of any Plot, received or delivered any Arms. As to the Inhabitants among whom I have lived many Years, they have known my Conversation; I have been a peaceable Neighbour, subjecting myself under the Government that now is, whom God continue. I desire this Certificate may be read concerning my Neighbours Testimony of my Conversation.

Sir Orl. Bridgman. If you have any of them here, they may speak; but the Certificate cannot be read.

The Porter's Man of *Bridewell* said, he knew nothing but that he lived very quietly among his Neighbours.

Sir R. Forster. Nor I neither.

Court. Mr. Tonge, what have you to say?

Tonge.

Tonge. I have nothing to say, but that the first Man that brought me into this Business was *Tyler*.

Sellers. All that I am charged with is a Report of the Delivery of some Arms; seeing that a number of Arms are mentioned, I would ask what was the Number?

Mr. Riggs. I cannot well tell the Number, but you said there were some Arms given, and some to be given, and that several had come to that Place, and went away without Arms, and that within two or three Days there would be more given; but as to the Number, I cannot remember.

Sellers. Now take notice of *Mr. Hill's* Evidence, he hath asserted that there were five or six hundred; how do these agree? I can have sufficient Testimony of my Life and Conversation.

Court. If you have any thing more to say in this Business, speak in the Name of God, no body hinders you, but keep to the Business.

Sellers. I intreat the Bench to take notice what I am charged withal; it's only a Report I received from one Man, and told to another, and the very Original was a Lye, there was no such Matter; and yet here is audacious Evidence: he says I named five or six hundred, and yet *Riggs*, to whom I spoke, heard me name no Number.

Counsel. One speaks to the Arms, but does not remember the Number; they both speak to the thing.

Sellers. How can *Mr. Hill* be a competent Witness against me, when he never saw my Face before, but says *Mr. Riggs* told him?

Hill. I said not so, but that I heard it from your own Mouth.

Mr. Solicitor. *Mr. Riggs*, why did you go to *Mr. Sellers* to help *Mr. Hill* to Arms?

Riggs. Because *Mr. Sellers* told me the Day before, that he heard there was some delivered, and more would be: and the next Day we went to the *Exchange*, and there he told me this Story.

Sellers. I cannot hear him.

Sir Orl. Bridgman. He says you told him the Day before there was Arms delivered, and more would be delivered; and then the next Day he and *Mr. Hill* came on the *Exchange*, and then you spoke those Words which they both witness against you.

Sellers. I never spoke such a Word. It's true, what *Wapshot* told me, I told *Riggs*, which was, that there were Arms delivered; but it seems there was none: and I told him I would tell him the Truth the next Day on the *Exchange*. And so in the mean time speaking with *Wapshot*, he told me there was no such thing, and I told *Mr. Riggs*, *Wapshot* said there was none.

Court. Pray what made you so busily inquire after Arms, if you were not concern'd?

Sellers. I did not inquire after it, but accidentally meeting him in *Mark-Lane*, he told me.

Tonge. My Lord, as you are my Judge, so I hope you will be my Counsellor; and I pray your Advice, whether *Mr. Tyler* and *Mr. Riggs* be competent Witnesses against me, they being in the same Case.

Sir Orl. Bridgman. Where is the Cause of your Exception?

Tonge. Because they are in the same Case.

Sir Orl. Bridgman. There are four Witnesses all against you, your own Confession and Examination against you, through the whole Business you are a principal Person.

Tonge. I confess I did confess it in the *Tower*, being threatned with the Rack.

Sir Orl. Bridgman. There is *Mr. Hill*, *Mr. Riggs*, *Mr. Bradley*, and *Mr. Tyler*: there is *Hill* and *Bradley* without Exception; *Bradley* he was not at all concerned, he went along with you to know what you said; and *Mr. Hill* was not a Person in the Design, but made use of only to find out the Plot: they did nothing unjustifiable, so they are Witnesses without Exception.

Serj. Glynn. We desire your Lordship to declare whether *Riggs* and *Tyler* be lawful Witnesses.

Sir Orl. Bridgman. I would have you know this: Whereas you make exception against those Persons that are guilty of the same Crime, that's a Mistake to say they are not Witnesses; in Cases of Treason, where there are Works of Darkness, these are things Men will not do by Daylight, but in Darkness; and who can discover these Works of Darkness better than they that have to do with them, if God turn their Hearts? It's true, such Persons as these are, if they had been convicted, they are not Witnesses; but tho they are in the same Fault, it is frequent Practice, they are allow'd in case of Felony. Besides, they are not Witnesses alone, and there are divers Circumstances concurring. 1 *Edw. 6.* 5 *Edw. 6.* both Statutes say, There shall be lawful Witnesses in Cases of High-Treason; but that is, such Witnesses as the Law would allow before those Statutes: The meaning of the Statutes was, that Men might not be taken upon bare Surmises; therefore the Law says, there shall be two Witnesses. When one is accused of Treason, another in the same Offence unconvicted, *Kelyng. 17.* his Evidence is made use of; and tho he is not so upright a Witness as others, yet he is such a Witness as the Jury is to take Notice of. Such Testimony was allowable before those Statutes; and the Trial is still by Jury, not Witnesses, and the Jury are to consider of the Credit of the Witnesses. In *King James's* Time a * Great Person was condemned upon the Evidence of one in the same Treason. It is plain by several Circumstances, you have been a principal Person, a Leader-on of the Business: Tho a Man be but present when Treason is spoken, or designed and acted; if this Man be present, and shew any thing of Approbation, his concealing of it is as much Treason as he that did it, they are all Principals in Treason.

Sir Heneage Finch. May it please your Lordships, and you Gentlemen of the Jury, you have heard the Evidence of the Prisoners at the Bar; Five of them have stood out their Trial, a Sixth hath confessed the Fact: Against those Persons that now stand at the Bar, under good Favour, there is a clear and unquestionable Proof of the Crime charged against them, and they have not said any thing that hath either taken away the Credit of the Evidence, or excused the Matter. If you consider first *Tonge*, there is against him four Witnesses, and those unquestionable; as you heard the Direction of the Court, that he knew

of the Design, approved of it, contrived how to surprize *Windsor-Castle*, had corrupted the head Gunner and Serjeant there: that he did contrive to seize *Whitehall*, and if you believe *Bradley*, advised, as the fittest way, to break into the Privy-Garden: All this against *Tonge*, with a world of other Evidence how active he has been, his House was the place of Consultation, he imparts the Design to *Phillips*, and *Phillips* undertakes to get the Word of the Trained-Bands; I think none can prove more than is proved against him. When you come to hear the Proof against *Phillips*, it is proved that he offered to betray 300 Arms in the Artillery, where he had some kind of Trust, and that he was ready to endeavour the Word when the Insurrection was to be; and but a very little before, he is the Man that discovers to the Congregational Meetings, that the Trained-Bands were coming to surprize them, that is in his own Confession, as well as the Willingness in him to discover the Word. It is proved, that *Tonge* and *Stubbs* were present at those Discourses touching surprizing the Tower, securing the King, this is proved expressly against them; *Stubbs* he thinks he has said fairly for himself, when he doth ask Mr. *Hill* whether he did not say he had Horses and 200 l. to carry on the Work; Mr. *Hill* says he did say so: then it seems *Stubbs* was inquisitive what Helps there were to carry it on. Mr. *Hill* goes further; That in the presence of *Stubbs* it was said there should be no Quarter given, but such as *Ludlow* should have if he were taken. When you come to *Gibbs*, he does deny all the whole matter, and indeed so they would all; and they have nothing to say, but to cry the Witnesses have sworn falsely, and God is a righteous God, and he will require their Blood one day: but remember what a horrid Protestation was in that Letter that was sent abroad, to alarm the whole Kingdom, as if a Massacre was intended by the Papists, and the Watch-word they should all rise by; that Letter says, *I call the Eternal God to witness, this is no Trepan, but a sober Truth*. Do you think, that Men who are not ashamed to call the Eternal God to witness to a Lie, when 'tis to raise Sedition, will make any scruple of such Protestations at the Bar, when 'tis to save their Lives? And if a Man may scape by his own Protestation, who shall ever be found guilty? But *Gibbs* thinks he says a great deal for himself, when he says his Neighbours can give great Testimony of his good Conversation. Alas! who will deny to give a good Report of any Man till he hear Evil proved against him? But do you think a little demure and sober Carriage amongst a Man's Neighbours will serve to balance an Evidence of High-Treason? Is not the Proof clear, that he did both know the Design and approve it? Mark what *Gibbs* tells the Company.

My Brother, saith he, for his part he will not speak before you; but if you be honest Men, This is the News that was spoke, like one that was not consenting to it. Well then, what is the News? He tells them why the Council of Six are broke up, Friday is the Day of Action, *Ludlow* is to be General. Can any Man be privy to these things and relate them so cheerfully, and yet not be consenting? Believe it, it is a hard matter to find greater Evidence of a Knowledge and Consent against any Conspirator, until he

break out into open Action. *Sellers*, he says that the Witnesses do not agree; for Mr. *Hill* speaks, that he said there was five hundred Arms delivered, and forty Men went without Arms, but within two or three days there would be more. And when *Riggs* comes to speak, he says, he did say Arms were delivered, and more would be, but he did not remember what number; and because they agree in the thing, but not in the number, therefore he thinks they disagree in the matter. Observe what Reason was there that *Riggs* comes to inquire of *Sellers* for Arms, because *Sellers* told him the day before Arms were delivered, and more would be, he thought therefore he came to a very proper Person to tell him. If you mark, *Sellers* does deny openly in the Court that ever he saw the face of *Hill* till he was apprehended, altho *Hill* was with *Riggs* when the Arms were spoken of upon the *Exchange*: And then he says again, that *Hill* speaks by hearsay, he is out in that too; for Mr. *Hill* swears expressly, he heard the words themselves from *Sellers*. Then here are these before you, four Witnesses against *Tonge*, two against *Phillips*, and his own Confession: Here are two against *Gibbs*, with these Circumstances, *If you be honest Men, this is the News, &c.* Here are two Witnesses likewise against *Stubbs*, who was likewise present at all their Debates, even when the King himself was to have had the same Quarter with *Ludlow*. Now, Gentlemen, that there was a Conspiracy, I think you have a clear Evidence: we may thank God, and the Care of the King and his Ministers, that it went no further; but 'tis no thanks to these Men, they would have carried it to the extremity, had they had Power. And without question this was formed by other kind of Wits than these poor contemptible Agitators, who are now try'd for it: you see there was a Council of Forty, and an Under-Council of Six, a Declaration framed to scatter at the time of Action, and that Action directed to be both in the City and Country, just in effect at the same pitch of time; and that it might be so, a wicked and an impudent Letter is contrived, and many thousand Copies dispersed, and it wrought so far, that the Countries, much about the time appointed, were in great disorder, as you have heard it proved. Is it not plain, that an evil Spirit went throughout the whole Nation, and animated the whole Party of Malecontents? Most evidently it was a terrible Conspiracy. Gentlemen, 'tis true, it is a Question of Blood, but 'tis Royal Blood, 'tis the Blood of Princes and Nobles, and it concerns the Peace and Security of the Kingdom, and every Man's Propriety, and of Religion, for they had left no Man of Conscience or Reputation behind, if they had prevailed. Consider the Massacre these Men would have committed, had they prospered, and oppose that to the pretended Massacre which they gave out by their Letter the Papists would have committed. Consider that you have the Life of the King in your hands, and I doubt not but he and the whole Kingdom shall always be safe in the Verdicts of honest Men.

Sir Robert Forster. My Masters of the Jury, I cannot speak long to you, you understand the Nature of this Business, such as I think you have not had the like Precedent in your time. My Speech will not give me leave to discourse of it; for the Witnesses, they are none but such as may

satisfy all honest Men: it is clear they all agreed to subvert the Government, to destroy his Majesty; what can you have more? Two of the Witnesses are without exception, but I do not see any way but their Testimony is good. For the Parties, they in themselves are very inconsiderable; these are but the Out-Boughs, and if such Fellows are not met withal, these kind of People are the fittest Instruments to set up a *Jack Straw* and a *Wat Tyler*: therefore you must lop off these, or else they will encourage others. You see one of their own Company hath confess'd the Fact, out of Remorse of his own Conscience. But I leave the Evidence to you: go together.

Officer was sworn to keep the Jury.

The Jury withdrew; and after an hour's Consultation, the Jury return'd.

Silence was commanded, and *James Hind* fetch'd from the Goal to the Bar.

Clerk of the Peace. Gentlemen, answer to your Names; *Edmond Butler, Clement Pung*, [and the rest of the Jury before-mentioned] are you all agreed of your Verdict?

Jury. Yes.

Cl. of the Peace. Who shall say for you?

Jury. The Foreman.

Cl. of the Peace. Set up *Thomas Tonge* to the Bar: *Thomas Tonge*, hold up thy Hand; look upon him, Masters: How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, Keeper.

Cl. of the Peace. What Goods and Chattels?

Jury. None.

Cl. of the Peace. *George Phillips* to the Bar: How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, Keeper.

Cl. of the Peace. What Goods and Chattels?

Jury. None.

Cl. of the Peace. *Francis Stubbs* to the Bar: How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, Keeper.

Cl. of the Peace. What Goods and Chattels?

Jury. None.

Cl. of the Peace. *John Sellers* to the Bar: How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, Keeper.

Cl. of the Peace. What Goods and Chattels?

Jury. None.

Cl. of the Peace. *Nathaniel Gibbs* to the Bar: How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, Keeper.

Cl. of the Peace. What Goods and Chattels?

Jury. None.

Cl. of the Peace. Harken to your Verdict, as the Court hath recorded it. You say that *Thomas Tonge* is guilty of the Treason whereof he stands indicted, and so all the rest. And you say, that they, nor any of them, had any Goods or Chattels, Lands or Tenements at the time of

committing the said Treason, or at any time thence, to your knowledge; and this you say all?

Jury. Yes.

Cl. of the Peace. *Thomas Tonge* hold up thy Hand, thou hast been indicted of High-Treason, thou hast thereunto pleaded Not guilty, and for thy Trial hast put thyself upon God and the Country, and the Country hath found thee guilty; what hast thou to say for thyself, why the Court should not proceed to Judgment, and thereupon award Execution of thee according to the Law?

Tonge. I pray Mercy from the King, I cry for Mercy from the King.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. *George Phillips*, hold up thy Hand; thou art in the same case that *Thomas Tonge* is, what canst thou say? &c.

Phillips kneeled down, and said, I pray the Mercy of the King and the Honourable Bench.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. *Francis Stubbs*, hold up thy Hand; thou art in the same case the two last Prisoners before thee are, what canst thou say? &c.

Stubbs. I beg Mercy, I was merely drawn in.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. *John Sellers*, hold up thy Hand; thou art, &c. What canst thou say? &c.

Sellers. I would intreat this Honourable Bench to consider my Condition, and what my Charge is; I delivered no Arms, if I had known where they had been, I would have discovered them: I beg Mercy from the King and this Honourable Bench.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. *Nathaniel Gibbs*, hold up thy Hand; thou art, &c. What canst thou say? &c.

Gibbs. And please this Honourable Bench, I have something to say, I am innocent as to my Conscience of acting any thing treasonable against his Majesty; the Lord forgive the Witnesses: I beg the Mercy of the King.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. *James Hind*, hold up thy Hand; thou art guilty of the Treason whereof thou standest indicted by thy own Confession, what canst thou say? &c.

Hind. I have nothing to say, but humbly beg the Mercy of the King.

Clerk of Newgate. Tye him up, Executioner.

Cryer. O Yes! my Lords, the King's Justices, command all manner of Persons to keep silence while Judgment is in giving, upon pain of Imprisonment.

Sir Robert Forster. *Thomas Tonge, George Phillips, Francis Stubbs, James Hind, John Sellers, and Nathaniel Gibbs*, you six Prisoners at the Bar, you have been here indicted for one of the greatest Crimes that can be committed upon Earth, as to this World, against God, our King, and your Country, and against every good Body that is in this Land, for that capital Sin of High-Treason, which is a Sin inexpressible, and indeed hath no equal Sin as to this World. Upon this you have severally been arraigned, and have severally (except one) pleaded Not guilty, and put your selves upon God and the Country for your Trials; and your Country have found you guilty:

For

For the five that are found Guilty, I must say, that in you I find little Remorse, little Sense of your Sin. For the little Man there, *Hind*, he hath much shew'd his Penitency. The Manner and Circumstances of this, most Men here believe this did not originally arise from your particular selves, it must be put into you by some others: You speak as if you desired Mercy; where was your Mercy, that would have destroy'd King and Country, and massacred many Millions of Souls, no Respect of any Person, but your own Fellows? I speak this, that you may be the more sensible of your own Crime, that you may truly, out of the Remorse of Conscience, be sorry for your Sin: You know very well the old Counsel, and it is a good one, *Fear God, and honour the King, and meddle not with them that are given to Change*. Meddling with them that are given to Change, has brought too much Mischief already to this Nation; and if you will commit the same Sin, you must receive the same Punishment: for happy is he, that by other Mens harms takes heed. I shall not spend long time with you, but if you will as much as you can discover the Actors herein, you will do God, the King, and your Country good Service. It remains that the Court proceed to Judgment: and therefore you fix, the one by his own Confession, and the other five by Conviction of Law, the Judgment of this Court is, 'That you be convey'd back to the place from whence you came, and from thence to be drawn upon an Hurdle to the place of Execution; and there you shall be hanged by the Neck, and being alive shall be cut down, and your Privy-Members to be cut off, your Entrails to be taken out of your Body, and (you living) the same to be burnt before your Eyes, and your Head to be cut off, your Body to be divided into four Quarters, and your Head and Quarters to be disposed of at the pleasure of the King's Majesty: And God have mercy upon your Souls.'

Phillips, Tonge, Gibbs, and Stubbs were ordered for Execution on Monday, December 22, when they were drawn on two Hurdles, viz. *Phillips* and *Tonge* on one, *Gibbs* and *Stubbs* on the other, to the common Place of Execution at *Tyburn*: Where being come, they were receiv'd into a Cart under the Gallows; and the Executioner desiring them severally to forgive him, they all declar'd they did freely forgive him and all their Enemies, and did severally salute each other with this Phrase, *Welcome Brother*; and to one another said, *We are now launching into the Deep*. They being all ty'd up, *Phillips* gave the Executioner a small Sum of Money, and the rest directed the Executioner to take out of their Pockets a small Parcel of Money, as their Gift to him; and *Phillips* afterwards bended a Sixpence, and presented it to a Friend of his, Mr. *Stroud*; and a Shilling likewise bended to one Mr. *Clark*. Then the Under-Sheriff of *Middlesex* acquainted them they had all free Liberty to speak, provided they did not reflect upon his Majesty, or the present Government; which they all promised not to do, and thanked him for his Civility. And then *Phillips* began in the Manner following.

Friends and Countrymen,

I Am come this Day to pay that great Debt that I owe to Nature; it is a Work that had need be well done, for it is but once to be done. My Hope is now above; and for what I now come to suffer, for my own Part, I bless God, in whose Presence I now speak, as a dying Man, I had not any murderous Thought against the King; but I have pray'd for him, and wish'd that he might Live and Reign, and long Reign in Righteousness; and that God would make his Crown a Crown of Righteousness upon his Head, and bless him in his Government, so that he may not know any of these Occasions more: For my Part, I have ventur'd my Life for his Majesty; it was far from my Heart to do any thing of that Nature. The Lord receive my Soul. I freely forgive all Men, as I hope to be forgiven of God: I never did act any thing, but only this, which was my Ignorance of the Laws, that I did not discover it; and I was justly found Guilty, for not discovering. I have done, Mr. Sheriff; but hope, after my Brethren have spoken, we may have liberty to call upon the Lord.

Und. Sher. It will not be denied you.

Then Mr. *Tonge* began in this manner.

Friends and Countrymen,

You see me here a dying Man: I have sometimes been in some Mens Company, where I have heard them contriving the Business for which I am to die; and that which led me to join with them was this, I was and had been sometimes in the Army; and I have looked upon this Cause to be good. As for his Majesty, the Lord bless him, and prosper him, and put it into his Heart, that he may be a Nursing-Father indeed to his Country.

Und. Sher. Have you any more to say? You may speak.

Tonge. I have nothing more.

And then *Gibbs* proceeded and said, Countrymen and Friends, and I hope Christians, and the last Consideration is that that makes me the more free to speak to you; we all profess to own God and Jesus Christ to be our Saviour, our Redeemer, our Sanctifier, and Giver of, and Bestower upon us eternal Life; this should excite our Souls to love one another; and upon the account of God's Love, that God has so loved us as to give Jesus Christ, to reconcile us Sinners to God, we ought to love one another, it is his great Command. Truly, as to the Cause for which I am brought here, God, the great Judge of Heaven and Earth, before whom I stand, knows that in the Place where I have liv'd, I behav'd myself as an obedient Subject; and when there was an Insurrection by the *Fifth-Monarchy* Men, I went out in my own Person, tho' I had Servants as well as others, purely out of Affection to his Majesty, knowing that in the Peace of his Government I should have Peace, and so I went out, hazarded my Life, and continu'd out till all was quiet. I was at a Neighbour's House drinking of a Cup of Beer on Tuesday Night in the Kitchen alone, save only the Man of the House and the Maid; these Men came in, one *Hill* and *Riggs*, that are the Witnesses against me; there were *Riggs* and *Hill* and this *Stubbs*, and one *Beazley*: and I being alone in

the

the Kitchen, they ask'd for one *Gibbs*; the People of the House told me there were some Gentlemen would speak with me; I wished them to direct them to me, and they came to me; and thro' the Ignorance of the Law, which, it seems, runs thus, If any Words treasonable against his Majesty are spoken, it is Treason to conceal 'em: So thus I have given you, in part, the Cause of my being here.

Hereupon Information was given to the King's Majesty, that I should say there would be a Rising, and that *All-hallows Eve* was the Time; that there were Arms sent into the Country, and that *Ludlow* was to be General; and this was charged upon me by the King's Majesty, when I came before him to be examin'd: And upon *Hill's* and *Riggs's* Oath, I was sent to the *Tower*, and kept a long time a Prisoner, examin'd three or four times over by the Lords of his Majesty's Council. I have one Word more; as touching my Judgment, I am reputed in the World to be one of those that is called by the Name of *Anabaptist*, a Name of Derision and Scorn; one is an *Anabaptist*, one an *Independent*, one a *Presbyterian*, one this, and one that, and one the other; who gave these Nick-Names to Christians? There is but one God, one Lord Jesus, one Baptism, one Hope of Glory: How comes the Body of Christ, or the Members of Christ to be called by these Nick-Names? But now, as I am one that do profess Faith in God through the Lord Jesus Christ, and do stand before you all, and before the Lord, I know no other God, but the eternal and living God, that hath made the World, and that rules and reigns, and disposes all his Creatures; I do believe in this God, he has been gracious to me a poor Sinner, and to all poor Sinners, that when we, by reason of Sin, had forfeited all our Mercies, and were under Wrath and everlasting Destruction, and must perish for ever; that God did out of his rich Grace and tender Mercies give his only begotten Son, according to his Promise, to be the Blessing of God to the poor Gentiles, according as the Scripture did declare; the Scripture foreseeing that God would justify the Heathens through Faith, preached before the Gospel to *Abraham*, saying, In thee shall all the Nations of the Earth be blessed: He speaks not of the natural Seed of *Abraham*, but of Christ; so that all the Blessings that God did convey to the sinful World, are by the means of Jesus Christ, whom God in the Fulness of Time did send, his Son, born of a Woman, to redeem poor Sinners under the Law; and herein was the great Grace and Mercy of God towards all Sinners, that he was so gracious to send his beloved Son out of his own Bosom to take our Natures upon him, who were defiled, and cursed, and condemned, and separated from God. I say, Jesus Christ took our Natures upon him, and for this very End, to do the Will of his heavenly Father: *Lo it is written in the Volume of the Book, I come to do thy Will, O God*; and it was his Meat and Drink to do his Will; and what was that, but that we might be sanctified through the offering up of the Body of Jesus Christ for our Sins, to tread the Wine-press of his Father's Wrath, and to endure the Cross, and bear all our Sins in his own Body, that made his Soul heavy unto Death: He was a Surety for us and our Sins, and for our sakes the Lord laid on him the Iniquity of

us all, and he hath borne our Grief and endured our Punishment; it made his Soul cry out, My God, my God, why hast thou forsaken me? or else we must for ever be banished out of the Presence of God, and never have any Hopes of Glory, of Faith, or of Salvation, had not the Son of God become our Mediator and Surety; so there is one God, and one Mediator, the Man Christ Jesus. He gave himself a Ransom for all our Sins, to free us from the Wrath to come, everlasting Destruction, and from the Worm that never dies. O that we could ever be thankful to God, live to him that hath so loved us, as to send his Son to die for us, and is by the almighty Power of God raised from the Dead, and now sits at the Right Hand of God, and ever lives to make Intercession.

Truly, Friends, this is not the Love of Man, but the Love of God, and therefore eternal Love. God so loved the World; it is God's Love, he loved Sinners, ungodly ones; he did so love them as to give his only begotten Son to save them, to reconcile them, to uphold them, to redeem them from Wrath to come; it was to seek and save them that were lost. This is a faithful Saying, and worthy of all Acceptation, that Jesus Christ came into the World to save Sinners. We all, like Sheep, had gone astray, and must perish in our Sins, had not the Lord Jesus been sent of his Father, out of his Bosom, to declare the good Will of God, and did it, by which we are sanctified through the offering up of the Body of Jesus Christ; and this Lord Jesus Christ, the eternal Son of God, he is the Mediator between God and poor Sinners. Come unto me all ye that are weary and heavy laden, says Christ, and I will give you Rest; now this Grace is from God, we are saved by Grace, and that not of our selves, it is the Gift of God; through Faith in Christ we are saved; and all things that do pertain to Life and Godliness it is the Gift of God; now all things are of God, who hath reconciled us to himself by Jesus Christ, to wit, that God was in Christ reconciling the World to himself, not imputing their Trespases unto them. Would you know the Forgiveness of your Sins, your Peace with God, and that God is well-pleased with you? God is reconciled by Jesus Christ unto you, and does not impute your Sins unto you, but looks on the Righteousness of Christ as Satisfaction, that thereby you might have the Remission of your Sins through the Blood of Christ. Be it known unto all Men, that through this Man's preaching, the Forgiveness of Sins, *Acts xiii. 38, 39.* and by him all that do believe are justified from all things, from which they could not be by the Law of *Moses*. Now Justification from Sin, and Redemption from Iniquity, is thro the Knowledge of Christ's Death for your Sins, and his Resurrection; and now there is no other Name given under Heaven whereby we can be saved, but by the Name of Jesus, and whosoever believeth in his Name shall not perish, but have everlasting Life, *Joh. v. 24.* It is the Doctrine of Jesus Christ, it is his Word, and I hope you will search the Scriptures, and look into those things for your Souls Good, when Christ says, Verily, verily, I say unto you, he that heareth my Words and believeth them, he hath everlasting Life, and shall not come into Condemnation, but is passed from Death to Life. The Reason

son why God does assure poor Sinners they shall not pass into everlasting Condemnation and perish, is through his rich Grace, through his Promise; for he hath promised, he will be merciful to our Iniquities, and our Sins will remember no more; and these his Promises of Grace, which are all Yea and Amen in Christ, are ratified by the Blood of Christ; the Blood of Christ is this Blood of the New Covenant, and it is that by which we have the Forgiveness, Remission, and Cleansing of all our Sins.

Und. Sher. Mr. Gibbs, let me interrupt you; this is very good and pertinent, but you have said these things over and over; there is another of your Friends to speak, and the Time grows short, pray go on to the Matter, or conclude.

Gibbs. I shall speak a Word or two as to the Knowledge of Forgiveness of Sins, by and thro Jesus Christ; and so the Knowledge of the Resurrection of the Dead, it is the Fruit of Jesus Christ; for by the first Man came Death, and by the second Man, Christ, came Life; and God that has by his exceeding great and mighty Power raised up Jesus Christ from the Grave and Power of Sin, he also shall raise us up by the same Power, and when he comes the second time, at his appearing and coming we shall see him, and be made like to him, and he will receive us to himself; he is gone to prepare a Place for us, and in his Father's House are many Mansions, and if it were not so, he would have told us: And now God that hath given eternal Life, and Forgiveness of Sins unto his poor Servants, he will also, when Jesus Christ shall come to judge the World, receive him into his everlasting Glory, which is my Faith, Expectation, and Hope, in God, through Jesus Christ. A Man may bear his Infirmities, but a wounded Conscience who can bear? When God smites, who can bear? And therefore I desire, as I believe the Forgiveness of all my Sins, through the rich Grace of God, through the Bloodshed of Jesus Christ his Son; every one must give account to God, and as their Works are, so will their Reward be, either accepted by God, as Workers of Christ, or condemned as Workers of Iniquity. Last of all, as to the separated Congregations to whom I belong, I have observed in those few Days that I have lived, there is a great deal of Animosity, evil Will, hard Censuring, and Abusing the precious Saints of Jesus Christ. If they are in an Error, you that are in the Truth instruct them, and you may recover them out of the Claws of the Devil: Are you Christians, and have the Light of God in your Souls? O then strengthen your Brethren, do not give them Nick-Names, and abuse them; that's not the way; Christ teaches another Lesson, *That if thine Enemy hunger, you shall feed him; and if he be a thirsty, give him Drink:* We should pray to the Lord that he would turn those that be out of his way, into the right way.

Und. Sher. You know we must be all subject to Government, every Congregation must not have a Ruler, their Meetings are prohibited by good Authority, and because they will not be obedient to good Government.

Gibbs. I do not say, that every Congregation must have a Ruler, and I hope I speak the Words of Sobriety; I hope you will put a charitable Construction upon what I say. As to the Magistrates, I have a Word or two.

Und. Sher. Speak well of them.

Gibbs. Be not afraid, I will not speak any Evil of them; Magistracy is an Ordinance of God, and the End of Magistracy is for the Punishment of Evil-doers, and the Praise of them that do well; and for this purpose, I do desire that the Lord would give to the supreme Magistrate here on Earth, Wisdom and Understanding, a wise Council, a Council fearing God, and hating Covetousness, that they may study to exalt the Throne of the King in Righteousness and Truth; O that we may all praise the Lord for Deliverance out of Condemnation; and I say it is the Duty of all the Subjects of the King's Majesty, in all his Kingdoms and Dominions, to live peaceably, and to pray for the King's Majesty: Prayers and Intercessions ought to be made for all Men, especially for Kings and Governors, for this very End and Purpose, that thereby we may live in all Quietness, Godliness, Honesty and Justice; and to this very End the Lord bless our Magistracy, give them Council and Wisdom, that they may love them that love the Lord, and hate them that hate the Lord.

After *Gibbs* had done speaking, then *Stubbs* began, who went over all the Particulars of his Trial at large, to which for brevity's sake we refer you. After which he said as follows.

Friends and Countrymen,

It is true, and I must confess my Sin in the Presence of God (and did ask Mercy of the King) that I was in the Company when I did hear wicked and treasonable Words spoken; and I being ignorant, and not knowing the Law, did not discover what I did hear.

As to my Judgment, truly I desire to own that the Scriptures own; I shall speak of that Place in the *Hebrews*, which is the Command of Christ, I desire the Churches and the People every one to live the Life of Faith, and love one another; I am confident it would be a Means of abundance of Comfort here in the Nation; there is a kind of Heart-burning and rising one against another, you are so and so, throw Dirt one against the other; it is our and your Duty, still to be studying to live in Love, and bear one with another, not to be angry, destroy, and fight one with another: O that we might live that Life of Love that God has commanded, then we may expect the Presence of God to be with us; surely God hath a great Judgment against his own People, for not loving one another.

Phillips. Mr. Sheriff, I have only one Word to speak before I go to my Prayers; that is, Here I see some Gentlemen present that are in the Capacity that I was in as a Soldier; I say, be faithful to your Trust, and beg of God that you may stand fast, and not dishonour God, nor be disobedient to the King; when the Fifth-monarchy Men were up, I was free and willing to lay down my Life for the Intetest of the Nation, and did venture it as much as any young Man in *London*; therefore good Friends, have a Care: I am now brought to suffer; it is true, I was guilty of concealing it; I desire your Prayers, that now as we are going to the State of Eternity, from whence there is no Redemption, I humbly beseech you, as Christians and Friends, that you would seek earnestly to God, that now he

he may receive our Souls into everlasting Rest and Happiness, which he has been pleas'd to bestow on them that love him and fear him; and the Lord knows my Heart, I speak it in his Presence, that had the King been pleased to shew Mercy to me, I should have been a faithful and true Subject to him all my Days; but seeing it is the righteous Hand of God, that now I am come to this untimely Death, I desire you to lift up your Hearts and Souls to God with me, that when my Soul shall leave this Body, that the Lord Jesus Christ may with his everlasting Arms receive me to Glory: There is no Redemption after Death, we shall either go to eternal Woe, or eternal Happiness; therefore, good Friends, I desire you to look up to God, that

when my Soul departs, it may be receiv'd to Glory.

Then they went to their Prayers; which being ended, their Caps were severally pull'd over their Faces, and after some private Ejaculations, the Executioner caused the Cart to be drawn away; and after they had hanged a while, they were severally beheaded and quartered according to their Sentence, and their Heads and Quarters conveyed in a Basket to *Newgate*, to be disposed of at the King's Pleasure.

Their several Quarters were buried on *Saturday Night, December 27.*

Their Heads were set up on several Poles, two on the one *Tower-hill*, and two on the other, as near the *Tower* as might be.



LXII. *The Trial of MARY MODERS, alias STEDMAN, styled the German Princess, at the Old-Bailey, for Bigamy, the 3d of June 1663. 15 Car. II.*

THE Court being sat, a Bill of Indictment was drawn up against *Mary Moders*, alias *Stedman*, for having two Husbands now alive, viz. *Tho. Stedman* and *John Carleton*. The Grand Jury found the Bill, and was to the effect following, viz.

‘ **T**HAT the the said *Mury Moders* late of London Spinster, otherwise *Mary Stedman*, the Wife of *Tho. Stedman*, late of the City of *Canterbury* in the County of *Kent* Shoemaker, May 12, in the Reign of his now Majesty the sixth, at the Parish of *St. Mildred's* in the City of *Canterbury*, in the County aforesaid, did take to Husband the aforesaid *Thomas Stedman*, and him the said *Thomas Stedman* then and there had to Husband. And that she the said *Mary Moders*, alias *Stedman*, April 21, in the fifteenth Year of his said Majesty's Reign, at *London*, in the Parish of *Great St. Bartholomews*, in the Ward of *Farringdon without*, feloniously did take to Husband one *John Carleton*, and to him was married, the said *Tho. Stedman* her former Husband being then alive, and in full Life: against the Form of the Statute in that case provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Afterwards the said *Mary Moders*, alias *Stedman*, was called to the Bar; and appearing, was commanded to hold up her Hand: which she accordingly did, and her Indictment was read to her as followeth.

Clerk of the Peace. *Mary Moders*, alias *Stedman*, thou standest indicted in *London* by the Name of *Mary Moders* late of *London* Spinster, otherwise *Mary Stedman*, the Wife of, &c. [And here the Indictment was read, as above] How sayest thou, art thou Guilty of the Felony

whereof thou standest indicted, or Not guilty?

Mary Moders. Not Guilty, my Lord.

Cl. of the Peace. How wilt thou be try'd?

Prisoner. By God and the Country.

Cl. of the Peace. God send thee a good Deliverance.

And afterwards she being set to the Bar in order to her Trial, she pray'd time till the Morrow for her Trial: which was granted, and all Persons concerned were ordered to attend them at Nine of the Clock in the Forenoon.

[The Reader is desired to take notice of the following Passage:]

After she was arraigned, and going back to the Goal, her Husband the young Lord told her, He must now bid her adieu for ever. To which she replied,

*Nay, my Lord, 'tis not amiss,
Before we part, to have a Kiss.*

And so saluted him, and said, *What a Quarrel and Noise here's of a Cheat! You cheated me, and I you: You told me you were a Lord, and I told you I was a Princess; and I think I fitted you.* And so saluting each other, they parted.

June 4, 1663.

THE Court was sat; Proclamation was made. *Cl. of the Peace.* O Yes! all manner of Persons that have any thing more to do, &c. Set *Mary Moders* to the Bar: Where she accordingly stood.

Cl. of the Peace. *Mary Moders*, alias *Stedman*, hold up thy Hand: [which she did.] Those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you for your Life: if you will challenge them,

them, or any of them, you must do it when they come to the Book to be sworn, before they are sworn. And then were called,

<i>William Rutland,</i>	<i>Simon Driver,</i>
<i>Arthur Vigers,</i>	<i>Robert Kerkham,</i>
<i>Arthur Capel,</i>	<i>Hugh Masson,</i>
<i>Tho. Smith,</i>	<i>Tho. Westley.</i>
<i>Fran. Chaplin,</i>	<i>Richard Clutterbuck,</i>
<i>Robert Harvey,</i>	<i>Randolph Tooke.</i>

And she challenged none; but they were severally sworn by the Oath following:

Look upon the Prisoner: You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in charge, according to your Evidence. So help you God.

Cl. of the Peace. Cryer, make Proclamation: 'O Yes! if any one can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken between our Sovereign Lord the King, and the Prisoner at the Bar, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon her Deliverance: and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, come forth and give Evidence, or else you'll forfeit your Recognizance.'

The Witnesses being called several times, and not appearing, young *Carleton* came into the Court in a rich Garb trimmed with scarlet Ribbands, and prayed that in respect his Father and the rest of the Witnesses were not all ready, the Trial might be deferr'd for half an hour; and he going back, and passing the Prisoner his Princess, who stood there in a black Velvet Waistcoat, dressed in her Hair, trimmed also with scarlet Ribbands, she (veiling her Face with her Fan) laugh'd at him, to the great Observation of the Court: and so the young Lord left the Court (by Advice of his Friends) and betook himself to an adjoining House, where he stood the whole Trial.

After some Stay, the Witnesses came into the Court, and the Prisoner was set to the Bar, and Silence being commanded, the Indictment was again read.

Cl. of the Peace. Upon this Indictment she hath pleaded Not guilty, and for her Trial hath put herself upon God and the Country; which Country you are. Your Charge is to enquire whether she be Guilty of the said Felony, or Not Guilty: If you find her Guilty, you shall enquire what Goods and Chattels she had at the time of the Felony committed, or at any time sithence: If you find her Not guilty, you shall enquire whether she did flee for it; if you find that she fled for it, you shall enquire of her Goods, &c. as if she had been Guilty: If you find she be Not guilty, nor that she did flee for it, say so, and no more, and hear your Evidence.

Several Witnesses were sworn by the Oath following:

The Evidence that you shall swear between our Sovereign Lord the King and the Prisoner at the Bar,

shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

James Knot. My Lord, and Gentlemen of the Jury, I gave this Woman in Marriage to one *Thomas Stedman*, which is now alive in *Dover*, and I saw him last Week.

Court. Where was she married?

Knot. In *Canterbury*.

Court. Where there?

Knot. In *St. Mildred's*, by one Parson *Man*, who is now dead.

Court. How long since were they married?

Knot. About Nine Years ago.

Court. Did they live together afterwards?

Knot. Yes, about Four Years, and had Two Children.

Court. You gave her in Marriage, but did the Minister give her to her Husband then?

Knot. Yes, and they lived together.

Jury. Friend, did you give this very Woman?

Knot. Yes.

Court. What Company was there?

Knot. There was the married Couple, her Sister, myself, the Parson, and the Sexton.

Court. Where is that Sexton?

Knot. I know not, my Lord.

Court. You are sure they were married in the Church, and this the Woman?

Knot. Yes, I am sure of it.

Court. How long ago?

Knot. About Nine Years ago.

Court. Did you know this Woman before the Marriage, and how long?

Knot. Yes, I knew her a long time, I was an Apprentice seven Years near her Mother's House in *Canterbury*.

Court. Then she's no foreign Princess? Of what Parentage was she?

Knot. I did not know her own Father, [and in that he might be believed] but her Father-in-Law was a Musician there.

Court. You saw her married: What Words were used at her Marriage, and in what Manner?

Knot. They were married according to the Order of the Land, a little before the Act came forth touching Marriages by Justices of the Peace.

Court. Was it by the Form of Common Prayer, any thing read of that Form?

Knot. I did not take notice of that, I was but a young Man, and was desired to go along with them.

William Clark being sworn, said, My Lord, I was last Week in *Dover*, in company with this *James Knot* and *Thomas Stedman*; and he the said *Stedman* did own that he did marry one *Mary Moders*, a Daughter of one in *Canterbury*, and that *Knot* gave her, and that he had two Children by her, and declared his Willingness to come up to give Evidence against her, but wanted Money for his Journey: And I have understood that a Person here in Court was of a Jury at *Canterbury*, at a Trial between *Day* and *Mary Stedman* at the Bar, for having two Husbands.

Court. Was she cleared?

Clark. I cannot tell.

Young Carleton's Father sworn. My Lord, I was at *Dover* the last Week, on Wednesday; I saw the Husband of this Woman, and the Man acknowledged himself to be so, and did say that

James

James Knot was the Man that gave her in Marriage to him.

Court. Where is this Man her Husband? Hear-says must condemn no Man: What do you know of your own Knowledge?

Carleton the Elder. I know the Man is alive.

Court. Do you know he was married to her?

Carleton. Not I, my Lord.

Sarah Williams. My Lord, this Woman was bound for *Barbadoes*, to go along with my Husband, and she desired to lodge at our House for some time, and did so; and when the Ship was ready to go, she went into *Kent* to receive her Means, and said she would meet the Ship in the *Downs*; and missing the Ship, took Boat and went to the Ship. After several Days remaining there, there came her Husband with an Order, and fetch'd her ashore, and carried her to *Dover-Castle*.

Court. What was his Name that had an Order to bring her on Shore again?

Sarah Williams. His Name was *Thomas Stedman*.

Court. Have you any more to prove the first Marriage?

Carleton the Elder. No, none but *Knot*; there was none but three, the Minister dead, the Sexton not to be found, and this *Knot* who hath given Evidence.

Court. What became of the two Children, *Knot*?

Knot. They both died.

Carleton the Elder. *Stedman* said in my hearing, that they had lived four Years together, had two Children by her, and both dead; five Years ago last *Easter* since she left him.

Court. Mr. *Carleton*, what have you heard this Woman say?

Carleton. My Lord, she will confess nothing.

Court. Mr. *Carleton*, did you look in the Church-Register for the first Marriage?

Carleton. I did look in the Book, and he that is now Clerk, was then Sexton, (*just now not to be found*;) he told me, that Marriages being then very numerous, preceding the Act before-mention'd, the then Clerk had neglected the Registry of this Marriage. If she intended this Trade, she likewise knew how to make the Clerk mistake registering the Marriage.

Young *Carleton's* Brother sworn; who said, My Lord, and Gentlemen of the Jury, I was present at the Marriage of my Brother with this Gentlewoman, which was on or about *April 21, 1663*. They were married at *Great St. Bartholomew's*, by one Mr. *Smith*, a Minister here in Court, by License.

Mr. *Smith* the Parson sworn: My Lord, all that I can say, is this; That Mr. *Carleton* the Younger told me of such a Business, and desired me to marry them: they came to Church, and I did marry them by the Book of Common-Prayer.

Court. Mr. *Smith*, are you sure that is the Woman?

Parson. Yes, my Lord, it is; I believe she will not deny it.

Prisoner. Yes, my Lord, I confess I am the Woman.

Court. Have you any more Witnesses?

Carleton. We can get no more but *Knot* to prove the first Marriage, the last is clear.

Judge *Howel*. Where is *Knot*? Remember yourself what you said before. You say, you

know that Woman at the Bar, that you had known her a great while, that she was born near you in *Canterbury*, that you were present at her Marriage, that Parson *Man* married them, that none were present but yourself, the married Couple, Parson, Sexton, and her Sister.

Knot. Some others came into the Church, but none that I knew; I am sure none went with her, but those I named.

Court. Who gave her in Marriage?

Knot. I did.

Court. How came you to do it?

Knot. I was *Stedman's* Shop-Mate, and he desired me to go along with him.

Court. Were her Parents then living, or no?

Knot. Her Mother was.

Jury. How old are you?

Knot. Two or three and thirty Years.

Jury. How long ago was this Marriage?

Knot. About Nine Years since.

Court. Then he was twenty-three, and might do it: What is your Trade of Life?

Knot. I am a Cordwainer, otherwise a Shoemaker; *Stedman* was so too; we wrought both together.

Jury. We desire to know whether she had a Father and Mother then living?

Knot. She had a Father-in-Law.

Court. Did you know her Mother?

Knot. Yes.

Court. How long before that Marriage did her own Father die?

Knot. I did not know him. [*He said so before indeed.*]

Court. What Age was she when married?

Knot. I suppose about Nineteen or Twenty.

Prisoner. May it please your Honours, and Gentlemen of the Jury, you have heard the several Witnesses, and I think this whole Country cannot but plainly see the Malice of my Husband's Father against me; how he causlessly hunts after my Life. When his Son, my Husband, came and addressed himself to me, pretending himself a Person of Honour, and upon first Sight pressed me to Marriage; I told him, Sir (said I) I am a Stranger, have no Acquaintance here, and desire you to desist your Suit. I could not speak my Mind, but he (having borrow'd some threadbare Compliments) replied, Madam, your seeming Virtues, your amiable Person, and noble Deportment, render you so excellent, that were I in the least interested in you, I cannot doubt of Happiness: And so with many Words to the like purpose, courted me. I told him, and indeed could not but much wonder, that at so small a Glance he could be so presumptuous with a Stranger, to hint this to me: But all I could say, would not beat him off. And presently afterwards he having intercepted my Letter, by which he understood how my Affairs stood, and how considerable my Means were, he still urged me to marry him: and immediately by the Contrivance of his Friends, gaping at my Fortune, I was hurried to Church to be married, which the Parson at first did without License, to secure me to my Husband, and some time after had a License.

And my Husband's Father afterwards considering I had a considerable Fortune, pressed me, that in respect I had no Relations here, and because, says he, we are Mortal, you would do well to make over your Estate to my Son your

Husband;

Husband; it will be much for your Honour, Satisfaction of the World, and for which you will be chronicled for a rare Woman. And perceiving he had not baited his Hook sufficient (with some fair Pretences,) to catch me then, he and his Son, who were both willing to make up some of their former Losses in circumventing me of what I had, they robb'd me of my Jewels, and Cloaths of great Value; and afterwards pretended they were counterfeit Jewels, and declared that I had formerly been married to one at *Canterbury*, which Place I know not: and this grounded on a Letter (of their own framing) sent from *Dover*, with a Description of me; that I was a young fat Woman, full-breasted; that I spoke several Languages, and therefore they imagined me the Person; and so violently carried me from my Lodging before a Justice of Peace, only to affright me, that I might make my Estate over to them. The Justice having heard their several Allegations, could not commit me, unless they would be bound to prosecute me; which my Husband being unwilling to, the Justice demanded of his Father whether he would prosecute me, saying, they must not make a Fool of him; and so after some Whisperings, the Father and his Son were both bound to prosecute, and thereupon I was committed to Prison. And since that, these People have been up and down the Country, and finding none there that could justify any thing of this Matter, they get here an unknown Fellow, unless in a Prison, and from thence borrow'd, you cannot but all judge, to swear against me. My Lord, were there any such Marriage as this Fellow pretends, methinks there might be a Certificate from the Minister, or Place; certainly if married, it must be registered: But there is no Registry of it, and so can be no Certificate, no Minister nor Clerk to be found. And if I should own a Marriage, then you see that great Witness cannot tell you whether I was lawfully married, or how; but it is enough for him (if such a paltry Fellow may be believed) to say, I was married. I was never yet married to any but *John Carleton*, the late pretended Lord: But these Persons have sought all ways to take away my Life, bring Persons to swear against me, one hired with Five Pounds, and another old Fellow persuaded to own me for his Wife; who came to the Prison, and seeing another Woman, owned her, and afterwards myself, and indeed any body. If such an old inconsiderable Fellow had heretofore woo'd me, it must have been for want of Discretion, as *Carleton* did for want of Money; but I know of no such thing. Several Scandals have been laid upon me, but no mortal Flesh can truly touch the least Hair of my Head for any such like Offence; they have framed this of themselves. My Lord, I am a Stranger and a Foreigner; and being informed there is Matter of Law in this Trial for my Life, my Innocence shall be my Counsellor, and your Lordships my Judges, to whom I wholly refer my Cause. Since I have been in Prison, several from *Canterbury* have been to see me, pretending themselves (if I were the Person as was related) to be my School-Mates; and when they came to me, the Keeper can justify, they all declared they did not know me.

Court. *Knot*, you said she lived near you at *Canterbury*; what Woman or Man there, have you to prove she lived there? Have you none in

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that whole City, neither for love of Justice nor Right, will come to say she lived there?

Knot. I believe I could fetch one.

Court. Well said! Are they to fetch still?

Prisoner. My Lord, I desire some Witnesses may be heard in my Behalf.

Elizabeth Collier examined. My Lord, my Husband being a Prisoner in the *Gate-House*, I came there to see my Husband, and did work there on Days; and there came in an old Man, his Name was *Billing*, he said he had a Wife there: says Mr. *Baley*, Go in and find her out; and he said I was his Wife, turned my Hood, and put on his Spectacles, looks upon me, and said I was the same Woman his Wife; and afterwards said I was not, and so to others: I can say no more.

Jane Finch examined. My Lord, there came a Man and Woman one Night, and knock'd at my Door; I came down, they asked to speak with one *Jane Finch*. I am the Person, said I. We understand, said they, you know Mrs. *Carleton* now in Prison. Not I, said I, I only went to see her there. Said they, be not scrupulous; if you will go and justify any thing against her, we will give you 5*l.*

Court. Who are those two?

Finch. I do not know them, my Lord.

Mr. *Baley* examined. My Lord, there has been at least five hundred People have view'd her; several from *Canterbury*, forty at least that said they lived there: and when they went up to her, she hid not her Face at all, but not one of them knew her.

Court. What Country-woman are you?

Prisoner. I was born in *Cologne* in *Germany*.

Court. Mr. *Carleton*, how came you to understand she was married formerly?

Carleton Elder. I received a Letter from the Recorder of *Canterbury* to that purpose.

Prisoner. They that can offer 5*l.* to swear against me, can also frame a Letter against me: They say I was Nineteen Years of Age about Nine Years ago, and am now but Twenty-one.

Court. Mr. *Carleton*, you heard what *Knot* said; he said she lived near him four Years a Wife, why did not you get somebody else from thence to testify this?

Carleton. Here was one *Davis* that was at her Father's House, and spoke with him——

Court. Where is he?

Carleton. I know not; he was here.

Court. You were telling the Court of a former Indictment against her, what was that for?

Carleton. She was Indicted for having two Husbands, *Stedman* of *Canterbury* her first Husband, and *Day of Dover*, Chirurgeon, her second Husband. The Indictment was traversed the Year before his Majesty came to *England*, she was found Not guilty.

Court. Who was at that Trial?

Carleton. One here in Court was of the Jury. But that Party said there was such a Trial, but knows not that this is the Woman.

Judge *Howel*. Gentlemen of the Jury, you see this Indictment is against *Mary Moders*, otherwise *Stedman*, and it is for having two Husbands, both at one time alive; the first *Stedman*, afterwards married to *Carleton*, her former Husband being alive. You have heard the Proof of the first Marriage, and the Proof doth depend upon one Witness, that is *Knot*; and he indeed doth

S i f

say,

say, he was at the Marriage, gave her, and he names one *Man* the Parson that married her, that he is dead; none present there but the married Couple that must needs be there, the Parson, this Witness, her Sister, and the Sexton; that he knows not what is become of the Sexton. All the Evidence given on that Side, to prove her Guilty of this Indictment, depends upon his single Testimony. It is true, he says she was married at *Canterbury*, but the Particulars, or Manner of the Marriage, he doth not so well remember, whether by the Book of Common Prayer, or otherwise; but they lived together for four Years, had two Children. If she were born there, married there, had two Children there, and lived there so long, it were easy to have brought somebody to prove this: that is all that is material for the first Marriage.

For the second, there is little Proof necessary; she confesses herself married to *Carleton*, and owns him; the Question is, Whether she was married to *Stedman* or not?

You have heard what Defence she hath made for herself, some Witnesses on her behalf: If you believe that *Knot*, the single Witness, speaks the Truth so far forth to satisfy your Conscience that that was a Marriage, she is Guilty. You see what the Circumstances are, it is penal; if Guilty, she must die; a Woman hath no Clergy, she is to die by the Law, if Guilty. You heard she was indicted at *Dover* for having two Husbands, *Stedman* the first, and *Day* the second. There, it seems by that which they have said, she was acquitted; none can say this was the Woman: That there was a Trial, may be believed; but whether this be the Woman try'd or acquit-

ted, doth not appear. One here, that was of that Jury, says there was a Trial, but knows not that this is the Woman. So that upon the Whole, it is left to you to consider of the Evidence you have heard, and so to give your Verdict.

[The Jury went forth, and after some short Consultation returned to their Places.]

Their Names were called, and all answered.

Cl. of the Peace. Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Foreman.

Clerk. *Mary Moders* alias *Stedman*, hold up thy Hand: Look upon her, Gentlemen; what say you, is she Guilty of the Felony whereof she stands indicted, or Not guilty?

Foreman. Not guilty.

[And thereupon a great Number of People being in and about the Court, hissed and clapped their Hands.]

Clerk. Did she fly for it?

Foreman. Not that we know.

Afterwards she desired, that her Jewels and Cloaths taken from her, might be restored to her. The Court acquainted her, that they were her Husband's, and that if any detained them from her, he might have his Remedy at Law: She charging old Mr. *Carleton* with them, he declared they were already in the Custody of his Son her Husband.

LXIII. *The Trials of Col. JAMES TURNER, JOHN TURNER, WILLIAM TURNER, MARY TURNER, and ELY TURNER, * at the Old-Bailey, for Felony and Burglary, the 15th, 16th, and 19th of January 1663.* 15 Car. II.

JAMES TURNER the Titular Colonel, *William Turner, Mary Turner, and Ely Turner*, were brought to the Bar.

Clerk of the Peace. *James Turner*, hold up thy Hand: which he did. *John Turner*, hold up thy Hand.

Col. Turner. He is not here, but he is hard by, and I will send for him. My Lord, it has been reported he was fled; it was a Mistake, he is in *Fleet-street*, where he has been ever since this Business.

[And thereupon he sent one for him, and then the Court proceeded to some other Business. A-

bout half an Hour after, the said *John* came in to the Court, and was set among the other Prisoners at the Bar.]

Cl. of the Peace. *James Turner*, hold up thy Hand; *John Turner*, hold up thy Hand; *William Turner*, hold up thy Hand; *Mary Turner*, hold up thy Hand; *Ely Turner*, hold up thy Hand: Which they all did, and then the said Clerk read their Indictment; which was as followeth:

‘YOU stand indicted in *London* by the Names of *James Turner* late of *London* Gentleman, *John Turner* late of *London* Labourer, *William Turner* late of *London* Labourer, *Mary Turner* late

late of *London* Spinster, (otherwise *Mary Turner* the Wife of the said *James Turner*) and *Ely Turner* late of *London* Labourer; for that you the said *James Turner*, *John Turner*, and *William Turner*, the 7th Day of *January*, in the Fifteenth Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, about Ten of the Clock in the Night-time of the same Day, with Force and Arms, &c. at *London*, that is to say, in the Parish of *St. Dyonis Back-church*, in the Ward of *Lime-street*, *London*, aforesaid, in the Dwelling-House of one *Francis Tryon* Merchant, there feloniously and burglarly you did break and enter; and on him the said *Francis Tryon*, against the Peace of God, and of our said Sovereign Lord the King, in his Dwelling-House aforesaid, then and there being and resting, feloniously and burglarly did make an Assault, and him the said *Francis Tryon* in corporal Fear of his Life feloniously and burglarly you did put; and one Pendant Pearl set in Gold, and a precious Stone fix'd thereto, of the Value of 150*l*. Two Pendant Pearls with Half-Moons, seven Diamonds, and eight Rubies fix'd to every of them, of the Value of 80*l*. One Topaz and Pendant Pearl at the bottom thereof, of the Value of 20*l*. One Emerald Jewel, and five Diamonds, of the Value of 150*l*. One Gold Ring, and Diamonds set therein, of the Value of 30*l*. One other Gold Ring, and nine Diamonds fix'd in the same Ring, called an Agar Ring, of the Value of 5*l*. One Jewel, and thirty-seven Diamonds, of the Value of 30*l*. One Gold Chain of the Value of 30*l*. One Gold Ring and nine Diamonds set therein, of the Value of 6*l*. Another Gold Ring and a Jacinth-stone fastened therein, and two Diamonds set in either of them, of the Value of 3*l*. One other Gold Ring of the Value of 20*s*. One Necklace of Pearl, of the Value of 500*l*. One Knot of Diamonds and Pendant Pearls fastened thereto, of the Value of 300*l*. One Sprig and three blue Sapphires, nine Pendant Pearls, and fifty-six Diamonds fastened thereto, of the Value of 300*l*. One Gold Ring and thirteen Diamonds set therein, of the Value of 50*l*. One other Gold Ring and Diamonds set therein, of the Value of 50*l*. One Knot and seventy-five Diamonds set therein, of the Value of 100*l*. One Necklace of Pearls, containing one hundred seventy-two Pearls, of the Value of 11*l*. 10*s*. One Necklace of Pearl, containing two hundred seventy six Pearls, of the Value of 18*l*. 10*s*. One Jewel and forty-six Diamonds set therein, of the Value of 300*l*. One Jewel and fifty-three Diamonds set therein, of the Value of 200*l*. One Gold Ring, and one Diamond set therein, of the Value of 50*l*. One Locket and thirty-six Diamonds set therein, of the Value of 70*l*. Two Lockets and one Ruby, and twenty Diamonds set in either of them, of the Value of 60*l*. One Pendant Pearl set in Gold, and four Diamonds set therein, of the Value of 40*l*. One other Gold Ring, and with one Diamond, of the Value of 35*l*. Six Bracelets set with precious Stones, of the Value of 20*l*. One blue Sapphire, twenty-four Diamonds, of the Value of 40*l*. One Locket and nine yel-

low Diamonds set in Gold, of the Value of 20*l*. One Locket and eight Diamonds set therein, of the Value of 8*l*. One Jewel and twelve Diamonds set therein, of the Value of 15*l*. One Gold Ring and Diamond, of the Value of 5*l*. One Jewel and Sapphire, Ruby and Emerald adjacent, and four Ophirs set therein, of the Value of 12*l*. Twelve *Scotch* Pearls, of the Value of 3*l*. Sixty-two Pearls, of the Value of 12*l*. One Oriental Amethyst, six Diamonds set therein, of the Value of 20*l*. Two other Gold Rings, nine Diamonds in either of them, of the Value of 15*l*. One other Gold Ring and thirteen Diamonds set therein, of the Value of 8*l*. One Jewel and ten Diamonds, and seven Emeralds, of the Value of 15*l*. Sixteen Gold Rings, and seven Diamonds in every of them, of the Value of 75*4**l*. One Bracelet and thirteen great Rubies set therein, of the Value of 100*l*. Six Two and Twenty Shilling Pieces of Gold, five other Pieces of Gold, called *Five Shillings Six Pence a-piece*; three other Pieces of Gold of two Shillings Nine-pence a-piece; another Piece of Gold of Twenty Shillings; two other Pieces of Gold of Five Shillings a-piece; four Eleven-Shilling Pieces of Gold; five Pieces of *French* Gold of sixteen Shillings Six-pence a-piece, and 1023*l*. in Money, (particularly named in the said Indictment) of the Goods and Chattels of the said *Francis Tryon*, then and there being found, then and there feloniously and burglarly you did steal, take and carry away. And that you the said *Mary Turner* and *Ely Turner* knowing the said *John Turner* the Felony and Burglary aforesaid to have committed; the said *John Turner* afterwards, that is to say, the 8th Day of *January*, in the Fifteenth Year aforesaid, at *London* aforesaid, that is to say, in the Parish of *St. Andrew Undershaft*, in the Ward of *Aldgate*, feloniously did receive, comfort and maintain, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

How sayest thou, *James Turner*, art thou Guilty of the Felony and Burglary whereof thou standest indicted, or Not guilty?

Col. *Turner*. My Lord, and the honourable Bench, I shall no way be refractory, nor do any thing that doth not become a Gentleman; but I humbly beseech your Honours that you will stand my Friend, that I may have Justice, and your Honours Opinion——

* *Ld Hyde*. You are to plead now to your Indictment.

Col. *Turner*. I do not refuse it; my Lord, I beg your Honour to hear me a Word——

Ld Hyde. Plead to the Indictment, and then say what you will; 'till that be done, all you can say will signify little: we are to receive your Answer to your Plea first, afterwards say what you will; you must now say Guilty, or Not Guilty.

Turner. I shall not refuse to plead, but I beg my own Goods may be restored to me; my House, my Lord, is locked up, and Children turned out of Doors, and I have nothing to support us.

Ld Hyde. Are you Guilty or Not guilty? You shall have Right done you.

Turner. I will take your Honour's word for it; I am Not Guilty.

Clerk. How will you be tried?

Turner. By God and the Country.

Clerk. How sayest thou, *John Turner*, art thou Guilty of the Felony and Burglary whereof thou standest indicted, or Not Guilty? [And so *William Turner*, and likewise *Mary Turner*, and *Ely Turner*, as Accessaries, being demanded the like Questions, severally pleaded Not Guilty, and put themselves on God and the Country to be tried.]

Ld Hyde. Now, Mr. *Turner*, let us know who has seized any thing of yours.

Turner. The Sheriffs, Sir *Richard Ford* and Sir *Richard Rives*, and they are in possession of my House; I have none but a Child of 7 and 9 at home, and have not a Shirt to command. It's true, the Sheriff, Sir *Richard Ford*, was so civil yesterday as to give me some Linen.

Sir *Richard Ford.* I shall give your Lordship an account of this: I suppose, my Lord, we have done nothing but what was customary; a Seizure we have made now, but after we had heard this Gentleman was committed for Felony and Burglary, and that none but Children were in the House, my Lord, we thought it our Duty, both for his Good, to secure his Estate, if acquitted, and so for the King, if convicted, that so the same might not be imbezeld; and thereupon caused an Inventory to be taken thereof: But, my Lord, we dispossessed none: it is true, we have left a Servant or two, for whom we are and must be responsible; whatever they would dispose or had occasion for, they had it without Contradiction. We offered him, that if he had any Friend of his own that would undertake them to be forth-coming, in case he were convicted, we would leave them in possession of them; we have made no Seizure, what we have done is according to Custom; if we have not done that which your Lordships approve of, we beg your pardon.

Ld Hyde. We are to look to that which is according to Law; the Goods of a Man that is accused of Felony (he is but only so yet) he forfeits none of his Goods, till convicted; more than that, he is to live upon them during his Trial; but on the other hand, where a Man is accused of Felony, and indicted for it, it is but Prudence, and agreeable to Law, to take care the Goods be not imbezeld; because, if a Conviction follow, they are forfeited to the King; therefore the Sheriffs have done but what they ought to do: they are not taken from you, what you have occasion for, either for Money (or Goods to turn into Money) for your present Supply, till your Trial be over, God forbid but you should have it, and you shall have it; if you have any Friend that will undertake the Goods shall be forth-coming for the King, in case you be convicted, or for your self, if acquitted, it shall be done. In the mean time what you have occasion for your self, Wife or Children, God forbid but you should have it: and this is as much as by Justice you ought to claim.

Turner. I submit to your Honour, and I beg of your Honour and the Bench to be of Counsel for me; for though the World looks on me as a Solicitor, it is a mistake, my Lord, it is not in Law, I am a Stranger to it; it has been only in Dealings for Monies, by Purchases and the

like. But, my Lord, I am informed your Lordship may restore me these Goods without Security; if the Law directs Security, I am ready to give it.

† *Ld Ch. J. Bridgman.* For that, that you may not mistake the Law, it is very true, the words of the Statute of *Richard III.* say, A Man's Goods shall not be seized before indicted. You must understand the Difference of the Law, that has made the Mistake; it was then good, but not now; then a Man's Course was to indict them and process against them before committed, but now it is altered; for when it remained indifferent, whether Guilty or Not guilty, he was to be maintained out of his Goods: so ought you and your Family: for the Town being answerable for the Goods of such a Felon, that they might not be amerced, in such Cases sufficient Sureties were given: the Statute of *Philip* and *Mary* gives the Power of Commitment by Justices of Peace, and so now it is quite altered; and though they cannot seize the Goods, yet they being responsible for them, they ought to have good Security.

Sir *Richard Ford.* I do assure your Lordships, that from the very first Hour we put our People into the House, none of his Family there then or now have been denied any thing in the House: if I be not misinformed, that very Night that he was committed, there was conveyed out of his House for his Use and his Occasions, some say 200*l.* they that say least, say 100*l.* they have had a free Disposal of what was in the House; and then, my Lord, could we do less than what we have done?

Turner. I would have made a short business of this, I tendered Security of 5000*l.* to their own Content, they accepted of the Persons, but one standing by, said, By no means; and so it is still undone. If you please, I have Security now.

Ld Hyde. There need not much a-do for Security; if your Trial were not to be presently, then there were Cause for you to insist on this; but now there is but one Night; if you want any thing for this Night, the Sheriffs here offer what you will, to-morrow will determine the Question, whether these Goods are yours, or no.

Turner. I will submit to the Court, I will not be refractory; here is Security, if you please; if not, I am content.

Ld Hyde. If you want any thing, either Money or Clothes, or any thing else, you may have them.

Turner. My Lord, the greatest thing will be some Writings and Papers, which will concern me at my Trial to clear me then.

Ld Hyde. Do this; nominate one Person, the Sheriff another to go with him, and what Writings you will have brought, they shall take a Note of them, and bring them to you.

Turner. I have divers Writings of Gentlemen's Estates, Bonds and Things in my Hands, and the Papers are amongst them; and I do beg I may, with the Keeper, go my self now.

Ld Hyde. I cannot, nor the Court, give you leave; you stand indicted for Felony and Burglary.

Turner. Let my Sons go, my Lord.

Ld Hyde. They are indicted too, and are notailable; if Mr. Sheriff (who is answerable for you) will send any with them, he may.

Sir

Sir *Rich. Ford*. I shall be willing to serve you, Gentlemen, so far my self, if your Lordship will spare me from further Service here, to go with such Person as he shall appoint.

Ld *Hyde*. We leave that to Mr. Sheriff's Civility, we can give no Rule for it.

Turner. I may be cut off of my Life, if I want my Papers.

Ld Ch. Just. *Bridgman*. Doth your Life depend upon this Evidence in Matter of Fact?

Turner. My Lord, I have been so strangely handled in this business, I know not where it depends.

Sir *Rich. Ford*. If he will say in what Trunk or Chest they are in, they shall be brought to the Court. [Thereupon Mr. *Turner* offered to send a Pillowbeer, and the Sheriff said he should have the Writings.]

Ld *Hyde*. Provide your self for to-morrow, Mr. *Turner*, we will then go on.

Turner. I have an humble Request to your Honours and honourable Bench; I would beg an Order to bring in some Witnesses, who are Mr. *Tryon's* Friends now, though mine lately; divers would come in, but send me word they dare not, except they are summoned by an Order of your Lordships.

Ld Ch. Just. We will help what the Law will do, but this cannot be done; those that will come in voluntarily, may; the Law will not admit us to summon any Witnesses: you see when any come against the King, we cannot put them to their Oaths, much less can we precept them to come.

Turner. Pray, my Lord, let some of the Sheriff's Officers wish them to come, not from the Bench.

Ld Ch. Just. We cannot direct any thing in't.

Turner. I desire the Party himself may be here.

Ld Ch. Just. We cannot compel him.

Turner. Then I have no Witness in the World; this is a sad thing, that the Prosecutor, being able, will not come; I hope you will advise him to come.

Ld Ch. Just. The Law is open, the same to every Man, you shall have that that is due to any Man, you cannot have more, and less you shall not have; if he be bound, we will call him.

Turner. What if he will forfeit his Recognizance?

Ld Ch. Just. We cannot help that, but we think you need not fear his not coming, he intends to be here.

And afterwards the Prisoners were conveyed back to the Goal.

16 January, in the Morning.

THE Court being set, and Proclamation made, the Jury was call'd, viz.

<i>William Bookey,</i>	<i>Thomas Hickson,</i>
<i>Thomas Seawell,</i>	<i>John Andrews,</i>
<i>William Allen,</i>	<i>John Jacob,</i>
<i>John Port,</i>	<i>David Bolger,</i>
<i>Francis Coles,</i>	<i>Henry Hague,</i>
<i>Robert Masters,</i>	<i>Lewis Tayte.</i>

Who severally answered to their Names.

Clerk. Set up *James Turner, John Turner, William Turner, Mary Turner* and *Ely Turner*; [Who (with some Felons) were accordingly set to the Bar.] You, the Prisoners that were last called to the Bar, those Men that you shall hear called and personally appear, must pass between our Sovereign Lord the King and you for your several Lives and Deaths. If you or any of you will challenge them or any of them, you must challenge them when they come to the Book to be sworn, before they be sworn.

Silence commanded twice.

Clerk. *William Bookey*, look upon the Prisoner: 'You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in Charge according to your Evidence. So help you God.'

And so all the rest were sworn, save only *Lewis Tayte*, against whom he excepted, there being some little Difference at present between them; but my Lord Chief Justices told him he need not give any Reason for it, he was free to except any without Cause. Thereupon Capt. *Edward Micoe* was sworn in his room. Count these, Cryer.

William Bookey, &c. Twelve good Men and true, stand together and hear your Evidence.

Clerk. Cryer, make Proclamation. O Yes! If any Man can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken between our Sovereign Lord the King and the Prisoners at the Bar, let them come forth, and they shall be heard; for now the Prisoners stand at the Bar upon their Deliverance: and all others bound by Recognizance to give Evidence against any the Prisoners at the Bar, come forth and give Evidence, or else you will forfeit your Recognizances.

Clerk. Cryer, call *Francis Tryon, William Hill, Fred. Ixam, John Garret, Jacob Watcher, Eliz. Fry, Ann Ball, John Guernsey, Francis Millington, John Alsop, Peter Culley, Ralph Tasker, William Daws, John Rouse, Richard Roberts, Nath. Clarke, Robert Cole, Edward Cole*. They all came into the Court.

Clerk. *James Turner*, hold up thy Hand. [And so the rest.]

[Here the Indictment was read again.] Upon this Indictment they have been arraigned, and thereunto have severally pleaded Not Guilty, and for their Trials have put themselves upon God and the Country, which Country you are. Your Charge is to enquire whether the said *James, John* and *William Turner*, or any of them, be Guilty of this Felony and Burglary in Manner and Form as they stand indicted, or Not Guilty: And whether the said *Mary* and *Ely Turner* are guilty of the Felony, as Accessaries to the said *John*. If you find them Guilty, you shall enquire what Goods and Chattels, Lands and Tenements, they or any of them had at the Time of committing this Felony or Burglary, or at any time since: If you find them Not Guilty, you shall enquire if they fled for it; if you find that they did fly for it, you shall enquire, &c. as if you had found them Guilty. If you find them Not guilty, and they did not fly for it, say so, and no more, and hear your Evidence.

But

But if you acquit *James, John* and *William Turner* of the Felony and Burglary, then you shall not enquire after *Mary* and *Ely* as Accessaries.

Sir Thomas Aleyn sworn. The Evidence that you shall give, &c.

Ld Ch. Just. Hyde. Pray, *Sir Thomas Aleyn*, tell your knowledge to the Jury.

Sir T. A. May it please your Lordships, and you Gentlemen of the Jury; upon Friday Morning last was sevensnight, I heard of this Robbery at *Guild-Hall*, and the Person robbed being my Acquaintance, I went to visit him in the Afternoon; and coming there, not thinking but the Business had been already examined, several Persons with *Mr. Francis Tryon* put me upon the Business to examine it. I went and examined the two Servants, the Man and the Maid: upon their Examination I found they had supped abroad at a Dancing-School, and had been at Cards, and came home afterwards; but before they came home, they heard that an antient Gentleman, one *Mr. Tryon*, was robbed, and then they hastned home. I examined them further, whether they used to go abroad after their Master was in Bed? The Man confessed he had been abroad twenty or thirty times at *Col. Turner's* House at Supper, about a Year since. The Maid denied they had been there at all: but it is true the Man's saying he supped there (though it was false) was the first Occasion of Suspicion of *Col. Turner*. When I had examined these two, I went to the Examination of *Turner*, Where he was all that Day, where at Night? he told me, at several Places and Taverns, and in Bed at Nine of the clock, and was called out of his Bed: but having my self some Suspicion of him, I wished him to withdraw. I told *Mr. Tryon*, that I believed if he was not the Thief, he knew where the things were. The old Gentleman said, He could not mistrust him, he had put a great Confidence in him: But I desired him to give me leave to charge him with it; and thereupon I called him in, but he denied it; but not as a Person of his Spirit, which gave me some Cause of further Suspicion. I desired to search his House; nay, told him I would whether he would or no. He desired to go home; I told him, if he would go with them (some Persons there) he should: but you shall not speak with your Sons or Daughters, or Servants, they shall be examined by me. They searched his House, the Marshal and Constable, they said they could find nothing. The old Gentleman was very unwilling to charge him with Felony; some Friends there were as well satisfied as I was, that he was guilty of it; and they brought me a Paper that he would charge him: and thereupon I wished him to read that Paper, told him I could do no less than send him to *Newgate*. Says he, you will not undo a Family, will you? Will you not take Bail? No, I cannot. What Proof have you material against me? I will give you as good Bail as any Man; give me leave to speak with *Mr. Tryon*. I did give him leave: He had no sooner spoke with him, but *Mr. Tryon* would not charge him, he promising to endeavour to find the Thief. I took *Mr. Turner* on one side, and told him, I did as verily believe if he was not the Thief, he could find him out, as I believed I should go home to my

Wife and Children; and I said, That if an Angel from Heaven should come, and tell me otherwise, I could hardly believe it. This passed on this Night: I could not sleep all the Night, still it was in my Thoughts that this Man was the Man that had done the Robbery. Next Morning, after Nine, there came a Gentleman to me, a Person of Quality, a Merchant; if your Lordship desires, I shall name him.

Ld Chief Justice. Pray name him.

Sir T. A. It was Alderman *Love*, my Lord: He told me that he thought I was a Friend to Justice: If I would go presently into the *Minories* my self, I might discover the Person that robbed *Mr. Tryon*; if I staid, or sent others, the Birds would be flown: *Mr. Turner* has this Morning removed several hundred Pounds. I went presently with a Footboy. When I came to *Bishopsgate*, meeting with Major *Tasker*, knowing not whether I went without the Liberties, said I to him, Are you in haste? Pray go along with me: And he went with me.

This Gentleman, Alderman *Love*, told me I should meet with a Maid-Servant of his that knew me, though I knew not her: She will meet you at such a Corner, and go with you. When I came without *Aldgate*, I met with two Maids that were the Persons to shew me the Place: The Maid told me these were the Maids. I bid them come behind me. At the further End of all the *Minories* I went into a Shop, and found Colonel *Turner* with his Hands in a Chest: I charged him to take nothing out, and not to stir himself. There was two Wallets, one of 100 *l.* and the other 200 *l.* I took the Keys from him, laid them upon the Compter: I went with him into the next Room, which was the Kitchen; and in another Chest was two Wallets more: and now the Gentleman was speechless. I told him it was just as I told him the last Night, that your Roguery would come out: What (said I) is become of the rest of the Money? Says he, Your haste will spoil all. I called in the Maid, to examine her: But she was fearful, and so trembled there was no examining her before Colonel *Turner*. But in conclusion, said I, Colonel *Turner*, if you will tell me whether this be *Mr. Tryon's* Money, I will do you all the Favour I can. Says he, I cannot say it is his Money. I called for a Constable, and made a *Mittimus* to send him to *Newgate*, thinking he would discover the Truth. Said I, Will you give me your Examination? He did: It is in Court. I asked him whence this Money came? He told me it was removed by himself, his Wife, and Children this Morning.

Turner. My Son and I, I told you.

Sir T. A. I asked him where he had received it? He told me at a Goldsmith's, fourteen Days since: He did not remember his Name. I asked why he should remove his own Money? His Answer was, He did remove it for two or three Days, till this Foolery was over.

When I saw I could get nothing further from him, I discoursed with him touching the Remainder of the Money and the Jewels. Says he, *Sir Thomas*, do not trouble your self, you will lose the Jewels and the rest of the Money by this Course; and, says he, I am now in pursuit of them: If you will give me leave to go to the old Gentleman, I know all will be well. I was not content to let him go: But presently we called

called a Hackney-Coach, and my self, and him, and Major *Tasker* went, and carried that Money to Mr. *Tryon*. When we came there, I told Mr. *Tryon* I thought we had brought 500*l.* of his Money; and I did not doubt but I had brought a Person that could tell of the rest of his Money and Jewels. Colonel *Turner* desired to speak with Mr. *Tryon* himself in private. I gave him leave. He calls me a little after: Sir, says he, Mr. *Tryon* and I am agreed; I must have this Money delivered to me again: I have assured him he shall have all his Money and Jewels again by Three of the clock this Afternoon. I told him I could not agree that he should have the Money back again, press'd him that he would stay there, and send for the rest of the Money and Jewels. But he would (if I did not) trust him: Mr. *Tryon* would have the rest of his Money and all his Jewels again.

Turner. I said, I would endeavour it.

Sir *T. A.* If he had said he would have endeavoured it, I would not have parted with him; but he said he should have the Money and Jewels, &c. I told him I would meet him at that Time at Mr. *Tryon*'s. Then I took Mr. *Tryon*, and said, Whatever Promise you have made in private, you must excuse my assenting to any thing against the Law: But do not tell him of it, lest you lose the Jewels: I must commit him to *Newgate*, and I must bind you to prosecute him. He desired me I would not come so soon as Three, not till Four or Five of the clock, and all would be brought thither. I staid till about Four. In the interim I heard some Particulars, what these Maids would testify; which Testimony had I received before I had parted with him, I would not have parted with him for any Consideration. But when I came thither in the Afternoon, I heard Colonel *Turner* was arrested, and was then at the *Hoop-Tavern* with the Officers. I sent immediately the Marshal and his Men to bring him to me. The Officers and he came; and then Colonel *Turner* told me, I had brought all these Things, but the Officers prevented me; I was a very unfortunate Man: Give me but leave till to-morrow Morning at Nine of the Clock, and you shall have all. Said I, I have now heard more; and you must produce the Money and Jewels, if you expect any Favour from me, or I know what to do. He pressed very hard an Hour, or almost two, that he might be trusted to go for them; if he did not go, Mr. *Tryon* would lose the rest of his Money and Jewels. I told him I had rather they should be all lost, than I should forfeit my Discretion and Reputation. And thus he kept us till Seven or Eight at night. At last he would have gone with one Person. I told him, no: If there were enough to secure you, I might give leave. Saith he, the Party will not see more than one; for his Life would be in danger. Whither would you go? I would go, saith he, (to my best Remembrance) to *Tower-Hill* or *White-Chappel*. I should have met him at Five of the clock; and now I must meet him about Nine. I will call in the Officers: They will tell you, your being upon a Judgment, they will not part with you without the Liberties: Nor will I give leave, because the Sheriffs will blame me. The Officers said they could not go without the Liberties, for it would be an Escape in Law. Pray give me leave to go near those Places, and I will send. Nay, then you may as well send from

hence. He begged leave to go to the *Hoop-Tavern*, and send for his Wife; which I did grant. And there he did send for his Wife. They brought me word he had sent his Wife for the Jewels and the rest of the Monies. He sent to me not to think the Time too long, for he had notice his Wife was coming. I directed the Marshal, when his Wife came, he would secure her. About Eleven of the clock they brought his Wife; who told me she had delivered the Jewels: They thought they were in two Bags. Then he came to me, and desired to speak with Mr. *Tryon* in private, and told me Mr. *Tryon*'s Soul was pawned to him, and his to the Thief, that no Discovery should be made. But when I examined his Wife what Money went from her House that Morning, she said she knew of none. Where had you the Jewels? She knew of none: But she had a Couple of Bags that she was sent for: Near *White-Chappel* or the *Tower* a Person should meet her, and ask what she did there, and she should say she walked up and down for something that should be given her by a Person; which, if he did, she was to bring it to him that sent her. He did deliver the two Bags, which she delivered to her Husband; but what was in them, she knew not. There was Sir *Thomas Chamberlane*, Mr. *Millington*, my self, and Colonel *Turner*, with Mr. *Tryon*. The two Bags was laid upon a Dresser. He told us they were now come; and having performed his part, he hoped Mr. *Tryon* would perform his. Have you performed your part? Have you brought the Jewels and the Remainder of the Money? He told us the Money was not brought: For the 600*l.* I shall give Mr. *Tryon* my Bond, to pay him at six Months. We press'd to see the Jewels: We run them all over. But I should have told you one Thing: She brought a Cat's-Head-Eye-Ring upon her Finger. This the Gentleman was like to forget: He delivered it to me, to deliver that with the rest. When we had told out the Jewels, we crossed them out upon the printed Paper as they were called. She said all that was in the Paper, except one Carcanet of Diamonds and Jewels, valued at 200*l.* that is fallen behind the Chest, or aside. You have 2000*l.* Pounds worth of Jewels over what is in the Paper; but that Carcanet shall be forth coming. He now pressed that no Prosecution might be, for two Souls were pawned, (as I said before) and desired an End of the Business. I told him further, and pressed him: Said I, I have staid a great while, and would stay longer, if he might have the 600*l.* and the Carcanet. But when I saw there was nothing more to be got from him, now (said I) what would you have this poor Gentleman to do for you? What he hath promised you, I know not; he is a Stranger to the Law: If there had been but you two had it, and it had not been published to the World, and the Neighbours publick Examination taken, somewhat might have been between your selves. But would you have this Gentleman bring himself into danger? He will lose all his Goods again; for he will be indicted himself. What will he be the better for Discovery, when he must lose his Jewels and Money, and be liable to a Prosecution, as you will be, were he so ignorant? Do you think that I understand the Law no better, being a Justice of Peace, to bring my self into danger? All the Kindness I can do for you, is, (to be short)

short) I must send you and your Wife to *Newgate*.

How say you, Master Alderman? Then I had better to have kept the Jewels. Those were his Words; to the best of my Remembrance he said so.

My Lord, I asked him several Questions: Why he should give a Bond for six hundred Pounds, if he was not concerned in this Business? But he knew not what to answer. Saith he, Will you not take Bail? Said I, I can take no Bail: I must send you to the common Goal, and then I am discharged. Pray send me to the *Compter*. No, I cannot. Do you think I would make an Escape? I cannot tell; but I would not bring my self into danger. He prayed me I would give him leave to go home. I must make my Warrant: If the Marshal and Constable will do any thing, I shall not direct them.

He desired his Wife might go and fetch some Linen.

Ld Ch. Just. *Bridgman*. What Day were the Jewels delivered?

Sir T. A. Saturday.

Ld Ch. Just. *Bridgman*. Thursday was the Robbery, Friday he was examined, Saturday the Money was removed, and that Night the Jewels were brought, and he committed.

Sir T. A. If I have said any thing that he is not satisfied wherein I have not true spoken, let him ask me; I shall not do him the least Wrong.

Ld Ch. Just. *Hyde*. Do so, Mr. *Turner*.

Turner. Do your Honours understand of Sir *Thomas* the Time the Robbery was committed? I shall ask him some Questions.

Sir T. A. I have only one Word more to say to you: That before he went to the *Hoop-Tavern*, Nay, said I, Colonel *Turner*, be ingenuous whether this was not Mr. *Tryon's* Money that he removed? And he confessed it was.

Ld Ch. Just. *Hyde*. That Money was removed from his own House.

Sir T. A. Yes; but his Wife, Children, and Maid denied it.

Ld Ch. Just. *Hyde*. Mr. *Turner*, will you ask him any Questions? What are they?

Turner. I would ask all this back again: You are upon your Oath, Mr. Alderman.

Ld Ch. Just. *Hyde*. You need not tell him that he is sworn; the Court and Jury understand it so.

Ld Ch. Just. *Bridgman*. Go on, Mr. *Turner*; ask your Questions.

Turner. My Lord, I demand of Sir *Thomas Aleyn* whether I did not tell him at the first there was a wicked young Man had belyed my House and Family, saying that he supped there that Night, when he had not supped at my House these twelve Months.

Sir T. A. I think I have done him that Right already. He desired me to examine that young Man, who said he supped at Colonel *Turner's*; but I found he had not been, nor was not there.

Turner. Upon Friday Night, when the Alderman pressed me concerning the Thing, I told him I had some Suspicion of some Persons, who formerly should have robbed Mr. *Tryon* a Year ago, and I employed *Mosely* the Constable and Mr. *Tryon's* Man to go to *Ratcliff*, and I went another Way. Pray ask Sir *Thomas* whether I did not promise him to do all I could.

Sir T. A. I pressed him hard; he said he would endeavour it.

Turner. Whether did not I tell him that that Money was carried there on purpose to gain the other Fellows that had the Jewels? Said I, If this Money be taken away, he that hath the Jewels will not bring them, and the Remainder of the Money; but that this Money must bring him to it, that they might share it.

Sir T. A. There was not one Word of this: His Examination was contrary. He told me 400*l.* was received of a Goldsmith, he knew not his Name, and 200*l.* was in his own House; and that he removed it for two or three Days, till this Foolery was over. He said it was his own Money. I said, an honest Man need not thus remove his own Money.

One thing I have omitted: When I was examining of him in the *Minories*, word was brought me his Son was fled away at the Back-door. I bid them run after him, but they said they saw him leap over a great Ditch; he was not heard of till yesterday, tho I sent out my Warrants for him.

Ld Ch. Just. *Hyde*. Yourself (as Sir *Thomas Aleyn* swears) said you knew not of whom you had part of the Money, but the other was your own, and yet afterwards that the Money was *Tryon's*; why did you say so?

Turner. I will tell you the reason; I would not have my business spoiled, and did feign those Answers. My Lord, I do demand of him whether Mr. *Tryon* and I had not made a bargain in the Morning, whether or no if he might have his Goods the Person should be free, and that he had agreed no Blood should be spilt; that he had rather lose all his Money and Jewels, than to forfeit such an Affelevation which the Thief had bound me that I should swear to him, That by the Blood of Jesus Christ that was shed for him and all Sinners, his Life should be free.

Ld Ch. Just. *Hyde*. You are beside the business.

Turner. My Lord, I ask Alderman *Aleyn* whether I did not tell him this?

Sir T. A. I told your Lordships two Souls were pawned, as he said before.

Ld Ch. Just. *Hyde*. Do not spend your time thus; the Question's short, whether you are guilty of robbing, or breaking the House of Mr. *Tryon*, or no?

Turner. I am as free as any Man here.

Ld Ch. Just. *Hyde*. They will not believe your own words.

Sir T. A. I think I have done him no wrong by this Evidence.

Turner. I hope, my Lord, I shall have the benefit to call him again for a Witness for me.

Ld Ch. Just. *Hyde*. You may ask him now.

Turner. No, when I come to my Defence.

Ld Ch. Just. *Hyde*. Yes, yes.

Turner. Oh your Honour's most humble Servant; I am very sorry I have put him to this trouble.

Mr. Tryon, his Servant, and Mr. Garnet sworn.

Ld Ch. Just. *Hyde*. Mr. *Tryon*, pray (as you are able) give an account of this Business.

Tryon. My Lord, about Eleven of the clock, or something past, upon Thursday Night last was a Seven-night, two Men came into my Chamber when I was fast asleep, one on the one side, and another on the other side of the Bed; one had a Lanthorn that opened on one side, and waked me: when I saw him, I was much astonished (as I might well) knew them not,

not, said, My Masters, who are you? I was newly out of my Sleep; being an antient Man, I apprehended another Man for the Party I spoke to, but was not the Man, and named him by his Name, What do you do here at this time of night? What is your business? Said nothing to me: one took both my Hands, the other with a little Cord bound me very hard, inso-much here yet is the dents of it; and bound my Feet, gagg'd me, and used me barbarously, most inhumanly: I must suffer it, because I could not tell how to avoid it. When they had done, they told me this withal, You shall not lose a Hair of your Head. I knew not their Intentions, I fear'd what it was, for when they had done this, they left me; I had no body could come to me in my House, my Servants I knew not upon what grounds they were forth at Supper when I a-bed, which was of ill consequence. After I had been an Hour in this manner, I rolled myself out of my Bed, and fell down; and, saving your Lordship's Presence, a Chamber-pot fell, broke, and I fell upon it, and very much hurt myself upon the pieces of the Pot: and so with much ado, it pleased God, I know not how myself, I got to the Chamber-Window which lay to the Street; I called out, *Murder!* and *Thieves!* My Neighbours said, I call'd with so strong a Voice, they wondered to hear me. Quickly after, many of my Neighbours came in, and one Mr. Peter Vanden-Anchor a Dutchman, that selleth *Rhenish* Wine, he came in and unbound me; and so after I was unbound, I went down to the Warehouse as I was, without Cloathes about me, only my Waistcoat and Shirt, and saw that they had been there. I considered those that had done the thing, were very privy to my House; they knew where to fetch the Key of my Cash, in a Drawing-Box, taking the Money there, which was about One Thousand and odd Pounds: some Plate there was, they did not meddle with it.

Ld Ch. Just. Hyde. How came they by the Jewels?

Tryon. I forgot something concerning some Jewels; these Jewels were in a Drawer under my Table in the Compting-house, he was privy to that, because he did frequent my House very long, and was very familiar.

Ld Ch. Just. Hyde. Who was privy to all this?

Tryon. James Turner.

Ld Ch. Just. Hyde. Mr. Turner, would you ask Mr. Tryon any Questions?

Turner. By and by, when I come upon my Proof.

William Hill, Mr. Tryon's Man, sworn.

All that I can say, is this: When I went out, I locked the Door double, and those things were there then.

Ld Ch. Just. Hyde. About what time?

Hill. Seven or Eight of the clock.

Ld Ch. Just. Hyde. Was he a-bed then?

Hill. Yes, my Lord. When I came home again, I found all these things gone; going down into the Compting-house, we found some Jewels gone, and some left, and those were inconsiderable to those that were gone; the best were cull'd and gone. On Saturday Col. Turner was arrested with two Serjeants, and sent the Boy at the Hoop-Tavern for me: I took two Friends with me, Mr. Gurney and Mr. Pilkington; he

prayed me to speak to my Master that he would give Bond for him, that the Serjeants might discharge him, and he haste about his business, or else it would be spoiled. Proceeding into some Discourse, I was saying to him, it was a great Providence that I and the Maid was not then at home, for if we had, we should have been killed. He answered, Saith he, No; they would only have bound you and the Maid. I asked him, how it was possible to get in? He answer'd, One went through the Entry in the Day-time, and there lay till Night, went up Stairs, found a Candle, lit it, went up to his Chamber, took the Key, and went down and let in others.

Turner. This Story I was informed, I told him.

Hill. I asked him how he came to know it? He said he examined them.

Ld Bridgman. Did he never tamper with you about making Mr. Tryon's Will?

Hill. Yes, my Lord; he came to me about a Year ago, I went with him to the Cock behind the Exchange, it was in a Morning, he took me privately aside, told me the old Gentleman your Master is very sickly, cannot live long, had a good Estate, or to that purpose, and it was pity he would never make a Will, and such an Estate should go to the building of Paul's. Saith he, I have press'd him several times touching making his Will; he said he had done it, when we both knew he had not, and I believe he will not make one. He told of one that could counterfeit a Hand.

Ld Bridgman. Was it not Grainger?

Hill. Yes, my Lord; that that Man could counterfeit a Will, and I and Mr. Garret, and another Good-fellow should be the three Executors, and a third Person Overseer, and that would please the Old-man. I answered, I would not have to do in such an unjust thing for all the World.

Ld Ch. Just. Hyde. Did you go to Turner's to Supper that Night this Robbery was committed?

Hill. No, my Lord, to Mr. Starkey's in Fan-church-street; the Maid went along with me.

Ld Bridgman. One Question more: You said you came in and found the Doors open, did you come in before the Neighbours?

Hill. No, my Lord, I had not known of it, but that one Gentleman at Supper went home with a Gentlewoman in Leadenhall-street, and hearing there was such a Robbery in Lime-street, I run with a great fright, came in and found the Doors open, and found the Neighbours within.

Turner. The thing understood touching the Will, hath another face: his Uncle was an Acquaintance of Mr. Grainger, his Uncle that bound him Apprentice, that lived in Cripplegate, now in Cornhill. This Grainger had counterfeited a Will touching my Lord Gerrard, and somebody else, about an Estate. Said I to this young Man, You have an Uncle acquainted with a notable Fellow, one Grainger, and your Master making no Will (speaking merrily) this Fellow is able to make it for him. Ask him if I did not tell him his Uncle was acquainted with such a Person.

Hill. You told me so indeed.

Ld Bridgman. Hill, by the Oath you have taken, did he not persuade you to endeavour that you and he and Grainger should counterfeit a Will?

Hill. He did, my Lord: he told me, That I, Mr. Garret, and another Good-fellow, should be the three Executors, and another Person O-

verfeer, and that this *Grainger* could do it undiscernibly. I answered him, I would not meddle with it for all the World.

Turner. Go, go, go, this is Malice; for it was mere jesting with him.

Elizabeth Fry sworn.

Fry. Mrs. *Turner* came to my House on Saturday Morning last, at Six a-clock in the Morning: she knocked me out of my Bed. I asked, who was there? She said, A Friend. Who are you, said I? Come and see, says she. I said, Who, Mrs. *Turner*? She said, Yes. I went and dressed me, and let her in. She said, There was a Friend of hers, a Merchant, newly broke, he had a Wife, and seven or eight Children; they desired to secure the Money till they had taken their Oaths the Money was not in their House. She said, Her Husband and her Son *Ely* was coming with it. I went and lighted a Candle, there was she and her Son *Ely* with the Money. She asked me, if I had a spare Chest? I said, Yes, there was one within. She went in, opened the Chest, and she put in the Wallets of Money, I know not how much, my Lord. I asked her if there was any more to come? She said, Yes, her Husband was coming with more. She went to the Door and let it in, but I know not who brought that.

Ld *Bridgman.* Did not Mr. *Turner* come in?

Fry. Yes, my Lord, he opened the Bags, and asked his Wife touching the Seals. She said, the Gentlewoman that owned the Money had desired me to pull them off. They offered me twenty Shillings for my Kindness in it, told me they had power to give it from the Gentlewoman; desired me if my Sister or any should ask about it, bid me conceal it, because the Discovery would ruin the poor Gentlewoman and her Children, but rather to say that they desired me to let some Linnen lie there.

Ld Ch. Just. *Hyde.* Were the Bags sealed?

Fry. I saw none sealed.

Ld *Bridgman.* How many Wallets were in the Shop?

Fry. I saw but three, and they put one into a Chest in the Shop, and two in the Kitchen.

Ld Ch. Just. *Hyde.* At that time when the Money was brought, was there any Discourse of Eleven Hundred Pound?

Fry. To my best remembrance it was so.

Turner. Not a Word of the Sum.

Fry. There was five Wallets brought into my House, three in the Shop, two in the Kitchen.

Ld Ch. Just. *Hyde.* Had they Bags at each end?

Fry. Yes, my Lord.

Sir *T. Aley.* You hear what the Wench says; she says, there was five Wallets, three in the Shop, two in the Kitchen: I took two in the Shop, and only one in the Kitchen.

Fry. My Lord, I have two Apprentices, little Girls, when all the People were in the Shop, said out aloud, That they saw Mrs. *Turner* go out of the Shop with something in her Apron, covered with a red Cloth, while I was above, my Lord.

Turner. Who should convey it away?

Ld Ch. Just. *Hyde.* Your Son was there.

Turner. Pray, my Lord, ask her which is *Ely*.

Fry. That is, (pointing to *Ely*.)

Turner. It was false; this *Ely* carried none, the

Boy knew nothing of it; both my Sons are dear to me, and if either more than the other, it must be my eldest, and yet I must say, it was *John* my eldest Son that carried the Money, this Boy was at home; she hath forsworn herself.

Fry. Your Wife told me, that *Ely* was to bring some.

Mr. Gurnet sworn.

My Lord, I met with Colonel *Turner* on Saturday Morning after the Robbery; he told me, says he, I have been as good as my Word, I sent my Son to make some discovery of this Business, and I did not doubt but to clear my self of it, and make a Discovery: this was on the Exchange. Says he, I have met with them. With what? With the Jewels and Money. Where are they? I have brought Five Hundred Pound; the rest, with the Jewels, I shall have at Three a-clock this Afternoon: will you be there? Yes, said I, who were they? They were Friends. Friends! what and use him so barbarously! O, says he, they were two Strangers, they went beyond their Commission.

Major Ralph Tasker sworn.

On Saturday Morning I met Sir *Thomas Aley*; passing by, he called me; says he, there is a business in hand, pray go along with me. We went along through *Aldgate*, and into the *Minories*, and passing along the *Minories*, these two Maids we overtook, and asked them where the House was; they shew'd us, we went in, Mr. *Turner* was there, his Hand in the Chest, Sir *Tho. Aley* said it: we seized the Money; there was two Bags of Buckram, I conceived there was Two Hundred Pound in either of them, and another in the Kitchen, Sir *Tho. Aley* desired me to secure them. I saw a Fellow play bo-peep in a Back-Room, and presently was a Noise, he was fled and gone; his Son they said it was. Sir *Thomas Aley* pressed very hard to Mr. *Turner*, and desired to know whose Money that was. Says *Turner*, By the Eternal God it is my own Money, with many other Protestations. A Constable was sent for, and we carried the Money and *Turner* in a Hackney-Coach to Mr. *Tryon*, and there left the Money on a Table with Mr. *Tryon*: they had some Discourse; *Turner* came forth and said, The old Gentleman and I are agreed, I will trust the Money no longer with you, but with the old Gentleman himself. Said I, let me be discharged of it, do what you will with it.

Ld *Bridgman.* Did you see the Bags out of the Wallets?

Sir *T. Aley.* We saw one which was sealed, I think, with the Bishop of *Chichester's* Seal.

Ann Ball sworn.

On Saturday Morning Mrs. *Turner* came to this Maid's House, and desired to come in; she slept out of Bed, and asked who was there? she said, a Friend. She went to the Door, and asked who was there? Mrs. *Turner* said, Open the Door, and you shall see. Opening of it, she came in: who is it, Mrs. *Turner*? Yes, says she. What would you have? I have a little Money I would leave here: This she came and told me. She lighted a Candle, I saw Mr. *Turner* and his Wife come

come in, I heard a great Noise and a Quarter, I lay still, heard not what they said. When they were gone, the Maid told me what they had brought into the House. Said I, I thought it had been Pewter: said I, if you keep this Money, we shall be utterly undone, if you do not tell some People of it. She went to her Sister to make her acquainted with it.

Ld *Bridgman*. You saw Mr. *Turner* and his Wife come in?

Ball. I did, but knew not what they did there: she did go to her Sister, and so it came to Sir *Thomas Aleyn* by accident.

Ld *Bridgman*. Now for the Seal, who were those that saw the Seal?

Frederick Ixam sworn.

My Lord, and Gentlemen of the Jury, being at the House of Mr. *Tryon* on *Saturday* in the Evening, I was desired, with others there present, to see the Bags taken out of the several Wallets; three, I think. I saw them taken out, three had no Seals on, one was very much defaced, and the other had a Seal, which being questioned to be the Seal of the Bishop of *Chichester*, it was compared with the Seal of a Letter which Mr. *Tryon* brought down, and declared to be a Letter received from the Bishop of *Chichester*, and those two Seals agreed: the Bags being here in Court, will be a further Evidence. The Letter was produced by Mr. *Tryon*, and owned by him to be the Bishop of *Chichester's*, and they agreed.

Mr. Hanson the Goldsmith sworn.

[The Bag sealed was shewn him.]

Ld *Bridgman*. Have you seen the Letter?

Hanson. Yes.

Ld *Bridgman*. Doth that Seal and the Seal of the Bag agree?

Hanson. Yes.

Ld *Bridgman*. Mr. *Tryon*, whose Letter was that?

Mr. *Tryon*. Dr. *Henry King's*, Bishop of *Chichester*.

Ld *Bridgman*. Open the Letter, and see whether that be the Letter you received from the Bishop of *Chichester*.

Tryon. Shall I read it?

Ld *Bridgman*. No.

Tryon. It is his Hand and Seal.

Ld *Bridgman*. Shew the Bag and Letter to the Foreman of the Jury: [which was done, and most of the Jury view'd it.]

Ld *Bridgman*. You observe this Evidence; this was one of the Bags that was taken in the *Minories*, that Colonel *Turner* was then removing: Mr. *Tryon* had Six Hundred Pounds of the Bishop of *Chichester's* in Bags sealed; it appears by the Letter to be his Seal, and these Gentlemen swear this was one of the Bags then pulled out of the Wallet, and Sir *T. Aleyn* has had it in his Custody since.

Ld Ch. Just. *Hyde*. One thing more observe, he asked his Wife when the Money was brought into this Woman's House, Have you taken off the Seals? His Wife said, The Gentlewoman directed her to take them off.

Ld *Bridgman*. Some were taken off, but it seems this was left on.

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[Here *Turner* spoke somewhat to the Jury.]

Ld Ch. Just. *Hyde*. Pray Mr. *Turner* discourse not with the Jury, your whispering will do you little good: tho' I think they are honest Men, and will not be guided by you, yet we expect the same Carriage from you as from other Prisoners; you shall have all the Justice that may be.

Cole the Serjeant sworn.

Ld Ch. Just. *Hyde*. Speak your Knowledge.

Cole. On *Saturday* in the Afternoon about Three a-clock, my Brother and I arrested Colonel *Turner* in an Action of Seven Hundred Pounds.

Ld Ch. Just. *Hyde*. At whose Suit?

Cole. At the Suit of *Thomas Lyon*, who with others was Bail for him.

Turner. It was only hearing of this Foolery that caused it.

Cole. My Lord, we went to the *Hoop-Tavern*, he sent for Mr. *Tryon's* Man, that he should engage for this Account, thar he might have his Liberty to look after Master *Tryon's* Business. Soon after came the Constable, and he charged us to assist him to go before Sir *Thomas Aleyn*. By and by I was saying, Colonel *Turner*, how could this House be robb'd, and none of the Doors broke? O, said he, I took a Man in the *Minories*, who has discovered it to me: he told me, that one going into the Cellar in the day-time, lay there till Night, then went up Stairs, found a Candle and lit it, went up to the old Gentleman's Chamber, took the Key from his Bed-side, and went down, and let all the rest of the Thieves in. The Young-man being there, said, It was well the Maid and I was not at home, we should have been killed. No, says he, you would not have been killed, only bound.

Turner. As the Fellow told me.

Ld Ch. Just. *Hyde*. Did he not say nothing touching Mr. *Tryon's* Tooth?

Cole. He said, that the Fellow putting his Finger in his Mouth to gag him, the old Gentleman bit him; and he struggling to get out his Finger, pull'd out his Tooth.

Ld Ch. Just. *Hyde*. You are very perfect at it, Mr. *Turner*, every way.

Turner. Ay, my Lord, I examined him every way.

Cole the Yeoman sworn.

Cole. My Lord, I can say only what my Brother said before.

Ld Ch. Just. *Hyde*. Tell it.

Cole. I arrested him, &c. [And so related in the same manner his Brother did.]

Ld *Bridgman*. Mr. *Hill*, what do you know about breaking your own Desk?

Hill. My Desk was safe locked, and the Key in my Pocket; I lost out of that Desk about forty-five Pound of my own.

Ld *Bridgman*. Where did it stand?

Hill. Upon a Table in the Ware-house; the Jewels were in a Drawer under the Table in the Counting-house.

Ld *Bridgman*. How did you leave Mr. *Tryon's* Door?

Hill. Double lock'd.

Ld *Bridgman*. Who had the Key?

Hill. I had.

Ld *Bridgman*. Was there more than one Key?

T t t 2

Hill.

Hill. Always two.

Ld Bridgman. Who had the other?

Hill. The other Key was in my Master's Chamber.

Ld Bridgman. Mr. Tryon, how was your own Door open'd?

Tryon. I called some of my Neighbours, and Mr. *Vanden-Anchor* came up to me: It seems they had forced open the Door with a Crow of Iron.

Ld Bridgman. The Door of your Chamber, do you mean?

Tryon. No, the Street-Door.

Ld Bridgman. How was your Chamber-Door open'd?

Tryon. I never lock my Chamber-Door, but pull it to.

Ld Ch. Just. Hyde. Mr. *Hill*, the Counting-house where the Jewels were, was that lock'd?

Hill. Yes, and the Drawer I think was lock'd; sometimes he does, and sometimes he does not lock it.

Ld Ch. Just. Hyde. Was the House-Doors open, or no?

Hill. Before I came, the Neighbours had broke open the Door.

Ld Ch. Just. Hyde. Mr. *Tryon*, were your Counting-house and Till, where the Jewels lay, lock'd?

Tryon. Ever, my Lord.

Ld Ch. Just. Hyde. That Night?

Tryon. Yes, my Lord.

Ld Ch. Just. Hyde. Was it opened with a Key, or broken open?

Tryon. I know not how it was opened, my Key was among a Bunch of Keys.

Peter Vanden-Anchor sworn.

Ld Bridgman. When Mr. *Tryon* cry'd out, you came in, did not you?

Vanden-Anchor. Yes, my Lord.

Ld. Bridgman. How did you find him?

Vanden-Anchor. I was lately come home, my Daughter heard a great Voice of Murder and Robberies: I went out, and some of the Neighbours were breaking open the Door, and I was the first that went into the House; and so I went presently up to Master *Tryon's* Chamber, and found him bound with this Rope; and put it into my Pocket, and searched about the House, and several Neighbours came in.

Chaplain sworn.

I was at the Door with Master *Vanden-Anchor*, we went into the Ware-house and Counting-house, and all open, Cash was taken away without any breaking. Says Master *Tryon*, All my Money is gone, a Thousand and odd Pounds: Several Pieces of Plate were there left. We went up with Master *Tryon*, and sent for a Chirurgurgeon to dress his Thigh: By this time his Man came in; I asked him where he had been? says he, I have been at Colonel *Turner's* at Supper. Where is the Maid? says he, She is fallen into a Swoon. Some Maids came home with her; I asked her where she had been? She said, At one *Chamberlin's* a Goldsmith's. Said I to her, The Man says one thing, and you another. A little after comes in Colonel *Turner*, with his Lanthorn, and his Hair turned up under a Cap,

and there he made a great Bustle. I went to *Chamberlin's* to enquire touching the Maid; he said, they had been there with a Dancing-Master. I went to Master *Tryon's* again: we asked him, who he thought bound him? he named one *Christmas*, but I knew him not.

Lord Mayor. Did you not find any Door, that you observed, to be broken?

Chaplain. No, but all open'd with Keys.

Mr. Christmas sworn.

My Lord, I know little of the Business. About Two a-clock on Friday Morning there comes a Constable and other People, and knock'd at my Ware-house Doors: the Man's Servant of the House rose up, and asked them who they would speak with? They said, they would speak with one *Christmas*. Hearing my Name, I rose up, I asked what was the matter? They said, they must have me to Master *Tryon*, he was robb'd. If he was, said I, it doth not concern me. They told me, I must go to Master *Tryon*. I said, he was not a civil Man to send for any at that time of Night out of their Beds. Then another Constable came, and said he would break open the Doors. Said I, I am not afraid to come to you, I am not the Man you take me to be. Nothing would satisfy, but I must go; I told them I would: and then they took me into their Charge, and carried me to the *Exchange*.

Ld Ch. Just. Hyde. Who besides the Constable?

Christmas. Two Young-men that I know, one *Bagnall's* Man, and *Browning's* Man: they told the Constable, I was a Man of Repute, and an honest Man, and my Word would be taken at the *Exchange* for many hundred Pounds. After that, they intended to carry me to Master *Tryon*; and the Constable of *Broad-street* carry'd me to the Counter: There I was 'till Ten a-clock, and then the Constable and *Turner* came to me. *Turner* asked me, what Justice I would go before: I told him, it was indifferent to me; Sir *John Frederick*, or the next, Sir *Richard Brown*, or before Sir *Thomas Aleyn*, Sir *John Robinson*, all one to me whom I go before; but I think it most convenient to go before Sir *Thomas Adams*, because he lives in the same Parish with Mr. *Tryon*. We went there, and no Man charging me, Sir *Thomas* discharged me, but desired I would go over to Mr. *Tryon*.

Ld Bridgman. I observe this Gentleman was of a pretty Bulk, somewhat corpulent, and so is Mr. *Turner*.

Turner. My Lord, I humbly beg I may have a Stool to sit down, I am troubled with the Gout.

Ld Bridgman. You may have one.

Mr. Millington sworn.

My Lord, I came to Mr. *Tryon's* on Saturday in the Afternoon, about the Evening; and being sent for to come with Mr. *Turner*, he told me of the Arrest that was made upon him, and said, that he should not comply with his words, in bringing the Jewels and Remainder of the Money. He desired me I would go and intercede, that he might have his Liberty to go about the Jewels: but I did not think it convenient to make my self concerned in it. He al-

ledged, that if he did it not presently, the Thief would be gone. It was hinted, that they that were with him, might go along with him, the Marshal and Serjeants: He said, if so many came, they would fright him away; for he said, he was walking about *Tower-Hill* or *White-Chappel*. But it was deny'd, and could not be granted that they should go, it being out of their Liberties. He desired to go near those Places, keeping within the Liberties, and to send for them. *Sir Thomas Aleyn* told him, he might as well send for them thither. He desired to go to the *Hoop-Tavern*, and then some went with him to his House: his Wife was private with him behind a Partition; then he came out, and spoke publickly to his Wife, says he, There is a Man will be walking all alone, either at *White-Chappel*, or on *Tower-Hill*, do you go there; if he sees you, he will ask you whether you want any thing, and will deliver you what I told you. We went to the *Hoop-Tavern* again, and about two Hours after, the Jewels were brought by his Wife. That being done, we went to Mr. Tryon's, Mr. Turner carried the Jewels; being at Mr. Tryon's, the Jewels were there opened: we found by Perusal, that there was only a Carcanet Jewel wanting, of the Value of about Two Hundred Pounds; and Mrs. Turner said, the Man told her, that that Carcanet was fallen behind a Chest, but did not doubt to procure it to-morrow. Afterwards *Sir Thomas Aleyn* told him, now he could do no less than commit him to *Newgate*. Mr. Turner told him, then he had better have kept the Jewels. The Remainder of the Money being asked for, he said he would be bound for it.

Mr. Mannock sworn.

Ld *Bridgman*. What Discourse passed between you and Mr. Turner at *Newgate*?

Mannock. My Lord, he told me Mr. Tryon was to give him 500*l.* to get the Jewels and Money, and that he had got him 500*l.* and most of the Jewels; and that if *Sir Thomas Aleyn* had not secured him, he did believe that he should have had them all: but *Newgate* was not a Place to find them out.

Ld *Bridgman*. Did he tell you of bringing any Money from his own House? that the 500*l.* he delivered Mr. Tryon, was procured from his own House?

Mannock. He did tell me so, my Lord.

Turner. My Lord, I own it, I shall unfold the Riddle by and by.

Sir Thomas Chamberlain sworn.

Ld Ch. Just. *Hyde*. What know you, *Sir Thomas*, of this Business? Pray let the Jury hear you.

Sir Thomas Chamberlain. My Lord, on Friday Morning I was at the *East-India* House, keeping Court there for that Company: Afterwards I went to the *Exchange*, and being tired, I cald in at the Coffee-house, and there heard that Mr. Tryon was robb'd. I went directly home, and dined: About Three a-clock I went to Mr. Tryon's House, an old Friend of mine, my Father's Servant heretofore, I went to visit him, and found a great many People about him; *Sir Thomas Aleyn*, Lady Garret, and the Countess of

Carlisle was there. I told him, Mr. Tryon, I understand you have been robb'd. Yes, says he, I have a great Loss. I found him very staggering what he should do. I said, you must now do like a Man, or you will lose all: Said I to *Sir Thomas Aleyn*, If you do not help the poor Man, being ancient, he will quite lose all. With that I went up above in the House, *Sir Thomas Aleyn* was pleased to call me along with him, I was by at all the Examinations; I did mistrust, and told Mr. Tryon in *French*, that no doubt but that Gentleman was in the Robbery: the Reason was, that he being a frequent Man in the House, knew every thing; he was there continually, coming for Jewels and Things, and no Man could do it but himself; that was my Judgment. I told *Sir Thomas Aleyn*, assuredly he had a Hand in it. My Lord, the while we were examining the Servants, Word was brought in, that he was hearkning at the Door, and in the Yards, which made me more and more mistrust him. We heard that the Maid had been gadding abroad several times; I desired *Sir Thomas Aleyn* to examine the Maid how often she had supped at *Turner's*, she denied any time. The young Man was examined, who said, they had been thirty or forty times feasted at Colonel *Turner's*. My Lord, *Sir Tho. Aleyn* has given you a just Account, but he omitted one thing: He had a Note sent him, which he had in his Pocket, touching Mr. Turner's going about Removal of the Money into the *Minories*; and before *Turner* came in, he examined Mrs. Turner upon that Note: says he, you were there too, and carried the Money. Says she, She is a Lyar and a Whore for saying so. Col. *Turner* came in and said, Why do you torment and vex my Wife? and falling a Cursing, and Swearing, and Banning, said she was with Child, you will make her miscarry, let her alone. *Sir Tho. Aleyn* examined him where he had been that Day, and that Night; he told him of many Taverns, and going to see his Horse, and I know not what, but we found him faulting. When the Jewels were brought, there being two Notes, *Sir Thomas Aleyn* had one, and I another. The old Gentleman was so joyful to see them again, that lying by him, and handling them, he pull'd two or three down with his Sleeve. Says Mr. Turner, Come, I know what belongs to them better than any of you, and read them over, and I will shew them you. There wanting one Jewel, says he, That Rogue that has the other Money, hath this Jewel, but I do not doubt but I shall find that out too. We put them all together, and *Sir Thomas Aleyn* sealed them with his Seal. For the Bags of Money, I saw them taken out, and one being sealed with a small Seal, I put on both my Spectacles, I found a Lion Rampant at top in one of the Quarters; said I, This is a Seal of some great Person: And then a Letter was brought down, and being compared, I was satisfied in my Conscience they were alike. *Sir Thomas Aleyn* told him he must make a *Mittimus* for him and his Wife: Said she, Do you send me of your Errands? You shall send somebody else another time: I thought it would come to this. After much ranting and swearing (I thought the Devil would have fetch'd him out of the Room) he said, that he had better have kept the Jewels, than to bring them forth, and to suffer for it himself, for he had pawned his Soul, and would not reveal it; and said, that

Mr.

Mr. Tryon had likewise engaged the like to him. For the Six Hundred Pound, he offered his Bond.

Lord Mayor. Pray repeat one Part of your Evidence again; that was, that somebody came to Mr. Tryon's House, from the House in the Minories, charging Mrs. Turner to have been at that House.

Sir T. Chamberlain. I said, that before Turner came in with the Jewels, Sir Thomas Aleyn had received a little Note, wherein was affirmed, that Turner and his Wife had been there; with which she was acquainted, and swore and took on, she was a Whore, for she was not there.

Sir T. Aleyn. When I examined Mrs. Turner, she would own nothing. Why, said I, will you deny this which is so apparent? That you were there (the Maid told you so now) you deny'd it when I charged you with it.

Mrs. Turner. I did not, it's false; what did —

Turner. Prythee be patient, dear Mal, come sit thee down.

Sir T. Aleyn. I asked Mrs. Turner whether she knew of any Money carried to the Minories that Day; she said, she knew of no Money at all, and said she was a Whore that said it.

Mrs. Turner. They put it to me, that I knew who brought the Money to my House, and that a Woman acquainted them so; I said she was a lying Whore that said so.

Ld Ch. Just. Bridgman. Mr. Hill, what time of Night did you go out that Night?

Hill. It was Seven or Eight a-clock.

Ld Ch. Just. Bridgman. Was the Door lock'd?

Hill. Yes.

Ld Ch. Just. Bridgman. Did you carry the Key with you?

Hill. Yes.

Ld Ch. Just. Bridgman. Was there any more Keys?

Hill. There was another above in the Chamber by my Master's Bed.

Ld Ch. Just. Bridgman. Did you find that other Key when you came back?

Hill. Yes.

Ld Ch. Just. Bridgman. In the same Place?

Hill. I know not that.

Ld Ch. Just. Bridgman. Mr. Hill, you have been acquainted with some Transactions between Mr. Tryon and Turner; was he not employ'd about a Mortgage?

Hill. Two or three.

Ld Ch. Just. Bridgman. Was not the Names of some Persons given to you to that purpose?

Hill. We have two or three Mortgages my Master lent him so much Money upon: We heard of one Man, but whether he gave order to Mr. Turner to take so much Money upon the Land, we know not.

Ld Ch. Just. Bridgman. Mr. Tryon, have you inquired after the Persons?

Tryon. No, my Lord; I did believe all was true.

Garret. I have inquired after Sir Theophilus Gilpin, but cannot find that he has any Estate in England.

Turner. My Lord, Gilpin only assigns a Judgment of Wescott's.

Ld Ch. Just. Bridgman. Then if Wescott be good, it is sufficient; you should enquire after him.

Sir T. Aleyn. My Lord, John Turner, his Son there, fled away from me, when I came to the House in the Minories.

Ld Ch. Just. Bridgman. Why did you fly away?

John Turner. I did not, Sir.

Sir T. Aleyn. No! You ran away as fast as you could; you got over a Ditch.

John Turner. My Lord, a Woman cry'd out, Get away and save your Life! And I not knowing what the Matter was, I went away.

Col. Turner. Poor Boy! he thought Thieves had been coming, and affrighted him.

Sir T. Aleyn. As to Ely Turner, I examined him upon the Sunday, the Day after his Father was committed; he would not confess the carrying of any Money, and the Maid swearing it, I committed him also.

Col. Turner. What's that of Ely? Upon my Soul, the Boy carried none.

John Turner. I carried what was carried.

Col. Turner. My Lord, one Son is as dear to me as the other, but if either be more, it must be my eldest; but yet I must say, it was John my eldest Son that carried the Money.

Sir T. Aleyn. My Lord, William Turner was brought before me on Tuesday or Wednesday: Sir Richard Brown sent out his Warrant for him, being a Person of evil Name, and likely to do such a Fact; being taken, he was brought before me. My Lord, when Mr. Tryon looked upon him, he suspected him: I examined him when he saw Col. Turner; he said, not these three Years, not to speak to him; and yet one at the Cock behind the Exchange said, this William Turner staid for Col. Turner at his House two Hours; that Col. Turner came in, paid for the Pot of Drink, and for ought he knew they both went together: thereupon I committed him.

In the Afternoon I ordered this Person to send his Servant; one came and made Oath that he came in, and inquired for Col. Turner, asked for him, staid two Hours for him; that they went both out of the House together: and this was on the Wednesday, the Day before the Robbery.

William Dawes sworn.

All that I can say, is this: William Turner was at my House on Wednesday was seven-night last; comes in, and called for a Flaggon of Beer; there comes in a Customer of mine, says he to me, What do you with such a Fellow in your House? Have a care of him, he is a dangerous Fellow. Presently after Col. Turner came in, and paid for a Flaggon of Beer, and went away.

Col. Turner. I drank not with him, did I?

Dawes. Not that I saw.

Ld Ch. Just. Bridgman. Sir Thomas Aleyn, did not this William Turner deny that he had seen Col. Turner lately?

Sir T. Aleyn. He said positively he had not seen him these three Years, so as to speak to him; said, he was grown too high for him.

John Rouse (Dawes's Servant) sworn.

Ld Ch. Just. Bridgman. Do you remember when Will. Turner was at your Master's House? Which is he?

Rouse. That's he (pointing to William) he was there upon Wednesday the 6th of this Month.

Ld

Ld Ch. Just. *Hyde*. Did *James* (called Colonel) *Turner* come there then?

Rowse. *William* came, and said he staid for the Colonel; and by and by the Colonel came.

Ld Ch. Just. *Hyde*. When he came, what did they?

Rowse. He went to the Bar, and paid the Reckoning.

Ld Ch. Just. *Hyde*. What time of the Day?

Rowse. About Twelve or One a-clock.

Ld Ch. Just. *Bridgman*. Did you ever see them both there before?

Rowse. No, I never saw them together before, but several others have enquired for Col. *Turner* at our House.

Ld Ch. Just. *Hyde*. By the Oath you have taken, did *William Turner* say he staid for Col. *Turner*, and that after Col. *Turner* came, he paid for the Drink, and they both went away together, and this on the Wednesday?

Rowse. Yes, Sir, it was so.

Col. *Turner*. My Lord, I left him there; he follow'd me to the *Exchange* about his Arrears, as twenty poor Gentlemen do.

Mr. *Garret*, Mr. *Watcher*, and Mr. *Peter Cully*, sworn.

Mr. *Cully*. My Lord, and Gentlemen of the Jury, I was at Mr. *Tryon's* this Day seven-night; as I came from him, I met Sir *Thomas Aleyn*, Col. *Turner*, and Major *Tasker* coming up Stairs: they asked who was there with Mr. *Tryon*? I told them nobody. *Turner* desired earnestly they would stay a little; for (says he) before God you will spoil all the Business by and by. After he had been a little time with Mr. *Tryon*, he comes forth again, he takes up the Bags of Money, says he, These belong to me, this is not Mr. *Tryon's* Money: he carries it to the old Gentleman; he comes into the Room, says he, Gentlemen, you may be all gone, the old Gentleman is satisfied, his Money and Jewels shall be forth-coming by Five a-clock this Night; Persons of Quality are concerned in the Business, and the old Gentleman will not prosecute. I asked Col. *Turner*, Why was the Money carried from your House to the *Minories*? He said there was none, and did affirm it with an Oath. When the Bags were taken out of the Wallets, upon comparing of a Seal of one of the Bags with the Seal of a Letter produced, I found them the same. That's all I can say.

Mr. *Watcher*. My Lord, last Saturday between Twelve and One of the Clock came Col. *Turner* on the *Exchange*, and said that Mr. *Tryon* should have all his Money and Jewels by Three of the Clock that Afternoon; and if any Man could say, that he lost Sixpence of his Money, or Sixpenny-worth of his Jewels, he had two Fellows in Custody that should suffer for it. And asking him why the Money was that Morning removed from his House to the *Minories*, he said with a great Oath, the Money was never in his House.

Mr. *Garret*. When Col. *Turner* brought home the Money, he took up one of the Wallets, and said, Jack, take Notice, this is my Money.

Ld Ch. Just. *Hyde*. Where was this?

Garret. In my Cousin *Tryon's* House; and that he only left it with my Cousin *Tryon*. When we looked over this Money in the Evening, we found

that Seal that this Gentleman (pointing to Mr. *Cully*) hath spoke of; it was a little defaced, but yet apparent enough.

Turner. I did say so, my Lord; he speaks Truth.

Mr. *Pilkinton* sworn.

I can say no more than hath been said already: I shall repeat it. Being at the *Hoop-Tavern* with Mr. *Tryon's* Man, and others, with the Officers, we were discoursing of his Robbery; and I was saying, That I admired, he being so ancient a Gentleman, they would use him so barbarously as hath been related. Said Colonel *Turner*, In that they went beyond their Commission, they had no Order for it. And being asked how they got into the House, he said one got into the Cellar in the Day-time: [And so related it in the same manner as several Witnesses before.] Being asked how his Tooth came to be beaten out? Says he, It was not with a Blow; but the Man's Finger being in his Mouth, he closed his Teeth, and struggling to get out his Finger, his Knuckle thrust out the Tooth. And then Mr. *Tryon's* Man saying, If he and the Maid had been at home, they should have been killed: No, said *Turner*, you would only have been bound.

Ld Ch. Just. *Hyde*. Now Mr. *Turner* you have heard your Charge; you will do well to make an Answer to it; you see what is laid to your Charge.

Turner. Ay, my Lord: I shall clear it all, every Syllable of it.

Mr. *Martin's Coachman* was called and sworn.

Ld Ch. Just. *Bridgman*. Tell the Jury what you know: Did you see any People about Mr. *Tryon's* House upon Thursday Night?

Coachman. I did, my Lord: I was come by from the Play-house with my Coach; I saw four Men, two on one Side of the Door, and two on the other Side; every one had a Handkerchief tied about his Neck, and every one of them had a good Cudgel in his Hand.

Ld Ch. Just. *Bridgman*. What Time a-night was that?

Coachman. About Eight or Nine a-clock at Night.

Lord-Mayor. Was their Faces turned towards Mr. *Tryon's* Door, as if they were to go in, or to knock?

Coachman. No, Sir, two stood towards *Fenchurch-Street*, and two stood toward *Leaden-Hall-Street*. I did suspect such a Business; for they pulled down their Hats over their Faces.

Ld Ch. Just. *Hyde*. What kind of Cudgels had they?

Coachman. Sticks somewhat bigger than Walking-Staves.

Mr. *Tryon* looking upon *William Turner* at the Bar, said, This Man, whose Name is (as I understand) *William Turner*, I do suppose to be one of the two that was in my Chamber at the Bed's-side, and that indeed did strike out my Tooth. I asked him, Why do you use me so inhumanly, like a Beast, and not like a Man? I am quiet; what would you have? Says he, Be still, you shall not lose a Hair of your Head.

Ld Ch. Just. *Hyde*. You believe that to be the Man?

Tryon.

Tryon. I would be loth to charge him; but he is as like him as any I ever saw.

Ld Ch. Just. *Hyde.* Had they either Vizors or Masks on?

Tryon. Nothing, my Lord; bare-faced. One said to the other, It's but past Eleven of the clock; else I had not known it: I was asleep, with Surprise amazed, being an antient weak Man.

Ld Ch. Just. *Hyde.* As near as you can conjecture, is that the Man?

Tryon. Yes, both of Face and Pitch.

Lord Mayor. Mr. *Tryon*, did you observe those Persons that were at your Bed-side, whether they had Handkerchiefs or Crevats about their Necks?

Tryon. My Lord, I did not take notice of that; I do not remember it.

Ld Ch. Just. *Hyde.* You hear your Indictment: That you, and *William*, and *John*, are indicted for the Felony and Burglary, for breaking and entring into the House of Mr. *Francis Tryon*, and stealing the particular Goods and Money, as you have heard: I would propose this to you, to make your Defence touching your Charge: Which is, first, that you and *William* met the Day before; he came in first, and said he staid there till you came; you came, and paid the reckoning, and went away: You two were together the Day before: what your Business was, you can better tell than I. The Night he was robbed, his Servant being gone, the Door was double locked. You knew all the private Places, where the Keys lay, all the Rooms wherein Cash, Jewels, where every thing was: And it was not possible this Burglary could be committed but by one that knew those Things.

Turner. There are about twenty People that knew as much as I; his Servants, and such as had been his Servants.

Ld Ch. Just. *Hyde.* It falls out that the self-same Night after this House was robbed, in the Morning early, you, your Wife, and Son, go to remove store of Money out of your House.

Turner. It was two Nights after the Robbery: Pardon me, my dear Lord.

Ld Ch. Just. *Hyde.* When you carry this, you go with a false Story, That a Merchant was broke, and you must needs have some of the Money for his Wife and eight Children; and this Money was to be set aside for them.

Turner. It was so, my good Lord.

Ld Ch. Just. *Hyde.* You will do well to hold your peace a while: Your Wife and you disowned you removed any Money; yet afterwards, when the Money was brought there, and taken upon Suspicion, (you taken in the very Place removing the Money) you owned it to be your own: That then it appeared that one of those Bags was sealed with the Bishop of *Chichester's* Seal; and at the Time of the Burglary, there was 600*l.* in Bags left with Mr. *Tryon*, sealed with the said Seal; and one of those Bags you brought back was taken with you, and owned to be your own, and had the same Seals. That's proved by four or five Witnesses, compared with the Seal of a Letter of the Bishop. Your Son, on their coming thither, he takes footing and leaps over the Ditch to escape, which is a good just Ground of Suspicion that he is guilty of somewhat that he would not abide to

answer. Your self and Wife take upon you to know every Thing: You know how the Usage was; that there was a purpose they should not be killed; that he was gagged; that they exceeded their Commission; if the Man and Maid had been at home, they should have been but bound. All Particulars you take upon you to know, and to confess the whole and the manner of it; nay, tell the Story how they came in.

Turner. As I was informed.

Ld Ch. Just. *Hyde.* Lay all this together, unless you answer it, all the World must conclude that you are one that did this Robbery.

Turner. I shall answer it; and I hope to give all the World Satisfaction. Pray call

Mr. <i>Vandeputt</i> ,	My Maid,
Mr. <i>Covell</i> ,	And the Lord Marquis
Mr. <i>Esnow</i> ,	of <i>Dorchester's</i> Servant.
Mr. <i>Cook</i> .	

Ld Ch. Just. *Hyde.* Tell us to what purpose.

Turner. To clear every Particular.

Ld Ch. Just. *Hyde.* Open it.

Turner. I shall first prove that upon Thursday Night, the Time of this supposed Burglary, that my self, my Wife, and all my Family, were in Bed, fast asleep, and innocent, not knowing any thing of this Business. This I shall prove; if not, let me hang and all my Family.

Ld Ch. Just. *Bridgman.* All this may be true, and yet this not to the purpose.

Turner. Then I cannot be guilty of the Burglary.

Ld Ch. Just. *Bridgman.* If you will lay and plot such a Robbery, though you are not there, yet you are guilty of it; for it is ordinary that the main Setter will not be present at such Times, but will be then in Bed, that People may take notice thereof. But satisfy the Court by what Means you came by this Money and Jewels, and then call your Witnesses.

Turner. I shall go on by degrees, and satisfy you as to the whole.

Ld Ch. Just. *Hyde.* My Lord *Bridgman* hath put you upon the right Business: Do that in the first place; make it appear how you came to know so exactly the whole Carriage of this Business, and how you came by the Money and Jewels.

Turner. I shall do it, my Lord. The Constable coming for me, by Direction of Mr. *Tryon*, to assist him, I came to him; saith he, Some Villains have been here, and have robbed me this Night; which made me weep. Said I, These are wicked People: I gave you notice how you should have been robbed about a Year since; but that was prevented. And saith Mr. *Tryon*, For God's sake assist me in this, and I shall be thankful to you. Sir, said I, did you see the Faces of them? Said he, It run in my Mind very strongly that one of them is *Christmas*. Said I, Who is he? Saith he, 'Twas *Hanson* the Grocer's Man. I know *Hanson*, said I. *Mosely*, go and knock up *Hanson*, and know where *Christmas* is, and bring him to Mr. *Tryon*. *Mosely* took two or three Men, and went to *Thomas Hanson*, in *Mark-Lane*, and there found at a Bricklayer's House where *Christmas* lay: He was a little refractory to rise. Another Constable coming, he came down; and then they sent *Christmas*

mas to the Compter. *Mosely* came and told us he was in the Compter. I sat with Mr. Tryon that Night. But, my Lord, pray observe how my Name came into question: The young Man and Maid being out, came home late, the Constable was there then: Friends, saith he, where have you been? Saith he, I have been at Colonel *Turner's* at Supper; which was a notorious Lie, and brought me here in question; God forgive him for it. Away comes the Constable, by Direction of Mr. Tryon, and *Hill's* Lie together. He came to my House; we were all asleep. I arose, and asked, Who is there? It is I, said Mr. *Mosely*: Mr. Tryon is robbed; pray come down. I came down, and opened my Door. Saith he, Was Mr. Tryon's Man and Maid here at Supper? When? said I. To-night, said he. I have had no Suppers these nine Months, said I: This *William* is a very Rogue. Whereupon the Constable replied, Are your Sons within? Yes, in Bed these two Hours. Do you suspect any thing by my Sons? He went and looked, and saw my Wife, he finds my Sons fast asleep; the one indeed was awake. Pray, said I, see that you know them again. Upon my Honour, my Lord, this Boy (pointing to *Ely*) was asleep.

Ld Ch. Just. *Hyde*. Upon your Honour, Sir! pray speak by your Honesty.

Turner. *Lapsus Linguae*, my Lord: It is my usual Phrase. I hope I shall appear to be a good Man. This Child was awake: He saw the Maid, my Daughters: searched every Room, searched every Place that was to be imagined to be searched. Saith the Constable, I am very glad that your Servants, your Children, and you are in this Condition: I will acquaint Mr. Tryon what a Rogue this *Hill* is, how he hath belyed you. Nay, said I, pray take me with you; and so I went with my Hair put under my Cap. When I came to Mr. Tryon's, I asked him who had been there? Pardon me, my dear Lord, if I were guilty, I should not speak any thing to excuse it. When I had understood this, I gave the Constable five Shillings, and desired him to search about this Business. I went to Mr. *George Day* the Goldsmith, and gave him a Note of those Things, to be printed, that they said they had lost. Friday came; and at Night Sir *Thomas Aleyn* was pleased to argue it with me: I told him and the Gentleman these must be some Rogues that know the House; which put me in mind of a former Crew that was to rob him a Year since.

Ld Ch. Just. *Bridgman*. We would be glad you would speak to the purpose.

Turner. I did charge the Constable and Mr. *Pilkington* that they would get up before Day; and that they would go to such and such Places, where the Constable and I had privately spoken of, to *Ratcliff*, or *Ratcliff-Cross*. The Constable and Mr. Tryon's Man had been there; but the Man and his Wife was gone into London: But afterwards, by Inquiry, the Boy said they were gone into *Hertfordshire* a Week before. This Boy is in two Tales: Here is some, pray God these People be honest.

Ld Ch. Just. *Bridgman*. Go on.

Turner. Your Honour's Servant, my Lord. Afterwards I went beyond the little Postern between the two *Tower-Hills*, near the *Tower-Ditch*: There is one *John Wild*, who had been

formerly here in *Newgate*; he should have been transported. This Fellow coming into my Mind, I having before been to take him in *East-Smithfield*, I had News he used *White-Chappel*, *East-Smithfield*, and *Tower-Hill*, and had Lodgings by the *Blue-Boar* by the little Postern, and at *Noah's-Ark*, and at the *Lion in the Wood*, the Corner-house at *Tower-Ditch*. This House about *Tower-Ditch* and the *Nag's-Head* at *White-Chappel* were the two Places where I found those Persons about a Twelvemonth since, that should have robbed him. Going now from House to House, I passed a Fellow in Black, in a large Coat, such another Man as this, (pointing at one that stood by:) He was in a black Loose Coat, and he was trimmed with Ribband at the Knees. This Person I passed him, and he passed me; and then I out-went him: And meeting him on the other Side, I was confirmed it must be one of these Fellows I looked for, one *Wild* or *White*. Passing the second time, I ran to him, thrusting to him. What mean you, Sir? said he. Said I, I mean to lay flat Felony to your Charge: Do not you know me? No, said he, with a great Oath. Then I know you. Who is it, Colonel *Turner*? said he. I said, Ay. Saith he, What do you mean? Said I, Mr. Tryon's House was robbed, and you are the Person that I will lay flat Felony to; you should have been one of them that were to rob him a Year since, when Colonel *Ashton* betrayed you all. He began with some hard Oaths: Be quick, said I, I will call out; you are an undone Man: I will lay this Felony to you.

Ld Ch. Just. *Bridgman*. What Night was this?

Turner. The Friday Night following, about Twelve a-clock at Night. I shifted my Hold from his Collar to the Waistband of his Breeches; I thought I had him secure. Said I, *Wild*, do not deceive your self, play not the Fool; if you will save your Life, let me see where those Goods and Moneys are, else you will go to pot. Saith he, Pray speak lower; we shall be heard. Well, I will speak lower. We walked to the Hill. I had fast hold of his Breeches all this while; and yet I was afraid he might have some Dagger, and stab me: Said I, Be Brief, you are alone; either resolve me, or I will call out. Then I will tell you, saith he: Colonel *Turner*, I understand you are a Person of Honour, and a Gentleman that will keep your Word; and if you will upon a serious Vow and Promise save my Life, I will unfold the Business: But if you will not, with a great Oath, saith he, you shall hang me, and lose all the Jewels. Said I, What will you have of me? Saith he, You shall swear to me, *That by the Blood of that Jesus Christ that died for you, and I, and all Sinners, that I shall have my Life free, in case I discover the Thing to you*; and then I will tell you more: If you will not, I will tell you nothing, do with me what you will. Saith I, *Wild*, I shall stand with you so long, that I shall have my Throat cut. Upon my Salvation, saith he, stooping down upon his Knees, saith he, Let me never rise up, if I am not just to you; and not a Hair of your Head shall be touched. Said I, Come, stand up: I do declare to you that I will endeavour with old Mr. Tryon: Tell me where the Things are. They are not far off. Where are they? They are at two Places: But do you swear to me. He

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did,

did, in short, make me say the same Words that I have repeated, and that I would get Mr. Tryon to engage himself too by the same Oath I did swear to him; thinking my Life in danger, and thinking my Friend's Goods likely to be lost; and did and do intend by the Help of God to make good my Oath. Saith he, Walk with me. He whistled once, the second time, and at a pretty distance a third time; and within a little while came another Fellow to him, at the further End, by the *Horse-Shoe-Tavern*. He comes. Saith he, Art thou come, Tom? I think he called him *White*. Ay, saith he. What shall we do? We are all undone; my Face is known. But I have lit in the Hands of a Gentleman who will save my Life; but for you, he knows you not. Saith he, the Money must be returned; go and fetch that Money. Said I, Shall not I go with them? No, said he. And truly, my Lord, I was very glad to take him at his Word: If I had gone, I might have had my Throat cut. There was this 500*l.* brought at twice, three and two. They went again, and brought, as I take it, two and one; so there was three and two, and two and one.

Ld Ch. Just. *Bridgman*. Who brought it?

Turner. White. All this while I had the Fellow by the Breeches, and would not part with him. It was from a little past Twelve till Four bringing, and was left on the Causey, and went away and fetched the other. This Fellow and I, all alone together, had this Discourse: Said I, What desperate Villains were you to go and use the old Gentleman in this manner, fourscore Years of Age: You beat and abused him; you are strange mad Fellows: Why could you not let him sleep in his Bed? he was asleep when you came in: You were the maddest Fellows that ever was. Saith he, Some of you have stabb'd him. I think you deserve ten thousand Deaths for laying your Hands on him, tho you did not take Six-penny worth of his Goods. Saith he, There was no Intention of hurting him: Upon my Soul there was no Order or Commission. Saith I, How got you in? Saith he, The Door stands open half a Day together, almost: One got into the Cellar, and stood till all was a-bed: He went into the Kitchen, found a Candle standing lighted, and went up into the old Gentleman's Chamber, and there he found the Key of the Door, came down, opened the Door, and let the rest in. How many was there of them? Saith he, Three or four. Said I, What did you do; and what would you have done? We would only have bound them. How got you the Treasure? By a Key out of the old Gentleman's Pocket: I think there is no hurt to the old Gentleman; I would not for all the World there should. You shall have the Things again: And pray keep your Word with me. About Four a-clock in the Morning they brought the Money. Now, said I, what shall we do with it? I can do nothing with it: You must carry it home to my House. These two Fellows carried one three, and the other two Bags.

We went through *Aldgate* with the Money, and so to my House: My Wife, nor Sons, nor no Soul, God is my Witness, knew any thing of this Business but my self. I knocked at the Door: This young Man (pointing to *John*) came down, and he unbolted, unlocked, and unlatched

the Door. My Parlour and Kitchen is all of one Floor: They followed me in, and threw down the Money. He bringing the Candle to me; No, said I, do not bring it. Said I, *Wild*, what shall I do for the Jewels and the rest of the Money? You shall have them brought you where you will appoint to-day. I will have them brought hither. Saith he, That cannot be. I have forgot my self: This Money must not lie here; you must remove it from hence: For the other Youths that have the rest of the Money and Jewels, will never be brought into the City. If you will remove it into the *Minories*, my Life for it, you will have it all. I will pretend there we will share it. You must not let it lie at all, but carry it presently thither. I will tell what I will do: Have you any Acquaintance about *Tower-Hill*, where you will leave it? No, said he. Nor I neither, said I. I went up Stairs to my Wife; *Mall*, said I, have you any Acquaintance about the further *Tower-Hill*? I durst not trust my Wife nor Sons; for I thought their Tongues might be too long, and left them in perfect Ignorance: Truly, I must clear them. *Mall*, said I, there is a Gentlewoman, whose Husband is failed, (this was a feigned Story, my Lord) it must be secured about *Tower-Hill*: She was pretty well awake. Saith she, There is the Commissary-General of the King, his Daughter *Betty Fry* keeps a Shop of Linen at the lower End of the *Minories*. Do you think she will be private, and let it lie for four or five Hours? Undoubtedly she will, saith she. Pr'ythee get up, and put on thy Clothes, and go thither. *Wild*, where shall I find you about Eight or Nine a-clock? I will lodge this at the Seamstress's Shop, upon the Right-hand at the farther End of the *Minories*: Tell me where I shall meet you, and we will have this Money carried there; my Son and I, we will have it lodged. Saith he, You shall have me walking within three Doors of the *Blue-Pig*; so he called it. Saith I, What mean you? Saith he, It is a little Sign, no bigger than a Pig, but it is called the *Blue-Boar*: There you shall have me walking in the under or upper Causey. My Lord, I took this Boy, (pointing to *John*) who knew nothing: I told him it was a Friend's Money. I raised my Wife: *Mall*, said I, come away. My Wife went before; the Boy and I took the Money: I carried two, and he three. My Wife went and knock'd up the Maid, the Door was open when we came; God forgive this Maid that swears it was this Son, she is mistaken, upon my Salvation this Boy was abed and asleep. When the Money was there, I staid by my Wife; said I, what have you done with this Money? I did not tell my Wife any thing. I came home; coming home, there was my Son and Wife. I drank a Cup of Syder, (for I kept a Hoghead of Syder in my House) as soon as I drank it, I went out of doors immediately: said I to this youngest Son, Stay at home, I shall have occasion to use you by and by. I went to Mr. Tryon's; coming there, I found Mr. Gurney the Merchant: said I, Mr. Gurney, I have Good News, I have some hopes of strong Presumptions, that Mr. Tryon will not lose one penny-worth of his Goods. Marry, said he, I am glad of that. We went up to Mr. Tryon's, we found him sitting by a little Charcoal Fire, as much as you may cover with your hands: he told us he had been up ever since

since three of the clock. We asked him, what he would have to comfort him: he told us, he had something. Mr. Gurney after some discourse took his leave of him, so I sat down (*Jesus! what a noise is here in the Court. My Lord! I can hear but with one Ear.*) I say, I sat down at the Bed-side of Mr. Tryon, he on the Stool: Mr. Tryon, said I, I have Good News for you. Saith he, Hast thou! I am glad of it with all my Soul. Sir, said I, I am informed you will not lose any of your Goods or Money, there is but thirty-eight Shillings spent of all your Money, the Rogues took but forty Shillings out, and *Wild* told me there was two Shillings saved: I dare boldly say, by Three of the clock in the Afternoon you will be master of them again. I would be glad of that, and will give you five hundred Pounds. But, Sir, said I, there is a Tale hangs by this: You know you should have been robbed about a Year since; and I have apprehended *Wild*, who was one of the intended Thieves: then, he hath made me swear, *By the Blood of Jesus Christ, &c.* that he shall have his Life, if you have your Goods: He hath engaged me that you shall likewise swear by the like Oath, or else you shall hang him, and so lose your Goods. Said I, I have a great part of your Money, but the Jewels and the rest of your Money is wanting. The old Gentleman was almost overjoy'd: This is not true, said he. Said I, I do declare this is true in the presence of God, make no words of it; if the business be discovered, we shall lose the Jewels. Well, said he, I will be ruled by you, Colonel; and the Lord God make me thankful I have such a Friend in the world that hath done this for me, I shall never make you amends: and thereupon he entred into the same Oath, *That by the Blood, &c.* the Blood of the Man should not be spilt tho he lost both Money and Jewels. I discoursed with him, I told him over and over again, left him satisfied that I would be with him again, and bring him more tidings, but by Three a-clock I doubted not but he should have all. Then it was almost Eight at Night; away went I to *Tower-Hill* to look my Merchant *John Wild*, he was here in *Newgate* formerly: there found I him walking by the *Blue-Boar*, carelessly walking there, with his Coat under his Arms. Said I, How now, what News? I think I have now pleased you, saith he. What have you done? said I. I have lodged the Money hard by, and all is right. What have you done? Is all right on the other side? All shall be well: but where have you lodg'd it? Here at a Seamstress's, at the corner of the *Minories*: said he, The Money must be removed, there are Salesmen thereabouts, and the Fellow that hath the Jewels he is known, he will not come thither; remove it towards the Water-side, any where, and the things shall come, my Life for it. They had a Cat's-Eye Ring, they were such wise Lapidaries, they called this a Hundred-Pound Ring, when it was not worth Five Pound. He gave order that the Money might be again removed to the other end by the *Horseshoe-Tavern*. I run home, fetch'd my Son; said I, Wife, we must have away the Money. My Lord, he told me he would have away the Money to the *Half-Moon Tavern* in *St. Katherine's*, or the corner Tavern at the *Iron-gate*; said I, Are not you resolved? Well, said he, it shall be carry'd to

St. Katherine's, he would meet my Son at the *Noah's-Ark* at *Tower-Ditch*: let my Son but hand the Money over that Path, and he would hand it to the other. We did carry it, carry'd again. At this second carrying, comes Sir *Thomas Aleyn*, he had heard some Cry of Money left, he comes with a great Company of People after him, and the foolish Wench said to my Son, Mr. John, *fly for your Life*. *John* being surprized and affrighted, he went out of the Back-door, went over the Ditch, and went to my House. Sir *Thomas Aleyn* had also sent to secure my House. When the Lad came home into the street, my Doors were shut up: (Gentlemen of the Jury, do you understand?) the Boy seeing such a Rout at the Door, saith the People, Mr. John, *your Father's House is shut up about Mr. Tryon's Money*. He walked by the street, and went into *Bishopsgate-street*, and *Cheapside*, into *Paternoster-Row*, and so into *Fleet-street*: I did not hear of him till Saturday in the Afternoon.

When Sir *Thomas Aleyn* came, saith he, Mr. *Turner*, here we have catch'd you and the Money. Said I, if you be hasty and passionate, as you were last night, you will spoil all the whole business. Tell me, saith he, whose Money it is. Said I, it is my Money. The truth is, the old Gentleman hath promised me 500*l.* it is the naked truth; I would not have Sir *Thomas Aleyn* have the honour of gaining it, but I would have the honour of gaining it my way.

Sir *Thomas* would know whether it was my Money, I told him I had received part of it at a Goldsmith's; so I put Sir *Thomas* off. Come, come, said he, we will carry this Money to Mr. *Tryon*. Said I to Mr. *Tryon*, Here is part of your Money, you know what I told you even now. Ay, saith he, God be thanked, before Sir *Thomas Aleyn*. I asked him, what his Promise was, and told him how the Passage was in short; and the old Man did acknowledge that such a Promise was made, and would have down upon his knees. I passed my word to him, that by Three a-clock I doubted not but he would have his Jewels, and the rest of the Money. Saith Sir *Thomas Aleyn*, Go, (whether he said live and prosper, I know not) Go, God bless you; and upon my honour (I think that was his word) the old Man shall make good his Word. Ay, but Sir *Thomas*, what will become of me and you, by this Business, for I understand the Law? How will this Business be daubed up? You will be fined, Sir *Thomas*; I must break my Word, he must be apprehended, or I must suffer. Saith Sir *Thomas*, Do not trouble me with that, get but the Goods, and the old Man's Word shall be made good, leave that to me. More than that, he said, He would make up the Business, or he would smother it. My Lord, you have a great deal of Patience, I am humbly bound to you, here is nothing but the naked Truth, step by step, as I trod it. Afterwards *Wild* came and said, All will be well. Said I, What have you done? Are you sure, saith he, the Jewels nor nothing shall be stirred? Said I, You see all is spoiled; Sir *Thomas Aleyn* is come where we had lodged the Money, the thing is known, do not they hear of it? Yes, they hear as well as you, and know what is done, and some have eyes upon you. Said I, They will run away with the Jewels. No, you shall meet about Three a-clock; no body knows me but you,

your Wife, and your Son, who saw me this Morning at Three a-clock, either by the *Blue-Pig* at *Tower-Hill*, or *Nags-Head* over-against *White-Chappel Church*.

It is agreed, for God's sake look to it, your Life and mine is concerned; if the Jewels be lost, I will persecute you to the Death, look they are preserved, and not purloin'd. Saith he, The Bags were never opened. I parted with him, he was to look for me at Three of the clock: coming home about Change-time, who should I meet with but Mr. *Stubbs*, who told me that it was all the News upon the *Exchange*, that you have been in the Robbery. Said I, Do not trouble your head, I have discovered the business. Then said *Stubbs*, You know I and *Thomas Lyon* are Bail for you. At that time I satisfied him. Afterwards that day I met with Mr. *Cole* the Officer; said he, Colonel, I arrest you. For what? for more Fooleries yet? *Thomas Lyon* will not be satisfied. By Six of the clock this business will be all over: nothing will serve your turn but Violence, Violence, no Force, no Law, I was forced to go to the *Hoop-Tavern*. I got them to send for Mr. *Stubbs* and *Lyon*; they came! said I, What will you have? I am in prosecution of a Business for Mr. *Tryon*, you will undo it with this sixpenny Business: say what Security you will have, and you shall have it: said I, Mr. *Tryon* and Sir *Thomas Aleyn* shall give you their Security, to save you harmless for being my Bail. Said they, Hold Mr. *Tryon*, we'll do it; we are content; they went away, and told me they would get a Bond, and come presently; but what was this presently? I will warrant you they staid two hours; it was Seven a-clock at night before I parted with them. I was fain to send the little Boy for Mr. *Hill*, Mr. *Pilkington*, Mr. *Millington*; this was either a Curse from God sent upon me, or a Plot of Roguery that the Money should be lost. They came not back till Seven of the clock, and then without a Bond; and I fell a little violent: But I was telling them how these Rogues told me the whole Carriage of this Robbery; when it came that Mr. *Tryon* and Sir *Thomas Aleyn* heard that I was in custody, he sent a Constable with a Warrant to bring us all before him. When we came there, I desired Sir *Thomas* to let a Gentleman go with me; I will break my Oath with the Fellow, and we will apprehend him, and make him bring the Jewels. Sir *Thomas Aleyn* told them, if they would all go together, they might; but to go out of the Liberties, he could not let them go: I have you, and I will keep you, and do find him if you will. How now, Sir *Thomas*, said I, are you come to that? Have you fooled me all this while? I faith, I thank you, for you have trapped me very fairly; if any thing miscarry in my Honour and Reputation, or Blood, you are in the fault: Here I do declare, said I, if you will let me go, I will take him. Then Sir *Thomas* did incline to let me: what say you, Officers, will you go out of your Liberties with this Gentleman? Sir *Thomas*, said I, there is no Liberty or Privilege for Felons; I will seize a Felon my self in any ground in *England* without Warrant. I do remember this *Wild* did condition, that in case I could not come, I should trust no Man living but myself, because he had had my Soul pawn'd to him. I asked him whom

he would trust: He said, if I could send my Wife, describing her to him, that she was a full short Woman about forty or fifty Years old, she had a long black Scarf on; then let him alone, if I cannot come, I will send such a Woman, and send the things by her, and preserve your Life. I told Sir *Thomas* this Story. My Wife came to me publickly, I did not whisper with her——

Mrs. *Turner*. Nay, look you, Husband——

Col. *Turner*. Pr'ythee, *Mall*, sit down: you see, my Lord, my Wife will interrupt me with Nonsense. Pr'ythee sit thee down quickly, and do not put me out: I cannot hold Womens Tongues, nor your Lordship neither.

Ld *Bridgman*. This is not a May-game.

Turner. My Lord, it is a serious Business, and I hope God will bless it—— Pray, said I, *Mall* go, as you love and honour my Life and Credit, or any thing that concerns me, I beg you to go. Then I will go, saith she; whither must I go? You must go to the further *Tower-Hill*, six doors beyond the little Postern: now it is so much of the clock, from Five to Seven he will walk there. A Fellow will come to you in black, that Man that in the Morning took the Money from *Jack*, he will know you, and once in a quarter or half an hour he will come to you. If you do not find him in half an hour, stay no longer, but pack away to *White-Chappel*, ask for the *Nags-Head* in *White-Chappel*, and once in a quarter of an hour you will have a Man come to you, and take notice of you, and ask you who you are; and you must say, that you walk for one to give you somewhat: he will deliver you somewhat, and whatever he delivers you, bring it hither. Said I to them, You may send if you will, and dodge my Wife, and catch him that way; they would not. I sent my poor Wife away, and, saving your Lordship's presence, she did all bedirt herself, a thing she did not use to do, poor Soul: She found this *Nags-Head*, she sat down, being somewhat fat and weary, poor Heart! I have had twenty-seven Children by her, fifteen Sons, and twelve Daughters. Seven or eight times this Fellow did round her——

Mrs. *Turner*. Let me give that Relation.

Col. *Turner*. You cannot, it is as well: pr'ythee sit down, dear *Mall*, sit thee down, good Child, all will be well. When she came back, she came with something in her Apron: What are you sped, saith he? I know not what: a Man came to me, and asked me who I look'd for; I told him, I look'd for any Man that would give me any thing. Are you Colonel *Turner's* Wife? And upon her Answer he gave her these Bags into her Apron, and was gone a matter of a yard from her: Steps back again, that is not all, here is a Diamond Ring worth a Hundred Pound, give that to your Husband. And this Diamond Ring proves a Cat's-Eye Ring, and worth but Four Pound.

Mrs. *Turner*. Well, and did not I bring these——

Col. *Turner*. Look you, my Lord, this Woman will put me out. My Lord, she did deliver all these things, and went home. I did take out these Goods: Now, said I, Mr. *Tryon*, you see all is come, (Sir *Thomas Chamberlain* was there) I have perform'd all my part, look to the rest, that you perform yours. Some People report, that there is other Jewels of my own; my Lord, they

they are all his own, and he will not disown it, and I do not expect my Five Hundred Pounds for what I have done, according to his Promise, *That as Jesus died, &c.* that the Man should not be prosecuted, nor lose a Hair of his Head, if he lose his whole Estate: and I do expect my Money, not such a Reward as this. After which I was committed by Sir *Thomas Aleyn*, and so was my Wife. Now pray let me call my Witnesses, and if I cannot make it good, that I am clear, let me be hang'd. My Lord, I shall humbly intreat that Mr. *Vandeput* may be called, Mr. *Cowel*, and the others.

Ld *Bridgman*. What do you prove by them?

Turner. To prove part of this Business, That I did assure Mr. *Tryon* of his Goods; and to my Reputation. I forgot one chief thing, I am not a Man in Debt, take Notice of that, no Man in the World hath my Bill for 5*l*. There is only this Contest between Mr. *Vanbrugh* and myself, which is left to Arbitrators, and the Lord-Mayor is Umpire: It is known I have an Estate, and there is one thing remarkable, Gentlemen of the Jury, I could have had all these Jewels at any time in Trust; I could have broke as well as others, and paid 5*s*. in the Pound: I lately made Payment of 2600*l*. for Goods, and I can have 20000*l*. Credit any Day upon the *Exchange*: Why I that had this Credit, that might break for so much Money, why should I put my Neck in a Halter? These are very strong Arguments for me, that I am not such a Person.

Ld *Bridgman*. I will tell you what you have done: You have made a very long Story, and have taken up the time of the Court these two Hours in a Narrative; and when all is done, answer me, Have you any Witness to prove all this Discourse between you and *Wild*?

Turner. I have by, Witnesses to prove I said this, that there was such Discourses between us.

Ld *Bridgman*. No doubt of it; and so will many a Man at *Newgate* frame such a Story as this.

Ld Ch. Just. *Hyde*. You have told a long Story about *Wild*, that you took him by the Throat, and that you were alone; what Weapons had you?

Turner. None, my Lord.

Ld *Bridgman*. Had you a Lanthorn with you?

Turner. No, my Lord.

Ld *Bridgman*. What time of the Night was it?

Turner. Twelve a-Clock, my Lord.

Ld *Bridgman*. You staid till Four, so they were four Hours a bringing of the Money.

Turner. Yes, my Lord.

Ld Ch. Just. *Hyde*. You took a Man in the dark by the Throat, that Man that was guilty of such a thing, as when that you did let him go to call his Companions, to bring the Money, bring Fellows to you single; I would be glad to know, whether in this case they would not have knock'd you on the Head, and killed you?

Turner. My Lord, *Wild* had engaged his Soul, and I my Soul to him, that if I would not discover him, I should go away free.

Ld *Bridgman*. Great Security indeed!

Col. *Turner* called several Witnesses, viz. Mr. *Vandeput*, Mr. *Cowel*, Mr. *Legoose*, Mr. *Snow* and Mr. *Mosely* the Constable. I desire my Maid

may be called: pray ask Sir *Thomas Aleyn* what he hath done with my Maid, he took her up with Sir *Richard Brown* and two Marshal's Men: (pray Gentlemen make not a laughing Business of this) Sir *Thomas*, pray where is my Maid?

Sir *Tho. Aleyn*. I had this Maid upon Examination, I found cause of further Examination, and thereupon directed an Officer to take her, and she is now in the Garden.

Mr. Mosely the Constable examined.

When I came first to Mr. *Tryon*, at Mr. *Tryon*'s House, he was bound; then he asked where his Man and Maid was? he said he could not tell. By and by the Man came in, and being asked where he was, he answered he was at Col. *Turner*'s at Supper. Presently after we went to Col. *Turner*'s, he came to the Window, his Wife and two Sons were in Bed.

Ld *Bridgman*. Did Mr. *Tryon* give you order to come to him?

Mosely. Yes, my Lord, he did.

Ld Ch. Just. *Hyde*. *Mosely*, you were Constable, were you not? What Discourse had you with Mr. *Turner* about a dangerous Place that you did suspect, where some People may be to do such a Feat?

Mosely. I never heard of any such thing spoken.

Ld *Bridgman*. You say Mr. *Tryon* he wished you to call *Turner* to him; did he give you any Order or Direction to search his House? Who wished you to go up to the House to see whether his Sons and Daughters were in Bed?

Mosely. Mr. *Turner* did, my Lord.

Turner. He doth not say true, my Lord: Pray ask him, when he came to my Door, and I opened it, if he did not ask whether Mr. *Tryon*'s Servant was there at Supper that Night? I said, No. Is your Sons within, said he? I said, Ay. Pray let me see them.

Mosely. I came to Mr. *Turner*'s House, and knock'd at the Door with some others with me; at last the Colonel came out of his Bed. I suppose he came out of his Bed, being partly naked; he came down to the Door; I asked him, where are your Sons? They are in Bed, says he. Said I, Mr. *Tryon* is robb'd, he would have you come to him.

Ld *Bridgman*. Did he desire you to go up?

Mosely. No, my Lord; but I asking him whether his Sons were in Bed, he said, I pr'ythee go up and see.

Turner. My Lord, I would prove where my Sons were on Thursday Night at Ten a-clock.

Lord Marquis of Dorchester's Servant examined.

My Lord, till Nine a-clock they were with me at my Lord Marquis's House.

Ld *Bridgman*. What time came they thither?

Marq. Servant. Between Seven and Eight at Night.

Col. Turner's Maid examined.

Turner. Come, Maiden, pray tell my Lord and the Court when my Sons came home this Night.

Maid. Between Nine and Ten a-clock.

Ld

Ld *Bridgman*. Were your Master and his Sons in Bed all Friday Night, or no?

Maid. Yes, my Lord, they were.

Ld Ch. Just. *Hyde*. Did your Master go forth on Friday Night?

Maid. No, he was at home and in Bed all that Night till Eight a-clock in the Morning, and Thursday Night before.

Turner. A filly Soul, she knows not what she says.

Ld Ch. Just. *Hyde*. I will ask you again, was your Master at home on Friday Night?

Maid. No I think he was not.

Ld. Ch. Just. *Hyde*. Why did you say so before?

Maid. I cannot remember, Sir.

Ld *Bridgman*. She knows her Master's Mind.

Turner. No, upon my Soul, my Lord.

Ld *Bridgman*. My Masters of the Jury, this is the Use that is made of this Maid's Testimony; she will say any thing, she is no fit Witness, no Trust to be given to her either one way or other.

Turner. Pray call Mr. *Cowel*, Mr. *Legoose*, Mr. *Cook* the Goldsmith.

Ld. *Bridgman*. What do you call these for?

Turner. To prove my Condition, my Credit and Reputation.

Ld *Bridgman*. The Jury knows that already.

Mr. *Cook*. Thus much I can say, that I have known him some twenty Years, I have had Dealing with him to the Value of several hundred Pounds, I have trusted him, and have found him very faithful; I have seen in his Possession Jewels to the Value of eight or ten thousand Pounds: by which I suppose, if he had been such a Person, he might have done himself a Kindness by breaking.

Mr. *Legoose*. All I can say, is, I have an Acquaintance with this Person, he was a Solicitor, dealt honestly and faithfully in a Business wherein I was concerned; he hath lived very well.

Sir *Richard Brown*. Where you have heard one Man say he is an honest Man, have you not heard a hundred say otherwise?

Mr. *Legoose*. There hath been an ill Report, that he hath been a Person that lived high.

Turner. Sir *Richard Brown*, no Man in England can say black is my Eye.

Sir *Rich. Brown*. Mr. *Turner*, you say you were upon *Tower-Hill* all Friday Night; whither went you in the Morning?

Turner. I came home between Four and Five in the Morning.

Sir *Rich. Brown*. Your Maid offered to depose even now, that you did not rise all that Morning before Eight of the Clock.

Turner. *Lapsus Linguae*, if the Girl be mistaken.

Ld *Bridgman*. Do not trouble your self with that, her Evidence is of no force.

Mr. *Jefferies*. Col. *Turner*, I cannot say any thing that will be advantageous to you; my Lord, and Gentlemen of the Jury, I have heard Mr. *Tryon* hath trusted him with Jewels to a good Value, and that Mr. *Tryon* had a very good Repute of him.

Sir *Rich. Brown*. Pray what Report hath he upon the *Exchange*?

Turner. I owe nothing there, Sir *Richard*, nor none there can lay any thing to my Charge, except it be that I am a Cavalier.

Ld. Ch. Just. *Hyde*. Mr. *Turner*, have you any more?

Turner. My Lord, I do want these Goldsmiths, they do not appear, they promised me they would.

Ld Ch. Just. *Hyde*. How can we help it?

Turner. I do humbly beg your Honour and this Honourable Bench, that the old Gentleman, my old Friend, may declare what passed between us on Saturday Morning.

Ld *Bridgman*. Consider what you do, for here would you have Mr. *Tryon* swear against himself: hear what you would put him to, take it as you put it, tho I do not believe a Word of it. As you put the Case, here is *Wild* commits a Robbery, you come and truck with *Wild*, and agree with him that Mr. *Tryon* shall let him go, shall not meddle with him, there shall be no Prosecution, so the Jewels and Money may be brought: Would not you get Mr. *Tryon* to conceal a Felony and Felon, and he confess against himself he made this Agreement with you? that Mr. *Tryon* did consent to it, that he promised you five hundred Pound to shuffle up this Business?

Turner. Hear me, pray; you put me out: I had not let this Man go, I begged that they would go with me, Sir *Thomas Aleyn* would not let us go, we would have taken him, I was sensible of the Danger; it may be we might have had the Felon and the Goods too.

Ld Ch. Just. *Hyde*. No doubt, upon your own Story, all this while you had no Possibility of having the Goods, unless the Life of this Fellow may be given you; so you were fain to agree, and plight your Word to him, pawn your Soul that he should be free, untouch'd, so he would discover the Goods and Money. Sir *Thomas Aleyn*, speak to that Particular again.

Sir *Tho. Aleyn*. My Lord, and Gentlemen of the Jury, he tells a long Story, that he was kept abroad till Seven a-clock at Night; I do verily believe he was brought to Mr. *Tryon's* at Five a-clock, and there he kept us till Seven, and all he would do, was, he desired to go himself, or with one Person at the most, or else we shall lose all the Jewels, saith he, for two Souls are pawned: he did not in the least argue the taking of the Thief. I must say this, when I came to him on Monday, he said if I had sent a good Guard, we might have taken the Thief. Said I, a Lyar had need have a good Memory. Then you must only go yourself, or with one Person; he hath told you, that I said there should be no Prosecution. I said only this, whatever Mr. *Tryon* had promised you, I knew not; but if you expect Favour, let the old Gentleman have his Jewels again.

Sir *Tho. Chamberlain*. I heard no such thing.

Ld *Bridgman*. What did he tell you?

Sir *Tho. Chamberlain*. He would have gone with one with him, and pretended he could find out the Jewels only.

Mr. *Millington*. There were some Propositions made, he desired first I should go with him singly; I told him there would be no Security, but if he would get a sufficient Guard, I would go with him: but he went home to his Wife, and never made mention of any Party's Name, but that there was a Party he expected the Jewels of.

Ld *Bridgman*. Did he propose any thing touching the taking that Man?

Millington.

Millington. Nothing but that he had pawned his Soul there should be no Discovery of it.

Ld Bridgman. Did he desire that you should go and take the Man?

Millington. No, but that we might go and secure the Jewels.

Serj. Cole. My Lord, there was a great deal of Danger; we are Bail for eight hundred Pounds; if he had been taken away, we are all undone: he only propounded of having the Jewels, and nothing of the Man.

Mr. Gurney. I understood you, *Col. Turner*, only for the Jewels, and not for the Man.

Mr. John Marshal. My Lord, he did move *Sir Thomas Aleyn* that I might go with him to *White-Chappel* and about *Tower-Hill*. I told *Sir Thomas*, it was very unsafe for me to go, being late, and out of the Liberties; tho I was a Constable, I could not command Assistance there; and intreated *Sir Thomas* to excuse me: I thought it not safe for him. He did then repeat the Engagement of his Soul to the Thief, and of *Tryon's* to him.

Ld Bridgman. Did you ever hear him say, desire or propose, that you should go and take the Thief?

Marshal. No, my Lord, it was to get the rest of the Jewels.

Alderman Smith. Do not you know that I spake to you again and again, and advised you by all means to let us know where this Man is; that I would go myself, or any of these Persons present? you utterly refused it, and said there was two Souls pawned, and you would not discover it.

Turner. That was at first, afterwards I mention'd them all.

Ld Bridgman. For what?

Turner. To take the Thief.

Ld Bridgman. You see not any Man testify any such thing.

Yeoman Cole. *Sir Thoms Aleyn* called my Brother and I both into the Room to him, and the Marshal and his Man; and said, *Col. Turner* would have us go without the Liberties for these Jewels: I think, saith *Sir Thomas Aleyn*, it is not safe to go out of the Liberties. *Mr. Marshal* said the same. He desired us to go with him, but *Sir Thomas* refused it.

Ld Bridgman. This is a notable Piece of Cunning; when he was moved by *Alderman Smith* and others, all this while he names no Man; but now he was under an Action, he would have them go with himself out of the Liberties, and yet never saith a Word to take the Man: He knew very well it was out of the Liberties. Truly I think, if *Sir Thomas Aleyn* had done it, I should not have taken him to be *Sir Thomas Aleyn*. Did you desire any of them to go with your Wife?

Marshal. He deny'd us to go with his Wife; his Token was this, the Thief would meet no Man.

Turner. My Lord, to the Business now. I am here indicted for Burglary: It appears to your Honours and the Bench, that it was Ten of the Clock when my Sons came from my Lord the Marquis of *Dorchester's* House; said I, You Knaves you, what do you out so late? Said they, It was past Nine before we had done, and my Lord's Gentlemen made us stay Supper. They were all in their Beds at a little past Ten of the

Clock. You hear what *Mosely* the Constable saith, he finds us sleeping in the House; how should this Burglary be laid on me? I am indicted here for Burglary, and that I cannot be, for that I was at Home.

Ld Ch. Just. Hyde. Have you done?

Turner. Ay, my Lord.

Ld Ch. Just. Hyde. *William Turner*, what say you? You see what is laid to your Charge; first, you are a Person of loose Life: there were two at his Bed-side, he believes you to be the Person that gagged him, and help'd to bind him.

William Turner. I was never in his House in my Life, till with *Sir Thomas Aleyn*.

Ld Ch. Just. Hyde. Where were you?

Will. Turner. At Home.

Ld Ch. Just. Hyde. Make that appear.

Will. Turner. I have none here.

Ld Ch. Just. Hyde. He saith it was a Man as like you as can be.

Will. Turner. And I am as innocent as may be.

Ld Ch. Just. Hyde. *John Turner*, that which is against you is this: You on Saturday Morning very early was busy with your Father and Mother in the removing the Money; and then when you had Notice that you would be apprehended, you got away.

John Turner. Sir, I did not know who it was that was come, whether to apprehend, or upon any other score; but the Woman speaking to me, *Flee for your Life*, or such Expressions, made me go away I know not how.

Ld Ch. Just. Hyde. Did not you bring some Money?

John Turner. I did, my Lord.

Ld Ch. Just. Hyde. How much was brought at that time?

John Turner. I carried away two Bags to *Wild*.

Ld Ch. Just. Hyde. Did you know him?

John Turner. Yes, my Lord.

Ld Ch. Just. Hyde. Did you carry these to *Wild* on Saturday-morning? Did not you carry them to *Fry's* House?

John Turner. We took them afterwards from the House where *Wild* appointed us to meet.

Ld Bridgman. At what time of the Day did you carry them back to *Wild*?

John Turner. Before *Sir Thomas Aleyn* came that Day, I was coming for more.

Ld Bridgman. To what Place?

John Turner. At *Tower-Ditch*.

Ld Bridgman. At what House?

John Turner. No House, but I delivered them at *Tower-Ditch*.

Ld Bridgman. At what Time of the Day?

John Turner. It was before *Sir Thomas Aleyn* came, about Eight or Nine of the Clock in the Forenoon.

Ld Bridgman. Was there no People there? Who was there?

John Turner. I cannot tell; I saw several other Persons.

Ld Bridgman. Did *Wild* stand in the Street?

John Turner. Yes.

Ld Bridgman. How came you to know him?

John Turner. By my Father's Direction; and I had seen the Man at our House that Morning when he brought in the Money.

Ld Bridgman. Whereabouts? Was it near the Quest-house? that is, the great House that stands in the middle of the way?

John

John Turner. It was hard by the Sign of Noah's Ark.

Ld Bridgman. This is a likely Story to be believed, that you should in the day-time, between Eight and Nine in the Morning, meet in the *Tower-Ditch* that Man that was a noted Thief, that had been in *Newgate*; that you should tarry for this Man to receive two Bags of Money: see how it hangs together!

Ld Ch. Just. Hyde. How often did you go?

John Turner. Twice.

Ld Ch. Just. Hyde. How much at a time?

John Turner. A single Bag.

Ld Ch. Just. Hyde. Had you a Coat or Cloak?

John Turner. Just as I am now.

Ld Ch. Just. Hyde. Had *Wild* a great black Coat? And what did he do with the Money?

John Turner. I know not; but I delivered one in the Street, and then went and fetch'd another, and he staid ready for it.

Ld Ch. Just. Bridgman. Was this all the Money that was brought in the Morning, save that that *Sir Thomas Aleyn* brought away?

John Turner. It was all, to my Knowledge.

Sir Tho. Aleyn. Colonel *Turner* confessed to me on Thursday Morning that more came unto his House, but that Rogue *Wild* took it away.

Ld Ch. Just. Bridgman. How much?

Sir Tho. Aleyn. About 200*l.*

Ld Mayor. How many Turns did you make when the Money was carried from your Father's House to the *Minories*?

John Turner. Twice.

Ld Mayor. Who went first?

John Turner. We went both together.

Lord Mayor. How much was carried between you both?

John Turner. The first time I carried 200*l.* as I can judge.

Ld Mayor. Who carried any more?

John Turner. My Father.

Ld Ch. Just. Bridgman. What did you bring the second time?

John Turner. Three Hundred Pound.

Ld Ch. Just. Bridgman. *William*, one thing more: What was the Occasion of meeting you and *James Turner* at the Alehouse?

William Turner. I did not meet him, my Lord.

Ld Ch. Just. Bridgman. You came thither, and called for a Pot of Ale, and said you staid for Colonel *Turner*.

William Turner. It is not right: I only asked if Colonel *Turner* used the House. By and by he came, and paid for the Pot.

Ld Ch. Just. Bridgman. You two went together: What was the Occasion of your meeting together?

Col. Turner. Finding him there, I said I could not drink with him; and so we parted.

W. Turner. I called for a Pot of Drink; and having no Money to pay for it, Colonel *Turner* coming by, I called him in, and desired him to pay for it; which he did.

Ld Ch. Just. Bridgman. The Boy swore you said you staid for Colonel *Turner*: Can you justify you were at home, or in any other Place? It is a great Suspicion: The old Gentleman charged you to be very like the Man; and you can give no Account where you were; and *Turner* and you met together the Day before.

W. Turner. I was at Home.

Ld Mayor. *William Turner*, when did you shave your Beard last?

W. Turner. Before *Christmas*.

Ld Mayor. Who shaved it for you?

W. Turner. A Barber in *Golden-Lane*.

Ld Mayor. When his Hair is shaved off his Chin, the other Man, whose Name is *Christmas*, being a smooth-chinn'd Man, it's very possible that might beget the Mistake in Mr. *Tryon*.

Ld Ch. Just. Hyde. You of the Jury, it is high time to let you go together to consider your Verdict: We will trouble you no more in this Business to-day. Here is an Indictment against *James Turner*, *John Turner*, and *William Turner*, for a Burglary in breaking the House of Mr. *Francis Tryon*, in the Night-time, and taking away a great deal of Money and Jewels; you have heard it particularly named. It is likewise charged, That *Mary* and *Ely* knowing of *John* to have committed this Felony and Burglary, did comfort and abet him afterwards. I shall speak to them two first: *Mary*, the Wife of *James Turner*, though it appears all along that she had a Hand in this Business, yet nothing appears at all but doing only that which her Husband had directed; then by Law she cannot be Accessary for committing of Felony. For *Ely*, the other Accessary, I did not observe in the whole course of the Evidence, any thing at all against him, that he was privy to any thing at all; for that of the carrying of the Money, it appears to be *John*: For them two, *Mary* and *Ely*, nothing is fasten'd upon them. Then the Matter is to *James*, *John*, and *William Turner*: I hope, and I am sure you are nearer, and you take Notes of what hath been delivered: I have not your Memories; you are young, and no Persons better; you are Men of Understanding, I need not repeat Particulars to you. Thus much I must say in general, That it is not always necessary: But for that I shall desire my Lord *Bridgman* to declare it to you. A Man may be guilty of a Burglary, tho he be not in the Place, in the Room where it was committed: Or thus, If three or four Men come together with Purpose to rob a House; two go in and do the Feat, and the rest stay without, to see no body comes to prevent, or to receive, one or other coming to that purpose; those that are without the House are as guilty of the Burglary, as the other that went in. No Man will deny the Law to be so. Then weigh your Evidence: It appears by the Coachman that he saw four Men, that had Handkerchiefs about their Necks; two upon one side, the other two upon the other side of the Door. Though there were but two appeared to Mr. *Tryon*, yet there being four in Company, and Mr. *Turner* himself tells ye, that by the Story from his Intelligencer there were three or four. Whom they were, or whether there was any or no, God knows; but rather suppose it to be a Story of his own framing: He walk'd up and down on *Tower-Hill*, took the Thief by the Throat, and there kept him about two Hours, and past Four a-clock before they brought the second Bags. Then weigh that particular Knowledge that Mr. *Turner* had of all these Things: That upon Wednesday before he met with this *William Turner*, a Person you see, of what Quality I shall not repeat, he cannot give account of himself what he is; and that Night, when this Robbery was committed, he says

says he was at home; they are his own Words: He might have had Witnesses to have proved this as well as Mr. *Turner*. But for *James Turner*, it's true it appears, and no doubt he was that Night at home: The Constable went to his House upon the occasion of *Tryon's* Man's saying he supped there, went to find whether he supped there; that was indeed false: But the Constable and those that went there, found them a-bed. But then take the time when this Robbery was done: It was between Eight and Nine, and he was found in bed at past Ten, tho indeed the Thieves said it was Eleven, as you might understand by Mr. *Tryon*: It must be left to you upon the Proof. You see when he comes the next Day, he undertakes to find out the Thieves, and that only upon a Suspicion; that there being a Purpose to rob Mr. *Tryon* a Year before, he goes to the same Place now, he found *Wild* out then: He had very good Luck; that because he lodged there a Year before, he must have the same Lodging now: It's a likely matter that Thieves, as *Wild* is, should keep their Lodgings thus constantly. There he finds him, takes him by the Throat, and there they were playing a while: There one comes, goes, and brings some part of the Money. After all this, the next Day he must take his Word to come again, and to bring the Jewels. Observe but this: After which time as the Money was received, yet by a Token, though he never saw the Woman before, describing her a short fat Woman, with a long black Scarf, he must meet her, asked her what she wanted, and must give her Jewels of that Value: 'Tis one of the finest fram'd Stories that I have heard, that this Man should come to be thus privy after himself stood charged, and the Jewels brought for all this; and yet he must know nothing of it. You observe the Evidences, and their Circumstances themselves: The Witnesses he called in point of Reputation, that I must leave to you. I have been here many a fair Time: Few Men that come to be questioned, but shall have some come and say, He is a very honest Man; I never knew any Hurt by him: But is this any thing against the Evidence of the Fact? But you have here the whole; I shall leave it to you.

Ld Ch. Just. *Bridgman*. Gentlemen of the Jury, my Lord hath repeated to you the Evidence: I shall repeat nothing of that; only one or two Things I shall observe to you. First, In point of Law: And I must agree in Opinion with what my Lord says. But in this Case there will be something more considered; that is, Whether or no (for this is the Law) if a Man have a false Key, (we are now upon the point of Law) and we ought to be of Counsel with him and you, to direct that which is right: If he appear plainly to be an Accessary, you must find him guilty of this Indictment: For that you must consider Circumstances, whether he broke open the House or no. Then you must observe Mr. *Tryon's* Door was shut; it was not broken open by a Crow: Therefore you may conclude that it is very probable they had a Picklock: But that I must leave to you. Either they must come in by one being in the House, or by a Picklock. But to say by one in that House, you have no Reason to presume on that: If by a Picklock, whosoever they were, they must be known, not Strangers to the House: Not *Wil-*

liam Turner alone, but he that knew the House, and all the Passages and Doors; knew where the Keys and Jewels were. Then who probably should be in the House? It was not for a Stranger to be in the House, only one that must know all. If that *James Turner* shall appear to you to have a Hand in it, if you think he was Accessary, you must find him guilty as Principal.

Col. *Turner*. God forbid.

Ld Ch. Just. *Bridgman*. If he were amongst them, if the Door be opened by a Picklock, it is a direct Burglary, as if broke open by an Iron Bar: But that must be left to you. In the next place, to prove the Burglary, you see what a Story he tells you, with all the Circumstances, as if he had been there: He tells you from this *Wild* (if there be any such, you must take it upon his Word) how the Man's Tooth came out, what he meant to do with the other Persons, and all other Things about that Affair. Observe another Thing of Sir *Thomas Chamberlain*: Says he, We suspected him from the first: We could not examine any but he would be thrusting in, and listening. I say, admit that you should be by the Evidence persuaded he had a hand in the Business, you must find him a Principal: For nothing in the World more ordinary, if a Man intend to commit such a Felony or Burglary, he will be sure to have Witnesses to prove he was here, or in such a Place, at the Time when this Robbery was committed. By all that I can guess, and I believe that I guess right, this Robbery was between Eight and Nine a-clock at Night. When the Constable came to Mr. *Turner*, no doubt, as it was his wisest Way, he was then in bed; but can prove nothing at all else. The Truth is, upon all that he hath said himself, if it be true as he hath said, he hath made himself a direct Accessary to a Felony: For first of all, being examined before a Justice of Peace, Sir *Thomas Aleyn*, he said himself that the Money he carried, was the Money he had of a Goldsmith: Truly his whole Story is a direct Romance. This Man must go upon the Friday Night, about Eleven or Twelve a-clock: And there is a Proverb of a *Blind-Man's* catching a *Hare*; if it can be applicable to any thing, it must be to this. He must go between Eleven and Twelve a-clock at Night without a Lanthorn, a good way above his own House, and there he must walk and think some *Mephistophilus* should come and tell him who is the Man: That he should take him by the Throat, though he could call two more with one Whistle, and there get him to deliver the Money: Truly he was a very noble and ingenious Thief. But all this you must take upon his own Word. Now he knows the Money was discovered, then it was a Merchant's that had failed, and must be secured for the Use of his Wife and Children. If you do believe all this that he hath said, he was neither Principal nor Accessary to this Felony, but Accessary enough to *Wild*; but that's not the present Business. It is whether upon all these Circumstances, the Money having been found with them, he being the Man that brought the Money, and his Wife the Jewels, whether you do believe the rest of the Story he hath made for himself? If you believe he had a hand in the Business, you must find him as Principal. I shall desire a little further Direction: Suppose it were as he says, That one was within, and he

opens the Door, and lets in others, if himself was one that did come in, I take it to be Burglary in them all; it was an unlawful coming in. So that upon all these Circumstances, first, whether you do believe that he had a hand in it, or no, or this fine Story that is made; next, whether you do believe this was one that was there; you must believe him guilty as Principal. But I leave it to you.

Ld Ch. Just. *Hyde*. To the last I say, If one comes in by Day, with a purpose before-hand to rob the House by Night, if he opens the Door, which is almost impossible here, because the Man swears it was double-lock'd, it must be opened with a Key; if he opened the Door, and the rest come in and rob him, that is Burglary in them all.

Thereupon the Jury withdrew; and after near an Hour's Consultation, they returned to the Court, and took their Places: Their Names being called, they severally answered.

Cl. of the Peace. Are ye all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Foreman.

Clerk. Set *James Turner* to the Bar. Look upon him: How say you? Is he guilty of the Felony and Burglary whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

John Turner, William Turner, Mary Turner, and Ely Turner, were by the said Jury severally acquitted.

January the 19th.

In the Morning the said *William Turner* was again arraigned and indicted for the felonious stealing of 45*l.* of the Moneys of *William Hill*, Servant to the said *Mr. Tryon*, and stolen in the said Robbery of *Mr. Tryon*; but the Trial thereof was deferred till the next Sessions.

Afterwards, some of the Justices of the Bench having received Intimation that Lodgings were lately taken in *Duke's-Place* by the said *Col. Turner, William Turner*, and others, for the carrying on of the aforesaid Robbery; the said *Col. Turner* and *William Turner* were severally examined by that worthy Gentleman *Sir Thomas Aleyn*, who with great prudence had managed this Affair, who pressed several Questions to the said Prisoners; who finding their said Design fully discovered, declared as followeth:

The Examination and Confession of Colonel James Turner and William Turner, two of the Persons in the Robbery of Mr. Tryon, taken by Sir Thomas Aleyn Knight and Baronet, in the Presence of the Right Honourable Sir Anthony Bate-man Knight, Lord Mayor of the City of London, Sir Richard Brown Knight and Baronet, Sir John Robinson Knight and Baronet, Sir Rich. Ford and Sir Rich. Rives Knights, Sheriffs of the City of London, the 19th of Jan. 1663.

THAT the contriving and setting of this Robbery was wholly acted by *Col. James*

Turner; and that it was in agitation about *Christmas* last, and should have been put in execution a Week sooner, but that the other Friend, whom *Col. Turner* brought, was drunk, and one *White*, who was one of the Actors, would not venture his Life with him: That there were four Persons that robbed him, *Col. James Turner, William Turner, White* a Solicitor, and *White's* Friend, whose Name they knew not: That upon Thursday the 7th Day of *January* instant, *Col. James Turner, William Turner, White*, and the other Person, whose Name they knew not, met at the *Red-Lion* in *Bishopsgate-Street*, near to *St. Helen's*, about Three of the clock in the Afternoon, where they dined: *Col. Turner* fetched a Neck of Veal from the Cook's for their Dinner; and then they agreed to rob *Mr. Francis Tryon* (who lives in *Lime-Street*) that Night, and went to meet again at the same House by Six of the clock that Evening: But the Room where they were to meet being taken up, they went over to the *Four Swans*, or the *Green Dragon*, and there they all staid till Eight of the clock. *Col. Turner* did then assure them that the Doors should be opened; for that by his own Confession he had got the Impression of the Key of the Door in Wax, and had another Key made by it; but knew not the Smith that made the Key. From that Place *Col. Turner* carried them to the new Market in *Leadenhall*, where they sat upon the Stalls for the space of half an Hour; and then he came unto them, and told them the Man and Maid were now gone out, and that now was their Time. Thereupon *Col. Turner* opened the Door with his Key, and let them in. Then they went up the Stairs, *Col. Turner* leading the way. He lit a Candle in the Kitchen, and went up into *Mr. Tryon's* Chamber, all four of them. *Col. Turner* went near the Bed's-feet, the Curtains being drawn close. *White* and the other Persons put a Cloth into *Mr. Tryon's* Mouth, stopp'd it, and bound his Feet and his Hands. *Col. Turner* brought down the Key of the Ware-House and the Counting-House out of his Pocket, opened the Ware-House Door and the Counting-House, and took the Keys of the Iron Chest, and took out the Money and the Jewels. *William Turner* carried two Wallets with four Bags of Money, as he conceives; And *Col. Turner* said that the said *William Turner* carried four hundred Pounds, and *White* carried two Wallets more, supposed to be four Bags of some hundred Pounds. *Col. Turner* and the other Person carried the rest of the Money, only *Col. Turner* carried away the Jewels in his two Bags. That *William Turner* did not see any Money, but as they said it was Money. They did not stay in *Mr. Tryon's* House above an Hour. That they carried all the aforesaid Money and Jewels into a Lodging in one *Nicholas Hickenson's* House in *Lousy-Lane* in *Duke's-Place*, which they hired some Days before, pretending it for the Use of a Master of a Ship, his Mate, Purser, and Boatswain. They carried the Money in about Ten a-clock at Night: When the Maid let them in, they blew out the Candle, carry'd up the Money and Jewels, *William Turner* going under the Name of Purser. *Colonel Turner* and *William Turner* came away that Night, and left the Money and the Jewels there. The next Morning *Col. Turner* fetch'd away the Money and Jewels at five Turns to his own House.

House. And saith, That *William Turner* was to have a hundred Pounds of the Money for his Pains, *White* and his Friend twenty Pounds a-piece for their Pains, and Colonel *Turner* was to have the rest. That *William Turner* knew not of any of the Jewels, nor *White*, none but Col. *Turner*. That after that Night *William Turner* never saw Col. *Turner*, nor the other Persons in the Robbery, till himself with Col. *Turner* and others were arraigned for the Fact at *Newgate*. Neither did the said *William Turner* see any Money or Jewels opened; neither did he receive one Penny of the Money; neither was he in the Counting-House of Mr. *Tryon*. That neither Col. *Turner's* Wife nor Sons knew of this Robbery; only that they helped him to remove the Money away on Saturday Morning. That the Money was in the House on Friday at Night, when the Constable and Marshal searched his House; but they had hid them. That Col. *Turner* being asked where the Jewels were on Saturday Morning, said, He did deliver them at Six of the clock to *White* in both the Bags. That the Carcanet of Rubies was not in those Bags. That Col. *Turner*, in the conclusion, confessed, That he had not done that he did, but that he did lately understand that another Person was made Executor, and that he was resolved to have somewhat.

After Colonel *Turner's* Examination, Sir *Thomas Aleyn* told Colonel *Turner*, that the first part of Repentance was Confession, the second Restitution; and he being a convict Person, and in all probability not likely to continue long in this World, it were much better for him to restore what was another Man's, than to think to enrich his Wife and Children, by leaving them that which he knew was none of his; and that one Penny of his own Estate left them, would continue longer with them than a Pound of another Body's: and thereupon he was pressed to restore Mr. *Tryon* the rest of his Money, and the Carcanet of Rubies and Diamonds yet in his custody. This had such a present Influence upon Mr. *Turner*, that he said he would immediately go and fetch the Carcanet; which he accordingly did, and delivered the same into the hands of Sir *Richard Rives*, one of the Sheriffs.

January 19, in the Evening.

Clerk. Set *James Turner* to the Bar. *James Turner*, hold up thy Hand: Thou standest here convicted of Felony and Burglary, for the felonious stealing of the Goods and Money of *Francis*

Tryon; what canst thou say, why the Court should not give thee Judgment to die according to Law?

Col. *Turner*. My Lord, I humbly desire your Honour, and the Honourable Bench, you would be pleased to grant me a Reprieve.

J. *Howel*. That we cannot do; the Court must give Judgment upon you: If you can by any means prevail with his Majesty to do it, you may use your Interest; but the Court cannot do it.

Col. *Turner*. I desire your Honours I may be transported.

J. *Howel*. That likewise is in the power of his Majesty: That he may do, if he please. It is not in the power of the Court: We have nothing to do but to give Judgment.

Col. *Turner*. You do it with others.

J. *Howel*. No, not in this Case of Burglary; but leave that to his Majesty's mere Mercy and Grace.

Col. *Turner*. My Lord, I shall humbly desire that my Wife and the two Youths may be discharged.

J. *Howel*. She is found Not Guilty; and therefore she shall have her Acquittal upon the Discharge of the Goal. Those that are acquitted, they must be discharged, if the Court do not see Cause for their further Detention.

Col. *Turner*. I pray the young Man and my Wife may be discharged.

J. *Howel*. Whosoever are found Not Guilty, must have their Discharge according to Law.

Col. *Turner*. My Lord, I hope the Bench is satisfied about the young Man.

J. *Howel*. Say no more.

Col. *Turner*. Your Honour's humble Servant.

Clerk. Set *James Turner* to the Bar.

J. *Howel*. I must pronounce the Judgment of the Court, which is, *That you go the Place from whence you came, and so to that Place of Execution which shall be appointed to you by Authority, there to be hanged by the Neck till you be dead; and the Lord have Mercy on your Soul.*

Accordingly the said Col. *James Turner* was drawn in a Cart from *Newgate* to *Lime-Street-End* in *Leadenhall-Street*, the 21st of *January*, and was there executed on a Gibbet erected for that purpose.

When he was come to the Place of Execution, among other things he declared, *That Whatever Crimes he had been guilty of, yet he had this to comfort his Mind, that he never went into a Church in his Life without pulling his Hat off.*



LXIV. *The Trials of JOHN TWYN* Printer, for High-Treason; of THOMAS BREWSTER Bookseller, SIMON DOVER† Printer, NATHAN BROOKS Bookbinder, for Misdemeanours; at the Old-Baily, the 20th and 22d of February 166³/₄. 16 Car. II.*



IV E several Indictments being drawn up, viz. one of High-Treason, against *John Twyn* Printer; and the other four for Sedition, viz. two against *Thomas Brewster* Bookseller, one against *Simon Dover* Printer, and one against *Nathan Brooks* Bookbinder; were presented to the Grand Inquest in *London*, at the Sessions of Goal-Delivery of *Newgate*, holden at *Justice-Hall* in the *Old-Baily*, the 19th Day of *February* 1663. Except that against *Brooks*, which was found the Day following, by the same Inquest. And after divers Witnesses were sworn and examin'd before the said Grand Inquest, the said Bills of Indictment were severally returned *Billa Vera*.

The Names of the said Grand Inquest being as followeth, viz.

<i>Arthur Jourdan,</i>	<i>Roger Hart,</i>
<i>Arthur Browne,</i>	<i>John Watson,</i>
<i>Simon Rogers,</i>	<i>Christopher Pits,</i>
<i>James Whetham,</i>	<i>Thomas Gerrard,</i>
<i>Ralph Blore,</i>	<i>John Cropper,</i>
<i>Isaac Barton,</i>	<i>Thomas Partington,</i>
<i>Roger Locke,</i>	<i>Ralph Coppinger,</i>
<i>Thomas Cooper,</i>	<i>Matthew Pelazer.</i>
<i>Samuel Taylor,</i>	

At Justice-Hall in the Old-Baily, Febr. 20, in the Morning.

THE Court being set, Proclamation was made: 'O Yes! All manner of Persons that have any thing more to do at this Sessions of the Peace, and Sessions of Oyer and Terminer, held for the City of *London*, and Sessions of Goal-Delivery holden for the City of *London* and County of *Middlesex*; draw near and give your Attendance, for now the Court will proceed to the Pleas of the Crown of the said City and County.'

God save the King.

Silence commanded.

Clerk of the Peace. Set *John Twyn* to the Bar: [who was set there accordingly.] *John Twyn*, hold up thy Hand.

Twyn. I desire to understand the meaning of it. [But being told he must hold up his Hand in order to his Trial, he held it up.]

Clerk, &c. 'Thou standest indicted in *London* by the Name of *John Twyn*, late of *London* Stationer, for that thou as a false Traitor against the most Illustrious *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. thy supreme and natural Lord and Sovereign — not having the Fear of God in thine Heart, nor weighing the Duty of thy Allegiance, but being moved and seduced by the Instigation of the Devil; and the cordial Love, true Duty, and natural Obedience, which true and faithful Subjects towards our Sovereign Lord the King bear, and of right ought to bear, altogether withdrawing; mind-ing and with all thy force intending the Peace and common Tranquillity of this Kingdom to disturb; and Sedition and Rebellion within these his Majesty's Kingdoms to move, stir up, and procure; and Discord between our said Sovereign and his Subjects to make and move, the 27th Day of *October*, in the Year of the Reign of our said Sovereign Lord *Charles* the Second, by the Grace of God, &c. the 15th, at the Parish of *St. Bartholomews*, in the Ward of *Farringdon without*, *London*, aforesaid, traitorously didst compose, imagine, and intend the Death and final Destruction of our said Sovereign Lord the King, and the Antient and Regal Government of *England* to change and subvert; and our said Sovereign Lord the King of his Crown and Regal Government to depose and deprive. And these thy most wicked Treasons and traitorous Imaginations to fulfil, thou the said *John Twyn*, the said 27th Day of *October*, in the Year aforesaid, in the Parish and Ward aforesaid, advisedly, devilishly, and maliciously didst declare, by imprinting a certain Seditious, Poisonous, and Scandalous Book, Entitled, *A Treatise of the Execution of Justice*, &c. — In which said Book, amongst other things, thou the said *John Twyn*, the 27th Day of *October*, in the Year aforesaid, in the Parish and Ward aforesaid, falsely, maliciously, and traitorously didst imprint, &c. — against the Duty of thy Allegiance, and the

* Kelyng's Reports. 22.

† Ibid 23.

' the Statute in that case made and provided;
' and against the Peace of our said Sovereign
' Lord the King, his Crown and Dignity.'

What say'st thou, *John Twyn*, art thou Guilty of this High-Treason whereof thou standest indicted, or Not Guilty?

Twyn. I desire leave to speak a few words: My Lord, I am a very poor Man; I have been in Prison several Months——

Clerk. Are you Guilty, or Not Guilty?

Twyn. With all due Submission to your Honours, I desire to speak a few words——

Ld Ch. Just. *Hyde*. You must first plead to your Indictment, and then you may say what you will; that's the Rule of the Law. We receive no Expostulations till you have pleaded to the Indictment, Guilty or Not Guilty.

Twyn. I do not intend to answer to the Indictment, by what I shall now say; I am a poor Man, have a Family and three small Children, I am ignorant of the Law, and have been kept Prisoner divers Months——

Ld Ch. Just. *Hyde*. Pray plead to the Indictment; you shall be heard, say what you will afterwards.

Twyn. I humbly thank you, my Lord.

Clerk. Are you Guilty, or Not Guilty?

Twyn. I beseech you to allow me Counsel, and some Consideration; I desire it with all Submission.

Ld Ch. Just. *Hyde*. You must plead first; then ask what you will.

Clerk. Are you Guilty, or Not Guilty?

Twyn. Not Guilty of those Crimes.

Ld Ch. Just. *Hyde*. God forbid you should.

Clerk. How wilt thou be try'd?

Twyn. I desire to be try'd in the presence of that God that is the Searcher of all Hearts, and the Disposer of all things.

Ld Ch. Just. *Hyde*. God Almighty is present here; there is no other Trial by the Law of *England*, but by God and the Peers, that is the Country, honest Men. You shall have all your Challenges, and all that's due to you, by the help of God; we are bound to be your Counsel, to see you have no wrong: therefore put yourself upon your Trial, say how you will be try'd.

Twyn. I desire to be try'd in the Presence of God.

Ld Ch. Just. *Hyde*. So you shall: God Almighty is present here, looks down, and beholds what we do here; and we shall answer severely, if we do you any wrong. We are as careful of our Souls, as you can be of yours. You must answer in the words of the Law.

Twyn. By God and the Country.

Clerk. God send thee a good Deliverance.

Ld Ch. Just. *Hyde*. Now say what you will.

Twyn. I am a very poor Man.

Ld Ch. Just. *Hyde*. Nay, let me interrupt you thus far: Whatever you speak in your Defence, to acquit yourself of this Crime, that you may reserve till by and by. This is but an Arraignment; afterwards the Evidence for the King is to be heard, then make your Defence. If you have any Witnesses on your part, let's know their Names, we'll take care they shall come in. If I did not mistake, you desired to have Counsel; was that your Request?

Twyn. Yes.

Ld Chief Justice *Hyde*. Then I will tell you,

we are bound to be of Counsel with you, in point of Law; that is, the Court, my Brethren and my self, are to see that you suffer nothing for your want of Knowledge in Matter of Law; I say, we are to be of Counsel with you. But for this horrid Crime, (I will hope in Charity you are not Guilty of it, but if you are) it is the most abominable and barbarous Treason that ever I heard of, or any Man else: The very Title of the Book (if there were no more) is as perfectly Treason as possibly can be. The whole Book through, all that is read in the Indictment, not one Sentence, but is as absolute High-Treason as ever I yet heard of. A Company of Mad-brains, under pretence of the Worship and Service of God, to bring in all Villanies and Atheism, (as is seen in that Book.) What a horrid thing is this! But you shall have free Liberty of defending your self. To the Matter of Fact, whether it be so or no: In this Case the Law does not allow you Counsel to plead for you; but in Matter of Law, we are of Counsel for you, and it shall be our Care to see that you have no Wrong done you.

Clerk. Set *Simon Dover* to the Bar: [*Who being set, his Indictment was read to the purpose following.*]

Thou standest indicted in London, by the Name of Simon Dover, late of London Stationer, for that thou, &c. the 15th Day of Febr. in the 13th Year of the Reign, &c. at the Parish of St. Leonard's Foster-lane, in the Ward of Aldersgate, London, falsely, maliciously and wickedly, didst imprint a certain false, malicious, scandalous and seditious Book, intituled, The Speeches and Prayers of some of the late King's Judges, &c. and the same didst sell and utter, against the Duty of thy Allegiance, &c. How sayest thou, Simon Dover, art thou Guilty of this Sedition and Offence, whereof thou standest indicted, or Not Guilty?

Dover. My Lord, and the Honourable Bench, I desire I may be heard a few Words——

Ld Ch. Just. *Hyde*. When you have pleaded, you shall.

Dover. I shall be willing to plead——

Ld Ch. Just. *Hyde*. You must either confess it, or plead Not Guilty. I hope you are Not Guilty of this foul Crime.

Dover. I am not, by the Laws of *England*, Guilty.

Ld Ch. Just. *Hyde*. You shall be tryed by the Laws of *England*, whether you are Guilty or no.

Dover. I am willing to be so, and I am glad I am come before you to that purpose, having been long a Prisoner: I am Not Guilty of any thing in this Indictment, neither as to Matter, Time nor Place.

Ld Ch. Just. *Hyde*. What do you mean by Time and Place?

Dover. I am not guilty in *Manner* or *Form*. And now, my Lord, I being altogether ignorant of the Law, I humbly beg Counsel, and a Copy of my Indictment: I hope I shall not be destroyed, because I am ignorant of the Law: I have been eighteen Weeks close Prisoner.

Ld Ch. Just. *Hyde*. What would you have?

Dover. I desire Time, and Counsel assigned me, and a Copy of my Indictment.

Ld C. Just. *Hyde*. For a Copy of your Indictment, though it be for a foul Offence, yet (in favour to you, it being not made so Capital as the other) we cannot deny it you: For Counsel you may have what you will, we need not assign it. [Make him a Copy,] but I will tell you, we shall try it now.

Dover. I do protest I knew not what I came for; I never imagined what my Indictment was, I know not what there's in't—

Ld Ch. Just. *Hyde*. You shall have a Copy made presently. If you have Counsel or Witnesses, send for them; we must try you to-day; but you will have some time, for we will begin with the other.

Dover. I beg I may have a Copy of the Indictment in *English*, I cannot understand *Latin*.

Ld Ch. Just. *Hyde*. That that is against you, is in *English*; the *Latin* signifies no more, but that you did seditiously and maliciously print all that which is in *English*.

Dover. I hope I have done nothing, but I shall acquit my self of.

Ld Ch. Just. *Hyde*. I hope you may; but we can give you nothing but a Copy of the Record: send for your own Clerk to understand it.

Clerk. Set *Thomas Brewster* to the Bar: [*Who was set; and then his Indictment was read, which was;*]

That be the said Thomas Brewster, late of London, Stationer, not having, &c. [in the Form aforesaid] the 15th Day of February, &c. at the Parish of Little St. Bartholomew's, in the Ward of Faringdon without, London, maliciously, &c. did cause to be imprinted the aforesaid Book of Speeches and Prayers, &c. and the same did sell and utter, against the Duty, &c.

Who being demanded, Whether he was guilty of that Sedition and Offence? answered, Not Guilty.

Clerk. How will you be tryed?

Brewster. By God and the Country.

Clerk. God send thee a good Deliverance.

Ld Ch. Just. *Hyde*. Say what you will now.

Brewster. May it please your Lordship, I am wholly ignorant of the Proceedings of the Law; I have been a close Prisoner these eighteen Weeks, no body to advise with me, scarce my Wife suffered to come to me; I desire some time to take advice.

Ld Ch. Just. *Hyde*. I doubt we shall not be able, if you mean till next Sessions—

Brewster. No, my Lord, I have had too long Imprisonment already, would I had been here the first Sessions after I was a Prisoner.

Ld Ch. Just. *Hyde*. If you desire a Copy of the Indictment and Counsel, you shall have it.

Brewster. I humbly thank you; but I must have time to consult them, or they will do me little good.

Ld Ch. Just. *Hyde*. If you have any Friends or Witnesses, you may send for them.

Brewster. I thank you, my Lord.

Clerk. *Thomas Brewster, thou standest again indicted in London by the Name of, &c. for that thou not having, &c. the 10th Day of July, in the 13th Year, &c. at the Parish of Little St. Bartholomew's, in the Ward of Faringdon without,*

London, &c. falsely, maliciously, scandalously and seditiously, didst cause to be imprinted a Book, intitled, The Phœnix, or the Solemn League and Covenant, &c.—And the said Book didst sell and utter, against the Duty, &c. How sayest thou? Art thou guilty of this Sedition and Offence whereof thou standest indicted, or not Guilty?

Brewster. Not Guilty, my Lord.

Clerk. How will you be tryed?

Brewster. By God and the Country.

Clerk. Set *Nathan Brooks* to the Bar.

Thou standest indicted in London by the Name of Nathan Brooks, late of London, Stationer; not having, &c. [The same as to Make, Time and Place, with that of Dover's] and knowing the said Book to be scandalous and seditious, did sell, utter and publish the same, against the Duty, &c. How sayest thou, Nathan Brooks, art thou Guilty of this Sedition and Offence whereof thou standest indicted, or Not guilty?

Brooks. Not Guilty.

Clerk. How will you be tryed?

Brooks. By God and the Country.

Clerk. God send thee a good Deliverance.

Ld Ch. Just. *Hyde*. If you desire to have a Copy of your Indictment and Counsel, you may have it.

Brooks. I am a poor Man, I have not Money to get Counsel; I hope I shall not want that that belongs to me by Law, for want of Money.

Ld Ch. Just. *Hyde*. You shall not, by the Grace of God.

Clerk. Set *John Twyn, Simon Dover, Thomas Brewster and Nathan Brooks*, to the Bar.

Clerk. *John Twyn*, those Men that you shall hear called, and personally appear, must pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if you will challenge them or any of them, you must do it when they come to the Book to be sworn, before they be sworn. And you that are for Seditions and Offences, look to your Challenges.

Dover. We desire we may have a Jury of Booksellers and Printers, they being the Men that only understand our Business.

Ld Ch. Just. *Hyde*. There are those already that understand it as well as Booksellers or Printers; besides, half the Jury are such, and they are able to make the rest understand it: but you may challenge whom you will.

The Jury were,

<i>William Samborne,</i>	<i>William Hall,</i>
<i>William Rutland,</i>	<i>John Williams,</i>
<i>Thomas Honylove.</i>	<i>James Fleisher,</i>
<i>Robert Lucas,</i>	<i>Simon Waterston,</i>
<i>Robert Beversham,</i>	<i>Samuel Thomson,</i>
<i>Richard Royston,</i>	<i>Thomas Roycroft.</i>

Who were severally sworn by the Oath following:

You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoners at the Bar, whom you shall have in charge, according to your Evidence. So help you God.

All

All Four. We are all satisfied with the Jury.

Clerk. Cryer, make Proclamation. O Yes! If any one can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this Inquest be taken between our Sovereign Lord the King and the Prisoners at the Bar, let them come forth, and they shall be heard; for now the Prisoners stand at the Bar upon their Deliverance; and all others that are bound by Recognizance to give Evidence against any of the Prisoners at the Bar, come forth and give Evidence, or else you will forfeit your Recognizance.

Clerk. *John Twyn*, hold up thy Hand. You of the Jury, look upon the Prisoner, and hearken to his Cause; you shall understand that he stands indicted in *London* by the Name of *John Twyn*, late of *London*, Stationer: [*Here the Indictment is read over again.*] Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty; and for his Trial, hath put himself upon God and the Country, which Country you are: Your Charge is to enquire whether he be guilty of the High-Treason, in Manner and Form as he stands indicted, or not guilty: if you find him guilty, you shall inquire what Goods and Chattels, Lands and Tenements he had at the time of committing the said Treason, or at any time sithence. If you find him not guilty, you shall enquire whether he fled for it; if you find that he fled for it, you shall inquire of his Goods and Chattels, Lands and Tenements, as if you had found him guilty: If you find him not guilty, nor that he did fly for it, say so, and no more, and hear your Evidence.

Mr. North, Barrister of the Law. *John Twyn* stands here indicted, for that he as a false Traitor to the most Illustrious *Charles* the Second, &c. not having the Fear of God before his Eyes, nor weighing the Duty of his Allegiance, &c. [*Here was opened the Form of the Indictment.*] To which he hath pleaded Not Guilty; if there shall be sufficient Evidence given you of the Charge in the Indictment, you must do the King and the Nation that Justice, as to find him guilty, that Sentence of Law may pass on him.

Mr. Serjeant Morton. May it please your Lordships, and you Gentlemen that are sworn of this Jury, I am of Counsel with the King against *John Twyn*, the Prisoner here at Bar, who stands indicted of a most horrid and damnable Treason: It is, the compassing and imagining the Death of the King, to deprive him of his Crown and Royal Government, and to alter and change the ancient Legal and Fundamental Government of this Kingdom; which he has endeavoured to do, and did intend to do, by printing a traitorous and seditious Book, which in it self contains as many and as great Treasons, as it was possible either for the Malice of the Devil, or the corrupt and treasonable Thoughts of blood-thirsty Men to invent: It contains Treasons against the King in his own Royal Person; against his Government, both Ecclesiastical and Civil; full of Treasons, (as my Lord Chief Justice was pleased to observe to you) Treasons against the Queen, Scandals against all manner of Professions both in Church and Kingdom, of Magistracy and Ministry. My Lord, there are in this Indictment thirteen Paragraphs of that treasonable Book recited; and

each of them contains as many Treasons as there be Lines in it. Nay, my Lord, this treasonable Book was intended to set a Flame in this Nation, to raise and stir up Rebellion in this Kingdom against the King and his Government. I shall observe to your Lordship the Time when it was to be printed; it was in the beginning of *October*, your Lordship knows, and I do not doubt but the Jury have heard, that there was a great and dangerous Design in this Nation, set on foot by Men of dangerous Principles, to imbroid this Nation in a new War, for the Destruction of the King and his Government. It was executed in part, as far as Time and other Circumstances would give way and leave to the Undertakers, (the 12th of *October* last;) and, my Lord, it was proved upon the Execution of a Commission of Oyer and Terminer at *York*, that there was a Council here in *London*, that sat to prepare Matter for an Universal Rebellion all *England* over. They sent their Agitators into the *North*, *West*, all Parts, to give notice to their Party to be ready to rise at a certain Time: several Days were appointed, but it seems they could not be ready till that 12th of *October*; for the seditious Books that were to lead on that Design, and the Libels and Declarations could not be printed before that Day: and truly that had been printed and published too, if there had not been great Diligence used by the King's Agents and Ministers, to take them just as they were preparing it. This Book, Gentlemen, doth contain a great deal of Scandal upon the King's Government, dispersing false and base Rumours; to the prejudice of it. It is a Rule in my Lord *Coke*, That the dispersing of false and evil Rumours against the King and Government, and Libels upon Justices of the Kingdom, they are the Forerunners of Rebellion.

We shall now go to the Proof: We shall prove that this Prisoner at the Bar, to print this Book, had two Presses in one Room; That he himself did work at one of those Presses, his Servants at the other, by his Command, and in his Presence; That he did compose part of it, print the Sheets, correct the Proofs, and revise them all in his own House, which were corrected and brought back into the Work-house by himself, in so short a time, that they could not be carried abroad to correct, so that he must needs correct them himself; That this Work was done in the Night-time, (and it was proper, it was a Deed of great Darkness, and not fit indeed to see the Light; and it was well it was strangled in the Birth, or else, for ought I know, we might by this time have been wallowing in our Blood.) We shall make it appear, that this Man, when *Mr. L'Estrange* came to search his House, brake the Forms, conveyed away as many of the Sheets as he could from the Press to other Places; yet notwithstanding, God's Providence was so great in the Thing, that he left there three or four Sheets, which *Mr. L'Estrange* then seized on, and many more within a little time after: And somewhat of the same Matter remained upon part of a Form of Letter, which his Haste would not give him leave to break. When he was charg'd with it by *Mr. L'Estrange*, he confessed that he had printed some Sheets of this seditious Book; and being demanded by *Mr. L'Estrange*, What he thought of it? He told him, He thought it was mettlesome Stuff: he had great Joy in it; he

confessed he had received Money for printing of this; and much other Matter, taken upon Examination before Mr. Secretary. We shall call our Witnesses; I should have observed to you, That this Man would have it done with all the privacy that could be, and to be done forthwith; there was great Haste of it, about the beginning of *October*, and the Design in the *North* was upon the 12th; so that it was clearly intended for that Design.

Several Witnesses were sworn.

Joseph Walker. My Lord, whereas my Master is indicted for printing this Book ———

Ld Hyde. Your Master! who is your Master?

Walker. He at the Bar,

Ld Hyde. What say you of it?

Walker. I desire to see the Book; [*it was shewed him.*] About the four first Pages of this Treatise I composed.

Ld Hyde. Who delivered it to you to compose?

Walker. My Master delivered the Copy to me.

Ld Hyde. What do you mean by composing?

Walker. Setting the Letters.

Ld Hyde. Well, and you set the Letters to print according to the Copy; and you had it of your Master, had you?

Walker. Yes, my Lord; but all this Copy we did not print.

[*Part of the Copy in Manuscript being shewed him, he said, He composed by that Copy.*]

Serjeant Morton. How much did you print?

Walker. About three Sheets.

Serj. Morton. How many of those did your Master compose?

Walker. Truly, Sir, I cannot tell.

Ld Hyde. Did he compose one?

Walker. As to a whole one, I cannot say.

* *Mr. Serjeant Wilde.* *Mr. Recorder.* * Did he compose the Title?

Walker. Here is no Title.

Mr. Recorder. No? read the top.

Walker. A Treatise of the Execution, &c. [*He reads the Title.*]

Mr. Recorder. Did your Master compose that?

Walker. No, I did.

Ld Hyde. Did your Master give you that to compose?

Walker. Yes.

Serj. Morton. Who composed the second, third and fourth Sheet?

Walker. I composed some of them, but to particularize, I cannot.

Ld Hyde. Who gave you what you did?

Walker. My Master.

Ld Hyde. Can you turn to any part of that you did compose?

Walker. I cannot tell that.

Ld Hyde. You composed, you say, four Pages: there are eight in a Sheet: who composed the other of the same Sheet?

Walker. I think my Master did.

Ld Hyde. At the same Time, and in the same Room with you?

Walker. He wrought not in the same Room.

Ld Hyde. After you had stamp'd the Sheet, who did peruse and over-read it, to see if it were right?

Walker. I carried them into the Kitchen, and laid them down upon the Dresser by my Master.

Ld Hyde. Who compared them?

Walker. I know not.

Ld Hyde. Who brought them back to you?

Walker. My Master brought them into the Work-house, and laid them down.

Ld Hyde. Was there any body in the House that might correct it?

Walker. Not that I saw.

Ld Hyde. When you had carried a Sheet down, how long was it e'er it was brought back again?

Walker. About an Hour, or an Hour and a half.

Ld Hyde. Was there any body in the House besides you and your Master?

Walker. There was my Fellow-Apprentice, and the Woman that keeps the House.

Ld Hyde. Were there no Strangers there?

Walker. No, my Lord.

Mr. Recorder. Were they printed in your Master's House?

Walker. Yes.

Serj. Morton. What Room?

Walker. In the Press-Room.

Serj. Morton. Did your Master work at the Press about this Work any part of the time?

Walker. Yes, I saw him beat some Sheets.

Ld Hyde. When you had printed one Sheet, were there not some Mistakes of the Letters to be mended?

Walker. Yes, there were Literals.

Ld Hyde. Who made the Amendment?

Walker. Upon my Oath I cannot tell.

Ld Hyde. Do you believe it to be your Master's?

Walker. I cannot tell that.

Ld Hyde. Have you seen your Master write heretofore?

Walker. I have seen him write, but because I have heard of them that could counterfeit Mens Hands, I dare not swear it was his Writing.

Ld Hyde. Were the Amendments that were brought back, like his Hand?

Walker. The Letters were something like them, but I cannot swear positively that they were his.

Ld Hyde. No, that you cannot, unless you saw him write them; but was it like his Hand?

Walker. It was not much unlike his Hand.

Mr. Recorder. Did not your Master use to correct other Works before this?

Walker. Yes.

Mr. Recorder. Then by the Oath that you have taken, were not the Corrections of this Book like those of other Corrections by his own Hand?

Walker. I know not that.

Mr. Recorder. Did any body correct Books in your House but your Master?

Walker. No, Sir.

Serj. Morton. Did you see your Master with Copy?

Walker. Yes, he had Copy before him.

Serj. Morton. What time was this printed? by Night or by Day?

Walker. In the Night-time.

Serj. Morton. What Directions did your Master give you about printing it; did he direct any Privacy?

Walker. He was not much desirous of that.

Mr. Recorder. At what time did you work about it?

Walker. In the Morning, from two till four or five.

Serj. Morton. Pray, Sir, thus; were you in the House when Mr. *L'Estrange* came up?

Walker. Yes.

Serj. Morton. Were you at work then or before?

Walker. Not when he was above, but immediately before I was.

Mr. Recorder. You are not bound to conceal Treason, though you are bound to keep your Master's Secrets.

Serj. Morton. What were you then at work upon?

Walker. Upon the Signature D, the Sheet D of this Treatise.

Serj. Morton. What did your Master say, when you told him Mr. *L'Estrange* was below?

Walker. Very few words; I cannot be positive in them.

Serj. Morton. To what purpose were they?

Walker. Hearing some body knock at the Door, I went down into the Composing Room, and looked through the Window, and saw People; I imagined Mr. *L'Estrange* was there, and I told my Master: whereupon he said, *He was undone*, or to that effect.

Mr. Recorder. Did he not wish you to make haste in composing it?

Walker. No, he did not.

Mr. Recorder. How long had you been at work upon it? how many Days?

Walker. I cannot tell justly.

Mr. Recorder. You can guess.

Walker. About three or four Days.

Mr. Recorder. Did not your Master work in that time?

Walker. He was in the Work-house, and did set Letters.

Mr. Recorder. Did he not likewise print?

Walker. Yes, he did.

Serj. Morton. Did not you, by his Direction, break the Form when Mr. *L'Estrange* came to search?

Walker. I brake one indeed.

Serj. Morton. What became of the other?

Walker. My Fellow-Apprentice brake it.

Serj. Morton. By whose Direction?

Walker. I had no order for it; I brought it down, and went to set against a Post, and it fell in pieces.

Serj. Morton. Did you ask your Master who delivered him this Copy to print?

Walker. I did ask him two several times; but he made no Answer.

Ld Hyde. Did he not say, *He would not tell you*; or that it was no matter to you; nor nothing?

Walker. Yes, he did afterwards say, *It was no matter to me*.

Mr. Recorder. Did not your Master nor Fellow-Apprentice tell you who brought the Copy?

Walker. No.

Mr. Recorder. And did not you know?

Walker. No.

Serj. Morton. Was he not used to tell you the Authors of Books that you printed?

Walker. The Authors he did not; but for whom they were printed he used to tell me. My Lord, I humbly beg pardon for what I did, I was his Apprentice.

Ld Hyde. How many Sheets did you Print?

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Walker. Two Reams on a Sheet, which makes a Thousand.

Ld Hyde. The first Page, being the Title of it, your Master brought to you to compose; at the same time when you were composing one part, your Master was composing another part of the same Sheet in the next Room; and part of it your Master did print as well as compose: I think you said this?

Walker. Yes.

Ld Hyde. Likewise that the Proofs were carried to him to overlook, and he brought them back within an Hour, or an Hour and half after, and laid them down in the Work-house; and that you saw the Hand of the Amendments, but you cannot swear it was his, only you say that it was not unlike it; and that he had corrected former Sheets that you had printed, and that the Hand with which he corrected others, and this, was alike: and that there was no Stranger in the House to correct it?

Walker. Not that I saw.

Ld Hyde. This is the Substance of what you said?

Walker. Yes.

Mr. Recorder. Did your other Man, or you, ever correct?

Walker. No.

Mr. Recorder. Did he use other Correctors at any time?

Walker. Yes, about some Books.

Mr. Recorder. What Books?

Walker. Hooker's Ecclesiastical Polity.

Ld Hyde. You did rise to work at Two of the clock in the Morning about it; and your Master said when you told him Mr. *L'Estrange* was below, that he was undone?

Walker. It was so, my Lord.

Mr. North. Mr. *L'Estrange*, pray tell my Lord and the Jury of your taking this.

Mr. L'Estrange. My Lord, I do remember that three or four Days, or thereabouts, before the 12th of October last, I had notice of a Press that had been at work for several Nights in Cloth-Fair, and imployed a Person to watch the House; who told me that they still gave over early in the Morning, at Day-light, or soon after. At length Intelligence was brought me in these very Words, That *now they were at it as hard as they could drive*, (which was about Four in the Morning.) I arose, went to one of the King's Messengers, and desired him to take a Printer by the way; who did so: and I called up a Constable, and so went to Twyn's House, where we heard them at Work. I knocked a matter of a quarter of an Hour, and they would not open the Door; so that I was fain to send for a Smith to force it; but they perceiving that, opened the Door, and let us in. There was a Light when we came; but before the Door was opened, it was put out. When I was got up Stairs, and a Candle lighted, I found a Form broken, (that is, the Letters dispersed) only one Corner of it standing entire; which was compared by a Printer that was there, with a Corner of a Page newly printed, and appear'd to be the same. This Form was brought down out of the Press-Room into the Composing-Room. As yet we could not find the whole Impression; but at last they were found thrown down a Pair of Back-Stairs. I remember they told me the Impression was a Thousand. I asked him

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him

him where he had the Copy? He told me, *He knew not; it was brought to him by an unknown Hand.* I told him he must give an account of it. He told me at the last, *He had it from Calvert's Maid.* I asked him where the Copy was? He told me, *He could not tell.* (When I speak of the Copy, I mean the Manuscript.) We searched near two Hours, and could not find it: And at length went thence to the Constable's House in *Smithfield*, and staid there a while with the Prisoner. I asked him, Mr. Twyn, said I, who corrected this Sheet? *Alas,* said he, *I have no Skill in such things.* Who revised it then? Who fitted it for the Press? *Truly I had no body but my self; I read it over.* What thought you upon reading it? *Methought it was mettlesome Stuff: The Man was a hot fiery Man that wrote it.* But he knew no Hurt in it.

Serjeant Morton. When you had taken these Sheets, were they wet, or not?

Mr. L'Estrange. They were not only wet, but half of them were imperfect, printed only on one side. Missing the Copy, I told him after he was carried to *Whitehall*; Mr. Twyn (said I) it may possibly do you some good yet, to bring forth the Copy: If you will be so ingenuous to produce the Copy, and discover the Author, you may find Mercy for your self; pray therefore get this Copy: Perchance I may make some use of it. After that, his Servant *Bazilla Winsor* brought out this part of the Copy: [*producing a Sheet of Manuscript in Court.*]

Ld Hyde. *Joseph Walker*, was the whole Copy of this Book in the House at that time, when you composed that which you did?

Walker. I cannot tell: I saw it but Sheet by Sheet?

Mr. Recorder. Did not you see the whole entire Copy in your Master's Hand?

Walker. No: But [*taking some part of the Manuscript in his Hand, said*] this is the Hand that I composed by.

Mr. Recorder. Mr. L'Estrange, where had you the entire Copy?

Mr. L'Estrange. It was only the Copy of the last Sheet, that I took in the Press.

Mr. Recorder. Who helped you to that?

Mr. L'Estrange. *Bazilla Winsor*, by Direction of the Prisoner, as I conceive: For I told him, If you can help me to the Copy, it may do you some good; and soon after part of it was brought me by her. I asked Mr. Twyn further, How did you dispose of those Sheets which you had printed, those several Heaps, whither are they gone? He told me, He had delivered those Sheets to *Mistress Calvert's Maid*, at the *Rose* in *Smithfield*.

Mr. Recorder. You say he told you *Mistress Calvert's Maid* received them of him; did you since speak with that Maid?

Mr. L'Estrange. I was long in searching Twyn's House, and one of his Apprentices made his Escape, and probably gave notice of it: For the Night I went to *Mistress Calvert's House*, she and the Maid too were fled. I have since taken the *Mistress*, and she is now in Custody. I have heard nothing of the Maid since.

Justice Keeling. Twyn owned to you that he had corrected some of the Sheets; that he had read them, and said, It was mettlesome Stuff.

Mr. L'Estrange. I did ask him in the House of the Constable, Who corrected this? The

Corrector must certainly know what it was. Said he, *I have no Skill in correcting.* But when I speak of *correcting*, I mean who revised it, overlooked it for the Press? *I read it over,* says he.

Twyn. I never said such a Word.

Mr. L'Estrange. He spake this in the Presence of two or three here present. Could you read over this Book, said I, and not know that it was not fit to be printed? *I thought it was a hot fiery Fellow; it was Mettle, or mettlesome Stuff:* Somewhat to that effect.

Serjeant Morton. What did you hear him confess before Sir Henry Bennet?

Mr. L'Estrange. He owned the Thing; that is, he acknowledged he had printed the Sheet I shewed there, and two other Sheets of the same Treatise.

Serjeant Morton. Did he acknowledge he corrected them?

Mr. L'Estrange. I know not whether before Sir Henry Bennet he did, or no.

Serjeant Morton. What know you about Money received by him?

Mr. L'Estrange. He said *Calvert's Maid* paid him 40s. in part for that Work.

Twyn. I said I had received Money of *Calvert's Maid* for Work I had done; but named not that.

Mr. Dickenson sworn.

About the 7th Day of *October*, it being Wednesday, as I remember, about Five a-clock, we attended Mr. L'Estrange, my self and others: We came to the House of the Prisoner in *Cloth-Fair*, and upon the Back-side of his House we stood listening a good while, and heard Presses a working. Upon that I came to the Fore-part, by Mr. L'Estrange's Order, and knocked; but none would answer: I took the Constable's Staff, and knocked again; and none would answer yet. After that Mr. L'Estrange knocked near half an Hour; and no body coming, he at last sent for a Smith's Hammer to force it open. Afterwards they came down, and opened the Door. Then Mr. L'Estrange and the Printer (Mr. Mabb) went up Stairs: I continued below with the Constable and the King's Messenger, to observe whether any went in or out. After which, some Sheets fell down on the other side of the House. Meeting with one of them, and perceiving they had discovered the Sheets they enquired after, I read some part of it; and finding what it was, I went up, and found the Sheets thrown behind the Door. Mr. Twyn (said I) I wonder you would print such a Thing as this: You could not chuse but know that it was very dangerous to do any such Thing. He answered, That he did not consider what it was. Questionless, said I, you could not but know it was very dangerous; for when you revised it, you must needs know the Sense of it. I think it was a dangerous Business; what did you think of it? Says he, *I thought he was a good smart angry Fellow; it was mettlesome Stuff:* or to that purpose. This was the Substance of our Discourse. I did see some of the Sheets printed on one side, and some on both sides: The Form lay disordered; yet not so, but there was one Corner of it yet remaining, and I having the Sheet in my Hand did compare them together, and, to the best of my Remembrance, I do remember these very Words, *Execution of Judgment*, and *Lord have.*

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Ld Hyde. Who did he say revised the Press?

Dickenson. He seemed to confess that he had corrected it himself: for when I urged it to him, That he could not chuse but know the Matter of it by reading it; Truly, says he, *I thought he was an angry smart Fellow: It was good mettlesome Stuff, indeed.*

Judge Keeling. The Question asked by my Lord is, Whether he did confess he revised it, or whether you did collect it from his Reply?

Dickenson. Truly, by that Answer I guessed he corrected it.

Recorder. Did he confess that he read it?

Dickenson. I put that Question to him; and, to the best of my Remembrance, he did not deny it.

Ld Hyde. To Mr. L'Estrange he confessed he read it over.

Thomas Mabb sworn.

My Lord, I was with Mr. L'Estrange in this Man's House; and being there, going up, we found the Press had been lately at work. There was at each Press a Sheet laid; I took them off the Tinpin, [some of the Jury understand that Term:] They were just laid upon the Points, printed on one side. I gave Mr. L'Estrange these two Sheets, the same with these, [showing two Sheets] some were perfect, others imperfect. I could not find the Form a great while. I gave him the Sheet to peruse; and in the mean while I went down, and below I found the two Forms, but broken: Somewhat indeed was standing; whereof I took part in my hand, and read in the Letters. Mr. Dickenson having the Sheets, he heard what I read, and looking on the Sheet, found them agree.

Twyn. What were the Words that you read?

Mr. Mabb. The Words were *Execution and Judgment, and Lord have*—There was a Back-pair of Stairs out of his Press-Room, partly between his House and his Neighbour's, and in the Hurry they had thrown the Sheets down there; part fell behind the Door, and part at the bottom. When I questioned him how many was done, he said five hundred; but I adjudged those I saw to be about seven hundred and fifty. Looking again over the Door, I espied the remainder of the Sheets, about two hundred and fifty more, and I brought them together; and then he owned there was one thousand.

Ld Hyde. What else do you know?

Mr. Mabb. At the Constable's House I heard him use the Words, That *it was mettlesome Stuff*, and that *no body corrected it but himself*. Said I, I wonder you would offer to do it; you could not compose it, but you must understand it. Said he, *It was my bad Fortune to meddle with it*. Said I, You lost a Press but a little while since, I wonder you would do this. He seemed to be sorrowful.

Serjeant Morton. He did confess he corrected it.

Mr. Mabb. Yes, my Lord.

Twyn. No, my Lord, I did not.

John Wickham sworn.

Upon the 7th of October, as I take it, about Four a clock in the Morning, Mr. L'Estrange came to my House, being one of the King's

Messengers, and told me I must go immediately with him to *Cloth-Fair*, and sent me to call one Mr. Mabb by the way. I met Mr. L'Estrange near Mr. Twyn's House between Five and Six a clock: We had a Constable, and went and knocked at the Door: They knocked at least half an Hour before they got in. I heard some Papers tumbling down, and heard a rattling above, before they went up. But I stood at the Back-Door, to secure any from running out that way; and at last, when they said there were some Sheets thrown into the next House, I went and looked, and there were two or three hundred, and they were wet, newly come off the Press. That's all I can say.

Serjeant Morton. Did you hear this Man say that he had corrected it?

Wickham. No: But I having him in Custody at my House, I asked him about it; he said, *It was a very bitter Thing, that it was his unhappy Fortune to meet with it.*

Jury. Did he confess he printed it?

Wickham. Not to me.

Serjeant Morton. He said, *It was a bitter Thing*; and *that it was his unhappy Fortune to meet with it*: Make the best of that; compare that with the rest of the Evidence.

William Story sworn.

Gentlemen of the Jury, upon the 7th of October last, early in the Morning, I was sent for to Mr. L'Estrange into *Cloth-Fair*: We went to the House of this Twyn. After some time knocking, they went up Stairs, and brought down several Papers: I know not what they were. I went into the next House with Mr. Wickham, and there we found two or three hundred Sheets, and brought them to Mr. L'Estrange. I asked the Prisoner at my House, whether he could not write or read? He said, *Yes*. Did not you use to read what you printed? He said, *Yes*. Did not you know Treason when you read it? *It was a fiery Thing; I did not mind it much: But I should have got Money by it.*

Mr. Mabb. He owned he had but a very small Price for the doing of it.

Mr. Joseph Williamson sworn.

That which I can say is, That I know this [looking upon a Paper] to be my own Hand-writing, and to be the Examination taken of this Twyn. I took it; and he owned it after it was written.

Serjeant Morton. What was the Substance of it?

Ld Hyde. What did he confess before Mr. Secretary, when he was examined?

Mr. Williamson. He said, That the Copy of the Book was brought to him by one Evans, Maid to Mistress Calvert. That for the Author, being asked if he knew him, he said he did not; and that he had seen the Copy of three Sheets of the Book; that he had printed only two of those Sheets, a thousand Exemplaries of each.

Judge Keeling. Did he confess that?

Mr. Williamson. Yes. And further, That he had delivered them to this Evans at the Sign of the *Rose* in *Smithfield*; that he himself had corrected those Sheets he had printed, and that he had read them after they were printed; that for

his Pains and Printing of them, he had received forty Shillings in part from this Maid at the Delivery of them at the *Rose*; that the Maid carried away those Exemplaries from the *Rose*; and that he parted with her at the Door.

Serjeant *Morton*. I hope you observe, Gentlemen. We have now done: We desire the Prisoner may give his Answer to it; and then we shall make our Reply.

Ld *Hyde*. What say you? You have heard the Witnesses, and what is laid to your Charge.

Twyn. I did never read a Line of it in my Life.

Ld *Hyde*. That's impossible. I'll tell you: First, your own Man, who set part, swears you did both set and print part of this Book your self: You gave him the Title to set. You composed one part of the Book, whilst he was composing another part. Is it possible you could compose, and not read a Line of it? He tells you further, when the first Sheet was printed, he brought it into the Kitchen, and laid it down, knew not of any one in the House but your self; about an Hour, or an Hour and half after, you brought it back again corrected, laid it down; and the Hand that corrected it was not unlike your Hand upon other Corrections of Books. Pray, Brother *Morton*, let the Jury have Books, and Mr. *Lee* read the Indictment, that they may see they agree.

Serjeant *Morton*. I observed to you there were thirteen Treasonable Paragraphs; you shall find them marked out in the Margent.

Ld *Hyde*. You shall see there are Treasons with a witness: See the very Title.

Mr. *Lee*. [*Reads the Title of the Indictment.*]
 'A Treatise of the Execution of Justice: Wherein is clearly proved, That the Execution of Judgment and Justice is as well the Peoples as the Magistrates Duty; and if the Magistrates pervert Judgment, the People are bound by the Law of God to execute Judgment without them, and upon them.'

Ld *Hyde*. That you gave to your Man to set.

Mr. *Lee* reads, 'It is one of the Scarlet Sins of this Nation, that the People suffered their Rulers, &c.' — The particular Passages are too impious to be published, and indeed too foul to be repeated, but in Substance. Those mentioned in the Indictment are as follows:

First, The Supreme Magistrate is made accountable to the People.

Secondly, The People are rebelliously incited to take the Menage of the Government into their own hands.

Thirdly, They are animated to take up Arms, not only against the Person of his Sacred Majesty, but likewise against the Royal Family.

Fourthly, They are stirred up to a *Revolt* (in that very Term) as an Action honourable and conscientious; making Publication in the next Clause of Encouragement to any Town, City, or Country in the three Nations to begin the Work.

Fifthly, The People are laboured not only to cast off their Allegiance to the King, but in direct Terms to put his Sacred Majesty to death. And to the Purposes before mentioned tends the whole Scope of the Treatise.

Serjeant *Morton*. You may judge of the rest by this: We will not put you to any more Expence of Time; there hath been sufficient Treason in that which you have read.

Ld *Hyde*. Now say what you will. But I must tell you, in those Particulars that have been compared, there is as much Villany and Slander, as is possible for the Devil or Man to invent: It is to destroy the King in his Person, to rob him of the Love and Affections of his People; to destroy the whole Family, and all Government, Ecclesiastical and Civil. And this read by your self, owned, and caused to be printed.

Twyn. Except it was that Sheet which Mr. *L'Estrange* read to me when I was taken, I never heard it before, nor read it.

Ld *Hyde*. Your Man swears that you did set and print part of it: It's impossible to compose and set, but you must read it. Nay, you did examine and correct the Sheets; brought them up again. Mr. *L'Estrange* swears you confessed you read it over; it was *mettlesome Stuff*. Mr. *Dickenson* says you did not say you read it over; but he saying to you it was impossible you should set it, and not read it, you told him also it was *mettlesome Stuff*: You could not judge it to be *mettlesome Stuff*, but you must read it. There is Mr. *Williamson* says that you confessed before Mr. Secretary *Bennet* that you had seen three Sheets, printed off two Sheets, corrected those two Sheets; and after printed, and delivered them; and that you had forty Shillings in part of Payment. Besides this, when Mr. *L'Estrange* came first, you were up, (nay, at Two a-clock in the Morning:) When they came and knocked at the Door, they heard Presses going, you would make no Answer till they called a Smith, with intent to force it open. When they came in, they found a Form brought out of the Printing-Room, and broken, all but one Corner; that taken up by a Printer, and compared with the Lines of the printed Sheets, and found to agree. Some of the Sheets were printed on one side only, the rest perfected, you threw them down Stairs, part into your Neighbour's House, said you were undone, when you understood Mr. *L'Estrange* was there. What needed all this, but that you knew what you were doing, and did it purposely to do mischief?

Twyn. I did never read or hear a Line of it, but when Mr. *L'Estrange* read it when I was taken.

Judge *Keeling*. Was it printed at your House, or no?

Twyn. I know not but that it might: Not that I did it with my own Hand.

Judge *Keeling*. The Papers were found wet with you: Who was in your House?

Twyn. My two Servants.

Judge *Keeling*. Did any set them at work but your self? Did they work of their own Heads?

Twyn. I did use to set them at Work; but I did not set them on that particular Work.

Ld *Hyde*. Have you any thing else to say? God forbid but you should be heard; but the Jury will not easily believe such Denials against so much Evidence.

Judge *Keeling*. Tell us to whom you carried this Copy to be corrected?

Twyn. I know not who corrected it.

Ld *Hyde*. If you have any thing to say, speak it; God forbid but you should have a full Hearing: Say what you will.

Twyn. I say I did not read it, nor heard it, till Mr. *L'Estrange* read it.

Ld Hyde. Have you any thing else?

Twyn. It's possible I may, upon Consideration.

Ld Hyde. We cannot spend all the Day: I must let the Jury know they are not to take your Testimony.

Serj. Morton. I am of Counsel for the King: I shall reply, if he will say no more.

Judge Keeling. You have heard your Charge; this is your Time to make your Answer: If you do not speak now, you must not speak after. Therefore if you have any thing to speak in your Justification, or Witnesses to call, now is your Time.

Ld Hyde. Let me give you this Caution: We cannot spend Time in vain; we have other Business before us, and it grows late. The best Counsel I can give you, is this: You said at first, That you desired to be tried in the Presence of God. You are here in the Presence of Almighty God, and I would to God you would have so much Care of your self, and do so much Right to your self, to declare the Truth, that there may be means of Mercy to you. The best you can now do towards Amends for this Wickedness you have done, is by discovering the Author of this villanous Book: If not, you must not expect, and indeed God forbid that there should be any Mercy towards you.

Twyn. I never knew the Author of it, nor who it was, nor whence it came, but as I told you.

Ld Hyde. Then we must not trouble our selves. Did you never see the Hand before, with which this Copy was written?

Twyn. No.

Ld Hyde. I am very confident you would not then have been so mad, as to have taken such a Copy: A Copy fraught with such abominable Treason and Lyes; abusing, in the first place, the late King that is dead, who was, I'll be bound to say it, as virtuous, religious, pious, merciful, and just a Prince as ever reigned, and was as villanously and barbarously used by his rebellious Subjects. Nay, you have not rested here, but have fallen upon this King, who has been gentle and merciful beyond all Precedent. Since he came to the Crown, he has spared those that had forfeited their Lives, and all they had: And he has endeavoured to oblige all the rest of his People by Mildness and Clemency. And after all this, for you to publish so horrid a Book, you can never make amends: God forgive you for it.

Twyn. I never knew what was in it.

Ld Hyde. You of the Jury, I will say only this: That in Point of Law, in the first place, there is no doubt in the World, by the Law of the Land, the publishing such a Book as this is as high a Treason as can be committed: By this he has endeavoured to take away the Life of the King, and destroy the whole Family, and so consequently to deliver us up into the hands of Foreigners and Strangers. It is a great Blessing that we have the Royal Line amongst us. But, I say, there is no question (and my Brothers will declare the same, if you doubt it) that this Book is as fully Treason by the old Statute, as much the compassing and endeavouring the Death of the King, as possible: And he rests not there, but incites the People to Rebellion, to dethrone him, to raise War. And the publishing of this Book is all one and the same, as if he had raised

an Army to do this. The Proof is, That he set part, printed part, and corrected it; by his own Confession, read it over, It was *mettlesome Stuff*; confessed how many Sheets he printed; the Reward and Recompence, you took notice of it. And I presume no Man among you can doubt but the Witnesses have spoken true: And for his Answer, you have nothing but his bare Denial. And so we shall leave it to you.

Set Simon Dover to the Bar.

Dover. My Lord, I pray Time, till Monday Morning: I have sent away the Copy of my Indictment.

Ld Hyde. The Sessions will be done to-night: Mr. Recorder and the rest are to go away on Monday; and therefore we must end to-night.

Dover. I beseech your Lordship I may have Time till Night.

Ld Hyde. Men clamour, and say they are hardly used, their Trials being put off: Are you content to lye in Goal till the next Sessions?

Dover. No, my Lord, I have had enough of that: We are willing now to have it tried.

Ld Hyde. You have had a Kindness done to you, that it is not laid Treason; and therefore go on to your Trial. But because you shall not say you are surprized, if you will not go on now, you must lye in the Goal till the next Sessions: We cannot bail you.

Dover. My Lord, the Indictment is full of Law, and I understand not the Formalities of it: I desire but till Four a-clock.

Ld Hyde. We must do it before we go to Dinner, or not at all; for there is Judgment to be given to the Goal, and all of us Judges are commanded by the King to attend him to-night.

Dover. I am not able to plead to it.

Ld Hyde. Then because you shall not say you had not all the Right imaginable, we will dispatch the rest of the Goal to-night, and adjourn the Sessions till Monday Morning, and you shall then have a fair Trial, by the Help of God. You and your Company, *Nathan Brooks* and *Thomas Brewster*, are you all desirous to be tried on Monday Morning?

All three. Yes.

Ld Hyde. Because you shall not want Advice, or any thing else, you shall have all the Liberty you will desire, to send for Persons; but you must be Prisoners till then.

All three. We humbly thank you.

Then the Jury went out; and after about half an Hour's Consultation, they returned to the Court, and took their Places.

Clerk. Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Foreman.

Clerk. Set *John Twyn* to the Bar: Look upon him, my Masters; how say you, is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Newgate. Look to him, Keeper.

Clerk. Harken to your Verdict, as the Court hath recorded it: You say that *John Twyn* is Guilty of the High-Treason whereof he stood indicted, and that at the time of committing the said

said

said Treason, or any time since, he had no Goods, Chattels, Lands nor Tenements, to your knowledge; and so you say all?

Jury. Yes.

Clerk. *John Twyn*, thou hast been arraigned for High-Treason, and thereunto hast pleaded Not Guilty, and for thy Trial hast put thyself upon God and the Country, and the Country hath found thee Guilty; what canst thou now say for thyself, why the Court should not proceed to Judgment, and thereupon award Execution of Death against thee, according to the Law?

Twyn. I humbly beg Mercy; I am a poor Man, and have three small Children, I never read a word of it.

Ld Hyde. I'll tell you what you shall do: Ask Mercy of them that can give it; that is of God and the King.

Twyn. I humbly beseech you to intercede with his Majesty for Mercy.

Cl. of Newgate. Tye him up, Executioner.

Cryer. O Yes! My Lords the King's Justices command all manner of Persons to keep silence while Judgment is in giving, upon pain of Imprisonment.

Ld Hyde. *John Twyn*, and *John Dunsmore*, (one convicted for clipping of Money) I am heartily sorry that your Carriage and grievous Offences should draw me to give that Judgment upon you that I must. It is the Law pronounces it, God knows it is full sore against my Inclination to do it; I will not trouble myself or you with repeating what you have done; but only this in the general, *John Twyn*, for you: Yours is the most grievous and highest Treason, and the most complicated of all Wickedness that ever I knew; for you have, as much as possibly lay in you, so reproached and reviled the King, the dead King, and his Posterity, on purpose to endeavour to root them out from off the face of the Earth. I speak it from my Soul, I think we have the greatest Happiness of the World, in enjoying what we do under so gracious and good a King; yet you in the Rancour of your Heart thus to abuse him! I will be so charitable to think you are mis-led. There's nothing that pretends to Religion, that will avow or justify the killing of Kings, but the Jesuit on the one side, and the Sectary on the other; indeed it is a desperate and dangerous Doctrine, fomented by divers of your Temper, and it's high time some be made Examples for it. I shall not spend my time in discourse to you, to prepare you for Death; I see a grave Person whose Office it is, and I leave it to him. Do not think of any Time here, make your Peace with God, which must be done by Confession, and by the Discovery of those that are Guilty of the same Crime with you. God have mercy upon you; and if you so do, he will have mercy upon you. But forasmuch as you *John Twyn* have been indicted of High-Treason, you have put yourself upon God and the Country to try you, and the Country have found you Guilty: therefore the Judgment of the Court is, and the Court doth award, 'That you be led back to the Place from whence you came, and from thence to be drawn upon an Hurdle to the Place of Execution; and there you shall be hanged by the Neck, and being alive, shall be cut down, and your Privy-Members shall be cut off, your

'Entrails shall be taken out of your Body, and, you living, the same to be burnt before your Eyes; your Head to be cut off, your Body to be divided into four Quarters, and your Head and Quarters to be disposed of at the Pleasure of the King's Majesty. And the Lord have mercy upon your Soul.'

Twyn. I most humbly beseech your Lordship to remember my Condition, and intercede for me.

Ld Hyde. I would not intercede for my own Father in this Case, if he were alive.

He was afterwards Executed according to the Sentence.



Monday, Febr. 22, 1662.

THE Court proclaimed,

Kelyng. 23.

Clerk. Set *Simon Dover*, *Thomas Brewster*, and *Nathan Brooks* to the Bar: Look to your Challenges.

The same Jury sworn anew.

Clerk. Set *Tho. Brewster* to the Bar, and the rest set by. You of the Jury look upon the Prisoner; you shall understand that he stands indicted in London by the Name of *Thomas Brewster*, &c. [and here he reads the Indictment] for causing to be printed, and selling a Book called, *The Speeches*, &c. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his, &c. Your Charge is to inquire whether he be Guilty of this Sedition and Offence, or Not Guilty. If you find him, &c.

Mr. North. May it please it your Lordship, and you Gentlemen of the Jury, *Tho. Brewster* stands here indicted of a foul Misdemeanour; it is for causing to be printed, publishing and uttering a seditious, scandalous, and malicious Book. The Indictment sets forth, That he not having, &c. [Here *Mr. North* opens the Indictment] and to this Indictment he hath pleaded Not Guilty. If there be sufficient Proof of the Charge, you are to find him guilty of the Matter contained in it.

Thomas Creek, *George Thresher*, *Thomas Loft*, and *Peter Bodvel* sworn.

Mr. North. *Tho. Creek*, tell my Lord and the Jury what you know concerning *Brewster*, and your printing of a Book called *The Speeches*, &c. and his uttering and publishing of it.

Creek. I shall, Sir. There is a Mistake in the Time, for it was before Christmas that *Mr. Brewster*, *Mr. Calvert*, and *Mr. Chapman* did come to me at the Cock in Little-Britain; and there they had some Copy of the Beginning of the Speeches of the Men that suffered, that were the King's Judges, and they spake to me to print it: and I did print part of the Book, I cannot tell you how much, without I had the Book, and then I can tell you how much I did print, [The Book being shewed him] if this be my printing; I suppose it was done afterwards, another Impression, and I must not own it in that. [He was shewed one of another Impression] My Lord, thus

thus far I own; the Printers that are of the Jury will judge [*pointing to the Page*] this is my Letter, and here I ended.

Ld Hyde. What Folio is that you ended at?

Creek. You shall see, it is 36.

Mr. North. By whose Order did you print that?

Creek. They all gave me Order together.

Ld Hyde. They all! Name them.

Creek. Mr. Calvert, Brewster, and Chapman.

Mr. North. Did they charge you to do it privately?

Creek. With as much Privacy and Expedition as I could.

Mr. North. When you had printed them, what did you do with them?

Creek. I disposed of them by their Order.

Mr. North. Did you print but one Impression, or more?

Creek. Yes, my Lord, I did print part of a second Impression.

Mr. North. That we use as Evidence, that he had uttered the first, because he went upon a second: How many did you print at first?

Creek. To my best remembrance, the first Impression was 3000.

Ld Hyde. These three employed you to print this Book, and you printed to the 36th Folio?

Creek. Yes.

Ld Hyde. And who printed the other part?

Creek. I cannot say positively.

Ld Hyde. Did these three afterwards direct you to give out the Sheets to such and such Persons, Bookbinders, to stitch up, and dispose of?

Creek. Yes.

Ld Hyde. The first was three thousand, you say: what number did they take?

Creek. They had all; they sent for them of me as fast as I did them.

J. Keeling. Who did you send the Proofs to?

Creek. They were sent for to my House.

J. Keeling. Sometimes by Calvert, sometimes his Man, sometimes his Maid, sometimes by Brewster.

Ld Hyde. Do not you know who began where you left off?

Creek. I am not able positively to say. I do believe, and I have heard, and spoken with them that said Mr. Dover did; but I cannot positively say it.

Ld Hyde. You were not by, to see it done?

Creek. No.

Ld Hyde. What grounds have you to believe that Dover printed the rest?

Creek. Grounds! Truly it is so long ago, to swear positively I cannot.

Ld Hyde. It is but three Years ago.

Creek. To the best of my remembrance, Mr. Dover in the time of printing it did meet me, and converse with me about it; but to express Time or Place, I cannot.

Ld Hyde. Did you and he agree that he should print the other part?

Creek. No, my Lord; I had nothing to do to agree it with him.

Ld Hyde. Did he declare to you that he printed the other?

Creek. To the best of my memory he told me he printed some Sheets.

Mr. North. Who changed Sheets with you?

Creek. Some Sheets were changed at Mr. Dover's.

J. Keeling. Who paid for the Printing?

Creek. Mr. Brewster paid me some, and some Mr. Calvert paid me.

Ld Hyde. If you desire to ask him any Questions, you may.

Brewster. By and by I shall, my Lord.

Dover. I desire he may tarry till I come to my Trial.

Serjeant Morton. Don't doubt it.

Mr. North. George Thresher, speak your Knowledge to my Lord and the Jury, whether Brewster did not bring you the Book called *The Speeches*, &c. to be stitch'd, and what you did with them; tell the manner of it.

Thresher. May it please you, my Lord, and the Honourable Bench, it is thus: This Book it seems was printed, Mr. Brewster came to my House to know whether I could fold them, and stitch them in blue Paper. That night I went to several Printers, Mr. Dover was one of them; we had several Sheets from thence, (I did not see them printed) I carried them home, and went about the working them that night.

J. Keeling. How many Books were delivered to you?

Thresher. First and last, about 500.

J. Keeling. Who delivered them to you?

Thresher. Some were brought to my House.

J. Keeling. By whose Direction?

Thresher. Mr. Brewster's.

J. Keeling. Did you deliver them to any body?

Thresher. Yes, to Nathan Brooks, ready stitch'd.

J. Keeling. Who paid you for them?

Thresher. Mr. Brewster for them he had, and Brooks for them he had.

Mr. North. Thomas Loft, tell your Knowledge in this business.

Thomas Loft. May it please you, all that I can say is this: There was to the number of about or near upon a thousand, as I take it, folded and stitch'd in my Master's House, one Mr. Perry, I was then his Apprentice; they were sent in, as I judge, by Mr. Brewster's Order, but I cannot positively say it: my Master appointed us to do them; I saw Mr. Brewster there sometimes, but I cannot positively say that Mr. Brewster paid for the doing of them.

Mr. North. Did not your Master press the Dispatch?

Loft. My Master did so; but I know not whether they conversed to that purpose.

Mr. North. Who fetch'd them away?

Loft. His then Apprentice did fetch some of them from our House.

Mr. North. Peter Bodvel, tell my Lord and the Jury what you know.

Bodvel. I did carry some three Years ago some Bundles of Books from Mr. Creek's House, and I think they were the Bundles of the Speeches of the King's Judges.

Ld Hyde. From whence had you them?

Bodvel. From Mr. Creek's.

Mr. North. What did you do with them? Were they sold?

Bodvel. I did see some of them sold in the Shop.

Mr. North. Who sold them?

Bodvel. Myself, and my Mistress sometimes.

Ld Hyde. Were they brought to the Shop to sell, by his privity?

Bodvel. I do believe he knew of them.

Ld Hyde. By the Oath you have taken, did he send you for them to the Printers?

Bodvel.

Bodvel. He or my Mistress did.

Ld Hyde. Has he been in the Shop when they have been sold?

Bodvel. I cannot truly tell; it's three Years ago.

J. Tyrrel. To whom did you pay the Money that you received for them?

Bodvel. We put it in the Box.

J. Keeling. Do not Booksellers keep account what Books they sell, and set down the Money?

Bodvel. Not for Pamphlets.

Mr. North. Did he not send you to the Bookbinder's for them, when they were stich'd?

Bodvel. It was by his or my Mistress's Order.

J. Keeling. What was your Bookbinder's Name?

Bodvel. Perry.

J. Keeling. Where was this Book kept? Publickly, as other Books, or in other Rooms?

Bodvel. In the Shop, my Lord.

J. Keeling. Were they publickly to view, as other Books?

Bodvel. Not so publick as other Books, but publick enough, Mr. *L'Estrange* knows.

Ld Hyde. I know you use to let your Titles of a new Book lie open upon your Stalls; did you lay these open?

Bodvel. No, my Lord, they did not do so.

Ld Hyde. Who was the cause they did not? Did your Master direct the Privacy?

Bodvel. I think he did, we had some direction to that end.

Ld Hyde. Not to lay them open upon the Stall?

Bodvel. No.

Ld Hyde. Give the Jury some Books, and read the Indictment; let them be compared.

Clerk reads the Indictment: first the Title; 'The Speeches and Prayers of some of the late King's Judges, viz. Major-General Harrison, Octob. 13. Mr. John Carey, Octob. 15. Mr. Justice Cook, Mr. Hugh Peters, Octob. 16. Mr. Thomas Scot, Mr. Gregory Clement, Col. Adrian Scroope, Col. John Jones, Octob. 17. Col. Daniel Axtell, and Col. Francis Hacker, Octob. 19. 1660. The Times of their Deaths, together with several Occasional Speeches, and Passages in their Imprisonment, till they came to the place of Execution. Faithfully and impartially collected for further Satisfaction.

Mr. Cook's Letter to a Friend, fol. 40. 'And so I descend to the Cause, for which I am in Bonds; which is as good as ever it was: And I believe there is not a Saint that hath engaged with us, but will wish at the last Day that he had sealed to the Truth of it with his Blood, if thereupon called; for I am satisfied, that it is the most Noble and Glorious Cause that has been agitated for God and Christ since the Apostolical Times; being for Truth, Holiness, and Righteousness, for our Liberties as Men, and as Christians for removing all Yokes and Oppressions.' And fol. 41. 'It is such a Cause, that the Martyrs would again come from Heaven to suffer for it, if they might: I look upon it as the most high Act of Justice that our Story can parallel, &c.'

[Not to trouble the Reader with all the Particulars mentioned in the Indictment; since the rest are but more of the same kind in other words.]

Ld Hyde. What say you to this Book?

Brewster. I desire to ask Mr. Creek a few Questions: Mr. Creek, how much of that in the Indictment did you print?

Creek. The Jury may see if they please.

Ld Hyde. Truly if he says true, he says he printed no part of that with which you are charged, but the Title-Page; he left off at Folio 36. your Charge is the Title, and beginning at Fol. 40.

Brewster. So that you see he printed nothing for me that is in the Indictment.

J. Keeling. Did you print the Title?

Creek. Yes, my Lord.

Ld Hyde. And you printed the rest, by his, *Calvert's*, and *Chapman's* Directions.

Creek. They delivered me the Copy together to print.

Ld Hyde. If you have any thing to say, speak to the Court, the Jury will hear you.

Mr. North. Pray, my Lord, give me leave to ask *Creek* one Question: There were two Impressions printed, did not you print more in one, than in the other?

Creek. I am upon my Oath; to the best of my remembrance I printed the same that I did before, for I had some of it standing, and so I had the same Sheets again.

Mr. North. Had you no more?

Creek. No, I had rather less.

Brewster. That's usual, he that prints the first, doth print the same of the second.

Ld Hyde. He says he did so; what have you to say to the Charge?

Brewster. I conceive that part that I ordered the printing of, is not included in the Indictment.

Ld Hyde. Yes, every part: he says in both Impressions he printed to the 36th Folio; and all the rest was printed by your direction.

Creek. No, my Lord, I printed to the 36th Folio by his Direction, the rest was printed elsewhere.

J. Keeling. Your Indictment was this, *For causing to be printed this Book, called The Prayers, &c. and for selling and uttering of it.* For the Evidence that you caused it to be printed, he swears you directed some, and it is not likely you would print half, and let the other half alone; we leave that to the Jury: For your uttering, that anon.

Ld Hyde. There are these two particular Charges in the Indictment, that you must answer: The first is, your causing it to be printed; and it is not essential, or of necessity, that every Particular that is in the Indictment be proved to be done by you: you caused this Book to be printed, with such a Title; that he swears he did for you: then let the Jury, or any Man living, judge whether you did direct the Book to be wholly perfected, or by halves. The second Charge is, that you uttered them: You delivered five hundred of these to be stich'd up, and disposed of them, so that you are in effect both Printer and Publisher of the whole Book.

Brewster. He speaks of one part that I ordered, there is no more Proof, and that was but to the 36th Page: he speaks also of somebody else that was present with me; and where they had the rest of the Copy printed, he tells you he knows not.

Ld Hyde. Have you any more to say?

Brewster. Yes, my Lord: Tho' he says I caused that Part to be printed, yet he doth not say I did it maliciously, or with any design against the Government.

Ld Hyde. The thing speaks itself.

Brewster. Booksellers do not use to read what they sell.

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Ld Hyde. You have forgot what he swore ; you brought the Proof.

Brewster. He did not swear that ; he says Mr. Calvert's Man, and sometimes others.

Ld Hyde. Ask him again.

Creek. I did declare, that the Proofs were sent for, and carried away and read, sometimes by Mr. Calvert's Man and others, and sometimes by his Servants, not by himself ; they were wrapt up and sent.

Ld Hyde. For a Man to pretend he did not know, when, he being Master, sends for the Proofs by his Servant ; for any Man to suppose this is not the Master's Act, (nay, and directing it to be done privately) you shall never find a Man guilty : they were sold in his Shop.

Brewster. The grand part of the Indictment lies, That it was done maliciously and seditiously, and then it says knowingly ; though it be granted I did do it, and sell it, yet it does not follow that I did it maliciously and seditiously ; I did it in my Trade : we do not use to read what we put to print or sell. I say, my Lord, selling of Books is our Trade, and for the bare exercising of it, knowing nothing of evil in it ; it came out in a time too, when there were no Licensers, or appointed Rules ; so that whatever was done we are not accountable for, for we read very seldom more than the Title, that some of the Jury knows ; so that I hope I cannot be said to do it maliciously or knowingly. I can give Testimony I am no Person given to Sedition, but have been ready to appear upon all Occasions against it.

Ld Hyde. Have you any more ? if you have, say it.

Brewster. My Lord, they are the Sayings of dying Men, commonly printed without Opposition.

Ld Hyde. Never.

Brewster. I can instance in many ; the Book-seller only minds the getting of a Penny : that declares to the World, that as they lived such desperate Lives, so they died ; so that it might shew to the World the Justice of their Punishment ; and so I think it a Benefit, far from Sedition. It was done so long ago too, it was not done in private, it went commonly up and down the Streets, almost as common as a *Diurnal* : it's three Years and a quarter ago, or thereabouts.

Justice Tyrrel. You speak of your Behaviour, have you any Testimony here ?

Brewster. I do expect some Neighbours ; Major-General Brown knows me, Capt. Sheldon, Capt. Colchester, and others : I can give a very good account as to my Behaviour ever since.

Ld Hyde. Say what you will, and call your Witnesses, and make as much speed as you can.

Justice Keeling. There is another Indictment against you, and while that is trying, your Neighbours may come.

Brewster. My Lord, I shall desist for the present.

Serj. Morton. May it please your Lordship, and you Gentlemen of the Jury ; I am of Counsel for the King against Thomas Brewster, Book-seller, that stands here indicted, for that he, contrary to the Duty of his Allegiance which he owes to our Sovereign Lord the King, did cause maliciously a seditious and scandalous Book to be printed, wherein there are divers scandalous Clauses contained, that are in Disparagement of

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the King's Royal Prerogative, and against his Government, Crown and Dignity ; and likewise that he hath sold and uttered the same Books in Contempt of his Majesty's Laws. This is the Effect of the Indictment : It has been proved to you by four Witnesses, that for which he stands indicted ; First, That he did cause part of the Book to be printed ; that's clearly proved by Creek : likewise that he has sold and uttered those Books in his Shop : nay, he confesses that he did, and says they were sold openly as a *Diurnal* ; and therefore he thinks it was lawful for him to do it. He has gone about to make a Defence of this his seditious Behaviour ; he tells you he did not print all the Book ; it is not said, that he printed such and such a Letter of the Book, but that he caused such a Book to be printed : and it is to be presumed, if he caused one part, he would cause the other, or otherwise it would be a Book of maimed Sense and imperfect. Gentlemen, for the uttering and selling of them, that himself confesses : you have heard the Excuses he hath made, whether you will not find him guilty of this Crime, that I must leave to you, and to the Direction of the Court.

Ld Hyde. You of the Jury, you see the Indictment is for causing a libellous and seditious Book to be printed, under such a Title, that is, *The Speeches and Prayers*, &c. it is for causing this, seditiously, factiously and wickedly to be printed ; and for selling and publishing it abroad to the King's People. For the Matter of Evidence, you have heard it : I will not repeat the Particulars to you, only something to what he has said, that you may not be misled. First, He says, it does not appear, that he did it maliciously or knowingly ; there are some things that you that are of the Jury are not to expect Evidence for, which it is impossible to know but by the Act it self. Malice is conceived in the Heart, no Man knows it unless he declares it : As in Murder, I have Malice to a Man, no Man knows it ; I meet this Man and kill him ; the Law calls this *Malice*. If a Man speak scandalous words against a Man in his Calling or Trade, he lays his Action, *Malice*, though he cannot prove it but by the words themselves. If I say a Printer or Stationer is an ignorant Person, has no Skill in his Trade, I would not have any Man to deal with him, he understands not how to set Letters, or the like ; here is nothing of Malice at all appears, yet if you bring your Action, you must lay it, *maliciously* ; it is the destroying your Trade, and you will have Damages. I instance in this Particular, that you may see there is *Malice* supposed to a particular private Person in that Slander, much more to the King and the State. The thing it self, in causing a Book to be printed that is so full of Scandals and Lyes, to inveigle, misguide, and deceive the People, this is, in Contruction of the Law, *Malice* ; and though no Malice appear further. The next is this ; *factiously, seditiously, knowingly* : this carries Sedition as well as Malice. Such a barbarous transcendent Wretch that murdered his Prince, without the least Colour of Justice, to declare that he rejoiced in his Bonds ; and that the Martyrs would willingly come from Heaven to suffer for it. Horrid Blasphemy ! All the Saints that engaged in it, to wish that they had sealed it with their Blood ! What can you have more to incourage and incite the People to the killing of Kings, and murdering

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murdering their lawful Prince! This they publish, and say it was spoken publickly; let it be upon his own Soul that did it: for in case he did it, no Man knew it but those that heard it. But to publish it all over *England*, (3000 of the first Impression, and a second;) this is to fill all the King's Subjects with the Justification of that horrid Murder: I will be bold to say, *not so horrid a Villany has been done upon the Face of the Earth, since the crucifying of our Saviour.* To print and publish this, is *Sedition*. The next thing is your Trade. I have a Calling to use, and I may justify the using of it, so long as I use it lawfully; but that must not justify me in all manner of Wickedness against the King and State. As if a Lawyer (I will put it in my own Coat) pleads a Man's Cause, and against the King; this is justifiable, he ought to plead for his Client, but he must plead as becomes him. If a Lawyer in defence of his Client will speak *Sedition*, do you think he is free from being punished? So of a Printer; if a Printer prints seditious and factious Books, he must look to himself; that's no part of his Calling to poison the King's People: so tho printing of a Book be lawful, he must use it as the Law appoints him, and not to incite the People to Faction. Writing of Letters, you know it is common and lawful; but if I write treasonable Letters, give notice to rise, do such and such unlawful Acts, I am to be punished for these Letters. A Printer he is a publick Agent, he is to do what he is able to answer, or else he must take what follows. He says, There was no Act against him: it is true, you see he is not indicted upon the Statute, but at the Common Law, for an Offence in the nature of a Libel. If I were a Printer, and would compile a Pamphlet against a Man, though not in Authority, and disparage him, this is the publishing of a Libel, and an Offence for which he ought to be indicted, and punished by the Common Law; and he that prints that Libel against me, as a publick Person, or against me as Sir *Robert Hyde*; that Printer, and he that sets him at work, must answer it; much more when against the King and the State. Another thing is this; he talks to you of *dying Mens Words*: if Men will be so vile to be as wicked at their Deaths, as they had been in their Lives; put the Case of that Man on Saturday convicted for printing a horrible villanous thing, if he will be so unchristian to himself, as to justify this at his Death, or to speak as bad as he had caused to be printed, is that a Justification to publish them, because they are the Words of a dying Man? God forbid. A Robber declares upon the Gallows, it is for a noble Cause, for taking a Purse upon the High-way, that it is an unjust Law to condemn to death for such Crimes. Shall any Man publish this in print, and not be liable to be punished for it? If any that were tried here upon Saturday, shall villify the Lord Mayor, or any of the Bench, traduce them for doing of Justice, shall this go unpunished, if a Man take it up and print it? This I speak to let you see this is without Colour of Law: He pretended he did it not knowingly; I will not repeat the Evidence; *He sent for them, had them stitched, caused them to be kept privately*, (not upon the Stall.) And observe, he tells you it was done long ago: it is but three Years ago that they were as publickly sold as *Diurnals*, he says. I shall

repeat no more, I know you are Men of Understanding, and of Obedience to your King; it is high time to take notice of this dispersing of Pamphlets: if therefore you do believe that he did cause it to be printed, or published it, or both, he is guilty of the Misdemeanour laid in the Indictment; (and *he hath a great Kindness in that it is not made Capital*.) If you do believe that he did either cause it to be printed or published, that's enough to find him guilty of this Indictment.

Clerk. Harken to the other Indictment: He stands indicted in *London*, &c. and this is for causing to be printed a certain Book called, *The Phoenix*, &c. publishing the same, [*the Indictment was wholly read.*] To this Indictment he hath pleaded Not Guilty; so your Issue is to enquire whether he be guilty of this Offence, or not guilty.

Mr. North opened the Indictment in manner as before. To this he hath pleaded Not Guilty; if the Charge of the Indictment be sufficiently proved, you are to find him guilty.

Serj. Morton. May it please your Lordship, and you Gentlemen of the Jury, here is another Bill of Indictment preferred against *Thomas Brewster*; it is, that contrary to the Duty of his Allegiance to his Sovereign Lord the King, and purposely to incite the People to Sedition, and to withdraw them from their natural Allegiance to the King, he hath caused to be imprinted, maliciously, falsely and scandalously, a certain scandalous Book, entitled, *The Phoenix*, &c. And this he hath done to disturb the Peace of the Kingdom, and to withdraw the People from their Allegiance; and to the Scandal of his Majesty's Government, he hath caused this Book to be printed, uttered and sold: and this we take to be a great Offence against the King, and his Crown and Dignity. Gentlemen, the dispersing of seditious Books is of great danger to the Kingdom; false Rumours, they are the main incentives that stir up the People to Sedition and Rebellion, that raise Discontentments among the People, and then presently they are up in Arms. Dispersing seditious Books is very near a-kin to raising of Tumults; they are as like as Brother and Sister: Raising of Tumults is the more masculine; and printing and dispersing seditious Books, is the Feminine Part of every Rebellion. But we shall produce our Witnesses, we shall prove that this *Thomas Brewster* caused this Book to be printed; that when it was printed he did receive three hundred; That these he caused to be stitch'd up; That he uttered and sold them, part in his own Shop, and part elsewhere. It being an Offence of that great and dangerous Consequence, which tends to the Disturbance of the Peace of the Kingdom; I hope you will take it into your serious Consideration, and if the matter stand proved against him, you will give him his due Demerit.

Creek, Thresher, Loft and Bodvel sworn again.

Mr. North. *Creek*, tell my Lord and the Jury what you know of the printing of the Book called *The Phoenix*.

Creek. My Lord, it was in *May* that *Mr. Calvert, Brewster* and *Chapman* brought that Book to me to print.

Ld Ch. Just. Hyde. What Book? name it.

Creek.

Creek. The *Phoenix*, &c. it was printed for them three. All that I can say, is, That Mr. *Brewster's* Part was delivered to me by his Direction.

Ld Ch. Just. *Hyde.* Who paid you for printing of it?

Creek. Mr. *Brewster* paid for his Part.

Justice *Keeling.* How many was his Part?

Creek. His Part of 2000, that was 600 and odd.

Ld Ch. Just. *Hyde.* These three Men joined to bear each Man his Share?

Creek. Yes, every Man was to have his Share.

Just. *Keeling.* Did he wish you to do it with Privacy?

Creek. Yes, with Expedition and Privacy.

Brewster. Was the Copy written or printed?

Creek. It was all printed formerly, some in *Quarto*, some in *Octavo*, and might have been bought single in any Place almost.

Ld Ch. Just. *Hyde.* What do you mean by all printed formerly?

Creek. My Lord, they were in several Parcels printed; there was Mr. *Calamy's* Sermon, and Mr. *Douglas's* Sermon, and the rest.

Just. *Keeling.* How long ago was it since they were brought to you to print?

Creek. It was in *May*, three Years.

Brewster. Did I order you how you should print them, or Mr. *Calvert*? Did not you hear him say, that they had staid two Hours for me at an Alehouse to be his Partner?

Creek. I did hear him say so.

Just. *Keeling.* What made you so loth to be their Partner? were they two Hours persuading of you?

Creek. No, they waited two Hours for him to be their Partner.

Serj. *Morton.* *Thresher*, did *Brewster* deliver any of those Books to you to stich up?

Thresher. Yes, and please you, my Lord, and I had them by Mr. *Brewster's* Order to fold.

Serj. *Morton.* How many?

Thresher. To the number of 2 or 300.

Mr. *North.* Did he not enjoin you Privacy?

Thresher. Yes, I think he did.

Just. *Keeling.* When they were bound, had you a Note to deliver those Books safely to any?

Thresher. Yes, from his own Hand; he desired me to go and give them to such and such Persons, Booksellers. Said I, I shall hardly remember them: he thereupon gave me a Note of their Names to whom I should deliver them; I judge they were to be trusted more than others.

Serj. *Morton.* Did you deliver them accordingly?

Thresher. Yes, I did.

Ld Ch. Just. *Hyde.* How many did you deliver in that manner?

Thresher. Two Dozen and more.

Just. *Keeling.* If you will ask him any Questions, do.

Brewster. Did I give you any Order to deliver them to any particular Booksellers?

Thresher. Yes, you did; I believe Mr. *L'Estrange* and Mr. *Williams* (one of the Jury) can remember I shewed them the Paper you wrote to that purpose.

Mr. *Williams.* I did see the Note.

Brewster. I do not remember I gave you any Order, they were all common things before.

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Just. *Keeling.* You may ask him what Questions you will.

Brewster. I shall ask him no more.

Mr. *North.* *Peter Bodvel*, speak what you know concerning the Selling or Uttering the Book called *The Phoenix*, &c.

Bodvel. I never knew of the printing of them, I never knew my Master sell any of them, nor heard him give Order for selling of them.

Just. *Keeling.* Did you sell any of them for him?

Bodvel. I think I did sell some.

Serj. *Morton.* Were they in the Shop to be sold?

Bodvel. Yes, they were.

Ld Ch. Just. *Hyde.* Were they in the Shop publicly, with the Title-page lying open upon the Stall, as other Books do, when they are newly out?

Bodvel. We seldom did so with Bound-Books.

Just. *Keeling.* Where were the Books found when they were seized?

Bodvel. I think they were in some of the upper Rooms.

Just. *Keeling.* Where were they found, by the Oath you have taken?

Bodvel. That Mr. *L'Estrange* can tell better than I, I did not see him find any of them.

Ld Ch. Just. *Hyde.* By the Oath you have taken, where was the Place whence you were to fetch them, when you were to sell them?

Bodvel. In the Hall, the Room over the Shop.

Ld Ch. Just. *Hyde.* Were they put up privately?

Bodvel. They were so.

Just. *Keeling.* What private Place was that?

Bodvel. It was a Hole in the Wall.

Just. *Tirrel.* By whose Direction were they laid there?

Bodvel. I know not whether by his, or my Mistress's.

Just. *Keeling.* Were not some found under the Bed?

Bodvel. I heard that Mr. *L'Estrange* found some of the Titles under the Bed.

Serj. *Morton.* I think it is enough; what say you to it, Friend?

Ld Ch. Just. *Hyde.* Observe this, and answer it: It appears that you and two more (*Calvert* and *Chapman*) did agree with *Creek* for printing this Book, (several Parcels drawn into one Volume) and you were to bear each of you a third Part, and to have a third Part of the Books; he swears you did both pay your Part, and had your Part of the Books: These Books were printed before, and so they were common enough, and therefore you must needs know what was in them. The third full Part was brought to you, and delivered by your Appointment; you gave a Note how they should be disposed of, and you owned them not in publick: (*your own Soul told you they were not to be justified*) two Dozen were delivered privately to particular Persons, by your Direction. Lay these things together, and now answer them: For the Indictment is, That you caused such a Book to be printed and published.

Brewster. In the first Place, the Evidence does say, That Mr. *Calvert* did acknowledge when he gave him the Copy to print, that he staid so long for me, in order to be their Partner, he that was the Collector of it together. They were all

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printed before, and printed by Licence; for the Books, I never read them: we seldom read the Books we sell, being they were before printed, and with Licence sold single, (as the Gentlemen of the Jury know) I thought there was no Crime to print them all together. It was done in an Interval when there were no Licensers, we knew not where to go: what has been printed formerly, we took it for granted it might be re-printed, till this late Act for Printing; and this was done before this Act.

Just. Keeling. Have you any more to say?

Brewster. No, my Lord, I shall leave it to the Jury. But, my Lord, here are now some Neighbours to testify that I am no such Person as the Indictment sets forth, that I did *maliciously* and *seditionously* do such and such things.

Ld Ch. Just. Hyde. We will hear them, though I'll tell you it will not much matter; the Law says it is *Malice*.

Capt. Sheldon sworn. My Lord, all that I can say, is, he was ready at Beat of Drum upon all Occasions; what he has been guilty of by printing or otherwise, I am a Stranger to that; I know he was of civil Behaviour and Deportment amongst his Neighbours.

Just. Keeling. It is very ill that the King hath such Trained-Soldiers in the Band.

Capt. Hanson and others offered to like purpose.

Ld Ch. Just. Hyde. If you have a thousand to this purpose only, what signifies it?

Just. Keeling. Are you his Captain?

Capt. Sheldon. No, my Lord, Capt. Bradshaw.

Ld Ch. Just. Hyde. He should be cashier'd the Band; not but that he should be charged with Arms. I'll tell you, do not mistake your self, the Testimony of your civil Behaviour, going to Church, appearing in the Train'd-Bands, going to *Paul's*, being there at Common-Service, this is well: but you are not charged for this; a Man may do all this, and yet be a naughty Man in printing abusive Books, to the mis-leading of the King's Subjects. If you have any thing to say as to that, I shall be glad to find you innocent.

Brewster. I have no more to say.

Ld Hyde. Then you of the Jury, there are some things in this Indictment (as in the other) necessary to be stated to you; my Brothers and I have consulted here about it: The Indictment is for causing a factious and seditious Book, called *The Phoenix*, &c. with divers other things therein, to be printed. But, pray let them see the Book, and compare it with the Indictment.

Clerk. [Reads the Indictment, and first the Title.] *The Phoenix, or the Solemn League and Covenant.* [Edinburg, Printed in the Year of Covenant-Breaking.] *A King abusing his Power, to the Overthrow of Religion, Laws, and Liberties, which are the very Fundamentals of this Contract and Covenant, may be controuled and opposed. And if he set himself to overthrow all these by Arms, then they who have Power, as the Estates of a Land, may and ought to resist by Arms; because he doth by that Opposition break the very Bonds, and overthrow the Essentials of this Contract and Covenant. This may serve to justify the Proceedings of this Kingdom against the late King, who in an hostile way set himself to overthrow Religion, Parliaments, Laws, and Liberties.* [The rest is much at the same Rate,

only now and then a Spice of Blasphemy, for the Credit of the Holy League: *A greater Sin* (is the Breach of that *Scotch Covenant*, according to our Author, pag. 158.) *than a Sin against a Commandment, or against an Ordinance, &c.*]

Ld Ch. Just. Hyde. You of the Jury, you see the Indictment agrees with the Book. There's a great deal of Mercy that this Man hath not been indicted of Treason; for those very Particulars you have heard are as high Treason as can be. First he doth declare, *That the King abusing his Power, the People may resist, and take up Arms against him*: That's express Treason, without any more ado. Then he tells you what a horrid thing it is to break that *Solemn League and Covenant*; justifies the raising of Arms and Rebellion against the late King, unthroning and murdering of him. I tell you that *Solemn League and Covenant* was a most wicked and ungodly Thing, against the Law of God, and the Law of the Land. To have such villanous Stuff to be published, it is a great Mercy of the King it had not been drawn higher. You see the Man is so far from acknowledging any Guilt, that he justifies the Fact.

Brewster. No, my Lord, I do not justify my self.

Ld Ch. Just. Hyde. Yes, you do. The Printer swears he was to go Share and Share like: He had his Part; he publishes them to some particular Friends: I say he justifies this. He tells you in his Defence, That it was commonly printed; that it was done by printed Copy, and that done formerly by Licence; and when Things are printed by Licence, they do not expect or need any new or second Licence: They were commonly sold asunder; here they are only printed together. That he says is nothing. What is this but justifying the printing of it? Observe, weigh, and see what kind of Defence here is. The Title, what is it? *The Phoenix, or Solemn League and Covenant*. You all know it, and rue it. When was it printed? It was when the wicked Rebels here could not seduce sufficient Numbers of the King's Subjects to support their Rebellion; and then they invite their Dear Brethren (as they called them) the *Scots*, to unite with them. The *Scots* were cunning; they would not do it till they had entred into a Covenant, in a League; and then they consent to unite with the Rebels here. This League and Covenant was indeed in Defence of the King; but how long? So long as he defended them, (the Presbytery and *Scotch Discipline*.) When they had got this good King into their Hands, they put what Terms upon him they pleased; and then were these seditious Sermons printed. *Douglas's* was printed in *Scotland*; was it licensed here? No, it was done there, and brought hither. Then for the other Sermon, by what Licence was that printed? Observe the Time when it was printed; *was it not to set forward Rebellion, to set up the Scotch Presbytery*; and this in Forty-five, when they were in Arms against the King, after the King put himself upon his Defence, and was at *Oxford*? Do you tell me of the Licence of Rebels then for your Justification? Now, when the King is so happily return'd, now to publish these things afresh to the People, that they might do the same again! And I tell you once again, It is Mercy in the King

King that he was not indicted for Treason. I shall leave it to you, you have had it fully proved.

Clerk. Set *Simon Dover* to the Bar. [And here the Indictment is read.]

Mr. North opens this Indictment, as the rest.

Serjeant Morton. We have but two Witnesses, and they will prove the Matter clearly. There were two Impressions of this Book; we will prove he had a Share in both of them.

Creek sworn again.

Creek. I delivered before what I can say.

Judge Keeling. Look you, you must deliver all that Evidence over again, because it concerns another Person.

Creek. I did say, and say still, That, to the best of my Memory, *Mr. Dover* did print part of that Book, and that he and I did converse about it in the Time it was doing; but I cannot swear it positively, because I cannot remember the Time when, or the Place where.

Judge Keeling. Did you change Sheets with him?

Creek. With him, I cannot say; but some Sheets were changed by our Men.

Serjeant Morton. You say you think you had some Discourse with him: Did not you speak about the Danger of printing it?

Creek. We talked of making an end of it.

Serjeant Morton. Can you remember to what Letter you printed?

Creek. I have shewed the Gentlemen of the Jury.

Judge Keeling. Had you no Discourse of the Danger of it?

Creek. I thought it could not come to any thing: I did tell *Sir R. Brown*, (then Lord-Mayor) That if they hanged twenty more, I thought I should print their Speeches.

Judge Keeling. You knew the Contents of the Book?

Creek. Yes, I did.

Judge Keeling. Such Men as you, the King and the Government hath a great Interest in your Trade: That you should think it lawful to print what a Man says when he dies, and to scatter it abroad, though never so bad, it's a great Offence: I would not have it pass for so clear a thing.

Ld Ch. Just. Hyde. If you are of such Principles, to print what you list, you are not fit to live in a civil Place; for a Printer or Bookseller to print any thing one against the other, is actionable. Do you think the Press is open to print what you list?

Creek. I did so then.

Ld Ch. Just. Hyde. I'll deal plainly with you: For this Book, if you had had your Due, you ought both to have been drawn, hang'd and quarter'd. When did you give *Mr. L'Estrange* Information of this Matter?

Creek. Lately, when I was a Prisoner in *Ludgate*.

Mr. Royston. [One of the Jury.] I desire to ask him one Question; Whether *Mr. Creek* saw this Book a printing at *Mr. Dover's House*, or no?

Creek. No, I did not.

Serjeant Morton. They changed Sheets.

Thresher sworn.

Thresher. This is all that I have to say, That the first Night that *Mr. Brewster* sent for me to stich these Books, it was very late before we could get them: I went that Night to *Mr. Dover's*, and had some of the Sheets, the rest at *Mr. Creek's*. I did not see him print any of them.

Serjeant Morton. What Quantity was there of them?

Thresher. I suppose there was two or three hundred Sheets.

Mr. North. Were they not of this Book?

Thresher. Yes, of the Speeches.

Mr. North. Where were they delivered?

Thresher. In the lower Room: I suppose some of them were hanging upon Lines before I had them.

Ld Ch. Just. Hyde. What say you to it?

Dover. I desire to ask him some Questions. I do say I never saw the Man before: I would ask whether ever he saw me before in his Life?

Thresher. Not before that: I was never in his House but that Night. By this Token I saw you, and you me; When I came for the Sheets, you asked *Mr. Brewster* whether he and *Mr. Calvert* were agreed, or else you would not deliver the Sheets.

Dover. I desire to know what Time and Place: I am charged in the Indictment on a Day and Place.

Ld Ch. Just. Hyde. That's not very material.

Dover. He fixes nothing on me.

Ld Ch. Just. Hyde. That the Jury can best tell: Have you any more Questions?

Dover. No, my Lord.

[The Indictment and Books were compared.]

Dover. My Lord, there is no Person swears that I printed it, or part of it: Nothing fixed upon me.

Ld Ch. Just. Hyde. The first Man swears that you set it to printing.

Creek. I do not swear it positively; I never saw him print a Sheet: It was the Report of the Town that he did it.

Ld Ch. Just. Hyde. You printed it: For whom?

Creek. For *Brewster*, *Calvert*, and *Chapman*.

Ld Ch. Just. Hyde. But you say that you and he did converse about it when it was printing.

Creek. I did say, To the best of my Memory we did.

Ld Ch. Just. Hyde. By the Oath you have taken, who did you change Sheets with?

Creek. I cannot say I did change any with him: I say that some Sheets were changed by my Men, and they told me they had them of his Men.

Dover. Where are those Men that changed the Sheets? Which of my Men are they?

Justice Keeling. Look you, *Dover*, you are indicted for causing to be printed this wicked Book, and for publishing and vending of it. You are a Printer by your Trade, as well as this Man that comes against you: He says he did not see you print

print it; but he took it and believed that you printed it. I tell you how far that weighs: You are a Printer by Trade; and comes the other and desires the Sheets; you would not deliver them unless Mr. Brewster and Mr. Calvert were agreed. How come the Sheets to your House, being a Printer, and yet you not print it? Answer that.

Dover. I shall, my Lord: It is no Consequence at all. Admit I had these Sheets, it is no Consequence at all that I printed them; for Printers and Booksellers usually have Books they did not print themselves.

Ld Ch. Just. Hyde. *Thresher,* by the Oath that you have taken, did you see those Sheets hang upon the Line in his House?

Thresher. My Lord, I judged these had lately hung up: And I saw other Sheets hanging there; and I knew nothing to the contrary but those that hung upon the Line were the same with these.

Ld Ch. Just. Hyde. Here are Sheets upon the Lines; you delivered him to fold part of those on the Lines: What would you have more plain? You would not deliver them, if they were not agreed: Then they were agreed, and you delivered them.

Dover. I say this; I look upon the Witness to be altogether invalid: He is a Person of no good Repute.

Ld Ch. Just. Hyde. A better Man than you, for ought appears: You are indicted for a foul Offence, so is not he.

Dover. I am not the Man you take me to be.

Ld Ch. Just. Hyde. You shall have Evidence, if you will, that you are at work at this time upon as bad as this.

Dover. If it be a Crime, I am sorry for it.

Mr. L'Estrange sworn.

Mr. L'Estrange. Shall I speak to the whole Matter, or only to the Particular you last mentioned?

Ld Ch. Just. Hyde. Say your Knowledge.

Mr. L'Estrange. When I came to his House, which was about the middle of *October*, to search, I found at that present a little unlicensed Quaking Book; and in his Pocket the Libel that was thrown up and down the Town, called, *Murder will out*, ready printed.

Ld Ch. Just. Hyde. Which was a villanous Thing, and scattered at *York*.

Mr. L'Estrange. Since that, I was at his House, to compare a Flower which I found in the *Panther*, (a dangerous Pamphlet;) that Flower, that is, the very same Border, I found in his House; the same Mixture of Letter, great and small, in the same Case; and I took a Copy off the Press. I found over and above this Letter, [producing the Letter.] dated the 7th of *February*, 1663, and directed, *For my Dear and Loving Wife, J. Dover.* Is it your Lordship's Pleasure I shall read it all?

Ld Ch. Just. Hyde. If it be touching the printing of Things you found, do.

Mr. L'Estrange Reads it. *I would fain see my Sister Mary; therefore since Sister Hobbs will not come, take her Order, and instead of her Name, put in Sister Mary's: It will never be questioned here. However do it as wisely and handsomely as you can, &c.* [And then in a Postscript,] *You*

must either get Tom Porter, or some very trusty Friend, (possibly C. D. may help you) to get for you a safe and convenient Room to dry Books in, as soon as possibly you can. [And again:] Let me know what you intend to do with the two Sheets and Half. I will have it published, when I am certain I shall be tried.

Ld Ch. Just. Hyde. Let the Jury see now, whether you are the Man you would be thought.

Dover. I desire to know whether my Name be to that Letter?

Mr. L'Estrange. No, it is not.

Ld Ch. Just. Hyde. Where did you receive or find this Letter?

Mr. L'Estrange. My Lord, I found it about his Wife?

Ld Ch. Just. Hyde. Let the Jury judge if this come from you, or no.

Judge Keeling. You of the Jury, you must understand this, That what is said now is only upon his Reputation, not to the Point in Question at all: That Matter rests upon its own Bottom.

Ld Ch. Just. Hyde. I'll deal plainly with you: Had he not stood upon such Terms, I should not have spoke of this: But when a Man will be thus bold and confident, I thought it proper to let you see how he continues now in the Goal.

Dover. I do not vindicate my self in it; but I speak against the Witness: I do conceive that the Witness does not fix any thing upon me.

Ld Ch. Just. Hyde. Have you any thing else to say to the Indictment?

Dover. I am indicted as a malicious and factious Man: The Witnesses say no such thing.

Ld Ch. Just. Hyde. You are not indicted so, but that you have maliciously and factiously caused to be printed such a seditious Book; not your Person, but the Action.

Dover. There is nothing of that proved: Admit I was guilty of it, it was done when there was no Act or Law in being touching Printing. The Witnesses do not swear positively that I did do it: One says he did not see me; the other, that he only believed it; that he did see some Sheets upon the Line, and they were the same for ought he knew; does not remember the Time or Place of our Discourse: I do not know that ever I had half an Hour's Discourse with him in my Life: I never had any Meeting with him about any such Matter, nor had any Converse with him. The Title of the Book says, *Faithfully and Impartially collected for further Satisfaction*; so that it cannot be interpreted maliciously. It's a Maxim in Law, That the best Interpretations are to be put upon the Words of the Indictment, in favour of the Prisoner at the Bar: And I hope this Honourable Bench and the Jury will mind that. I am a Printer by Trade; what I did was for my Livelihood: The Scripture says, *He is worse than an Infidel that takes not care for his Family.* I speak not this to justify any thing against his Majesty or his Government. Through my Ignorance I may possibly transgress: If I have done any such Thing, I am sorry for it; I hope I shall be more careful for the future. The other Part of the Indictment is for selling of them: No Man swears that I sold one Book of them. *Mr. Creek* says, That some of his Men told him that they had some of those Sheets from some of my Folks; but

but of whom he does not say. That I did meddle with them, knowing them to be scandalous, I hope there is nothing proved of that nature: There being then *no Law*, I humbly hope there was *no Transgression*.

Ld Ch. Just. Hyde. Have you done?

Dover. I humbly desire your Honours, and this Jury, to take notice of what I have said.

Ld Ch. Just. Hyde. You of the Jury, I will not spend Time (it is too late) in repeating the Evidence: You have heard the Evidence particularly, and his Answer. He doth in part make the same Answer with his Fellows, which was, That it is his Trade. It's true, no doubt but he ought to maintain his Wife and Children by his lawful Calling; but if a Thief should tell you that he maintained his Wife by Stealing, is that lawful? Printing Books lawfully, no Man will call him to account for it; but if he prints that, which is abusive to the King and his Government, that's no Part of his Trade, and his Trade will not bear him out in it: He is charged for printing and publishing of these scandalous Books, That he did it *knowingly, maliciously, falsely, factiously, and seditiously*. I told you, That although all these Things be not proved, yet if he did it, the Law calls it *Malice, Faction, and Sedition*. Consider the Circumstances: You see it is done in the Dark; the Sheets delivered at his House, and Discourse about Delivery of them; he would not deliver them unless *Brewster* and *Calvert* were agreed. I leave the Evidence to you in this Case: Pregnant, strong, undeniable Circumstances are good Evidence. Though a Man doth not come and tell you he declared to him he knew what was contained in this Book, yet if there be sufficient Evidence to satisfy you in your Consciences, that he knew what was in it, and was privy to the printing and publishing of it; there's enough for you to find the Indictment. You are to weigh Circumstances as well as pregnant full Proof, in Cases of this Nature.

Clerk. Set *Nathan Brooks* to the Bar. You of the Jury, you shall understand that he stands indicted, &c. [*Reads the Indictment.*]

Mr. North afterwards opened the Indictment.

Serjeant Morton. This Man, we shall only prove him guilty of Stitching and Dispersing the said Books.

Thresher sworn.

Thresher. This Man I have not seen these three Years.

Serjeant Morton. Did he set you to work in stitching those Books?

Thresher. He brought none to me, that I can remember: But by Mr. *Brewster's* Order I delivered about two hundred, or thereabouts, and carried them to his House in *St. Martins*, and he took them at the Stair-foot, and paid me for stitching of them in Blue Paper.

Serjeant Morton. Who furnished you with Blue Paper?

Thresher. I went by Mr. *Brewster's* Order to a Stationer in *Bread-Street*, and received some.

Brooks. I desire to know whether in those Books he said he delivered me, there were those Passages in the Indictment?

Thresher. I know not: They were the *Speeches and Prayers* that I delivered you.

Brooks. How did you deliver them to me?

Thresher. They were stich'd; and I tied them up with a Piece of Packthread, and carried them to him: He received them himself, and came afterwards to an Alehouse, and gave me a Flaggon of Beer. He knew what they were; for some being imperfect, he said Mr. *Brewster* must make them good: And Mr. *Brewster* gave Order, if he came for them, they should be delivered him.

Brooks. Did you know there were those Passages in them?

Thresher. No, not I.

Brooks. I knew only the Title of it.

Ld Ch. Just. Hyde. Let there be what there will in it, if you knew the Title, look you to it. Have you any thing else to ask?

Brooks. No, my Lord.

Henry Mortlock sworn.

Serjeant Morton. Mr. Mortlock, how many of those Books did you receive of this *Nathan Brooks*?

Mortlock. About Forty or Fifty.

Serjeant Morton. What Talk had you about receiving them?

Mortlock. I do not remember any Discourse.

Serjeant Morton. Where did you receive them?

Mortlock. I am not certain whether in my Shop, or no.

Ld Ch. Just. Hyde. Were they open?

Mortlock. They were tied up.

Ld Ch. Just. Hyde. Did you speak for them?

Mortlock. I cannot tell; he brought them to me.

Ld Ch. Just. Hyde. How came he to bring them to you?

Mortlock. May be I might speak for them; I paid him for them.

Ld Ch. Just. Hyde. You and he knew what Book it was?

Mortlock. I think we did.

Ld Ch. Just. Hyde. Did you not open them? They might have been *The Devil of Edmon-ton*, for ought you knew. Did you open them afterward? And did they appear to be this Book?

Mortlock. Yes.

Mr. L'Estrange sworn.

Mr. L'Estrange. I came to the House of *Nathan Brooks* about *October* last, and knocking at the Door, they made a Difficulty to let me in: At last, seeing not how to avoid it, *Brooks* opened the Door. I asked him, what he was? He told me he was the Master of the House. By and by comes one that lodged in the House, and throws down this Book [*shewing the Book*] in the Kitchen, with this Expression, *I'll not be hang'd* (says he) *for ne'er a Rogue of you all: Do you hide your Books in my Chamber?* This Book had the *Speeches* in it, with other Schismatical Treatises. After this I searched the next House; and there I found more Difficulty to get in. But after a long Stay, I saw the Second Floor in a Blaze; and then with a Smith's Sledge I endeavoured to force the Door. At length the Fire was

was put out, and one comes down and opens the Door. I went in, and up Stairs, where I found about two hundred of the *Prelatick Preachers*, and certain Notes of *Nathan Brooks*, wherein he mentions the Delivery of several of these *Speeches*, and other seditious Pamphlets. There is one Particular wherein he records, That *Thomas Brewster* did in the Presence of Captain *Hanson* undertake to bear his Charges of Imprisonment; this *Nathan Brooks* having been formerly imprisoned for a Crime, wherein *Brewster* was to bear him out.

Ld Ch. Just. *Hyde*. What was it that burnt above?

Mr. *L'Estrange*. My Lord, they had burnt, I suppose, some of the *Prelatick Preachers*, (a desperate Book:) I found one Bundle untied, and I suppose (as the Man told me after) that it was a part of that which was burnt.

Ld Ch. Just. *Hyde*. You say this was in the next House to *Brooks*: what had *Brooks* to do there? Had he conveyed those Books thither?

Mr. *L'Estrange*. The Owner of the House said he knew nothing of them: But a Man and his Wife, lodging in the Chamber where the Fire was, said, That *Nathan Brooks* had delivered with his own Hands to them those Parcel of Books that were there found.

Ld Ch. Just. *Hyde*. You hear what he says, That one of your Guests came down, said he would not be hanged for ne'er a Rogue of you all; throws down the Book —

Brooks. What's that to me, if a Man have a Book in his House, and throw it down, and say so, doth that concern me? He did not bring it out of my Chamber.

One *Mercer* sworn.

Mercer. My Lord, [having the Book in his Hand] this is the Book that I did find in a Room, brought up by *Nathan Brooks*; and I brought it down: I had it in a Room where two Boys and my Sister lay. He came first and knocked at our Chamber-Door: Said I, Who is there? Says he, *A Friend*. Who are you? *Brooks*, your Landlord, says he: Pray open the Door, and lay up this Book for me. No, said I, if you were my Father or Brother, I will not receive it; I will not meddle or make with you. After I had denied the Book, he flings it into the next Room.

Ld Ch. Just. *Hyde*. How came you by the Book?

Mercer. After Mr. *L'Estrange* had enquired there for Books, I knew nothing; but my Wife called to my Sister, and asked her if she heard Mr. *Brooks* in the Room? She said, *Yes*, and he had left a Book with her. Having notice, I went up Stairs, took the Book, and brought it down presently.

Brooks. Is that the Book, the very individual Book, that I brought up there?

Ld Ch. Just. *Hyde*. He swears this, That you knocked, and prayed him to take in a Book; he refused it: You went up to the next Chamber, and there you left it. And his Wife asking afterwards if you had been there, his Sister said, *Yes*, you had left a Book. He brought it down; and this appears to be the very individual Book, nothing can be more clear.

Mercer's Wife sworn.

That Morning they knocked at *Brooks's* Door, we were a-bed; I heard a Noise of Thieves. Upon that, I being awake, and my Husband asleep, I awaked him, and desired him to go to the Window. He asked who was there? One said to him, Rise, and open the Door. Said my Husband, I am but a Lodger; let my Landlord open it, if he will. Who is your Landlord? Mr. *Brooks*. That's the Man I look for, says the other. So with that, after some time, Mr. *Brooks* went down, and opened the Door. Mr. *L'Estrange* coming up to my Husband, says he, *Are you sure there is nothing in your Rooms?* There is nothing, said he. When my Husband went down, I called to my Sister: Said I, Did you hear Mr. *Brooks* there? *Yes*, said she, he has left a Book here. Said I, Do you know what's in it? It may bring us all into Trouble. And my Husband having confidently denied any such thing, fearing he might be troubled, I called him up, and told him of it. Said my Husband, *I'll call up the Gentleman, and give it him*. No, said I, go take the Book, and carry it him.

Mercer's Sister sworn.

Thomazin Mercer. It is very true that that is the very Book I received from Mr. *Brooks*.

Ld Ch. Just. *Hyde*. Now the individual Book is brought to light.

Brooks. What was the Title of it?

T. Mercer. I know not; but there was the *Speeches of the ten Men that were executed*.

Brooks. Did you see that Book, that very Book?

T. Mercer. *Yes*.

One Mr. *Merridale* sworn.

Mr. *Merridale*. My Lord, this very Book did *Mercer* bring down, told us, *He would be hang'd for never a Rogue of them all: Did he think to lay his Books at my Door?* I know this is the very Book: I took notice of the Picture of Sir *Henry Vane* in it; and he there owned it.

Mercer. I can tell that he owned it, and said it was brought to him to be bound.

Ld Ch. Just. *Hyde*. Here are two hundred of these Books delivered to you to sell: fifty you deliver to another. When Mr. *L'Estrange* comes to search, you open not your Doors: When you see you could not stay longer, you run up to deliver it to *Mercer*, your Guest: He would not receive it; you deliver it to his Sister: She keeps it in her Hands. When her Husband had denied Books to be there, and his Wife understanding afterwards you had left it, she was afraid of her Husband for denying it, calls him, and gives him the Book; and then he said, *He would be hanged for never a Rogue of you all: throws down the Book: And that was the very Book she received from you: and your self did own it, and confess it*.

Brooks. As for Mr. *L'Estrange*, it is not so; he says, when first he knocked at the door, I did not hear him: afterwards I called out, Who's there? said one, Which is Mr. *Brooks*? said I, Here. I told them, if they would be civil, I would open the door, give me but leave to put on

on my Breeches. I went and opened it. He doth not swear positively they are my Books. My Lord, this *Mercer* was a Lodger in my House; I have often desired him to pay his Rent, and since I have been taken, I have sent several Messengers: I told him I would seize his Goods, and thereupon he speaks against me maliciously. I desire you to consider, I being only a Workman, how can I be guilty of Sedition and Scandalous Things? I never printed any thing, I am only a Bookbinder, that's my Trade: I hope you will consider, that I am only a bare Workman. My Lord, I desire when they go out, that somebody may stand at the door, that no body may go in to the Jury.

Ld Ch. Just. *Hyde*. We will take care of that: Have you any more to say?

Brooks. No, my Lord.

Ld Ch. Just. *Hyde*. You of the Jury, you have heard so much of the other Indictments of the same nature, I need not say much to this. That which he speaks touching his Trade, I must repeat the same as before; he is not questioned for using, but abusing of his Trade; for publishing and dispersing seditious and scandalous Books, printing and publishing, but the Evidence is only for publishing. If you be satisfied that he published it, that's the Crime; printing alone is not enough, for if a Man print a Book to make a fire on, that's no Offence, it is the publishing of it which is the Crime. You have heard the Evidence, how far forth it is proved, two hundred delivered to him, fifty by him delivered to another: This Book you see his own Conscience tells him what it was; when Mr. *L'Estrange* came, he would have slipt it into his Guest's Chamber; he refused it: then he carries it to another. Lay your Evidence together; if you find him guilty of the publishing, it is enough.

Jury. We desire to know upon what Statute Law this Indictment is grounded?

Ld Ch. Just. *Hyde*. Upon none; but it is an Offence at Common Law, I told you so at first.

[The Jury went forth, and after near an hour's Consultation, returned to the Court, and took their places.]

Clerk. Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Fore-man.

Clerk. Set up the Prisoners to the Bar: How say you, is *Tho. Brewster* guilty of the Offence whereof he stands indicted, for printing the seditious Book called *The Speeches*, &c. or not guilty?

Fore-man. Guilty of selling and uttering the said Books.

Clerk. What say you, is he guilty of the Offence of printing and publishing the Book called *The Phoenix*, &c. or not guilty?

Fore-man. Guilty of publishing it.

Clerk. How say you, is *Simon Dover* guilty of the Offence for printing and publishing *The Speeches*, &c. or not guilty?

Fore-man. Guilty.

Clerk. How say you, is *Nathan Brooks* guilty of the Offence for printing and selling the said Book?

Fore-man. Guilty of selling it.

Clerk. Harken to your Verdicts as the Court hath recorded them: You say, that &c. and so you say all?

Jury. Yes.

Mr. *North*. My Lord, we humbly pray Sentence against the Prisoners.

Ld Ch. Just. *Hyde*. You three, *Thomas Brewster*, *Simon Dover* and *Nathan Brooks*; you have been severally indicted for a heinous and great Offence: *Brewster*, you have been indicted for two several Books, as full of Villany, and Slander, and Reproach to the King and Government, as possibly can be: And I will tell you all three, it is the King's great Mercy you have not been indicted capitally; for every one of those Books are filled with Treason, and you for publishing of them, by strictness of Law, have forfeited your Lives and All to the King: It is his Clemency towards you. You may see the King's Purposes; he desires to reform, not to ruin his Subjects. The Press is grown so common, and Men take the Boldness to print whatever is brought to them, let it concern whom it will; it is high time Examples be made. I must let you and all Men know, by the Course of the Common Law, before this new Act was made, for a Printer, or any other, under pretence of Printing, to publish that which is a Reproach to the King, to the State, to his Government, to the Church, nay to a particular Person, it is punishable as a Misdemeanour. He must not say, *He knew not what was in it*; that is no Answer in Law. I speak this, because I would have Men avoid this for time to come, and not think to shelter themselves under such a Pretence. I will not spend time in discoursing of the Nature of the Offence, it hath been declared already; it is so high, that truly the highest Punishment that by Law may be justly inflicted, is due to you. But, *Thomas Brewster*, your Offence is double; therefore the Judgment of the Court is,

' That you shall pay to the King, for these
' Offences committed, an hundred
' Marks: And for you, (the other two) *Kelyn. 24.*
' *Simon Dover* and *Nathan Brooks*, you shall pay
' either of you a Fine of forty Marks to the King.
' You shall either of you severally stand upon
' the Pillory from Eleven to One of the Clock
' in one Place at the *Exchange*, and another Day
' (the same space of time) in *Smithfield*; and you
' shall have a Paper set over your Hats, declaring
' your Offence, *For printing and publishing Scan-*
' *dalous, Treasonable, and Factious Books against*
' *the King and State.*

' You shall be committed till the next Goal-
' delivery without Bail; and then you shall
' make an open Confession and Acknowledg-
' ment of your Offences in such Words as shall
' be directed you.

' And afterwards you shall remain Prisoners
' during the King's Pleasure: And when you
' are discharged, you shall put in good Security
' by Recognizance, your selves 400 l. a-piece,
' and two Securities each of you of 200 l. a-
' pice, not to print or publish any Books, but
' such as shall be allow'd of. And this is the
' Judgment of the Court.

LXV. *The Trial of Mr. BENJAMIN KEACH, at the Assizes at Ailsbury in Buckinghamshire, for a Libel, October 8 and 9. 1664. 16 Car. II.*



Benjamin Keach of *Winslow*, in the County of *Bucks*, having wrote a little Book, entitled, *The Child's Instructor; or, A New and Easy Primer*: In which were contained several Things contrary to the Doctrine and Ceremonies of the Church of *England*; as, *That Infants ought not to be baptized; That Laymen may preach the Gospel; That Christ shall reign personally upon the Earth in the latter Day, &c.* He had no sooner got it printed, and some of them sent down to him, but one *Mr. Strafford*, a Justice of the Peace for that County, received Information of it. Whereupon, taking a Constable with him, he went in quest of the said Books; and coming to the House of *Mr. Keach*, found and seized several of them, bound *Mr. Keach* over to answer for it at the next Assizes in a Recognizance of an hundred Pounds, and two Sureties with him in fifty Pounds each.

The next Assize holden for the said County was at *Ailsbury* on the 8th and 9th Days of *October*, 1664, Lord Chief Justice *Hyde* being Judge. On the first of which Days, in the Forenoon, *Mr. Keach* was called upon; who answering to his Name, was brought to the Bar, and examined as follows:

Judge. Did you write this Book? [*Holding out one of the Primers in his Hand.*]

Keach. I writ most of it.

Judge. What have you to do to take other Mens Trades out of their hands? I believe you can preach as well as write Books. Thus it is to let you, and such as you are, have the Scriptures to wrest to your own Destruction. You have made in your Book a new Creed: I have seen three Creeds before; but I never saw a fourth till you made one.

Keach. I have not made a Creed, but a Confession of the Christian Faith.

Judge. Well, that is a Creed then.

Keach. Your Lordship said you had never seen but three Creeds; but Thousands of Christians have made a Confession of their Faith.

After this the Judge observed to the Court several Things which were written in the said Book, concerning Baptism and the Ministers of the Gospel, which were contrary to the Liturgy of the Church of *England*, and so a Breach of the Act of Uniformity.

Keach. My Lord, as to those Things—

Judge. You shall not preach here, nor give the Reasons of your Damnable Doctrine, to seduce and infect his Majesty's Subjects. These are not Things for such as you are to meddle

with, and to pretend to write Books of Divinity: But I will try you for it, before I sleep.

After this he gave Directions to the Clerk to draw up the Indictment; and the Witnesses were sworn, and ordered to stand by the Clerk till the Indictment was finished, and then to go with it to the Grand Inquest.

Judge. Gentlemen of the Grand Jury, I shall send you presently a Bill against one that hath taken upon him to write a new *Primmer* for the Instruction of your Children: He is a base and dangerous Fellow; and if this be suffered, Children by learning of it will become such as he is, and therefore I hope you will do your Duty.

The Indictment being long, took so much time to draw it up, that the Tryal did not come on till the next Day.

The next Day, the Court being set, the Grand Jury found the Bill, and brought it in indorsed *Billa vera*.

Clerk. *Benjamin Keach*, come to the Bar.

Mr. Keach comes to the Bar.

Clerk. Hear your Charge. 'Thou art here indicted by the Name of *Benjamin Keach*, of the Parish of *Winslow*, in the County of *Bucks*: 'For that thou being a Seditious, Heretical, and 'Schismatical Person, evilly and maliciously disposed, and disaffected to his Majesty's Government, and the Government of the Church of 'England, didst maliciously and wickedly, on 'the 1st Day of *May*, in the 16th Year of the 'Reign of our Sovereign Lord the King, write, 'print, and publish, or cause to be written, 'printed, and published, one Seditious and Venomous Book, entitled, *The Child's Instructor; or, 'A New and Easy Primer*; wherein are contained, by way of Question and Answer, these 'Damnable Positions, contrary to the Book of 'Common Prayer, and the Liturgy of the 'Church of *England*: That is to say, in one 'Place you have thus written; Q. *Who are the 'right Subjects of Baptism?* A. *Believers, or godly 'Men and Women only, who can make Confession 'of their Faith and Repentance.* And in another 'place you have maliciously and wickedly written these Words; Q. *How shall it then go with 'the Saints?* A. *O very well. It is the Day that 'they have longed for: then they shall hear that 'Sentence, Come ye Blessed of my Father, inherit the Kingdom prepared for you; and so shall 'they reign with Christ on the Earth a thousand 'Years, even on Mount Sion, in New Jerusalem; 'for there will Christ's Throne be, on which they 'must sit down with him.* Then follows this Question,

Question, with the Answer thereto, in these plain English Words; Q. *When shall the Wicked and the fallen Angels, which be the Devils, be judged?* A. *When the thousand Years shall be expired, then shall the rest of the Devils be raised, and then shall be the general and last Judgment, then shall all the rest of the Dead and Devils be judged by Christ and his glorified Saints; and they being arraigned and judged, the Wicked shall be condemned, and cast by the Angels into the Lake of Fire, there to be burned for ever and ever.*

In another place thou hast wickedly and maliciously written these plain English words: Q. *Why may not Infants be received into the Church now, as they were under the Law?* A. *Because the fleshly Seed is cast out: Tho God under that Dispensation did receive Infants in a lineal way by Generation, yet he that hath the Key of David, that openeth and no Man shutteth, that shutteth and no Man openeth, hath shut up that Way into the Church; and hath opened the Door of Regeneration, receiving in none now but Believers.*

Q. *What then is the State of Infants?* A. *Infants that die are Members of the Kingdom of Glory, tho they be not Members of the Visible Church.* Q. *Do they then that bring in Infants in a fleshly lineal way, err from the way of Truth?* A. *Yea, they do; for they make not God's Holy Word their Rule, but do presume to open a Door that Christ hath shut, and none ought to open.* And also in another place thou hast wickedly and maliciously composed *A short Confession of the Christian Faith*; wherein thou hast affirm'd this concerning the second Person in the Blessed Trinity, in these plain English words: *I also believe that he rose again the third Day from the Dead, and ascended into Heaven above, and there now sitteth at the right hand of God the Father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be Judge of the Quick and Dead.* And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain English words following: *Christ hath not chosen the wise and prudent Men after the Flesh, not great Doctors and Rabbies; Not many Mighty and Noble, saith Paul, are called: but rather the Poor and Despised, even Tradesmen and such-like, as was Matthew, Peter, Andrew, Paul, and others. And Christ's true Ministers have not their Learning and Wisdom from Men, or from Universities, or human Schools for human Learning. Arts and Sciences are not essential to making of a true Minister, but the Gifts of God, which cannot be bought with Silver and Gold; and also as they have freely received the Gift, so they do freely administer: They do not preach for Hire, for Gain and filthy Lucre: They are not like the false Teachers, who look for Gain from their Quarter; who eat the Fat, and clothe themselves with the Wool, and kill them that are fed; those that put not into their mouths, they prepare War against: Also they are not Lords over God's Heritage, they rule them not by Force and Cruelty, neither have they power to force and compel Men to believe and obey their Doctrines, but are only to persuade and intreat; for this is the Way of the Gospel, as Christ taught them——*

And many other things hast thou seditiously, wickedly, and maliciously written in the said Book, to the great Displeasure of Almighty

God, the Scandal of the Liturgy of the Church of England, the Disaffection of the King's People to his Majesty's Government, the Danger of the Peace of this Kingdom, to the evil Example of others, and contrary to the Statute in that case made and provided. How say you, *Benjamin Keach*, are you Guilty, or Not Guilty?

Keach. The Indictment is so very long, that I cannot remember half of it, nor have I been accustomed to plead to Indictments: therefore I desire a Copy of it, and liberty to confer with Counsel about it, in order to put in my Exceptions, and then I shall plead to it.

Judge. 'Tis your Intention, I perceive, to delay your Trial to the next Assize.

Keach. No, my Lord, I have no design by this to delay my Trial.

Judge. I will not deny you what is your Right, but you must first plead to your Indictment, and afterwards you shall have a Copy of it.

Keach. I desire I may have a Copy of it before I plead, in order to put in my Exceptions against it.

Judge. You shall not have it, before you plead Guilty or Not Guilty.

Keach. 'Tis what has been granted to others.

Judge. You shall not have it first; and if you refuse to plead Guilty or Not Guilty, I shall take it *pro confesso*, and give Judgment against you accordingly.

Keach. Not Guilty, my Lord.

Judge. Now you may have a Copy of your Indictment, and I will give you an Hour's time to consider of it.

Keach. If I may have no longer time I don't desire any.

Judge. I have something else to do than wait upon you; you are not a Person fit to go abroad till next Assize, and you will think it hard if I should commit you to Goal till then: but because you shall not say but that you were offered fair, if you will find sufficient Sureties for your Appearance at the next Assize, and for your good Behaviour till then, you shall not be try'd till then.

Keach. My Lord, I am content to be try'd now.

Judge. Go on then, a God's Name.

Clerk. Gentlemen of the Jury, answer to your Names, &c.

Then the Jury were sworn, well and truly to try the Traverse between the King's Majesty and the Prisoner at the Bar.

Judge. Clerk, read the Indictment. [*He reads it.*]

Gentlemen of the Jury, the Prisoner at the Bar has pleaded Not Guilty, and your Charge is to inquire whether he be Guilty or not.

Then the Witnesses were sworn, who were *Neal* and *Whithall*.

Neal deposed, That Justice *Strafford* sent for him to his House; when he came there, the Justice sent him back again for his Staff of Authority: which being done, he went with the Justice to one *Moody's* Stall, and asked for some of the *Primmers* which he had: he answered, that he had none. That from thence they went to Mr. *Keach's* House, where first they saw his Wife, who told them he was in an inward Room. They asked her, if there were not some

Primmers in the House? she said, there was; and about thirty were brought forth, and delivered to them.

Then Justice *Strafford* himself was also examined: he said, That he found the Primmers now before the Court in *Benj. Keach's* House, and seized them; and that the Prisoner at the Bar had confessed before him, that he writ and composed the said Book.

Then a Copy of the Prisoner's Examination before the said Justice, signed with his own Hand, was produced and read; wherein was contained, That the Prisoner being asked whether he was the Author or Writer of the said Book? answered, Yes he was. And further declared, That he delivered a part of the Copy to one *Oviat* a Printer at *London*, since dead; and that the rest of the Copy he sent up by another Hand, but that he knew not who printed it: That about forty of them were sent down to him, of which he had dispersed about twelve, and that the Price was Five-pence each Book.

After this the Judge called for a Common-Prayer-Book, and laid it before him; and ordered one of the Primmers to be given to the Gentlemen of the Jury, and bid them look on those arts where the Leaves were turn'd down.

Judge. Clerk, read those Sentences in the Indictment, which are taken out of the Book, that the Jury may turn to them, and see that the said Positions are contained in the Book.

Clerk. Q. *Who are the right Subjects of Baptism?* A. Believers or Godly Men and Women only, who can make Confession of their Faith and Repentance.

Judge. This is contrary to the Book of Common-Prayer, for that appoints Infants to be baptized, as well as Men and Women. [*Here he read several places in the Liturgy, wherein the baptizing of Infants is enjoined and directed.*]

Clerk reads. Q. *How shall it then go with the Saints?* A. Oh very well! it is the Day that they have long'd for: then they shall hear that Sentence, *Come ye blessed of my Father, inherit the Kingdom prepared for you:* And so shall they reign with Christ on the Earth a thousand Years, &c.

Judge. This is contrary to the Creed in the Book of Common-Prayer, and is an old Heresy, which was cast out of the Church a thousand Years ago, and was likewise condemned by the Council of *Constance* about five hundred Years ago, and hath lain dead ever since, till now this Rascal hath revived it.

Clerk reads. Q. *Why may not Infants be received into the Church now, as they were under the Law?*

A. Because the fleshly Seed is cast out, &c. Q. *What then is the State of Infants?* A. Infants that die, are Members of the Kingdom of Glory, tho they be not Members of the Visible Church. Q. *Do they then that bring in Infants by a fleshly lineal Way, err from the Truth?* A. Yea, they do; for they make not God's Holy Word their Rule, but do presume to open a Door that Christ hath shut, and none ought to open.

Judge. This also is contrary to the Book of Common-Prayer, which appoints Infants to be received into the Church, and directs the Priest to say, when he hath sprinkled the Child, *We receive this Child into the Congregation of Christ's Flock.* And whereas he says that Infants that die are Members of the Kingdom of Glory, tho not of the Visible Church, he speaks this of In-

fants in general, and so the Child of a Turk or Heathen is made equal with the Child of a Christian: But the Church hath otherwise determined; that is, if an Infant die after Baptism, and before it hath actually sinned, it is saved, because Original Sin is wash'd away in Baptism. Read on.

Clerk. Also in another place thou hast wickedly and maliciously composed *A short Confession of Faith*, in which thou hast affirmed thus, concerning the second Person in the Blessed Trinity, in these plain *English* words; *I also believe that he rose again the third Day from the Dead, and ascended into Heaven, and there now sitteth at the right hand of God the Father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be the Judge of the Quick and the Dead.*

Judge. This is contrary to our Creed: for whereas he saith, *From thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be Judge both of the Quick and the Dead;* our Creed only saith, *From thence he shall come to judge both the Quick and the Dead.*

Clerk. And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain *English* words following: *Christ hath not chosen the wise and prudent Men after the Flesh, not great Doctors and Rabbies; Not many Mighty and Noble, saith Paul, are called, &c. as above.*

Judge. This also is contrary to the Book of Common-Prayer: for whereas the Position in the Indictment saith, *Christ hath not chosen great Rabbies and Doctors, but rather the Poor, and Despised, and Tradesmen;* the Book of Common-Prayer doth admit of such. [*Here he read some Passages concerning the Qualification of Ministers, and their Manner of Consecration.*] Because Christ, when he was upon the Earth, made choice of Tradesmen to be his Disciples, therefore this Fellow would have Ministers to be such now; Taylors, and Pedlars, and Tinkers, and such Fellows as he is: But it is otherwise now, as appears from the Manner in which the Church has appointed them to be chosen, ordained, and consecrated.

The Judge having thus gone through the Indictment, the Prisoner began to speak in his Defence.

Keach. As to the Doctrines—

Judge. You shall not speak here, except to the Matter of Fact; that is to say, whether you writ this Book or not.

Keach. I desire liberty to speak to the Particulars in my Indictment, and those things that have—

Judge. You shall not be suffered to give the Reasons of your damnable Doctrine here, to seduce the King's Subjects.

Keach. Is my Religion so bad, that I may not be allow'd to speak?

Judge. I know your Religion, you are a Fifth-Monarchy-Man; and you can preach, as well as write Books; and you would preach here, if I would let you: but I shall take such order, as you shall do no more mischief.

Keach. I did not write all the Book, for there is an Epistle to it written by another Hand; neither can it be proved that I writ all that is put into the Indictment.

Judge.

Judge. It is all one whether you writ it yourself, or dictated to another to write it: but it appears by your Examination under your own Hand, that you wrote it all.

Keach. Because I writ the major part of it, I was contented to let it go with the word *all* in my Examination before Justice *Strafford*; but I cannot in Conscience say I wrote it all: nor is it proved that I published it.

Judge. Yes, you did; for *Moody* had six Books of you.

Keach. I did neither sell them, nor deliver them to him.

Judge. He had them at your House, and it is not likely he should take them without your Consent.

Keach. I do not say he had them without my Consent.

Judge. It is all one then, as if you delivered them.

Here the Judge summ'd up the Evidence, and gave his Charge to the Jury; but this the *A-manuensis* has omitted.

The Jury being withdrawn, staid for some hours: at length one of the Officers who attended them came in.

Officer. My Lord, the Jury about the Primers cannot agree.

Judge. But they must agree.

Officer. They desire to know whether one of them may not come and speak with your Lordship, about something whereof they are in doubt.

Judge. Yes, privately: [*And then ordered one to come to him on the Bench.*]

Then the Officer called one, and he was set upon the Clerk's Table, and the Judge and he whispered together a great while; and it was observed, that the Judge having his hands upon his shoulders, would frequently shake him as he spake to him. Upon this Person's returning, the whole Jury quickly came in, and being according to Custom called over by their Names the Clerk proceeded.

Clerk. Are you agreed in your Verdict?

Jury. Yes, yes.

Clerk. Who shall speak for you?

Jury. Our Fore-man.

Clerk. How say you, is *Benjamin Keach* Guilty of the Matters contained in the Indictment against him, or Not Guilty?

Fore-man. Guilty in Part.

Clerk. Of what Part?

Fore-man. There is something contained in the Indictment, which is not in the Book.

Clerk. What is that?

Fore-man. In the Indictment he is charged with these words, *When the thousand Years shall be expired, then shall all the rest of the Devils be raised*; but in the Book it is, *Then shall the rest of the Dead be raised*.

Clerk. Is he Guilty of all the rest of the Indictment, that Sentence excepted?

One of the Jury. I cannot in Conscience find him Guilty, because the Words in the Indictment and the Book do not agree.

Judge. That is only through a Mistake of the Clerk's, and in that Sentence only; and you may

find him Guilty of all, that Sentence excepted; but why did you come in before you were agreed?

Fore-man. We thought we had been agreed?

Judge. You must go out again, and agree: and as for you, that say you cannot in Conscience find him Guilty, if you say so again, without giving Reasons for it, I shall take an Order with you.

Then the Jury withdrew, and in a little time returned again.

Clerk. Are you agreed in your Verdict?

Jury. Yes.

Clerk. How say you, is *Benjamin Keach* Guilty of the Matters charged in the Indictment against him, or Not Guilty?

Fore-man. Guilty of the Indictment; that Sentence, wherein *Devils* is inserted instead of *Dead*, only excepted.

Upon this, *Benjamin Keach* was called to the Bar, and the Judge proceeded to pass Sentence upon him as follows.

Judge. *Benjamin Keach*, you are here convicted of writing and publishing a seditious and scandalous Book, for which the Court's Judgment is this, and the Court doth award, That you shall go to Goal for a Fortnight, without Bail or Mainprise; and the next Saturday to stand upon the Pillory at *Ailsbury* for the space of two Hours, from Eleven of the clock to One, with a Paper upon your Head with this Inscription, *For writing, printing, and publishing a schismatical Book, intituled, The Child's Instructor, or a New and Easy Primer.* And the next Thursday to stand in the same manner, and for the same time, in the Market of *Winslow*; and there your Book shall be openly burnt before your Face by the common Hangman, in disgrace of you and your Doctrine. And you shall forfeit to the King's Majesty the Sum of 20*l.* and shall remain in Goal until you find Sureties for your good Behaviour and Appearance at the next Assizes, there to renounce your Doctrine, and make such publick Submission as shall be enjoined you. Take him away, Keeper.

Keach. I hope I shall never renounce those Truths which I have written in that Book.

Clerk. My Lord, he says he hopes he shall never repent.

But the Judge taking no notice, the Goaler took him away.

According to the Sentence passed upon him, he was kept close Prisoner till the Saturday following, and then about Eleven a clock was carried to the Pillory at *Ailsbury*; where he stood full two Hours to a minute, was deny'd the liberty of speaking to the Spectators, and had his Hands as well as his Head carefully kept in the Pillory the whole time.

On the Thursday following he stood in the same manner and for the same time at *Winslow*, the Town where he lived, and had his Book burnt before him.

After this, upon paying his Fine, and giving sufficient Security for his good Behaviour, he was set at liberty; but was never brought to make a Recantation.

LXVI. *Proceedings in Parliament against* EDWARD Earl of CLARENDON, * *Lord High Chancellor of ENGLAND, for High-Treason, and other High Crimes and Misdemeanours, July 10, 1663. 15 Car. II. and October, &c. 1667. 19 Car. II.*

THE Earl of Bristol having been oppos'd by the Earl of Clarendon in the Designs which he had form'd in favour of the *Papists*, resolved to take all Methods to ruin him; not contented therefore with endeavouring to deprive him of the King's Favour, he forms Articles of *High-Treason* and other *Misdemeanours* against him, which he shew'd to the King; and tho' the King would have dissuaded him from it, yet the next Day he carried the Charge to the House of Lords, which was as follows.

Articles of High-Treason, and other Heinous Misdemeanors, Exhibited against Edward Earl of Clarendon, Lord High-Chancellor of England, in the House of Lords; on the 10th of July, 1663. By the Earl of Bristol. †

THAT being in Place of highest Trust and Confidence with His Majesty, and having arrogated a Supream Direction in all His Majesty's Affairs, both at Home and Abroad, hath Wickedly and Maliciously, and with a Traiterous Intent to draw Scandal and Contempt upon His Majesty's Person, and to alienate from him the Affections of his Subjects, abused the said Trust in Manner following, viz.

That he hath Traiterously and Maliciously endeavoured to Alienate the Hearts of his Majesty's Subjects from him, by Words of his own, and by artificial Insinuations of his Creatures and Dependences, that His Majesty was inclined to Popery, and had a Design to alter the Religion Established in this Kingdom.

That in pursuance of that Traiterous Intent, he hath to several Persons of His Majesty's Privy-Council held Discourses to this Effect, viz.

That His Majesty was dangerously corrupted in his Religion, and inclined to Popery.

That Persons of that Religion had such Access, and such Credit with him, that unless there were a careful Eye had unto it, the Protestant Religion would be overthrown in this Kingdom; and in pursuance of the said Wicked and Traiterous Intent, upon His Majesty's admitting Sir Henry Bennet to be Principal Secretary of State, in the Place of Mr. Secretary Nicolas, he hath said these words, or words to this effect;

That His Majesty had given 10000*l.* to remove a zealous Protestant, that he might bring into that Place of High Trust a concealed Papist; notwithstanding that the said Sir Henry Bennet is known to have ever been, both in his Profession and Practice, constant to the Protestant Religion.

That in pursuance of the same Traiterous Design, several near Friends and known Dependences of his, have said aloud, that were it not for my Lord Chancellor's standing in the Gap, Popery would be introduced in this Kingdom, or words to that effect.

That in pursuance of the aforesaid Traiterous Design, he hath not only advised and perswaded the King to do such things contrary to his own Reasons and Resolutions as might confirm and encrease the Scandal, which he had endeavoured to raise upon His Majesty as aforesaid, of his favour to Popery, but more particularly to allow his Name to be used to the Pope and several Cardinals in the solicitation of a Cardinal's Cap for the Lord Aubigny, one of his own Subjects, and great Almoner at present to his Royal Consort the Queen.

That in pursuance of the same Wicked and Traiterous Design, he had recommended to be employed to the Pope one of his own Domesticks, Mr. Rich. Bealing, a Person (tho' an avow'd Papist) known to be trusted and employed by him in Dispatches and Negotiations concerning Affairs of greatest Concernment to the Nation.

That in pursuance of the said Traiterous Design, he being chief Minister of State, did himself write by the said Mr. Rich. Bealing, Letters to several Cardinals, pressing them in the King's Name to induce the Pope to Confer a Cardinal's Cap on the said Lord Aubigny, promising, in Case it should be attained, exemption to the Roman Catholics of England from the Penal Laws in force against them; by which Address unto the Pope for that Ecclesiastical Dignity for one of His Majesty's Subjects and Domesticks, he hath, as far as from one Action can be inferred, traiterously acknowledged the Pope's Ecclesiastical Sovereignty, contrary to the known Laws of this Kingdom.

That in pursuance of the same traiterous Design, he has called unto him several Priests and Jesuits, whom he knew to be Superiors of Orders here in England, and desired them to write to their Generals at Rome, to give their help for the obtaining from the Pope the Cardinal's Cap for the Lord Aubigny, as aforesaid, promising great Favour to Papists here, in case it should be effected for him.

* Bishop Burnet's *Hist. of his Own Times*, p. 254, &c.

† Burnet's *Hist. of his Own Times*, Vol. I. p. 196.

That he hath promised to several Papists he would do his endeavour, and said he hoped, to compass the taking away all Penal Laws against them, which he did in pursuance of the traitorous Design aforesaid; to the end they might presume and grow vain upon his Patronage, and by their publishing their hopes of a Toleration, encrease the Scandal endeavoured by him, and by his Emissaries, to be raised upon His Majesty throughout the Kingdom.

That in pursuance of the same traitorous Design, being intrusted with the Treaty betwixt His Majesty, and His Royal Consort the Queen, he concluded it upon Articles scandalous and dangerous to the Protestant Religion.

That in pursuance of the same traitorous Design, he concluded the same Marriage, and brought the King and Queen together, without any settled Agreement in what manner the Rites of Marriage should be performed, whereby the Queen refusing to be married by a Protestant Priest, in case of her being with Child, either the Succession should be made uncertain for want of the due Rights of Matrimony, or else His Majesty to be exposed to a suspicion of having been married in his own Dominions by a Romish Priest, whereby all the former Scandals endeavoured to be raised upon His Majesty by the said Earl, as to point of Popery, might be confirmed and heightened.

That having thus traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him upon the score of Religion, he hath endeavoured to make use of all the malicious Scandals and Jealousies, which he and his Emissaries had raised in His Majesty's Subjects, to raise from them unto himself the popular Applause of being the zealous Upholder of the Protestant Religion, and a promoter of new Severities against Papists.

That he hath traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him, by venting in his own Discourse, and by the Speeches of his nearest Relations and Emissaries, opprobrious Scandals against His Majesty's Person and course of Life, such as are not fit to be mentioned, unless necessity in the way of Proof shall require it.

That he hath traiterously endeavoured to Alienate the Affections of his Highness the Duke of York from His Majesty, by suggesting unto him Jealousies as far as in him lay, and publishing abroad by his Emissaries, that His Majesty intended to Legitimate the Duke of Monmouth.

That he hath Wickedly and Maliciously, contrary to the Duty of a Privy-Counsellor of England, and contrary to the perpetual and most important Interest of this Nation, perswaded His Majesty, against the Advice of the Lord General, to withdraw the English Garrisons out of Scotland, and to demolish all the Forts built there, at so vast a Charge to this Kingdom.

That His Majesty having been graciously pleased to communicate the Desires of the Parliament of Scotland for the remove of the said Garrisons to the Parliament of England, and to ask their Advice therein, the said Earl of Clarendon, not only perswaded His Majesty actually to remove those Garrisons, without expecting the Advice of his Parliament of England concerning it, but did by Menaces of his Majesty's displeasure, deter several Members of Parliament from moving the House, as they intended, to enter upon consideration of that Matter.

That he had Traiterously and Maliciously endeavoured to Alienate His Majesty's Affections and Esteem from this his Parliament, by telling His Ma-

jesty that there was never so weak and inconsiderable a House of Lords, nor never so weak and so heady a House of Commons, or words to that effect, and particularly, that it was better to sell Dunkirk, than to be at their Mercy for want of Money, or words to that effect.

That he hath wickedly and maliciously, contrary to his Duty of Counsellor, and to a known Law made last Sessions, by which Money was given, and particularly applied for the maintaining of Dunkirk, advised and effected the Sale of the same to the French King.

That he hath, contrary to Law, enriched himself and his Treasures by the Sale of Offices.

That contrary to his Duty he hath wickedly and corruptly converted to his own use, great and vast Sums of publick Money raised in Ireland by way of Subsidy, private and publick Benevolences, and otherwise, given and intended to defray the Charge of Government in that Kingdom. By which means a supernumerary and disaffected Army hath been kept up there, for want of Money to pay them off, occasion'd it seems to be because of the late and present Distempers of that Kingdom.

That having arrogated to himself a supreme Direction of all His Majesty's Affairs, he hath, with a malicious and corrupt Intention, prevailed to have His Majesty's Customs Farmed at a far lower Rate than others do offer, and that by Persons, with some of whom he goes a share, in that and other Parts of Money resulting from His Majesty's Revenue.

July 10th,
1663.

BRISTOL.

The Earl of Bristol having Exhibited against the Lord Chancellor, Articles of High-Treason, and other Misdemeanours, This Order was made by the House of Peers.

Die Veneris, 10 July, 1663.

ORdered, by the Lords Spiritual and Temporal in Parliament assembled, That a Copy of the Articles or Charge of High-Treason Exhibited this Day by the Earl of Bristol, against the Lord Chancellor, be delivered to the Lord Chief Justice; who, with all the rest of the Judges are to consider whether the said Charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, and whether there be any Treason in it or no, and make Report thereof to this House on Monday next if they can, or else as soon after as possibly they may.

Whereupon all the Judges met at Serjeants-Inn in Fleet-street, and my Lord of Bristol repaired to us thither, desiring to see the Order; which being read, he told us he came out of Respect to know of us whether we were informed how it came into the House of Peers, whether as a Charge or not; but one of the Judges, who had been present when it was delivered in, saying, we were tied up by our Order, his Lordship took some Exception at the manner of his Expression, as if his Lordship's Address was unnecessary at that time, and taking it as a Rebuke unto him, went away; but according to our Order, which supposed it to be a Charge of High-

High-Treason, and not mentioning *Misdemeanor*, we did upon Consideration unanimously agree upon this ensuing *Answer*, which on Monday the 13th of July, the Lord Chief Justice *Forster* did deliver in, viz.

We conceive that a Charge of High-Treason cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another unto the House of Peers, and that therefore a Charge of High-Treason by the Earl of Bristol against the Lord Chancellor, mentioned in the Order of Reference to us of the 10th of this Instant July, hath not been regularly and legally brought in, and if the Matters alledged in the said Charge were admitted to be true, altho' alledged to be traiterously done, yet there is no Treason in it.

Which *Answer* being given in, the Earl of Bristol took some Exceptions at it, and some of the Lords inferred thence, that if it were Irregularly and Illegally brought in, it was a Libel; but we satisfied them that it was not under Consideration of us, whether it came in as an Information or Charge; our Order required us to give *Answer* to it as a Charge.

Secondly, We did not meddle with any thing concerning accusing him of *Misdemeanor*, for our Order reached only to *Treason*,

Thirdly, It did not follow that if this Charge were Irregular, or Illegal, that therefore he was Criminal: There might be Precedents to give Colour to such kind of Proceedings, for which, till it be declared or known that they are Illegal, they are Titular, and ought not to be punished.

But it was much insisted on, That we should deliver the Reason of our Opinions, the Lord of Bristol and his Friends seeming unsatisfied.

We *Replied*, That it was never known, that when the Justices to whom *Questions* were referred from Parliament had unanimously agreed in their Opinions, that Reasons were required from them. Yet notwithstanding, it being the desire of the Lords, after some things premised, and a desire that this should not be drawn into an Example, (which the Lords assented unto, as I took it, for no Order was entred concerning it, there being no Order as I think for delivering our Reasons entred, and it was agreed amongst us, that no Note should be reduced, lest we might be required to deliver our Reasons in Writing; nor had I time to digest it in Writing, having only Monday Night after Conference with my Brethren to think upon it,) I did on the next Tuesday, being the 14th of July, deliver the Reasons of all the Judges, of their Opinions, by their Consents. To the first Point, *That a Charge of High-Treason cannot originally be Exhibited by one Peer against another unto the House of Peers*, the Emphasis of the Word *Originally* was shewed.

For First, an Indictment of *Treason* against a Peer may be removed up to the Lords House to be tried, as it was in the 31 H. 6. in the Earl of Devonshire's Case, but a Steward was then to be made.

Secondly, If an Impeachment came from the House of Commons unto the Lords House, we did

not take upon us the Consideration, whether this could be proceeded in or not, for it was not the Case to which we were required to give *Answer*.

We *Replied*, Upon the Statute 1 H. 4. cap. 14. which recites the many great Inconveniencies and Mischiefs by Appeals, and provides that all Appeals of Things within the Realm, shall be Tried and Determined by the good Laws of the Realm made and used in the time of the King's noble Progenitors, and Appeals of Things out of the Realm before the Constable and Marshal: But we relied upon the Clause ensuing, and thereupon it is accorded and assented, That no Appeals be from thenceforth made, or in any wise pursued in Parliament, in time to come. I shewed Appeals in this Statute, and Accusations by single Persons, were one and the same Thing, and that this Statute reached to all Appeals, Charges, Accusations or Impeachments delivered in, in Parliament, whereupon the Person accused was to be put to his *Answer*, and that they were but several Names of the same Thing, I shewed first Historically, that the Appeals the 11 R. 2. * and 21 R. 2. were but Accusations by those Lords of Felons against the other, and differed from the Case of the Duke of Hereford and Norfolk, which was to be tried as 21 R. 2. Pl. Cor. in Parl. No. 19. is by the Course of the Civil Law, and thereupon Battle was waged. That tho it concerned H. 4. in Interest to confirm the 11 R. 2. and repeal the 21 R. 2. he being Appellant in the former, yet he saw the Mischief so great, that he himself made Provision against them for the time to come; and indeed, the Mischief was so great, that it ceased not after the Destruction of many Lords and Families (there being *Lex talionis* in that 21 R. 2. used towards most of those Appellants in the 11 R. 2.) till it tumbled King R. 2. first out of his Throne, and then into his Grave.

That there were but two sorts of Proceedings in *Capitalibus*, the Suit of the Party, which was called an Appeal, or the Suit of the King, who ought to proceed by Indictment, and so to Trial by virtue of *Magna Charta*. *Nec super eam ibimus*, &c. and that, in an Appeal, being the Suit of the Party, there was no Prerogative of Appearance, if it were an Appeal at the Common-Law, 10 Ed. 4. Lord Gray's Case. That an Appeal was taken in our Law-Books frequently for an Accusation by the Party, I cited *Westm.* the 1st, Cap. 14. where the Word Appeal reaches to Indictment; and 9 Coke, 119. Lord Zanchar's Case, that an Appeal hath two Significations, one general and frequent in our Books for an Accusation, and *Stamford*, 142. in Case of an Approver, the Felon after Confession may Appeal, that is (*saith he*) accuse others, Coadjutors with him to do the Felony. C. P. C. 129. Appellant cometh from the French Word *Appeller*, which signifies to accuse, or appeach, and 1 Co. Inst. §. 189. Appel signifieth an Accusation; and therefore to Appeal a Man is as much as to accuse, and in ancient Books he that doth Appeal a Man is called *accusator*, vide 9 Ed. 2. *Articuli Cleri*, cap. 16. That I knew no Reason why in those tumbling Times of R. 2. (which caused this Statute for the Statute-Roll is *coment ad auterment este eus en temps la darrein Roy*, R. 2.) they

* See the Trial of Sir Robert Tresilian, &c. Trial I.

should proceed by way of Appeal, but because they were then allowed at the Suit of the Party, to accuse any other of *Treason*, but at the King's Suit there ought to be an Indictment, and an Indictment could not be found but by Jury.

That in all other Cases, an Appeal was to be brought by the Party concerned, the Wife or Heir, or Party robbed, &c. But in Case of *Treason*, any Man may Appeal another, and therefore in all Reason it must be understood of an Accusation, and any Man might accuse another of *Treason*; and if it can be proved by Witnesses, it must not be Tried by Battle, as other Appeals may. I concluded that the 8 H. 6. No. 38. this Statute, the 1 H. 4. cap. 14. is recited, and desired it should be duly kept and put in Execution; that *Stamford* 78 & *Coke Pl. Cor.* 31. 132. agree that Appeals of *High-Treasons* were commonly used to be sued in Parliament, till the 1 H. 4. cap. 14. Since which time this manner of Appeal hath gone out of use; and I said, I had searched many Precedents, and tho' of late there may be a Precedent (as it was of the Earl of *Bristol's* Father against the Duke of *Buckingham*, of some kind of Impeachment) yet I did confidently believe there was not since that Statute 1 H. 4. cap. 14. any one Precedent of such an Impeachment at the Party-Suit whereupon there was any Indictment: In truth, in the Earl of *Bristol's* Case, the *Commons House* did Impeach the Duke of *Treason*, and so the Earl of *Bristol's* Impeachment proceeded not.

For the Second Point, That there was no *Treason* in the Charge, tho the Matters in it are alledged to be Traiterously done. I said we had perused each Article *seriatim*, and we had found no *Treason* in them; the great Charge, which is endeavoured to be proved by many Particulars, was, That he did Traiterously, and Maliciously, to bring the King into Contempt, and with an Intent to Alien the Peoples Affections from him, say, &c. such and such Words, &c.

And so it runs on, That in pursuance of the Traiterous Intent, &c. he did, &c. and that in farther pursuance of the said Traiterous Design, &c. And in like manner was most of the Articles upon which the Characters of *Treason* seemed to be fixed. I said that it is a transcendent Misprision or Offence to endeavour to bring the King into Contempt, or to endeavour to alienate the Peoples Affections from him, but yet it was not *Treason*. This Statute, 13 Car. 2. cap. 1. makes *Treason* during the King's Life: But if a Man calls the King *Heretick*, or *Papist*, or that he endeavours to introduce *Popery*, (which is more in express Terms than the Article of that kind insinuates) or by Words, Preaching, Prayer, to stir up the People to Hatred or Dislike of the Person of his Majesty, or the Established Government; the Penalty is only Disability to enjoy any Place Ecclesiastical, Civil, or Military, and subject to such Penalties as by the Common-Law or Statute of this Realm may be inflicted in such Case, (which is Fine and Ransom, with Imprisonment) and it limits a time and manner of Prosecution.

There was an *Objection* made yesterday upon the 25 E. 3. That this being in Parliament, the King and Parliament had Power to declare *Treason*, and then we ought to have delivered our Opinions with a Qualification, unless it be declared *Trea-*

son by Parliament where this Charge is depending; to this I Answer'd.

First, 'Tis not *Treason* in *presenti*, and if such a Declaration should be, *non constet*, whether it would relate to the time past.

Secondly, That I conceived that the Statute as touching that *Declaratory Power*, extended but to such Cases as were clearly *Felony*, as single Acts, if not *Treason*, (the Words being) *Whether it be Treason or other Felony*; but in respect of the Doubts of *Escheats*, which, if *Treason*, belonged to the King; if *Felony*, to the Lords of the *Fee*, it was left to the Parliament. I did not say we Resolved the Point.

Thirdly, That admitting the *Declaratory Power* did extend to other Cases than such as were before the Judges, and was not taken away by 1 Mar. Cap. 1. or any other Statute, yet I read my Lord *Coke's* Opinion at large, *Pl. Cor. Fol.* 22. That this Declaration must be by the King, Lords and Commons, not by any two of them alone; and we were now in a judicial Way before the *House of Peers* only; and I did affirm as clear Law, that by this judicial Way no *Treason* could be declared nor adjudged, but as were expressly within the Letter of the 25 E. 3. and said, That Statute 25 E. 3. was a second *Magna Charta*, and that their Ancestors thought it their greatest Security to narrow, and not to enlarge *Treason*, and cited 1 H. 4. cap. 10. to which in the Parliament-Roll *Rot. No.* 17. is added (it coming of the King's Free Grace) That the Lords did much rejoice and humbly thank the King: And I read the Statute 1 M. cap. 1.

That the now Earl of *Bristol* in my Lord of *Strafford's* Case, was the great Asserter of the Law against Constructive and Accumulative *Treason*, which if admitted, their Lordships could better suggest unto themselves, than I express, how great a Door they would let open to other Inconveniencies and Mischiefs to the Peerage. I concluded with reading the Act, 14 Car. 2. for Reversing the Attainder of the Earl of *Strafford*; the first Part whereof I read to them, wherein is expressed, That they, who Condemned him, did purposely make an Act of Parliament to Condemn him upon an Accumulative *Treason*, none of the pretended Crimes being *Treason* apart, and so could not be in the whole, if they had been proved.

After I had spoken to this Effect, the Earl of *Bristol* seemed to acquiesce, insomuch as concerned our Opinions as the Case was delivered to us; but it being to be put to the Question, whether the Lords did concur with the Judges Opinions, and himself being concerned in the Illative, that therefore the Charge was Illegal and Irregular; yet not being intended by him, as he said, as a Charge, but an Information, he desired (tho' as the Case was put to us, it was a good Inference) that the Voting of that might be spared till it was Resolved by the Lords whether he delivered it in as a Charge, or only as an Information for the Matter of the Charge, if it should be thought fit for their Lordships to proceed in it: After some Debate upon the Question, the Lords Resolved the same Day, according to our Opinions,

First, That a Charge of *High-Treason* cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another, unto the *House of Peers*.

Secondly, That in these Articles, if the Matters alledged in them were admitted to be true, there is no *Treason* in them. And because the Lords unanimously Concurred in them, (my Lord of *Bristol* freely as any other) it was by Order entred, that these Votes were *Nemine Contradicente*.

Note, That in Judge *Hatton's* Reports, *Fol.* the Resolution of the Judges is expressed to be, That a Peer cannot be Impeached but by Indictment, and Mr. *Rushworth* in his Collections, *Fol.* 272, expresses such an Opinion to be deliver'd by the Judges, in 1 or 2 Car. but upon Search it was found to be entred in the Journal of Parliament of that Time, but it was cautious referring to the Common-Law only. But that for Proceedings in Parliament it did not belong to them to determine, or to that Effect; but no mention of 1 H. 4. cap. 14. It hath been credibly reported that some of the Judges in my Lord of *Strafford's* Case, being asked some Questions, did with the like Caution deliver their Opinions, and did speak with Reservations, (as the Case is put) tho they upon Hearing did know the Case mis-put; which, after, troubled the Conscience of one of them, (*ut audiui*) being a grave Learned Man; for *Suppression of the Truth is the Oppression of the Innocent*. Vide *Peacock's* Case, Co. 9. Rep. *Fol.* 71. But we having the Case referred to us in Parliament upon Articles exhibited in Parliament, did Resolve to deliver our Opinions without any such Reservation; the Act of 1 H. 4. being express against Appeals in Parliament, (and of Acts of Parliaments after they are once made, none under the King, and without him are Interpreters but the Judges. See *King's Answer* printed in the *Old Print* of 3 Car. 1. at the end of the *Petition*.) And therefore did deliver these Opinions which I conceive of great Benefit to the Lords themselves, and a just Ground for farther Enquiry to be made, whether such Impeachments may be in the *House of Peers* for other *Misdemeanors*, without the King's Leave, or being exhibited by his Attorney.

And secondly to take into Consideration the Validity of Impeachments of *Treason* by the *House of Commons*, notwithstanding the late Precedents which yet ended in a Bill, and so in the Legislative, not Judiciary Way.

Thus ended this Attempt against the Earl of *Clarendon*; but thus far it had its Effect, in diminishing the King's Favour towards him, and lessening his Interest with the Lords, and with the People, whereby he became expos'd to a Second Attempt, four Years after.

Aug. 30, 1667, the King removed him from his Place of Lord Chancellor; and the House of Commons Impeach'd him of *High-Treason*, and of *High Crimes and Misdemeanours*.

Pro-

Proceedings against the Earl of Clarendon, upon an Impeachment of High-Treason and High Misdemeanours.

October 26, 1667.

MR. *Edward Seymour* Charged him *viva Voce* with many great Crimes, whereupon a Debate arose what Proceeding ought to be had upon it, some moving to Impeach him in the Name of the *Commons* till Articles should be prepared; others urg'd, that Witnesses should be first examined to see how the Charge could be made good, lest failing, it should reflect on the Honour of the *House*. After long Debate, a Committee was appointed to search Records for Parliamentary Proceedings in the like Cases, and to make Report.

30th, The Report being made by Sir *Thomas Littleton*, that various Proceedings were found in several Parliaments, it occasioned a long Debate, several Members speaking to the Effect following.

Sir *Tho. Little*. In Cases Criminal, we find Proceedings to have been, sometimes by Articles, sometimes by Word of Mouth; but in Capital Crimes no Proceedings appear till the Earl of *Strafford's* * Case, against whom * Trial XXXIX. the House carried up a general Impeachment, the Reason whereof seems to be this: Some Votes were made in the *House*, at which the King takes Offence, as if they would proceed upon common Fame; whereupon they vindicate their Proceedings as done in a Parliamentary way, and appoint a Committee to withdraw for about half an Hour to consider the Matter for a Conference with the Lords about the Charge, and upon their Report a general Charge is carried up to the Lords Bar; the principal Charge then was for advising to bring over the *Irish* Army, and the single Proof was Sir *Henry Vane*, so the Impeachment went up for *High-Treason*, tho' no Member would positively say he would make the Charge good.

So for the Bishop of *Canterbury* there was no Impeachment, but a Charge in general.

And if you take not the same Course now, but insist upon examining Witnesses first, the Difficulties will be unanswerable; for is it like that Men before they shall see you in earnest will have their Names produced against the Earl of *Clarendon*? If this be your Proceeding, we must never expect to Impeach a Great Man more. If you think there is nothing in the Charge, leave it; but if you think 'tis worth your while, take heed of making such a dangerous Precedent as by neglecting it to wound your Liberties; but proceed in the usual way with a General Impeachment.

Serj. *Maynard*. I stand not up to give Advice, but to speak to matter of Fact in the Business of *Strafford* and *Canterbury*; I attended that Business from the beginning. Sir *John Clotworthy* informed something against *Strafford* to be direct Treason, that he had assumed an Arbitrary Power in *Ire-*

Ireland, and dispossessed one *Savage* by Force of Arms, and undertook to prove it. Sir *Henry Vane* also told them, that he had a Note taken out of his Father's Cabinet, containing the Advice which *Strafford* gave the King in that Case; namely, the King wanting Money, and the Question being how he should supply it, he replied, *That if the Parliament was refractory and would not, you stand loosed and absolved from Rules of Government; you have an Army in Ireland which you may employ to reduce them.*

Then there was a Debate whether they should accuse him of Treason. And Sir *Edward Herbert* (the Attorney) said, If you are persuaded the Truth is, as is pretended, you may. And so it was; but when the Close Committee had examined the Business, they moved the House, that some Lawyers might be added to them; and had they gone, when they said they were ready, they had not touched one Hair of *Strafford's* Head. Then it was considered what was fit to be done: To accuse him of Treason would be a dangerous Precedent, as if out of many other Crimes a Treason could be drawn; thereupon it was resolved, not to demand Judgment from the Lords, because some Articles were not Treason. Then it was propounded not to state what his Offences were, lest it should give Advantage to inferior Courts so to proceed; but said, he deserved to be accused of Treason; and in conclusion a Proviso was added, not to make that Case a Precedent.

For the Bishop of *Canterbury*, the four Articles were general, and he was long in Prison without any Proceeding against him; but after long time he demurr'd, then new Articles were framed on which he died.

Mr. *John Vaughan*. You have had a Charge opened of a strange Nature, and I know not what Part of it can be proved, but the Reputation of this House is at stake, and of the King too: For, where a Charge is brought in by some of your Members, whereof one Article is, That he should say such Words of the King, as by a Statute made by you is a *Premunire*, and to give Counsel to levy War upon the Kingdom; is it agreeable to our Duty to the King and Kingdom to let it die?

For the Person concerned, I know not which way his Honour can be whole without his giving an Answer to this Charge; for mark the Consequence, if the King should take him to Favour again before clear'd, will not the World say a Person is received to Favour again, who gave the King Counsel against the Kingdom, and traduc'd the King, and how can he be whole in his Honour this way?

Obj. But it will be said, we must have Ground to put him to Answer.

Ans. Whether you have Ground enough to prove I know not, but you have Ground enough to make him Answer to clear himself. Suppose those two Articles had been Charged on a Member of this House, what would it have become that Member to do? Should he sit still and say, I will make no Answer, but see whether the House will make more Proof? If he should do so, the not making an Answer is Reason enough to Charge him.

I can give you Instances of Persons Charged in Parliament, who, tho not nominated, yet be-

ing (as it were) pointed at, Petitioned that they might Answer, and so would any Man; but when this is bruited up and down, will not the World say, You never ask the Party whether he is Guilty?

The Duke of *Suffolk* was Charged upon Common Fame, and if that were a Ground for a Charge then (which I do not say it was) so it is in this Case; but he moved that he might be heard; and tho it was desired he might be Committed, yet it was justly rejected till he had Answered. Then for the Nature of the Charge, if it be true, it is very High, but whether it be Treason is another Matter; it is brought to you under no Name, when you make the Charge, it becomes you to say what it is; therefore choose a Committee to reduce the Accusation into Heads, and bring them to you, without which you cannot right your selves, nor him, if Innocent.

For the way of it, it cannot be thought fit to publish your Witnesses and the Matter before hand; if in private Causes the Defendant and Plaintiff should have a Publication before-hand, no Cause would be rightly Judged, much less when you have Publication of all which concerns the One, but nothing of the Other. Again, if a Witness be examined concerning Matters in his own Knowledge, if he gives Evidence, where he is not brought judicially to give it, if he hath testified any thing which brings him within the Statute of False News, how can he avoid the Penalty? For it's not enough for him to say he knows it, but he must have others to justify it.

As for the Persons who bring the Charge, they are your own Members, which the Writs return for honest and discreet Men, and if you are satisfied of that, how can you reject their Complaint, tho grounded upon *Common Fame*, as all Accusations are, seeing they tell you, they can bring Proof of what they say?

Then for *Common Fame*, if a Man spends largely, and hath no visible way to get an Estate, no Man accuseth him to have gotten it unlawfully; yet he may be put to clear himself from what *Common Fame* charged him with. Upon Suspicion of Felony, I may bring a Man before a Magistrate to clear himself; so in the Course of Indictments and Presentments, a Charge is given of what Things are to be Presented; then a Proclamation is made, That if any one can give Evidence, he may be sworn, but if no Evidence appear, yet they may Indict.

Then it will be said, the Oath is a Material Thing, but we are proceeding without an Oath.

To this I answer, What this House shall Charge is of more Authority than the Oaths of ordinary Witnesses; Peers, tho' not upon Oath, are supposed to do Right; so are we upon the Reputation of our Honesty and Discretion.

Mr. *L. H.* I am sensible the House may think me Partial, but I shall endeavour to shew my self not so much a Son of the Earl of *Clarendon* as a Member of this House; and I assure you, that if he shall be found Guilty, no Man shall appear more against him than I; if not, I hope every one will be for him as much as I; let every Man upon his Conscience think what of this Charge is true, for I believe that

if one Article be proved, he will own himself Guilty of all.

Sir Hen. Finch. An Impeachment there must be, if there be Cause; such Accusations are not to be passed over in Silence.

I believe not one Truth in the Law more than this Proposition, That there is no such thing as Treason by Common Law, or by Equity, and we hold our Lives by that Law; Before the 25th of Ed. 3. a Man could scarce speak any thing but it was Treason, in Parliament or out; but no Man ought to die as a Traitor, who hath not literally offended that Law, or some other made since: There is indeed in that Law a Proviso about the Parliament's declaring what is Treason; but note the Danger of taking Declaratory Powers, which I fear hath brought us into a Reckoning of Blood, which we have not yet paid for.

The Power of Parliaments is double, *Legislative*, which hath no Bounds; *Declaratory*, by pronouncing Judgments.

And tho' I know not what the *Legislative* Power of a Parliament cannot do, yet it is not in the Power of the Parliament, King, Lords nor Commons, to declare any thing to be Treason, which is not in the Common-Law Felony before. The Proviso in *Strafford's* Case was (it's true) made for Inferiour Courts; but I hope we shall not so proceed as must needs draw after it a *Ne trabatur in Exemplum*, and your own Act this Parliament shews, That all done by *Strafford*, *a-part*, or *together*, was not Treason: And it behoves us to take heed we thwart not our own Argument.

For the Manner then, Consider how you should proceed if it were out of Parliament, and how the bringing of it into this *House* alters it.

If it were out of Parliament, without doubt the Accusation should be proved before-hand, and those who discover it are guilty of Felony. This provides for the Subject, that the Witnesses must be Two, and for the King, that none shall discover the Evidence.

But suppose the Charge be for Misdemeanors, the Trial then is not to be by the Lords, but by the Commons; for the Lords are his Peers only in Cases Capital.

How then doth the bringing it into Parliament alter the Case? If the Parliament set aside Laws in this Case, we should be happy to see Law declaring what is the Power of Parliaments.

There is no Precedent produced which is singly of Weight to guide you, therefore if you proceed, let it be as near as possible by the good Old Laws; Namely, That there be an Accusation founded upon an Oath, and the Evidence kept secret. I propose that way for the very reason that others oppose it, (*viz.*) The Accusation goes over the Kingdom, and it will bring Dishonour to the *House*, the *King* and the *Earl*; For the Honour of the *House* it will be hard to say, the Charge was brought in upon Misinformation. A Person accused for advising to bring in Arbitrary Government, &c. And for saying the King is not fit to Govern; If this be true, tho' it be not Treason in the Formality of the Law, it deserves no less Punishment than if it were;

but if not found Guilty, Consider the Case. If one say, *A* killed a Man, and it is not so, must not he give Reparation? We have an Accusation upon Hear-say, but if it be not made good, the blackest Scandal which Hell can invent, lies at our Door.

Then Sir Tho. Meers moving to refer it to the Committee of Grievances:

Mr. Vaugh. You should have put the first Question before another had been moved, the Earl of *Middlesex's** (*Cranfield's*) Case, will not hold parallel; He was accused of Bribery, which might be proved by their own Books, but this is for Scandalizing the King, &c. And where shall the Committee of Grievances enquire about it? you say let them hear the Persons.

But suppose they be of the Lords *House*, Can you send for them? Or if you do, will they come and say it? The Matter of this Accusation is such, that if it lies in the Knowledge of a single Person, if he delivers it extrajudicially (which he doth, if not upon Oath) he may be undone by it, and hazard his Person too: At the Committee of Grievances the Persons must be known, and what they can say, and then we may conclude what will follow: Besides their Quality may be such as they cannot be brought, or their Discretion such as they will not answer.

Sir Rich. Temp. Tell but the Lords that a Man in Publick Place hath misbehaved himself, and they will sentence him, if he purge not himself; Never yet were Witnesses examined before the Trial in case of Treason or Felony, for then if there be two Witnesses, a way may be found by *Poyson*, or *some other Way*, to take away one.

Serj. Mayn. No Man can do what is Just, but he must have what is true before him; where Life is concern'd, you ought to have a moral Certainty of the thing, and every one be able to say, *Upon this Proof in my Conscience, this Man is Guilty*. Common Fame is no Ground to accuse a Man, where Matter of Fact is not clear; To say an Evil is done, therefore this Man hath done it, is strange in *Morality*, more in *Logick*.

Upon the whole Debate it was Voted,

That the Committee do reduce the Accusation to Heads, and present them to this *House*.

November 6th, 1667.

Sir Tho. Lit. Reports that the Accusation was reduced to Heads, which he read in his Place, and afterwards delivered the same in at the Clerk's Table, which are as followeth, *viz.*

I. **T**HAT the Earl of Clarendon hath designed a Standing Army to be raised, and to govern the Kingdom thereby, and advised the King to Dissolve this present Parliament, to lay aside all

* 22 Jac. I. 1624. Clar. Vol. I. p. 20. Ken. Comp. Hist. Vol. II. p. 727, 787. 3 Co. Inst. 148.

Thoughts of Parliaments for the future, to govern by a Military Power, and to maintain the same by Free Quarter and Contribution.

II. That he hath, in the hearing of the King's Subjects, falsely and seditiously said, That the King was in his Heart a Papist, or Popishly affected, or Words to that Effect.

III. That he hath received great Sums of Money for the procuring of the Canary Patent, and other illegal Patents; and granted illegal Injunctions to stop Proceedings at Law against them, and other illegal Patents formerly granted.

IV. That he hath Advised and Procured diverse of his Majesty's Subjects to be Imprisoned against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them from the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like manner.

V. That he procured his Majesty's Customs to be Farmed at under Rates, knowing the same, and great pretended Debts to be paid by his Majesty; to the Payment of which, his Majesty was not in Strictness bound: And afterwards received great Sums of Money for procuring the same.

VI. That he received great Sums of Money from the Company of Vintners, or some of them, or their Agents, for Inhaunting the Prices of Wines, and for freeing them from the Payment of legal Penalties which they had incurred.

VII. That he hath in a short time gained to himself a greater Estate than can be imagined to be gained lawfully in so short a time; and contrary to his Oath, he hath procured several Grants under the Seal from his Majesty to himself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Disprofit of his Majesty.

VIII. That he hath Introduced an Arbitrary Government in his Majesty's Foreign Plantations, and hath caused such as complained thereof before his Majesty and Council, to be long Imprisoned for so doing.

IX. That he did reject and frustrate a Proposal and Undertaking, approved by His Majesty, for the Preservation of Nevis and St. Christophers, and reducing the French Plantations to His Majesty's Obedience, after the Commissions were drawn for that Purpose, which was the Occasion of our great Losses and Damage in those Parts.

X. That he held Correspondence with Cromwell and his Complices, when he was in Parts beyond the Seas attending his Majesty, and thereby adhered to the King's Enemies.

XI. That he advised and effected the Sale of Dunkirk to the French King, being Part of his Majesty's Dominions; together with the Ammunitions, Artillery, and all sorts of Stores there, and for no greater Value, than the said Ammunitions, Artillery, and Stores were worth.

XII. That the said Earl did unduly Cause his Majesty's Letters Patent under the Great Seal of England, to one Dr. Crowther, to be alter'd, and the Enrolment thereof to be unduly rased.

XIII. That he hath in an Arbitrary way examined and drawn into Question divers of his Majesty's Subjects, concerning their Lands, Tenements, Goods, Chattels, and Properties, determined thereof at the Council Table, and stopped Proceedings at Law by Order of the Council-Table, and threatened some that pleaded the Statute of 17 Car. I.

XIV. That he hath caused Quo Warranto's to be issued out against most of the Corporations of England, immediately after their Charters were con-

firmed by Act of Parliament: To the Intent he might require great Sums of Money of them for Renewing their Charters, which when they complied withal, he caused the said Quo Warranto's to be Discharged, and Prosecution therein to cease.

XV. That he procured the Bills of Settlement for Ireland, and received great Sums of Money for the same, in most corrupt and unlawful manner.

XVI. That he hath Deluded and Betrayed his Majesty and the Nation in all Foreign Treaties and Negotiations relating to the late War, and Betrayed and Discovered his Majesty's Secret Counsels to his Enemies.

XVII. That he was a Principal Author of that fatal Counsel of dividing the Fleet, about June, 1666.

The Clerk having read them a second time, it was moved, That in regard the Articles were many, they might be referr'd to the Committee to see how far they were true; because Fame is too slender a Ground to bring a Man upon the Stage.

Sir Fran. Goodr. Seconds it, because new Matter was now added to what was formerly charged *Viva Voce* in the House.

Sir Rob. Howard. Suppose the Earl of Clarendon Innocent, and yet Charged and Imprisoned (which is the worst of the Case) he afterwards appears Innocent, and is discharged, receiving no more Hurt than other Subjects have done; Namely, *one Great Man *D. Buck. lately.

Object. But why should we Commit him?

Ans. For Proof, whether the Articles be true or not. Suppose Men for Self-preservation will not venture to come, not knowing how they may trust themselves, and so you have no Proof, He very guilty, and You not able to proceed? Is the Inconveniency greater for an Innocent Person (if he prove so) to suffer a few Days, than for you to lose your Reputation for ever. If this Man be not brought to his Trial, it may force him to fly to that which he Counsell'd, that is, that we may never have Parliament more.

Sir Fr. Goodr. I am not against proceeding, but unsatisfied to do it without Witness, it being like Swearing in *Verba Magistri*.

Sir John Holl. That the Committee undertake to make good the Charge, otherwise Examine Witnesses.

Mr. Vaughan. You admit the Accusation to be Matter for a Charge, if the Committee find Proof; if you intend to make this a distinct Case I leave it to you; but if this be to settle the Course of the Proceedings of the House, I am against it; for this is ordering a way of Proceeding in the Earl of Clarendon's Case, which shall not be a General Rule. Tho' I cannot say one of the Articles to be true, yet I know them to be a full Charge if made good, and you are prescribing a Course neither proper, nor ever practised. A Witness who speaks without Oath, is subject to Damage; not so upon Oath, because the Law compels him: And whereas it hath been said, If Witnesses attest before the House of Commons, what Judges dare meddle in it? I answer, Such Judges as meddled in the Case of Sir John Elliot, &c. and the Ship-Money.

Sir R. Temple. A Grand-Jury is capable to present upon their own Knowledge, and are sworn

to keep the King's Counsel and their own, and I believe there is not one Article of the Accusation but will be made good.

Sir Rob. Howard. As I am sensible of the Danger of publishing Witnesses beforehand, so I would have every one satisfied; therefore take the Articles one by one, and according as you shall find what your Members may say for the Truth, you may be induced to proceed or not.

Sir Tho. Osb. The House ought to have something to induce their Belief, which they have had from several Members, and I know how some will be made good.

Sir Tho. Littl. What Article Members of the House do not offer you Matter to induce you to believe, you may lay it aside; therefore hear what shall be said, and proceed accordingly.

Mr. John Tr. You cannot expect Witnesses will appear before you, Lords will not, nor can you expect Commoners should; for when you are up and gone, nothing can protect a Commoner, if this Information be not Judicial.

At last the Question was put whether to refer it to a Committee.

Yeas, 128.

Nocs, 194.

322.

Then the first Article was read, to see what would be said to induce the House to impeach.

The First Article read.

Sir Rob. How. } Heard from Persons of Quality,
Lord Vaugh. } That it would be proved.

The Second Article was read.

Lord St. Job. Persons of great Quality have assured him to make it good, and if they perform not, he will acquaint the House who they are.

The Third Article read.

Mr. Ed. Seym. Sufficient Persons will make it good, with this Addition, When he received the Money, he said, *So long as the King is King, and I Lord Chancellor, the Patent will stand.*

The Fourth and Fifth Articles read.

Sir R. Temp. Divers have undertaken to make them good, if they do not I will name them.

About his receiving Money of Vintners.

Sir Rob. Carr. That he knows who will prove it.

About his getting a great Estate so suddenly.

Mr. Ed. Seym. I suppose you need no Proof the Sun shines at Noon-day.

Sir Tho. Littl. The matter of Fact in the Article is easily made out, for his Place as Chancellor could not be worth above 4 or 5000 l. per An.

About introducing an Arbitrary Government in the Plantations.

Sir Tho. Littl. } One Farmer and others came
Sir Tho. Osb. } from the Barbadoes to complain of it, and lodg'd their Petition in this House, but were imprison'd that they might not be heard.

About frustrating Proposals for preserving Nevis, &c.

Sir Charl. Wheel. My Lord Chancellor only opposed it.

About holding Correspondence with Cromwell.

Mr. Swinf. That is pardon'd by the Act of Indemnity.

Mr. Vaugh. The Committee were aware of that, but the Defendant may plead it, and prove that he is not Out-law'd.

Sir Char. Wheel. I want not clearly to prove it.

Sir Rob. How. For such secret things as these, he ought to plead, notwithstanding the Act of Oblivion, that the World may know who are undiscern'd Enemies.

Mr. Hampd. It is not only an Act of Parliament, but Oblivion; and no Man ought to be so much as Accused for what was done before.

Mr. Vaugh. If the Pardon be general, the Judges and you are to Note it; but if it hath Qualifications (as that Act hath) they are not to Note it; for you must say there is no Indictment or Outlawry against him (for such the Act excepts) or the Article is to stand.

Then the Act was read.

Mr. Swinf. The Clause for Pardon is Absolute, and any Man accused, pleading it shall not be sued, nor his Fault mentioned, and this is to all Offences and Offenders; and for those who betrayed the King beyond Sea (who are excepted) they must be prosecuted within Two Years.

Obj. You will say, he may plead that Act.

Ans. By the same Rule, any Man who committed a Fault, during the Troubles, may be put to plead it for Pardon.

Serj. Mayn. We profess that there shall be Candour in our Proceedings, Do we therefore believe this Great Man is Outlaw'd? If not, how shall we accuse him of what we believe not true?

Mr. Vaugh. When I am satisfied of a thing I am not ashamed to own it; I find now, having perused the Act, that he is within the Clause. The Indemnity is general, and he is within it if not excepted, the Exception reaches those who have held Intelligence with the King's Enemies, so as they be prosecuted within Two Years, this he is not, therefore is clear.

So upon the Debate, the Article was expunged the Paper without a Vote.

About the Sale of Dunkirk.

Sir Tho. Osb. A great Lord told me that the Earl of Clarendon had made a Bargain for Dunkirk three quarters of a Year before it was known.

About Sealing Dr. Crowther's Patent.

Mr.

Mr. Street. The King gives the Living to *Crowthen*, in the Grant is a mistake of a County, *Crowthen* finds the mistake, and petitions the King to amend it; the King calls for the Chancellor and Seal, and in the King's Presence it was amended and Sealed.

Sir Tho. Littl. The Crime seems as great as a Chancellor could commit; the King was to Present by such a Day, or not at all; the Error was found after the Day, so that the King (by Act of Parliament) had lost his Right. The Chancellor did alter the Patent, and the Record was fetch'd away by one of the Chancellor's Servants, and brought back, rased and altered, which might be done (and in other Cases is done) where a Word only hath been mistaken; but that is in Case of something perfectly in the King's Power, and to save new Sealing; but here could be no new Sealing, the time being elapsed: It was to throw another Man out of his Freehold, and is a great Crime.

About drawing Mens Lands into Question.

Mr. Thom. I shall be able to make it out.

About Quo Warranto's to Corporations.

Sir Tho. Littl. This is so Publick a Thing, that it need not be proved.

About the Settlement of Ireland.

Sir R. How. I doubt not but it will be made out.

About Foreign Treaties.

Sir Tho. Littl. This will appear by the Treaties themselves, putting us in hopes of Peace, and so hindring the Fleet's setting out.

About Miscarriage of the War.

Mr. Thom. I want not Persons to bring to make it good.

Sir Tho. Littl. Sir Edward Sprag desires Money to give an Intelligencer, and has it; Sprag brings the Intelligencer to the King, the King Commands him to meet him at the Chancellor's, there he met the King, and then Order was given to divide the Fleet.

Mr. Marvel Chargeth Mr. Seymour with saying in his Accusation, That the King was insufficient for Government, which is now omitted in the Charge, and desires he may declare where he had it.

Mr. Seym. The Party that told me at first differ'd something afterwards, therefore I rather withdraw it than to trouble you with Uncertainties; but a Gentleman in the House can give you further Satisfaction in it.

Sir John Den. A Peer of the Land heard the Earl of Clarendon say in a Coach, That the King was an unactive Person and indisposed for Government: This will be made good.

Upon debate it appearing probable that these words were spoken before the Act of Oblivion, it passed over.

About the Customs.

Sir Rich. Temp. I have been Informed that he had a share for under-letting the Customs, and 40000 l. Bribe for getting pretended Debts from the King.

Sir Tho. Osb. The Earl of Clarendon said, Bid who would for the Customs, none should have them but the Old Farmers.

Mr. Prynn. Having gone over the Articles, we should know where and when the words were spoken.

Mr. Seym. That will be a way to Suppress the Evidence. I hope you will Impeach him at the Lords Bar, and in due time produce your Witnesses.

Mr. Prynn. You must resolve to Impeach him of Treason, or Misdemeanour, and name it accordingly.

Sir Ed. Walp. You ought first to give a Title to your Impeachment; for if it be for Treason, you will move for Commitment; if it be for Impeachment in general, not.

Mr. Coleman. What is laid before you is only by Hear-say, but no Assurance that it will be made good; only that if they who reported it do not make it good, you shall know who they are. In the Earl of Strafford's Case (the worst of Precedents) the House proceeded not, till one spake in the House upon his own Knowledge, and another engag'd his Reputation to make it good.

Sir Rob. Atk. Those who have given you Inducements to proceed, do it at third hand, and tho' they may know the Credit and Impartiality of those that told them, yet you do not.

Sir Tho. Littl. A Question should be put, Whether this House hath sufficient Inducement to Impeach? Afterwards Consider what the Title shall be, then appoint a Committee to frame Articles.

Which Question being put, was carried in the Affirmative.

Then Adjourned.

November 9.

The first Article read.

Sir John Goodrick. Treason ought to terminate in an overt Act, which Designing is not, therefore pray read the Statutes.

Thereupon sundry Statutes were read.

25 Ed. 3.

1 Hen. 4. Cap. 10.

1 Ed. 6. Cap. 12.

1 Q. Ma.

13 Car. 2d.

14 Car. 2d. Cap. 29.

Mr. Steward Declared it to be transcendent Misdemeanour, but no Treason.

Mr. Vaugh. Two Questions will be considered, One, Whether what's Charged in the Article was Treason in Common-Law before —

25 Ed. 3. That so we may understand the Nature of Treason; The other, Whether by any subsequent Act it is made otherwise.

Mr. Wall. The Advice given to the King I look upon to be this; To establish a New Government,

vernment, To be Govern'd by *Janezaries* instead of a Parliament; To have a *Divan* and a great Minister of State, instead of *Vizier-Bassau*, A worse Plot than that of the 5th of November; There, if the Lords and Commons had been destroyed, there would have been Succession, but here both had been destroyed for ever. Then in order to the Debate consider how the Law looks on it; for tho we may Accuse on less Evidence than she may Judge, yet we must be Cautious in naming the Crime: What therefore doth the Law call this before 25 Ed. 3? Then look whether the Power of Constructive Treason be taken away since.

Sir *Fran. Goodr.* The matter concerns Life, therefore we should be wary in the Exercise of Legislative Power; you are not tyed to Rules, but you are now a step towards Judicature: The Common-Law is *Jus non Scriptum*, and tho every Treason includes Felony, yet not every Felony Treason, 25 Ed. 3. There is a Declaratory Power, whether a thing be Treason, or other Felony, not whether it be Treason, and could not be declared Treason if not Felony before. In Cases Capital at Common-Law they might declare it Treason, but in Cases not Capital at Common Law, they never exercised their Declaratory Power.

Among other things that Statute declares false Coin'd Money to be Treason, which is but Felony at Common-Law; afterward Money being imported, which was not according to the Stamp, there was no Punishment for it, but as a Misdemeanour: Therefore 4 Hen. 7. Provision is made against that Practice, and it is made Treason; but if the Parliament's Declaratory-power could have made it Treason, what needed a Statute on purpose? So that I cannot think the Article before you is Treason, it not coming within the Words of the Statute.

Mr. *Vaugh.* I shall speak to the first Question, whether this Article was Treason at Common-Law; and first remove what some have asserted, Namely, That nothing is Treason, but what was Felony before 25 Ed. 3. where petty Treason is spoken of, the Wife killing the Husband, &c. These words follow, If hereafter it come into Question whether there be another Treason? It shall not be resolved by the Judges, till the Parliament determine it; For in petty Treason, if it be Treason, it must be Felony, because there is killing.

Then comes more, whether raising, &c. and it follows whether it be Felony or Trespass; And the thing it self is more strange. None ever doubted, but that all Treasons of 25 Ed. 3. was Treason before, and was so resolved 12 Q. Eliz. That by that Act the King declares what should be Treason; Namely, If any Man Vitiates the King's Eldest Daughter, &c. But by this Doctrine if it were not Treason, what was it? Only Adultery or Fornication, when it is the Eldest Daughter, not the Youngest?

It hath been in all Ages a Reputation to Persons who have been Counsellors to Princes according to Emergencies to give Counsel to extricate them out of danger, and therefore hard to tax a Minister of State in a Case which he acquaints his Master with; for there can be no Treason but against the King himself.

I will shew you what I mean, It is true this is a Treason which cannot arise from Misprision,

because it was spoke to the King himself; but as a Minister of State he has liberty to give Counsel for the King's Safety. If a Person be able to Inform his Master what Alliances are good for him, it is his Duty; so what Trades are Profitable, what not, &c. So where Men or Money are wanting, to advise how to extricate is commendable; but when it comes to this, that he breaks in upon the Laws, invading the Contract between the King and his Subjects, it will be as if a Man adviseth, That if the King wants Money, he may set up High-way Men to take it, and bring it to him, and so the skillfullest for breaking the Law shall be esteemed the best Counsellor; therefore whoever thinks to serve his Prince by breaking the Laws, he is so far from a wise Man, that he is the highest Criminal, &c. Then for the Nature of the thing, The Treasons declared 25 Ed. 3. were declared by the King's Commission, and the Treasons were of that Nature which concern'd Counsel, &c. they were not like to be declared. And there is a passage in *Glanvil*, called *Seductio Domini Regis*, that is, deceiving the King to what is pernicious to Him, and his People.

Now see the Nature of this Crime; If a Man Counsel his Prince, and Practice it such a way as shall render him Prince of Conscience, who hath broken his Oath, and all this to his Injury, so that he hath no Assent to it. Compare this with any Treason of 25 Ed. 3. Consider it: Here is a Person who gives the King Advice, which at once must make his People see he hath broken all his Faith to his Kingdom (and is not the Counsel of Governing by an Army such) all the Laws broken, to keep which the King has Sworn, and this the King put upon, tho not Inclined to: I assert not this upon the Earl of Clarendon, but upon the Article. Who doth this, Counsels the highest Treason against the Common-Law, because others are so; but if a Man will pretend to give Counsel, wherein many shall have no benefit by the Law, he breaks all parts, and therefore I think this Counsel was Treason at Common-Law.

Mr. *Colem.* The Question is, Whether it be in your Power to declare this Article Treason by 25 Ed. 3. If he advised an Army against the King's Consent, it is against the Statute; but I suppose that the Expression in the Article was Advice to the King in Aid of his Government. Your Enacting Power is a kind of Omnipotency, but in a Declaratory Power you can declare no more than is committed to you, and with Safety to the Subject you cannot declare this Treason; Then what must be our Rule in Declaring I dare not say: For scarce any Man can tell what was Treason before 25 Ed. 3. was made to bring things to a Certainty, and what was uncertain to them who made that Law can be certain to us now. As the Judges can declare no other Treason, so in your Declaratory-power, Neither can you declare Treason unless there be Resemblance to some other like Case: The Advice said in the Article to be given the King, cannot be within that Statute, unless the Counsellor must run the hazard of his Advice.

Mr. *Vaugh.* The greatest Declarations of Treasons which ever were, equal not those 22 Rich. 2. in Nottingham Castle: the Judges are called to deliver their Opinions upon their Faith, and they

they declare the Acts to be Treason, because Felony before, and tho' some of them were Hang'd for it, yet the Parliament declared the same thing.

Serj. Mayn. Was, what is mentioned, Treason by the Common-Law, tho' so said by the Lords? and what was so declared was repealed, H. 4.

Sir Tho. Littl. Pray resolve whether it was Treason by Common-Law; and if so, when made so. Some think not, because they find not the Parliament declaring them Treasons, as being so at Common-Law, and that that Statute was made to bound them, but that was only to bound Inferior Courts, not themselves; for the Parliament makes not a new Crime and then Condemns it, but the Crime was before, and the Parliament declares it.

Sir Ed. Thur. Hath the Parliament declaratory Power now? Yes, but it must be by King and Parliament, so it was in the Case of the *Genoua* Ambassador *. The Judges would not conclude the Articles Treason, nor would the Lords alone; and if you come to an equal declarative Power with them you must examine Witnesses, or go by a Bill.

Serj. Charl. The Question is, Whether it be Treason by the Practice of *England*; the Common-Law is the Custom of *England*, and the Usage is grounded on Precedents. I know not one Precedent where Words or Intentions were Treason at Common Law, for they are not Treason where no Act follows.

Sir Rich. Temp. The Article is Treason by Common-Law, and Judges have recourse to *Glanvil*, &c. who say, that giving Advice to overthrow the Realm is Treason by Common-Law.

Serj. Mayn. The Question is, Whether he shall be Impeached of Treason upon this Article? If you go to Treason at Common-Law before 25 Ed. 3. you fly out of fight, for the Word *Seditio* was soon after called *Seditio*, Seducing, but not said to what; nor were those Authors ever reputed of Authority: It's true they are sometimes quoted for Ornament, but not Argument, and not one Case in one hundred of *Glanvil* is Law; but when a Case comes that is the Sheet-Anchor of Life, and Estate, you should be wary; for by Wit and Oratory That may be made Treason which is not; and this which is a great Crime, ought not, because great, to be made Treason.

Object. But it will be said, levying War against the Law, is against the King, and here was an intent to alter the Law.

Ans. True; yet a Design to levy War is not Treason within the Statute, here is nothing of Act, but Words to that end; If a Counsellor gives bad Advice, it makes it not Treason, but by a Bill it may be made what you please. By that Statute of 25 Ed. 3. are more Treasons than are mentioned; for it saith if any Case happen, the Judges shall stay till the King and Parliament hath declared, so that there is a Power, but the *Modus* is the Question, whether by Impeachment or Bill; you may the latter, not the

former. It was done †, but you have repealed it, and have said † *Strafford's Case, Trial 39.* None of which pretended Crimes are Treason; and what was pretended against him? That he had Traitorously Endeavoured (which is worse than Design'd) to alter the Government, &c. Now where is the Difference? Here is Advice to Raise an Army, there to Use an Army Raised, and these you have called pretended Crimes, and no Treason, which is not Comprehended by a Law; but to Impeach as a Traitor, and yet the thing No Treason, is strange. In this House, other than by Bill, you have no Power; you carry your Impeachment to the Lords, and they may give Judgment without coming back to you; declaring by Bill is by way of Judgment, but, as an Impeachment, is only an Accusation: so that whatsoever the Consequence is, the Lords judge it, and it never comes back to you, and if you go by Bill you make it Treason *ex post facto*.

Mr. Vaug. Concerning what you have declared about *Strafford's*, that this Case is, if not less, equal to it, and you have declared that not one Charge against him is Treason, is true thus far; when that Act was made I repaired to it, because there were some Things which should not have passed so, if there had not been something to secure such Charges as these; for there is no expression of any Particular Charge, but that the Charge against the Earl of *Strafford* was not, in the particular, Treason; and in the Close of the Bill, it is said, that the whole Proceeding shall be taken away; and if so, no Man should speak against the Particulars, but look on it as Repealed.

Then this is said to be levying War, and it's true, it must be Actual, and so not within the Charge. And the Charge against *Spencer* was for Counselling the King, &c. and is called levying War against the Kingdom, and the Judgment against him was but Banishment; because the Sentence was mitigated at the instance of the King.

And for Counsel, tho' Counsel is given but in Words, yet Words are more than Counsel, and are an Action, otherwise a Counsellor is Sworn to nothing.

But it may be thought I have not dealt ingenuously with the House, than which I abhor nothing more; when the Case of *Strafford* was before the Lords, I was of Opinion the Parliament had no Declarative Power left, because 1 Hen. 4. there was an abolishing of all declared Treason, and that no Treason, for the future, should be so, and then the Treason about the *Genoua* Ambassador was gone, and all declared Treasons were gone, 1 Hen. 4. and no Statute hath recovered them; and if all Actual Treasons were taken away 1 Hen. 4. or if not then, 1 Ed. 6. then what doth the first of Q. M. do, unless it take away all declaratory Treason?

Upon the whole, the Question was, whether to accuse of Treason upon the first Article.

Yeas, 103.

Noes, 172.

275.

* See this Case 3 Co. Inst. p. 8. Rot. Parl. 3 Ric. 2. N^o. 18. Placit. coram Rege Hil. 3 Ric. 2. rot. 8. 12. Co. Rep. 16. Holin. Chron. Vol. 3. p. 422. Killing the King's Ambassador had formerly at the Common-Law been adjudged Treason, 22 E. 3. Assis. pl. 49. and may still be so by Parliament, for the Statute of 25 E. 3. is a restraint only upon the Judges, but not upon the Parliament.

November 11.

The Second Article was Read.

Mr. *Pryn*. Let the Act made by you, about defending the King, be Read, because it limits Prosecution to a Time, to see if this be within Time.

Mr. *Vaugh*. In things wherein there is a publick Defaming the King, it becomes no Man here to defend the Person accused; if the Charge be not proved, let the Party himself plead it; you had that which induced you to Impeach him, and have declared not to Impeach of Treason upon the First Article: And if any Man will add to the rest of the Articles he may, but you ought to accuse.

* Sir Heneage Finch. Mr. *Sollicitor* *. None accuseth but for Justice sake, and should be glad if the Party accused prove himself Innocent. There is a Duty to the King, and to Truth, and it is not fit that an Article of this Kind, brought into the *House*, should be laid by, upon pretence that the time is elapsed; for the Crime is more than what is mentioned in the Act made by you; it is an Offence at Common-Law, and if it be prosecuted by Fine and Imprisonment, no Time is limited.

The Third and Fourth Articles Read, and Voted.

Mr. *Vaugh*. Your reading every Article is needless, unless it be to see whether any one may be Charged as Treason, for if One may be Objected against, so may all, as to Misdemeanours.

Fifth Article, Read.

Sir *John Shaw*. The Old Farmers had not the Customs till others said they would give no more, and they had no reason to thank the *Chancellor*, because they gave more than others: And I declare upon my Life I know no Reward given him.

Sir *Tho. Litt*. It appears by the Farmers Confession, that they had it 50000*l.* under, besides time of Payment which was 30000*l.* more.

Mr. *Seym*. You are at liberty to receive Objections to the Articles, but tho others bad more, they were told they should not have it, and had about 1000*l.* each given them to bid no more.

*Sixth, Seventh, Eighth and Ninth Articles Read and Voted.**The Tenth.*

Mr. *Vaugh*. This is an Article of an high Nature, *Dunkirk* was then as much a Part of His Majesty's Dominions as *Ireland*, and if the Sale of it be nothing, I know not what you would think of it if *England* should be Sold; you lately debated whether on the first Article he should be accused of Treason, and found by the Statute of 25 *Ed. 3.* he could not, tho' it was absolute Treason at Common-Law; and it's reported abroad that I said that the Right of the Parlia-

ment in declaring Treason is taken away, which I did not, for there are Treasons not mentioned in that Statute. Therefore it provided that the Judges should not upon any one Treason proceed to Judge, until declared before the King and Parliament, and what is signified by it? If we think before the King, Lords, and Commons, that is impossible; for how can the Commons possibly declare before the King and Lords? nor was that the Case, but this, that there is the ultimate Power of determining what the Law is in a doubtful Case. In Writs of Error let them pass from Court to Court, at last they come to the Lords, 24 *Ed. 3.* If the Judges cannot resolve what the Law is, it is to be brought thither, that is, where it is questionable, but that is not in the *House of Commons*, any more than in a Writ of Error: How then is the Case here? If a Question be whether a Thing is Treason or not, it shall be Resolved where the Law useth to Resolve, that is, before the King in Parliament, that is in the Lords *House*. Had the Words of the Act been these, there shall be no Proceeding until Resolved by the King in the Lords *House*, and Suppose that Clause taken away, That Treason shall not be Resolved, but suppose it shall not be declared otherwise, doth it follow it is taken away? No. If you charge Treason which is not within the Statute, it is another Thing, but I said not, there is no Treason at Common-Law.

Mr. *Sollicitor*. There was a great Mischief in the declaring Treason by Parliaments; for *Mortimer* † was made a Traitor for incroaching upon Royal Power, which every Man, who incroacheth upon any Power, doth. Hence the *Commons* Petition'd the King to explain what incroaching upon Royal Power was, and when no Answer could be gotten to it, 25 *Ed. 3.* they Petition'd it might be declared certainly, and so Treasons were enumerated, and if the Judges be in doubt, it is *provided* that the King and Parliament shall first declare it.

Declaration in Parliament, is a Declaration before the King, Lords, and Commons. Would our Ancestors leave what is to be Resolved Treason to the Lords, and themselves have no share in it? And *Talbot's* being declared 3 *Inst. 22.* Treason by the Lords, is said to be no Treason by Judge *Coke*, because the *Commons* had no hand in it; there is no Treason in Common-Law, because there can be no Treason, where there is no way to judge it, which is not at Common-Law.

Mr. *Vaugh*. When the Law is made uncertain the Lords must declare it; it appears there were Treasons at Common-Law not mention'd, 25 *Ed. 3.* It is one Thing for a Matter to be Treason before, and the Parliament declare it; another, for the Parliament to make a Thing Treason which was not.

Sir *William Lewis*. I desire to be Resolved whether *Dunkirk* was annexed to *England*, because a Bill to that end was carryed, but not Passed.

Mr. *Waller*. To shew that *Dunkirk* was annexed to *England*, consider we were Passing a Bill for 1200000*l.* But when we were making a Preamble to the Bill, we were to seek for Reasons for giving the Money, seeing we had no War, some said to keep *Dunkirk*, but we were

told we should take heed of looking upon it as annexed unto the Crown; but it was replied, *Dunkirk* was look'd upon as a Frontier Town, and accordingly noted in the Bill. Therefore the Sale of it Treason.

Mr. *Coventry*. Had it been part of the Crown of *England*, what needed a Bill to make it so?

Mr. *Prynn*. It cannot be Treason, because Sold by the King's Consent.

Mr. *Vaugh*. If the King agreed to it, doth it follow that he, who adviseth the King to a Thing destructive to his Kingdom and King, is not a Traitor? If any part of the King's Dominions may be alienated, especially when a Parliament is Sitting, for they concurring, it may be alienated; by the same Reason the King may alienate *Ireland* or *England* too without the Parliament. For by what Act of Parliament doth the King hold *Ireland* or *England*? It is by Acquisition; I say not *Tangier*, for that was part of his *Portion*, and is his own: But *Dunkirk* would have been the Kingdom's if not thus disposed of, and tho it might have been alienated with the Parliament, it could no more without, than *England* or *Ireland*.

Mr. *Ed. Hartl*. The Act of Parliament for annexing was not This Parliament's, but of the Convention, and came in thus; the King was pleased to tell me, that the *Spanish* Ambassador might press him to part with it, which he had no mind to do; therefore he would have a Bill to annex it to the Crown, which shews it was the King's Will to have it annexed, accordingly this Parliament passed it, and *Dunkirk* might have been as useful as *Calais*.

At length this Article was passed by, without determining whether Treason or not.

Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Articles Read and Voted.

The Sixteenth Article Read.

Lord *Vaugh*. I brought in this Article; his betraying the King's Counsels was to the *French* King during the War, and that in the Secrecy of State, which was the occasion of the late Mischiefs.

Sir *Tho. Osb*. That is direct adhering to the King's Enemies, and if so, it is Treason.

Mr. *Sollicitor*. This must be Treason if you have any inducement to believe it.

Sir *Rob. How*. I have heard it from an Eye-Witness who told it me, and added that we are neither to be trusted nor dealt with, who were so betrayed.

Serjeant *Mayn*. Betraying the King's Counsel to his Enemies is, doubtless, Treason. Corresponding is another Thing. Betraying must be without the King's Knowledge, otherwise it is but delivering the King's Words to his Enemies.

Sir *John Bramp*. Did this Information come from a Subject, or from one of the King's Enemies?

Sir *Rob. How*. I would not have brought you Information from one of the King's Enemies, nor did I ever converse with them during the War.

Col. *Birch*. We cannot accuse of Treason, except it be said, Betraying the King's Counsel, or Corresponding with his Enemies.

Mr. *Vaugh*. You have declared that you have

had inducement to Impeach, and ought to put the Question, whether on this Article he shall be Impeached of Treason.

Mr. *Sollicitor*. To betray the King's Counsel, taken generally, is not Treason, for it may be to the King's Friends; but to his Enemies it is, if the Article be so.

Lord *Vaugh*. Let it be put, Betraying His Majesty's Secret Counsels to his Enemies during the War.

Then the Question was put whether these New Words delivered by the said Lord *Vaugh*, should be added.

Carried in the Affirmative.

Sir *John Holl*. Was this Information given by an Enemy or by a Subject?

Mr. *Vaugh*. It must come from a Foreigner, or you could not know it; may not the King have from a Foreigner a discovery of Treason against him? The end of questioning it must be to know the Man, for it might as well be asked whether his Beard be Red or Black.

Sir *Thomas Meers*. The Words are discovered not betrayed, and discovering may be with the King's Consent.

Lord *Vaugh*. Add the Word Betraying, for so I meant it.

Serjeant *Mayn*. They who give the Information say not they had it from more than one Witness, which *Stat. Ed. 6.* requires, and only one of them names the Earl of *Clarendon*.

Mr. *Seym*. This Exception is proper to be made before the Judges.

Then the Question was put,

Whether to Impeach of Treason on this Article.

Yeas, 161.

Noes, 89.

250.

Sir *Tho. Litt*. That an Impeachment of Treason and other Crimes and Misdemeanours be carried up to the Lords against him by Mr. *Seym*.

Serjeant *Mayn*. For Misdemeanour he may have Counsel, not for Treason: Therefore so distinguish the Charge, that he may have Counsel.

Resolved, *That a Charge be carried up.*

Resolved, *That the Speaker and the whole House carry it.*

Nov. 12. It being considered that if the Speaker go up with the Charge, some dispute might arise about carrying the Mace and otherwise;

It was Resolved, That Mr. *Seym*. carry it.

Accordingly he went, where at the Bar of the Lords House, the Lord-Keeper *Bridgman* being come to the Bar to meet him, he delivered himself to this purpose.

My Lords,

THE Commons Assembled in Parliament, having been informed of several Traiterous Practices, and other High Crimes and Misdemeanours, committed

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ted by Edward Earl of Clarendon, a Member of this Honourable House, have Commanded me to Impeach him, and I do accordingly Impeach him of High-Treason and other Crimes and Misdemeanours in the Name of the said Commons, and of all the Commons of England: And they have farther Commanded me to desire your Lordships to Sequester him from Parliament, and to Commit him to safe Custody, and in convenient time they will exhibit Articles against him.

Nov. 15. The Lords sent down to desire a Conference in the Painted Chamber.

At which the Earl of Oxford delivered a Paper in writing (without any Debate) the Contents whereof were to this effect.

The Lords have not Committed the Earl of Clarendon, because the Accusation is only of Treason in general, without charging any thing in particular.

Mr. Garraway. I had rather the House should lose the Punishment of this Man, (tho a great Offender) than that this House should lose its Privilege: For if this House may at no time Impeach a Lord without giving in particular Articles, it may fall out to be at a time (as in the Duke of B——'s Case) where a great Man by his Interest with the King procured the Dissolution of the Parliament, and then the Accusation falls.

Mr. Vaugh. Either you can justify your Proceedings, so as to satisfy the Lords what you have done, or you cannot; you must name a Committee as well to consider what you are to do, if your Reasons satisfy not, as to draw those Reasons.

Mr. Solicitor. Without doubt this House was not mistaken in demanding that the Party accused for Treason should be committed, That is, that Treason is worthy of Commitment, and you may find Precedents that Persons have been accused of Treason, and thereupon have been committed: But the Case is this, Treason is an Offence, for which Bail cannot be taken; the Lords tell you not they will, or will not Commit; But it is true, Persons have been Committed for Treason, and Persons accused of Treason, Judges may Commit, or not.

Consider this Law. Let the Crime be what it will, an Imprisoning till the Charge is given is but an Imprisoning to Security, not to Punishment; otherwise the Law is not Just: and if the Judges of the *King's-Bench* have a Judgment of Discretion, whether to Commit or not; can we wonder that the Lords have not Imprisoned, till they know the Article, when they have Judgments of Discretion tho' they knew it? You may find Precedents, but it is not an Argument it must always be so: But as the Judges have a Latitude, much more then the Lords; the Impeachment from the Commons of England is properly the King's Suit, for there is no Treason but against him, and if the Judges may Bail in that Case, may not the Lords? But you are not told he shall be Bailed, but they desire to know what his Crime is, and then you shall know their Answer; the Resolution seems reasonable, having gone no farther, I cannot except against it.

Sir Thomas Litt. The Long-Parliament had some good Precedents which we are not to cast away lest we smart for it.

Resolved, To Resume the Debate to Morrow.

Nov. 16. Mr. Vaugh. The Lords do not say Commitments should follow because Treason isailable by the *King's-Bench*: it's true, the *King's-Bench* Bails for Treasons, but how? If Persons be brought thither for Treason directly, there is no Bail; but when a Commitment is by the Council-Table for Suspicion of Treason, then if the Matter fall not out to be what was expected, they give notice to take Bail; else the great Article of the Great Charter, namely, that Justice should not be delay'd, nor denied, would be to no purpose; and in such a Case a Man may be in Prison for ever. On the other side, what is the Case of Committing for Treason? When a Person is Committed by the Council-Table, they say, they do no more but by special Command of the King, and that is the ground of his Committing, and were not this so, what would follow? Intelligence would be given of a Treason discovered, wherein many might be concerned, and if they who Commit should Commit with the Treason, all the Complices would escape; and therefore sometime they make it Treason General. Then for the Case, before you have gone up with a Charge of Treason generally, which is to the Lords a Warrant sufficient for Commitment, say they, we will know the Particulars; then will not the same Inconveniences follow, if other Persons be concerned, and so the danger of all exposed upon the Nicety.

If a Business comes before this House, which concerns others, and may prove Treason, if we go to the Lords (for we have not Jurisdiction except in Case of our Privileges) but are not yet ready to bring up Particulars, and desire the Lords to apprehend such Persons, would it be reasonable for them to refuse it, there being no Inconvenience like to follow the doing it, much the not doing it? I say not to commit them, and we not prosecute, for that is delay of Justice.

Qu. But why do the Lords refuse?

Ans. Tho' I have great respect to the Lords, yet to clear something in point of Privilege, the Lords have the same Privilege with us in point of Speech, their Members, &c. as they are essential to pass Laws; but that great Privilege which they often assume as Peers, is as the King is there present in the highest Court: How then will it fall out in respect of this Privilege? If the King be there, there be many things which the Lords as Peers cannot pretend to, for the King hath often sate there not only in passing Bills, but in Judgment. Had this Charge then come before the King there, it had been reason if the King should have said, *I desire to know what this Treason is*, we must then have told it, because he, whom it concerned, required it; or if we desired Commitment, he, who could Release or Pardon him, might say, *let him be Bailed*. The Lords indeed retain this Privilege, but it is in the King's Right, not as Peers.

Now we have carried a Charge, if the Lords Bail him, I know not what would follow, for no Example can be given of it, and I think they will not do it, if the King do not direct it.

On the other side, I would be glad we might be no more troubled, than is necessary, because others are listening what we do, and think there

is nothing in the Case: Therefore I am not for delay, but for satisfying others, that what we have done is not barely for Imprisoning the Earl of *Clarendon*, but for Justice; and if you go this way, give the Lords the Reasons why we sent the Charge as we did, and yet keep up their Privileges, and declare so to them.

But then we must go up with more than that Head, on which we Resolved to Impeach of Treason, for your Article must be so formed as to make it a Charge fit to be Answer'd for Time and Place, and that Article hath something of that, which must be penned so as to make it more certain; for the Article goes but thus. That there was Discovery and Betraying of the King's Counsels to his Enemies, and if you leave it there, those, who scruple doing any Thing, because particular Treason is not mentioned, will say; you say he hath discovered and betrayed Counsels to Enemies, but as we trust you not what is Treason, but we will know it; so we know not whom you mean by Enemies; for we may think them not so: therefore appoint a Committee to form Articles.

Mr. *Sollicit*. It is a great mistake to say, That the Power of the *King's-Bench* to take Bail for Treason, is no other but what is asserted, as if the Judges there had only Power from *Magna Charta*; when a Man is Committed upon Suspicion of Treason, and no Prosecution follows, and the Party bringing his *Habeas Corpus*, the *Bench* Bails him, because he should not lie there eternally. It is not to be said the Judges Bail for Treason; seeing no Crime is produc'd: For when a Man hath been accused of Treason for Coining false Money and brought to the Bar, the Judges have Bailed him, not because they ought, but from that discretionary Power wherewith the Law trusts them, they may Bail if they will, for no other Judicature, but they, can Bail in that Case; for seeing Imprisonment before Trial is only that the Prisoner may be forthcoming, if they see there is no danger of escaping they may take Bail, for he is a Prisoner when Bailed, and the Bail is his Keeper; but there are few Cases of this kind, wherein they will Bail, they have a fundamental Power to do it, placed in them to preserve the Rights of the Crown; and the Lords will not think themselves less trusted with the Rights of the Crown than the *King's-Bench*. Yet tho the Lords may Bail, they will not exercise their Discretion, when there is a probable Truth in the Impeachment; shall we then refuse this Intimation from the Lords, who saying, Because they have not a particular Article of Treason do not secure, seem to imply, that if they had, they would, tho they might refuse. The Right of Bailing comes not from an imaginary apprehension of the King's sitting there, tho some Kings have sat there in Judicature, but from their Inherent Authority of being trusted with the Right of the Crown: Let us do then what becomes us, and not let the Impeachment miscarry upon a Misunderstanding, but draw up the Article. But how is it possible to draw it as an Article which you expect he should be imprisoned upon? For your Impeachment is in the Nature of an Indictment, and must contain so much of Certainty as to put him to plead, that so he may not Demur.

How may it then be Circumstantiated, so as that he may be put to plead; if you do it ac-

cording to 25 *Ed. 3.* (for discovering the King's Secrets to his Enemies is within that Statute.) The first part of the Article is not pleadable, for we must shew how he adhered to the King's Enemies, and we must add what the Counsel was that he betrayed, else he will deny to plead, and say, I can avoid it: Therefore consider what kind of Certainty this Article must have to make him plead; for the other Articles, it's enough to say them without proving Time or Place, if the Facts were after the Act of *Oblivion*; but in Treason, the Matter must appear in the Indictment, for he hath liberty not only to plead not Guilty, but to avoid it: Therefore prepare the Article accordingly.

Mr. *Vaugh*. What is Moved is to put you upon an impossible Business, for an Article presented from the Parliament needs not that Certainty, as if it were to be tryed at the *King's-Bench*.

Sir *Thomas Litt*. It is not for the Honour of this *House* to recede so easily from such a Privilege, for besides the Earl of *Strafford's* Case, we have express Precedents for, but none against us. We have heard that we must have no more Impeachments, because they are dangerous and tend to Rebellion. Consider the Arch-Bishop of *Canterbury's* Case, *Finch*, *Ratcliff*, and others in the *Long Parliament*, and we should not so easily part with them. *William Delapool* being commonly reported to be no true Man, (which is a less Charge than Treason) desired he might acquit himself, and the Lords required no special Matter before they imprison'd him, and afterwards he was accused more Specially.

Sir *Rob. Atk*. In the Case of *Anselm* Arch-Bishop of *Cant.* the Commons Accused him, but the Lords did not Commit him, and gave no other Reason for it, but that he was a great Man; and yet afterwards he was Condemned as a Traitor, tho the King reduced his Punishment only to be Banishment. Tho a Privilege is much spoken of, yet I shall never be fond of any Privilege which shall Intrench upon my Liberty as a Subject.

Mr. *Vaugh*. I hear it Objected, That as you Charge a Lord generally, so may the Lords a Commoner, but that cannot be; for the Lords cannot cause a Commoner to be committed tho for Treason, without your Consent: Therefore put a Question, whether a Committee shall be named to draw up Reasons to justify what you have done.

Resolved, *That the Question shall be put.*

Resolved, *That a Committee shall draw Reasons.*

November 18.

The Committee brought in their Reasons.

First, What can or ought to be done by either *House* of Parliament is best known by the Customs and Proceedings of Parliament in former times; and it doth appear by Example, that by the Course of Parliaments the Lords have Committed such Persons as have been generally Charged by the *House of Commons* for High-Treason, to safe Custody, tho' the particular Treason hath not been specified at the time of such Charge.

Second,

Second, That a Commitment for High-Treason in general, is a Legal Commitment, and if the Party so Committed bring his *Habeas Corpus*, and the Cause of his Commitment thereupon be returned for High-Treason generally; he may lawfully be remanded to Prison by the Judges upon that Return.

Third, If before securing the Person, the special matter of the Treason should be Alledged, it would be a ready course that all Complices in the Treason might make their Escape, or quicken the Execution of the Treason intended, to secure themselves the better there.

Fourth, If the *House of Peers* should require the particular Treason to be Assigned before the Party Charged be secured, they leave the Commons uncertain and doubtful (and that from time to time) how particular they must make their Charge to their Lordships Satisfaction; before the Offenders be put under any Restraint.

Fifth, The Commons conceive, that if they should desire the Lords to secure a Stranger, or Native Commoner, upon the Suspicion of Treason, which the Commons had of him, and which was by them under Examination to be Evidenced to their Lordships in due time; their Lordships in Justice for the Safety of the King and People, would secure such Person or Persons, upon the desire of the Commons, and in such Case there would be no difference between a Lord and a Commoner so desired to be secured.

Sixth, The Proceedings of Inferior Courts, between the King and the Subject, or Subject and Subject, and the Discretion of Judges in such Courts, is bounded and limited by the Discretion of the Parliament which trust them; and 'tis not left to the Discretion of the Judges in ordinary Jurisdiction to give the King, or take from him inconvenient Power for the Subject, nor to dispen-
 pence the Law Partially between Subject and Subject for Malice or Affection; but the Discretion of the Parliament, which is the whole Publick, comprehending the King, Lords and Commons (for the King's Presence is supposed to be in the Lords *House*) is, and ought to be unconfin'd for the Safety and Preservation of the whole, which is it self.

It cannot be malicious to a part of it self, nor affect more Power than already it hath, which is absolute over it self and part, and may therefore do for Preservation of it self whatsoever is not repugnant to natural Justice.

Mr. *Prynn*. I like not the first Reason, because it cannot be called a Custom, where only one Parliament hath done it.

Mr. *Swinf*. The great strength lies upon this first Reason, and is like to be a Precedent; for exact Precedents I find none, except that of *Michael Delapool*, and in the Long Parliament: But consider the Reasons why there was no express Precedent before, and what was the Custom of Parliaments before. The Parliament was wont to proceed formerly by Bill, and thus far that Proceeding makes against the Lords now, and for committing the Party accused; for then the Proceedings upon Treason were by Common-Law, and because the Judges could not proceed, therefore the Parliament went by Bill, and it cannot be supposed that the Parties were at liberty all that while.

Second, Third, Fourth and Fifth Reasons Voted, *Sixth* Read.

Mr. *Solicit*. I am against this Reason, not as a Reason, but unnecessary; for if the former Reasons satisfy not, this will not, because it supposeth things not in question.

Our Debate must at last end in this Question, betwixt Privilege of Parliament and former Proceedings; And there being no Privilege in Case of Treason, Why should not former Proceedings Sway? Except we call that Treason which is not, for otherwise no Privilege will help.

Therefore add this to your Reason, That there is no Privilege for Treason, and the Lords ought not to think that the Commons will call that Treason which is not, or if they do, the Lords may by a speedy Trial determine it.

Resolved, *That a Conference be desired with the Lords, and the Reasons carried up.*

November 21.

The Lords sent down to desire a Conference about the Subject Matter of the last Conference. But the Commons doubting that if they should consent to it, the Lords might afterwards refuse a Free Conference, because the Business in dispute concerns Judicature, which belongs to the Lords, and so the Impeachment generally falls;

Resolved, *To send an Answer by Messengers of their own: And accordingly did, with Order to acquaint the Lords how far they had proceeded, and they expected they should rather have desired a Free Conference.*

November 23.

The Debate about the Freedom of Speech in Parliament was resumed.

And the Report read of the Proceeding about Sir *John Elliot*, Mr. *Hollis*, &c. 5 Car. 1. Cr. Car. 181.

Mr. *Solicit*. If you are satisfied that the Judgment passed upon them was Illegal, two ways you have to be safe; By taking notice of that Judgment, giving your Opinion upon it, and carrying it up to the Lords, that Judgment will be utterly Damned; else you may proceed by Act, but consider then the Consequence: For if you go by Act, you bound the Liberty of Speech, unless in Penning it you prevent it, but an unknown Limitation is better than bounding, for an Act it self is subject to Exposition, but your Vote, and the Lords Concurrence, is not.

Mr. *Vaugh*. It is not safe for you to circumscribe Privileges, therefore that must be done which may take away what destroys them.

The Laws and Rights of this Kingdom are Rights by Common Law, or Act of Parliament; what is an Act of Parliament, may be Repealed by Parliament; what is Common Law may be altered by Parliament, and whatever is both, may be altered by a *New Law*; and how is it possible to do one or the other without Liberty to speak about it? And how can there be any Inconvenience about Freedom of Speech, about any thing which cannot be a Law, without passing King, Lords, and Commons.

Then it being moved to put the Question for confirming that Report;

And it being reply'd that some Passages in that Business, viz. about keeping the *Speaker* in the Chair, were not warrantable, and so not to be joined in the Question with the rest;

Mr.

Mr. *Vaugh.* That Business which is so much talked of, and condemned, I shall state to you.

The *House* is to adjourn it self, tho' sometimes the King adviseth them to adjourn themselves (as then he did;) but the Adjournment is always made by a Question, and without it the *Speaker* cannot leave the Chair.

The *Speaker* acquainting the *House* then with the King's Message, Sir *John Elliot* stood up to speak, but the *Speaker* would not hear him, but was going to leave the Chair; whereupon some said, if you go out without a Question the Parliament is dissolved, upon which he was leaving the Chair; some kept him, and told him, if this be a *House*, you, as *Speaker*, have no Place in it but the Chair; and this was all the Irregularity in that Business so much talk'd of.

Cr. Car. 604. Resolved, That the Judgment given against Sir *John Elliot*, &c. 5 *Car.* was an illegal Judgment, and against the Freedom and Privilege of Parliament.

The Lords sent for a present Conference, after which Report was made that the Lords had Voted the *Commons* denying them a Conference lately, was contrary to the Course of Parliamentary Proceedings, and gave Reasons why it was not yet time for a Free Conference.

November 25.

After Debate whereof, it was Resolved to grant them that the *Commons* agreed to the Conference formerly desired.

At which the Lords declared that they had consider'd of the Precedents and Reasons formerly sent them by the *Commons*, but were not satisfied to secure the Earl of *Clarendon*, or to Sequester him from Parliament, until some special Treason be assigned.

November 28.

The *Commons* sent to the Lords to desire a Free Conference upon the Matter of the last Conference.

To which the Lords concurring, Mr. *Vaugh.* Sir *Rob. How.* Sir *Tho. Littl.* and others were appointed to manage it, who went up immediately to that End.

Mr. *Vaugh.* Made Report of the Conference with the Lords yesterday to the Purpose following.

The Lords told us, That no Precedent can be against the Law.

We Answered,

If that can be made good, we shall press Precedents no more: But what they most stood upon was the *Petition of Right*, where 'tis provided that none shall be Committed without special Cause, whereby the Party may Answer according to the Law; thence they infer that our Proceedings are against Law, because a general Charge is against the *Petition of Right*.

Commons. The Case of the *Petition of Right*, rightly stated, will clear this, which was This: Some Persons were committed by no other War-

rant, but the King's special Command, they bring their *Habeas Corpus* to the King's-Bench to know the Cause: This Cause was returned by the Judges, that they could not Bail a Man, when so committed, because they knew not the Cause, nor had any way to bring him to his Trial.

Then the *Petition of Right* provides, That the Cause should be returned, whereby the Crime might appear, and that before and after the *Petition of Right* to this Day, if upon bringing a *Habeas Corpus*, it be returned that the Party is imprisoned for Treason, the Judges ought to Remand, unless there be some special Cause to make them take Bail. So that the *Petition of Right* was against them, for they say, a Man ought not to be Imprisoned upon a general Charge, because 'tis against the *Petition of Right*: We lay it is not against the *Petition of Right*, because the Judge may Remand the Party, if there be not special Cause.

Then the Lords said, That the Reason why the Judges Remanded in that Case was, because the Party Committed knew it was for Treason: Therefore they Re-committed.

We owned it, because it was the Rule for the Judges to proceed by, but that was no Rule for Proceeding of Parliament; for as a Magistrate commits for Treason, and is supposed to be acquainted with it; so also is he with the Probability upon the Proof: But the Lords insist not now upon that, but specify Treason, and if the Course of Parliaments so much varied in such Cases, that was no concluding Proof, why they should have special Treason. And for the other part,

That upon the Return, there should be a Cause Returned, that so the Party might Answer; for when a Return is made, if the Cause be such as that the Party ought not to be Imprisoned, the Judges free him; otherwise they leave him to come to his Trial.

Then to the Precedent about the Earl of *Strafford*, they Replied, That it was made in bad times. And we Answered, That as good Laws were made before, in, and after that Time as any other; and if the Lords then might make such Laws, we could not see why it should be a good time to make Laws, and no good time to Administer to Persons the Laws already made.

Farther, to their Objection, that in the time whence those Precedents were brought, there was a Face of War; We Answered, That could not alter the Case, for the Law calls no Time a Time of War, whilst the Courts of Justice have Freedom, as they had when *Strafford*, *Finch*, *Canterbury* and *Ratcliff* were Impeached: And it was strange that in the Parliament-House there should be such a Consternation as to make their Proceedings invalid, when in other Courts there were none: Besides, in *Holland* for many Years there was a constant Scene of War, and can we imagine that there was not Justice done at that time.

Then they pressed Precedents against ours, One 14 *Ed. 2.* against the *Spencers*, where a great Man moved the King to Commit one of them, and the King answered, it could not be unless Cause was shewed. We Replied, This was a Precedent like that, a Man was Committed, because he

was

was Committed; for there was no Allegation of Treason.

Second Precedent was 38 Hen. 8. against Lord Stanhope, the Commons moved the King to Imprison him, and the King Answered, *he would consider of it.* We Answered, That was no Denial, but a thing usual with the King, and that Motion was to the King himself, which differs from this Case, for that was not alledged to be Treason: Besides, had it been Treason, it was against the King himself, and being an Offence against himself, he might (if he would) not Imprison, because he may discharge a Man, or pardon him, tho for Treason; but this Case is not so, because the Lords Justice is but ministred to the King.

21 R. 2. Arundell Arch-Bishop of Canterbury, who as they said was Impeached of Treason, but not Committed.

Answer. The Case was this. There was a Commission issued out by Ric. 2. That that Bishop and others should regulate what was amiss by evil Government, and the King was offended at the granting of it, and at Nottingham sent for the Judges, and charged them upon their Allegiance to give true Answer to what Questions he should ask them; and the first Question was, *Whether that Commission so granted, was not invading his Prerogative?* They Answered, *Yes.* Then he asked *how they ought to be punished, who procured it?* They Answered, *as Traitors.* In the 21 the Bishop is charged by the Commons, and the Treason alledged is, That he had procured himself to be put into the Commission.

This being the Case, we said, that if a Fact be called Treason, which afterwards appears to be none, there could be no Commitment. For if a Man call another Man's coming into his Ground Treason, it falls of it self; therefore the Bishop was not Committed.

The Lords said farther, That all those Articles were declared to be Treason, which before could not possibly be Treason to Commit a Man, because the Nature of them must be Treason at Common-Law, and till these Treasons were declared, which was not till 21 Ed. 3. they were not Treason so as to Imprison, or Try any Man for them.

We Replied, All that Parliament was Repealed, yet the Precedent was the more authentick. But I think that Lord (it was the Earl of Bridgewater) understood not what he said, at least I did not.

Then about the Earl of Strafford's Precedent, the Lords said, that the very Impeachment was taken away by the Act of this Parliament, because the Impeachment is recited in it. Namely, Whereas the Earl of Strafford was Impeached; &c. But every Clause in that Act of Attainder is taken away now, therefore the Impeachment; and you cannot make use of any part of it.

We Replied, It's true, the Act of Attainder is taken away, but the very Act of Repeal doth recite that very Clause (whereas Thomas Earl of Strafford was Impeached, &c.) and the Act cannot take away any thing which strengthens its own Supposition.

Then the Lords said, that they should be willing to comply with the Commons, but that they

must be tender of their own Judicial Proceedings.

Commons. It's true they ought, and we supposed that the Lords might be jealous that we should Intrench on their Power; but the Commons were so far from that, that they thought the Judicial Power better lodg'd with them than in the Commons themselves could be; but we would open the Objection.

Their Lordships being the Judges in this Case might think, that for the Commons to take upon them to know what was Treason, would be an assuming to themselves what was only proper to the Lords, and that it was so now in Charging the Earl of Clarendon generally.

Lords. The Objection is right.

Commons. For our knowing Treason, we have many among us who are Justices of Peace, trusted by Law to know and Commit, and (if the Parliament be not Sitting) even to Commit a Peer himself for Treason; and the knowing what is Treason is so far from being improper to the House of Commons, that every Man in the Nation is bound to know it; for was it ever known, that Ignorance of the Law could ever excuse a Man from breaking the Law? Laws are made to be known by Subjects, especially those which concern the King; and unless they could find a Reason, why the Parliament Embodied should be more ignorant than particular Persons, the present Case must be clear. That the Jealousy of the Lords arose from a Fallacy thus, The Lords have Judicial Power concerning Treason, and must of necessity know it; the Commons have no Judicial Power over it, therefore cannot know it; that is, because the Commons know what Law is, therefore they have Judicial Power over Law. To this was not any thing Replied.

Farther, We said that because they insisted upon us to specify Treason, because by Committing upon a General they might wrong the Party by Committing him without Cause, and because they themselves were not inform'd in their Consciences what they did: They would do well to consider the many Inconveniencies which might follow, if the Charge of Treason was not General, but Particular; and suppose it was Special, their Lordships would know no more by it. For suppose a Man Impeached for Counterfeiting the Great Seal, which is express Treason, and he may be Impeached for it, yet neither their Lordships nor the Party could have any Advantage by that Specification, because there might be as many Questions what is Counterfeiting the Great Seal, as what is Treason.

For Instance. One Leak*, a Clerk in Chancery, intending to Forge a Patent, puts together two Pieces of Parchment, and had fitted them, and put them together with Mouth-Glew, that they appeared as one: Then a Grant was written upon the outmost, and a Seal affix'd, so that the Great Seal is put to a true Thing; then he cuts off the Edges of the Parchment, so as to sever them, takes off the written One, and leaves the Seal on the Blank, then Forgeth the Grant and makes use of it. This was questioned before the Judges, whether 'twas Treason or not, that is, whether Counterfeiting the Great Seal or not? If it were, it was Treason, otherwise not. They

* Co. 12. Rep. 15. Kelyng. 30.

Resolved,

Resolved, it was not Counterfeiting the Great Seal, and so not, but Misprision. And if it had been Treason, they *Resolved*, that an Indictment had been enough to Impeach him. Then suppose you have such an Impeachment before you for Counterfeiting the Great Seal, you have special Treason, and Imprison him; but when it is brought to Question, it appears not to be Treason, therefore he is wrong Imprisoned: And if your Lordships will examine what Knowledge you have of this Fact, you have no more than if it had been a General Treason.

Lords. There is a Case put there, as we are content to take a Special Treason, but expect not the Proof as there it was.

Commons. If it were a Case put, so is your Lordships *Reply*, for it was put *ex Concesso*, because you agreed that if the Treason was Special, the Party was to be Committed, and this Case was to shew their Lordships, they were in no better Case then, than if the Treason were General.

But the Lords still pressing that the Impeachment it self of the Earl of *Strafford* was Repealed in the Act about him;

Commons. We *Reply'd*, one Part of the Act ought to be severed from the other, and that which is without Exception shall stand, tho' the other be taken away: For, suppose a Man prosecutes in a Court of Justice, for what he apprehends to be his Right, and yet the Cause goes against him, and he hath no Effect of his Suit, afterward the Party (being an evil-minded Man, and thinking to reach his Ends) Forgeth a Deed, or Suborns Witnesses, and then begins a Suit in some other Court, and by those ways attains his Ends. Then a Bill comes before this Parliament to Reverse the Judgment, reciting that such a Person hath been a Suborner of Witnesses, &c. so, and so, and therefore the Judgment is made void; certainly tho' this Person is Named to be an evil-minded Person, yet this lays no Blemish on his first Proceedings. So that it appears by the Act, that the Proceedings against the Earl of *Strafford* were legal at first; if those afterwards, when the Times became tumultuous, were not, it is not to be applied to what was well done and legal: Then we told them that we had pressed them with four Precedents, and to three of them nothing was Replied.

Lords. They Answered, the Reason why my Lord *Finch* was Committed, was because of his Flight.

Commons. He was fled before the Impeachment; but it was Ordered, That he should be Committed when found.

Then we told them, That we must Report to them, that be the Treason what it would, we could not go to the Lords to have it punished without that Disadvantage, which the publishing the Treason before-hand would expose us to by making of Witnesses, escaping of Parties, and the like; than bad them consider, whether if we should lay before them a Treason in every Thing circumstanced as *Gun-Powder-Treason*, they would not Imprison the Party till the whole Matter was opened.

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Lords. They Answered to hear that Case put, for in Matter of State, other Courses are to be taken, and they could see no Inconvenience in Publishing that to the Lords, which must be published before 400 in the *House of Commons*.

Commons. The Commons may proceed with what Secrecy or Openness they please, and the Lords are not to take Notice of their Proceedings, whether Open or Secret.

Farther, That by a Matter of State must be understood, when a Parliament is not Sitting, and we know not whither to resort; but when a Parliament is particularly called to prevent the Mischiefs threatening the Kingdom, if that be not capable of Remedying, no other Council could, or we are not bound to resort to that, we are excluded from that to which we ought to resort.

Lords. That the Lords bad us take heed of the Liberty of the Subjects, to which they are now fain to have Regard, bidding us consider the Bishop of *Canterbury's* long Imprisonment, without knowing the Cause, and they must satisfy their Consciences, lest they should Commit for Treason, and it not prov'd so.

Commons. It appears not that the Bishop of *Canterbury* should have lain less Time, had the Impeachment been Special; and for the Liberty of the Subject, we know not how a Subject should have more Liberty by Special Matter, than General; Special being but adding a formal Title, and the Subject goes to Prison, as well for the one as the other.

For their Consciences. Suppose a Person accus'd generally, they are then to know whether it be Treason, and is not it as much that they Commit an innocent Person? So as if the Matter was Special.

December 2.

The Lords sent down a Message to the Commons by two Judges, to this Effect, *That upon the Report made to them of the last Free Conference, they are not satisfied to Commit or Sequester from Parliament the Earl of Clarendon, without the particular Treason be mentioned or assigned. Who being withdrawn;*

Lord *Torrington*. (General M——ck's Son) Moved not to part with any Privileges of the Commons of England, but adhere to the General Impeachment.

Sir *Rob. How*. The Matter before us, is of as great Concernment as ever came before us; if there should be Malice supposed in a Nation against it self, it might be exercised by giving a particular Charge, as well as a general; many of the Lords are convinced by the Reasons we gave, and concur, thinking our Precedents good, and have enter'd their Protestation in the Lords House, asserting the Rights of the Commons of England to Impeach generally: So that (excepting the Spiritual Lords) I think I may say the Major Part of the Lords are for us; and should we give up this, we may be wrested out of all Right, and the Commons have no way to proceed

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ceed to an Impeachment, but some Men to be so great, as not to be fairly reach'd. Therefore adhere.

Mr. Wall. The Lords are a Noble Estate, but whatever the Matter is, they have of late some Advice given them, which makes them proceed as they never did yet; for scarce any Thing happens betwixt us, but they incroach upon us. The *Militia* is now as burthensom to the Fifty Pound Man in the Country, almost as all other Taxes, and the Lords have gotten this Advantage of us, that they touch not the Burthen of it with their Finger: So in time of the Plague, the Commons must be shut up, but not They, insomuch that a good Act provided to that Purpose passed not; we Impeach'd the Lord *Mordant*, and could not bring him to the Bar (tho' formerly I have known an Earl and a Lord brought thither). You desired a free Conference about it, but could not obtain one to this Day. *Rome* was at first modest, and only medled with Spiritualls, but afterwards concerned themselves so much with other Matters, that every Thing almost was made to be in *Ordine ad Spiritualia*, and many Kingdoms thereupon break from them. The Lords now insist upon one Thing, because they say 'tis in order to their Judicature, perhaps hereafter they will tell us we must come to them on our Knees, because it is in order to their Judgment. Consider therefore whether there be any Hope of giving them Satisfaction; then, whether you will adhere, and what you will do afterwards; for the present my Motion is to adhere.

Mr. Vaugh. It is truly said, the Business before you seems to be as great as hath been in Parliament; many of the Consequences being invisible, therefore before you *Resolve* what to do, take the whole Matter before you.

The Difference between the Lords and us, is upon a general Impeachment of Treason; the Lords, after a Free Conference, say, they will not Commit unless Special Treason be mentioned or assign'd; those whom you employed to Manage the Conference were very unwilling to differ with them, but it seems it hath produced nothing, and I have nothing to make me believe, but that the Reason is, that the Lords were *Resolved* (say what we would) not to be satisfied; for I know nothing which they Offer'd, but it was fully Answer'd, nor any thing left undone to satisfy them if they would have been satisfied; what I have to say now is to clear something which the Lords may make much Sound of.

When we urged Precedents, and made them our principal Reason, we told them, the way to decide what was in Difference betwixt the *Houses*, is, the Usage of Parliaments; but to our Precedents we received no full Answer.

Then the Lords used this Reason, namely, That they cared not for Precedents, because it was against the express Law of the Land.

I Answer'd them, we would join with them, if they could shew Law against it, and expected what they would Answer, but heard nothing: Much Discourse there was, without Application, of the Great *Charter*, and of a Statute of 28 *Ed.* 3. but not applied; so that I thought Law in a Lord's Mouth, was like a Sword in a Lady's Hand, the Sword might be there, but when

it comes to cut, it would be awkward and useless.

But I hear since, that their Meaning was this (which must be cleared by mentioning some Laws) that by *Magna Charta* it is provided, *That no Man shall be Taken or Imprisoned, or Condemned, but by the Law*; and thence they infer, That no Man may be Imprisoned, but it must be by his Peers, or by the Law of the Land.

Again, 5 *Ed.* 3. No Woman shall be attached upon Accusation, or be adjudged of Life or Limb, but according to the Law.

25 *Ed.* 3. No Man shall be taken by a Petition to the King or his Council, unless by Indictment of lawful People, or by Process of Writ at Common Law, and (say they) this Case is to none of these.

28 *Ed.* 3. No Man shall be Imprisoned without due Process according to the Old Law of the Land: But this Case being neither by Presentment nor Indictment, the Lords would not stand upon our Precedents, but relied on this, as if it were enough in Bar of all our Precedents.

Therefore to open this, and the Danger of the Consequence, there are in the Land many different Laws, and Proceedings in these Laws, and Imprisonment upon them; and yet not one of them by Presentment, Indictment, or Trial by Peers, tho' the Lords thought this was the Law, and there was no other.

1. It is known that the Crown-Law, or Prerogative, is distinct Law from that between Party and Party.

2. There is the Law and Custom of Parliament, called a Law, *ab omnibus querenda, a multis ignorata, & a paucis cognita*.

3. Then the Canon-Law, (and it is much the Bishops forgot that) and there is nothing in that Law, more than standing in a White Sheet, which proceeds not by Indictment or Presentment, yet there is Imprisonment even in that Law.

4. There is the Law of Admiralty, and the Articles of *Oleron*, where there is Proceedings of another Nature, and by Imprisonment.

5. The Law of Merchants, or of the Staple.

6. The Law of Arms, where is Imprisonment and Death, and yet different Proceedings from the Common-Law in the Great *Charter*: Now no Man thinks that all those Courses of Proceedings are taken away by the Common-Law, and it is gross Ignorance to think it.

7. The Law of the Forest, which is most different: So that to urge *Magna Charta* to this Purpose, as if all Proceedings in those Cases must be according to the Common-Law, is absurd.

Then there are divers Writs in the Register.

One, When a Man hath received the King's Money to serve him, and went not, then there is a Writ to Arrest him upon a Certificate from the Captain under whom he was to serve.

Then the ordinary Writ, which belongs to the Law Ecclesiastick, *de Excommunicato Capiendo*.

Another

Another, *de Apostata Capiendo*, to recover a Regular run away from his Convent.

Another, called *ne exeat Regno*, to Imprison a Man, who will not give Security not to go out of the Kingdom, and this is not Traversable any where, because it suggests that he will *Machinat* somewhat hurtful to the Kingdom, and upon that Suggestion he is Imprisoned.

Another, when a Man hath a *Leprosie*.

Another, to burn *Hereticks*, which concern'd the Bishops also, if they had pleas'd to think of it.

These Proceedings are no way agreeable to those mentioned in the Common-Law.

Then consider how this *Resolution* of the Lords strikes at the Law of Parliaments.

1. It is certain that all Imprisonment by Parliament is not by Presentment, Indictment, &c. So that by this means that Power is taken away.

2. Contempt against Parliamentary Authority, whosoever he is to appear before them, and disobeys them, they may Imprison him in the Tower, and yet it is not against *Magna Charta*.

Whither therefore tends this?

The Conclusion must be, that no Impeachment by the Commons must go on, unless it be by Presentment, and so there is an end of all that, for which the Parliament is principally called, unless we are part of those 500 contemptible Ones, who are only fit to give Money: That may be reserved for us, but nothing else; tho' 23 E. 3. saith, *For Redress of Grievances in the Kingdom a Parliament shall be called every Year*. I would know which Way we should redress Abuses, if we are so far from remedying in Parliament, that we must be shut out to the Common Courses in other Courts?

Obj. The Lords may say, if you find the Statutes broken, and short, you shall have New.

Ans. And when these New Ones are broken, then we shall have a Remedy; so rise up Remedy, and go to the Remedy, *ad infinitum*, for there is no more Reason to think that a Second Law shall be maintained more than the First, and what Way a Mischief shall be redressed, other than by Parliament, I know not.

So that by this *Resolution* of the Lords, and denying to Commit upon this Ground (for they shew'd no other) every Thing for which a Parliament is useful is denied us.

After all this come to the very Case.

If a Treason be Committed, and the Fame is that *A. B.* is guilty of it, it is lawful to Apprehend him for it. If a *Hue and Cry* pursue a Man, tho' he be not of evil Fame, yet he may lawfully be Imprisoned: If it proves false, he hath his Remedy; but that obstructs not the Law to bring him to Trial. Any Watchman may Arrest a Night-walker, and hath a Warrant in Law for it, and this is as good Process in Law, as any original Writ.

And after all this, Consider with what kind of Colour, when there are weighty Reasons why

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we should not mention special Treason, and that mentioning it generally, answers the Petition of Right, the whole Commons of *England* (who are in no Degree represented by the Lords, they only represent their own Persons) should be denied the Securing a Person Impeached unless a particular Charge be given, how prejudicial soever to the Kingdom.

Another Thing, there is no Right which a Man hath in this Land, or any part of the World, but his Right is such, that if it be kept from him, he hath a Means to come to it, otherways it is *Dammum sine injuria*; for where the Law gives no Remedy, there is but a Supposition of Right: By the same Measure it will follow, that there is no civil Wrong can be done to any Man, but the Law provides a Remedy, if that Wrong be done; and if by the Law there is no Remedy, it is no Wrong: consider then this Case.

There are in this Kingdom, in the Civil State of it, three Estates, which the King hath then in making Laws: There are three Estates, whereof the King is Principal; sometimes they are mention'd as the King's three Estates, and he none of them: The Estates in general are, the Commons of the Kingdom, (who are perfectly represented in this *House*) the Lords another, and the King another; and these are such, that there is no Petitory Action, nor the Laws directed to any one of them, but the Laws you make, are to distribute Justice in other Courts.

For Instance, If all the Commons of *England* (who are one of the Estates) should Accuse one of themselves, the Party can have no Wrong, because the Parliament can have no Action brought against them, nor can they be supposed to do any thing for Malice.

It is the same between the Body of the Lords and Commons; and there is no Law either to Vindicate the one or the other; but they stand as if there were no communicable Law betwixt them; but the Measure between them is that which is good for the whole; for they are the Makers of Laws for others, but no Laws can be fancied to reach the whole of the Commons, or of the Lords.

So that 'tis easily to be seen, how it hath been put upon us; so that now we are in such a Case, we know not to what end we shall proceed upon this or any other Impeachment; for by this Judicial Power, you shall be excluded from any Proceedings by Laws of Parliaments, and so you take away the whole Right of the Kingdom.

Quest. But now what shall you do?

Ans. I see many Inconveniencies which may happen both ways, but I see so many this way, that if any Man gave such Counsel as is charged upon the Earl of *Clarendon*, it is not so dangerous as the Case before you; for the Inconveniencies attending that Counsel would quickly shew it self by the Misery following: But this is a small thing begun with, which, like a Canker, may eat till it be uncurable, and that is as absolutely justifiable as this.

And now I have said this, I am perplexed what to say more, for all can bear me witness, what Respect I have endeavour'd to preserve to the *House of Peers*, but I am so sensible of this,

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that

that tho I cannot forget my Respect to them, yet I must lament the Condition into which they have brought themselves first, and us next, for they cannot think to avoid it.

The *House of Peers* is but a new Style, called so, as *Jurors* are called *Peers*, from the Word *Par*; for every Commoner hath his *Peers* as Lords have; and the whole Style formerly was *Arch-Bishops, Bishops, Dukes, &c.* But *Pares Regni* is a new Style. It is called the *Upper House*, and is to be look'd upon with Reverence. The Lords have a Jurisdiction; but in this Case, I must be plain, their granted Jurisdiction ariseth from the *House of Commons*, if you Impeach not there your Judicial Power will be very little. If a Lord be to be Tried for Treason, the Lords are but his Jurors; and tho they Try him upon Honour, not upon Oath, yet they are no more his Tryers, than as out of Parliament: The Judge of Treason in the Lords *House*, is Constituted by the King, as a Lord *High Steward*, and is no other Judge, therefore I know not the Judicature they speak so much of.

There is another for Writs of Error, which are there determined, but the Jurisdiction of that is very little, for the Inconveniency of the Lords determining what could not be determined in other Courts, is so found out 25 *Eliz.* They are to be brought first into the Exchequer-Chamber.

There is another Way when Persons carry Complaints to the Lords, which is a Question, for Commoners ought not to carry Complaints there, except in some Cases from *Chancery*; therefore this matter of Jurisdiction, which they talk of, is not such a wonderful thing as they would make it.

Therefore whatever we shall do after it, your Rights being so much concerned, that you know not where the stay will be, it is necessary that you make a Committee to draw up a Protestation to be made by this *House* concerning this Matter. The Invasion of your Right in it, and the Danger to the Kingdom by it.

Mr. *Colem.* The Lords say, That committing upon a general Impeachment is against Law, and I think it will appear so; I deny not, but a *Mittimus* without special Cause is legal, and grounded upon the Petition of Right, the Reason of which is to secure Men against Commitment by a special Warrant, and a Judge ought not to discharge where Treason is alledged, but in this Case it is different; The Judges cannot discharge a Man Committed after Examination, but the Lords ought not to Commit a Man, except there be particular Treason.

If I come before a Justice of Peace, and say, I accuse this Man of Treason, will any wise Man Commit him? he makes his Warrant indeed, but he that accuseth must go farther and make it more particular, and the special Matter must appear before he Commits, and this is the present Case.

The Common-Law is, That no Man ought to be Committed without particular Cause; because no Man can Commit in Capital Matters, without taking Examination before-hand, otherwise no Man can justify a Commitment: Therefore I am not satisfied that the Lords had not reason to deny. The Commons are in the Nature of a *Grand Jury* to present, but the Lords

are the *Judges*; Commitment is not the Judgment, but in order to it, and the Lords have a discretionary Power in the Case: The Lords say not that they will not Commit, but that they are not satisfied to do it without special Matter, therefore we ought to send it up.

Sir *Rob. How.* I have attended the Reasons given against making a Protestation, and whatever is said, is but levelling a *House of Commons* with every private Accuser; a Justice of Peace (it is said) must have Evidence before he Commit, and this *House* has had Inducements to Impeach; and may not a *House of Commons* Judge what is Treason as well as a Justice of Peace?

The Inconveniencies and Dangers laid before you, if you proceed, are nothing in comparison of those on the other side.

Had the Lords Imprisoned, they had before this had the particular Charge, and the Protestation is not to stop it, but to make way for it some other way; for it will resolve into a Remonstrance, by which you may give the Nation an Account of your Proceedings to come to a Trial of this Business.

Mr. *Vaugh.* By the Protestation spoken of, is meant to preserve the Rights of this *House* upon the whole Matter, and to give the Reasons of your Proceedings.

Sir *Tho. Meers.* What is said, not being explained, I know not what is meant by the Protestation; if it be but to enter it into our Books, I am not against it; if it be an Appeal to the Nation, pray consider what you do.

Mr. *Vaugh.* This way of Protestation differs from entering in our Books, but the best way is to draw it up, and to bring it to you, and then any Man may take Exceptions against it; for the meaning is, that this *House* claims its Rights.

Mr. *Garraw.* First make your Protestation, and then Appeal to the King.

Mr. *Vaugh.* None can surmise that you mean an Appeal to the People by what is moved, for what is done, must be done to some part of the Parliament; the King, Lords, or your selves: And they who speak of it (if it were done with evil intent) deserve to be called to the Bar; when it is brought before you for your Approbation, you may either retain, or reject it.

Sir *Walt. Young.* I desire that the *House* may know before hand to whom they are to Remonstrate, and on what ground, and therefore to Adjourn their Debate now.

Mr. *Trev.* What Appeal you make ought to be to the King, but bring it in hither and give it what Name you please.

Sir *Rob. Atk.* As I would be tender of your Privileges, so, of giving Offence to the Lords, therefore we shall endeavour to be Unanimous in this *House*; a Protestation is Named, I am a stranger to it, and would understand clearly what it is, before we do it; That it is a Course warranted by Precedents and Proceedings of Parliaments, considering what effect it hath had in late times, therefore we may do well to adjourn the Debate and consider of it.

Sir *Tho. Lit.* This Protestation will be like that in the Lord *Maynard's* Case, but somewhat longer, and ought to go no farther than to one of the Estates, and be kept within the Walls.

Mr. *Swinf.* You sent up a Charge to the Lords in general, desiring that the Earl of *Clarendon* should be secured, and in convenient time you

you would send up Articles; from that time it hath not been done, and the Lords have passed several Votes about it since, but you have not passed one.

First they Voted, that they had not complied with your Desires for want of particular Treason; Then you give them Reasons, they are not satisfied with them; then a Free Conference, they are still unsatisfied; and all this while you have not come to any Resolution: So that till you come to a Vote, no Man knows but that you are satisfied with their Answer; for when the Matter of the Protestation is brought in, we shall not be ready for it till we have resolved, that what the Lords Insist on, is an Obstruction of Justice, and you cannot agree with them without great Inconvenience to the Nation; Therefore put a Question, *That the Lords, not having agreed to Secure the Earl of Clarendon upon the general Impeachment, have obstructed the Publick Justice of the Kingdom in Proceedings of Parliament, and is of dangerous Consequence:* This is necessary, because the Lords have heard nothing from you, but endeavour to satisfy them.

Sir John Good. This Question will be a greater Accusation of the whole House of Lords, than the other is of the Earl of Clarendon. If you will go by way of Protestation, and keep it within your own Walls, I like it better than this Question.

Sir Rob. How. The putting this Question is no Charge upon the House of Lords; and therefore if that Gentleman thinks it so great an one, sure he thinks the Charge against the Earl of Clarendon to be a very small one. Is there any Obstruction to Justice? If not, Why do we not Comply? If there be, we cannot it seems complain without Charging the Lords. Keeping it within your own Walls, is but like a Man, when he is alone, muttering Arguments to himself, and Commending himself for it. If you meet with any Obstructions, pray first put the Question, whether you are obstructed.

Sir Rob. Atk. It is no light matter to Charge the Lords with Obstructing Justice; therefore the thing being new, pray adjourn it till tomorrow, that we may be more of one Mind.

Then the Question was stated, Namely,

That the Lords not having complied with the desire of the Commons in Committing the Earl of Clarendon, and Sequestering him from Parliament upon the Impeachment from this House, is an Obstruction to the publick Justice of the Kingdom, and is a Precedent of evil and dangerous Consequence.

Resolved, *That the Question be put,*

And being put, *Resolved in the Affirmative.*

Resolved, *That a Committee be appointed to draw up a Declaration to Vindicate the Proceedings of this House.*

December 3.

A Message from the Lords by two Judges, That they have received a large Petition from the Earl of Clarendon, which intimates that he is withdrawn.

Sir Tho. Tompk. Moved to take care to get the Sea-ports stopt.

Sir Tho. Lit. I believe he is now past stopping, but we should do it, tho' it have no effect; lest it look as tho' we would have him escape.

Sir Rob. How. The Lords seem now mistaken in their Opinion at the Conference, they said there was no fear of his Running away; and in our House it hath been Jested that he was not like to Ride Post. Besides the Expression in the Message is (*withdrawn*) which may be an inward Chamber, therefore 'tis fit to desire to see the Petition, and Command some Members to prepare something to Vindicate your selves in discharge of your Duty.

Mr. Seym. You cannot take Notice to the Lords of the Petition, unless they think good to Communicate it to you, but make the Declaration.

Mr. Vaugh. I look upon what the Lords say as doubtful, therefore beware lest you do something misbecoming you. They only say, that he is withdrawn, but not what is his Petition; for the saying that he is withdrawn, is not the Matter of a Petition. Perhaps he is gone into the Country, the Message seems light, and you are to take no notice of it. If it be of Moment, and they think us Concern'd, they should let us know it; and I cannot think so of the Lords, that they would use that word, if he were fled: therefore send a Message, to know whether fled or withdrawn.

Mr. Sol. Gen. When a Delinquent signifies to his Judges, that he is withdrawn, it cannot signify any thing, but that he is withdrawn from their Judgment. None but a mad Man will tell them that he is fled, fearing what may follow; it would be well if their Care would prevent his flying, but you cannot Answer it, if you hear they do nothing, and so seem to say, fare him well.

Upon all which Motions, *Ordered,*

That Sir Tho. Clifford (Comptroller of the King's Household) be sent to the King, to desire the Ports may be stopt.

December 4.

The Lord Fitzharding makes Report from the King, that the Message for stopping the Ports being delivered him, he had taken Care accordingly.

A Message from the Lords to desire a speedy Conference:

From which Mr. Solicitor Reports;

We attended the Lords at the Conference, which was deliver'd by the Duke of Buck. who said to this Purpose,

That the Lords had Commanded him to deliver to us that Scandalous and Seditious Paper sent from the Earl of Clarendon, desiring us to present it to you; and to desire you in convenient time to send it to them again, for it had a Style which they were in love with, and desired to keep it.

Which said Paper was read, and is as follows, viz.

To

To the Right Honourable the LORDS
Spiritual and Temporal, in Parliament
Assembled, the humble Petition and
Address of Edward Earl of Clarendon.

May it please Your Lordships,

I Cannot express the unsupportable Trouble and Grief of Mind I sustain, under the Apprehension of being Misrepresented to Your Lordships, and when I hear how much of Your Lordships time hath been spent upon the mention of me, as it is attended with more Publick Consequences, and of the Differences of Opinion which have already, or may probably arise between Your Lordships and the Honourable House of Commons; whereby the great and weighty Affairs of the Kingdom may be obstructed in the time of so general a Dissatisfaction.

I am very unfortunate to find my self to suffer so much under two very disadvantageous Reflections, which are in no degree applicable to me.

The First from the Greatness of my Estate and Fortune, collected and made in so few Years, which if it be proportionable to what is Reported, may very reasonably cause my Integrity to be suspected.

The Second, That I have been the sole Manager and chief Minister in all the Transactions of State since the King's Return into England, to August last, and therefore that all Miscarriages and Misfortunes ought to be imputed to me and my Counsels.

Concerning my Estate, Your Lordships will not believe, that after Malice and Envy hath been so inquisitive and so sharp-sighted, I will offer any thing to Your Lordships, but what is exactly true; and I do assure Your Lordships in the first place, That (excepting from the King's Bounty) I have never received nor taken one Penny but what was generally understood to be the just lawful Perquisites of my Office, by the constant Practice of the best Times, which I did in my own Judgment conceive to be that of my Lord Coventry, and my Lord Ellmore; the Practice of which I constantly observed, altho' the Office in both their Times was lawfully worth double to what it was to me, and I believe now is.

That all the Courtesies and Favours which I have been able to obtain from the King for other Persons in Church or State, or in Westminster-Hall, have never been worth me Five Pounds: So that Your Lordships may be confident I am as innocent from Corruption as from any disloyal Thought, which after near Thirty Years Service of the Crown, in some Difficulties and Distresses, I did never expect would be objected to me in my Age.

And I do assure Your Lordships, and shall make it very manifest, That the several Sums of Money, and some Parcels of Land, which His Majesty hath Bountifully bestowed upon me since his Return into England, are worth more than all I have amounts unto; so far I am from advancing my Estate by indirect Means. And tho' this Bounty of his hath very far exceeded my Merit, or my Expectation, yet some others have been as fortunate at least in the same Bounty who had as small Pretences to it, and have no great Reason to envy my Condition.

Concerning the other Imputation of the Credit and Power of being Chiefest Minister, and so causing all to be done that I had a mind to; I have no more to say, than that I had the good Fortune to serve a Master of a very great Judgment and Understanding, and be always join'd with Persons of great Ability

and Experience, without whose Advice and Concurrence, never any thing hath been done.

Before his Majesty's coming into England, he was constantly attended by the then Marquis of Ormond, the late Lord Culpeper, and Mr. Secretary Nicholas, who were equally trusted with my self, and without whose Joint Advice and Concurrence, when they were all present (as some of them always were) I never gave any Counsel. As soon as it pleased God to bring his Majesty into England, he Established his Privy Council, and shortly, out of them he chose a Number of Honourable Persons of great Reputation, (who for the most part are still alive) as a Committee for Foreign Affairs, and Consideration of such things as in the Nature of them required much Secrecy, and with these Persons he vouchsafed to join me: And I am confident this Committee never transacted any thing of Moment (his Majesty being always present) without presenting the same first to the Council-Board; and I must appeal to them concerning my Carriage, and whether we were not all of one Mind, in Matters of Importance.

For more than two Years I never knew any Differences in the Councils, or that there were any Complaints in the Kingdom, which I wholly impute to his Majesty's great Wisdom, and the intire Concurrence of his Counsellors, without the Vanity of assuming any thing to my self; and therefore I hope I shall not be singly Charged with any thing that hath since fallen out amiss. But from the time Mr. Secretary Nicholas was removed from his Place, there were great Alterations; and whosoever knew any thing of the Court and Councils, know well how much my Credit hath since that time been diminished, tho' his Majesty graciously vouchsafed still to hear my Advice in most of his Affairs: Nor hath there been, from that time to this, above one or two Persons brought to the Council, or preferr'd to any considerable Office in the Court who have been of my intimate Acquaintance, or suspected to have any Kindness for me; and most of them most Notoriously known to have been very long my Enemies, and of different Judgment and Principles from me, both in Church and State, and have taken all Opportunities to lessen my Credit with the King, and with all other Persons, by Mis-representing and Mis-reporting all that I said or did, and persuading Men I have done them some Prejudice with his Majesty, or crossed them in some of their Pretensions. Tho' his Majesty's Goodness and Justice was such that it made little Impression upon him.

In my humble Opinion, the great Misfortunes of the Kingdom have proceeded from the War, to which it is notoriously known that I was always most averse, and may without Vanity say, I did not only foresee, but declare the Mischiefs we should run into, by entering into a War, before any Alliances made with the Neighbouring Princes. And that it may not be imputed to his Majesty's want of Care, or the Negligence of his Counsellors, that no such Alliances were entred into, I must take the boldness to say, his Majesty left nothing unattempted in order thereunto; and knowing very well, that France resolved to begin a War upon Spain, as soon as his Catholick Majesty should depart this World, which being much sooner expected by them, they had in the two Winters before been at great Charges in providing plentiful Magazines of all Provisions upon the Frontiers, that they might be ready for the War, his Majesty used all possible means to prepare and dispose the Spaniard with that Apprehension, offering his Friendship to that Degree, as might be for the Benefit and Security of both Crowns. But

But Spain flattering it self, That France would not break with them, at least, that they would not give them any Cause by administering Matter of Jealousy to them, never made any real Approach towards a Friendship with his Majesty, but, both by their Embassadors here, and to his Majesty's Embassador at Madrid, always persisted, as Preliminaries, upon the giving up of Dunkirk, Tangier, and Jamaica.

Tho France had an Embassador here, to whom a Project of a Treaty was offered, and the Lord Hollis, his Majesty's Embassador at Paris, used all Endeavours to pursue and prosecute the said Treaty, yet it was quickly discerned, That the principal Design of France was to draw his Majesty into such a nearer Alliance as might advance their Design; without which, they had no mind to enter into the Treaty proposed.

And this was the State of Affairs when the War was entred into with the Dutch, from which time, neither Crown much considered the making any Alliance with England.

As I did from my Soul abhor the entring into this War, so I presumed never to give any Advice or Counsel for the way of managing it, but by opposing many Propositions, which seemed to the late Lord Treasurer and my self to be unreasonable, as the Payment of the Seamen by Tickets, and many other Particulars which added to the Expence.

My Enemies took all Occasions to enveigh against me, and making their Friendship with others out of the Council, of more licentious Principles, and who knew well enough how much I disliked and complained of the Liberty they took to themselves of Reviling all Councils and Counsellors, and turning all things Serious and Sacred into Ridicule. They took all ways imaginable to render me ungrateful to all sorts of Men, (whom I shall be compelled to name in my Defence) persuading those that miscarried in any of their Designs, that it was the Chancellor's doing; whereof, I never knew any thing. However, they could not withdraw the King's Favour from me, who was still pleased to use my Service with others, nor was there ever any thing done but with the joint Advice of at least the Major part of those who were consulted with. And as his Majesty commanded my Service in the late Treaties, so I never gave the least Advice in private, nor wrote one Letter to any one Person in either of those Negotiations but upon the Advice of the Council, and also after it was read in Council, or at least by the King himself, and some others; and if I prepared any Instructions or Memorials, it was by the King's Command, and the Request of the Secretaries who desired my Assistance; nor was it any Wish of my own, that any Embassador should give me any Account of the Transactions, but to the Secretaries, to whom I was always ready to advise; nor am I conscious to my self of ever having given Advice that hath proved mischievous or inconvenient to his Majesty; and I have been so far from being the sole Manager of Affairs, that I have not in the whole last Year been above twice with his Majesty in any Room alone, and very seldom in the two or three Years preceding.

And since the Parliament at Oxford, it hath been very visible, that my Credit hath been very little, and that very few things have been hearkened to, which have been proposed by me, but contradicted, or no mine, because proposed by me.

I most humbly beseech Your Lordships to remember the Office and Trust I had for seven Years, in

which, in Discharge of my Duty, I was obliged to stop and obstruct many Mens Pretences, and refused to set the Seal to many Pardons and other Grants, which would have been profitable to those who procured them, and many whereof, upon my Representation to his Majesty, were for ever stopt, which naturally have raised many Enemies to me: And my frequent concurring, upon the Desires of the late Lord Treasurer, (with whom I had the Honour to have a long and vast Friendship to his Death) in representing several Excesses and Exorbitances, the yearly Issue so far exceeding the Revenues, provoked many Persons concerned, of great Power and Credit, to do me all the ill Offices they could. And yet I may faithfully say, That I never medled with any part of the Revenue or the Administration of it, but when I was desired by the late Lord Treasurer to give him my Assistance and Advice, having had the Honour formerly to serve the Crown as Chancellor of the Exchequer, which was for the most part in his Majesty's Presence. Nor have I ever been in the least Degree concerned, in point of Profit, in letting any Part of his Majesty's Revenue; nor have ever Treated or Debated it, but in his Majesty's Presence, in which my Opinion concurr'd alway with the Major part of the Counsellors who were present.

All which, upon Examination, will be made manifest to Your Lordships, how much soever my Integrity is blasted by the Malice of those who I am confident do not believe themselves. Nor have I in my Life, upon all the Treaties, or otherwise, received the value of One Shilling from all the Kings or Princes in the World, (excepting the Books of the Louvre Print sent me by the Chancellor of France, by that King's Direction) but from my own Master, to whose intire Service, and the Good and Welfare of my Country, no Man's Heart was ever more devoted.

This being my present Condition; I do most humbly beseech Your Lordships to entertain a favourable Opinion of me, and to believe me to be Innocent from those foul Aspersions, until the contrary shall be proved; which I am sure can never be by any Man worthy to be believed: And since the Distempers of the Times, and the Difference between the Two Houses in the present Debate, with the Power and Malice of my Enemies, who gave out that I should prevail with his Majesty to Prorogue or Dissolve this Parliament in Displeasure, and threaten to expose me to the Rage and Fury of the People, may make me to be look'd upon as the Cause which obstructs the King's Service, and Unity and Peace of the Kingdom.

I most humbly beseech Your Lordships, that I may not forfeit Your Lordships Favour and Protection, by Withdrawing my self from so powerful a Persecution, in hope that I may be able, by such Withdrawing, hereafter to appear and make my Defence, when his Majesty's Justice (to which I shall always submit) may not be Obstructed, or Controlled, by the Power and Malice of those who have sworn my Destruction.

CLARENDON.

Mr. Vaugh. I think it not convenient to lose more time about this Paper. Since the time of the Earl of Clarendon's Name being mention'd here, I had nothing to Charge him with till now, but most of the Heads of this Charge are so weighty, that I am confident they will be easily and thoroughly proved, tho I know not how;

how; so that I admire at his Confidence, to Charge this House, and so the Nation, as his Persecutors, and that in such a Condition, as he hopes to vindicate himself. It's the first time that ever I heard an Innocent Man run away under the greatest Charge, with hopes to return again and vindicate himself.

Then mark one Expression, he saith, *he is as far from Corruption, as from Disloyalty*. If he said he was guilty of neither, he had said something; but by that Expression he may be guilty of both: So insolent a Paper I never met with in this Kingdom, nor have I ever read the like in any other; so inconsiderable a part of the Nation as he is, to lay it upon the Nation, who, if innocent, might defend himself; if Guilty, why doth he Charge the Nation with persecuting? Therefore without troubling your selves with it, do as the Lords have done; who deliver it to you as a Scandalous and Seditious Paper; it hath Malice in it, and is the greatest Reproach upon the King, and the whole Nation, that ever was given by Man. Therefore put the Question whether his Paper shall not have the Character, that it is a *Scandalous and Malicious Paper, and a Reproach to the Justice of the Nation*.

Resolved, upon the Question,

That the Paper sent to the Lords by the Earl of Clarendon, and by them sent down to the House of Commons, and now read, is *Scandalous and Seditious, and doth Reproach the King and the Publick Justice of the Nation*.

Sir Rob. How. You have voted this Paper Scandalous, and therefore it should not live, wherefore I move it should be burnt by the Hangman.

Mr. Garraw. The Paper is the Lords, and you must sent it to them, but enter it into your Books, and your Vote upon it.

Resolved, To have it burnt.

Sir Rob. Car. The Paper is the Lords, therefore move them to concur that it may be burnt.

Sir Rob. How. The meaning of my Motion is, because the Duke of B——ks desired the Paper again for the admirableness of the Style; it is entered into their Books already, and they need it not to that End; therefore desire the Lords Concurrence to burn it.

Resolved, To send it to the Lords to that End.

December 5.

A Motion being made to send to the Lords in pursuance of the Vote about burning the Paper:

Mr. Vaugh. I am against sending up to the Lords to that purpose, because you have Ordered to enter the Paper into your Books, and when a Paper is burnt, it is not to stand upon Record, but should be rased out; which two Things are a perfect Contradiction, therefore let it rest as it is; We have Voted it *Scandalous, &c.* The Lords tell us not that they have done any such thing, tho they ought to have done it first.

As for the Earl of Clarendon, he being now gone, if such a like Occasion should fall out, we are in a worse Condition than we were: for there is this Precedent against us, in a Case now manifest: And it becomes us to do something in order to the Lords concurring, that so a good Understanding may be got; therefore I shall propound this to you, to be sent up to them to that End.

Namely, when any Subject shall be impeached by the Commons before the Lords in Parliament with desire to secure him, such Person by the Law of the Land ought to be secured accordingly. This you have in effect Voted already, in saying the *Justice of the Kingdom is obstructed by their not doing it*.

Secondly, when such Impeached Persons shall be secured, the Lords may limit a certain Time for bringing in the Charge, to prevent delay of Justice.

This may salve all, and prevent such Ways as may be displeasing to the Lords, and perhaps us also, in some Cases hereafter.

Mr. Swin. I am persuaded that according to Rules of Parliament, when you Charge by Impeachment generally, and promise in due time to send up your Charge, they ought to secure; but they not having done it, I question whether you could do what you have; but the Earl of Clarendon flying, it is manifest Justice was obstructed; for he might have been brought to his Trial, if the Lords had secured him; but now your Vote is made good, which seems to lay the Advantage on your side.

Sir Rob. How. I think this Message to the Lords, will destroy the way of vindicating our selves by Declaration; therefore finish the Declaration, and then Resolve, before you publish it, whether to send up this Message.

Mr. Vaugh. If the Lords agree with us, we may spare the Declaration, but if they agree not now, they will much less hereafter: Your Declaration can amount to no more but this, make a Narrative of the Invalidity of the Lords Precedents; but then you must of necessity do something more, else your Labour is in vain; therefore this Message with these Votes are necessary.

Sir Rich. Temp. I expected that when the Earl of Clarendon had been fled, the Lords would have desired the King to issue out a Proclamation to Apprehend him, seeing they have been the Occasion of his Escape; therefore now desire their Concurrence to go to the King to that End, and if they Concur, they have upon the Matter granted Commitment upon a general Impeachment.

Mr. Vaugh. I thought it my Duty to offer you what I have done, if you like it not, I desire to be excused in serving you in the Declaration, and that they who think it necessary would be pleased to take the Pains to do it.

Sir Tho. Lee. If you declare, it will beget an Answer, and where will that end? If you send up your Votes, and the Lords agree, your End is Answered; for it is a yielding that which they have yet denied; your declaring, and entering it upon the Journal, will be to no purpose. It is but like a Man, who having been beaten publicly, in the Chamber calls him who did it Rogue.

Mr.

Mr. Hampd. I desire that the Words (*Law of the Land*) may be left out, and the Words (*Law of Parliament, or, Usage of Parliament*) put instead of them; for it hath been shewed us, that there are several ways of Impeachment besides Common-Law.

Mr. Vaugh. Those words were purposely put in, because at the free Conference, when we pressed the *Law of Parliaments*, the Lords pressed the *Law of the Land*, by way of Negative, as if the *Law of the Land* were otherwise; but rather than that shall be any obstruction, put it by *Law*.

Mr. Stew. Leave out the Words (*by Law*) for if a Man be secured, it is Implied by them who do Commit that it is according to Law.

Then it being Moved to draw both Votes in one;

Sir Tho. Litt. Tho you should put both Votes into one, it will not answer your end, for the Lords will not Concur with the first Part, and yet may make use of what Part you grant of it, that is the last, and so have advantage against you; but there is another Reason, why you should forbear these Votes, Namely, *Prudence*.

The Earl of Clarendon being gone, there is an expectation that a Bill should be prepared to do something farther, wherein I hope both Houses will join; if you send up this, you will give disturbance to that Bill; and if you should enter this in your Books, in Order to send it up hereafter, they will hear of it, as done to make them swallow their former *Resolves*. Therefore defer it for the present.

Mr. Trev. Consider whether the Matter betwixt you and the Lords is not well as it is: You have Voted, That when a Man is generally Impeached, he ought to be secured, and that the Lords not having done it, is an obstruction to Justice; and what will it signifie to carry it to the Lords; what hath since fallen out, justifies you, and lays the disadvantage upon the Lords. The World expects now what you will do farther, and that must be by Concurring with the Lords.

Sir Tho. Cliff. We all agree to these Votes, in order to justifie your Rights; but what is the use of it? You have already done it in your Books, and you cannot expect the Lords should go so much against their own Votes, this therefore will but widen the Gap, it being telling them they must eat their Words.

Sir Tho. Litt. Those, who have had a hand in the Charge against the Earl of Clarendon, have been thought sometimes too Violent, sometimes too Remiss, as not able to make out the Charge: But what I speak now, is for your Honour, which will be wrong'd in this Proceeding; I am for bringing the Impeachment to something; and therefore against these Votes: Now you make a Declaration of your own Rights, and entering it upon your Books, that not only the Vote may appear, but the Ground of it, but not to declare to the Lords, which will beget an Answer, and exasperate. It is now unseasonable to make the Lords retract, therefore lay it aside; for tho I am confident that Gentleman did it to no such end, yet if I would design any thing to the Earl of Clarendon's Advantage, I could not take a better way than this.

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Mr. Vaugh. This is but the affirming all which hath been done already, and I am for none of those, who are contriving for any thing out of the House.

Sir Will. Covent. This Question is not now seasonable; tho it is a better expedient than the Declaration, as Things now stand, and considering what hath past, I am apt to think the Lords may do it of their own accord, and you would not willingly have a Negative to your Votes. Therefore seeing your Votes may be of use hereafter, put no Question at all, but adjourn the Debate to a proper Season.

Mr. Vaugh. I am against the Adjourning of it, and have given Testimony, that I have done nothing to be thought to do that which is so much for the Advantage of the Earl of Clarendon, and shall take heed of doing any Thing hereafter to be so reflected on.

Sir Tho. Litt. I hope I avoided any such Reflection, nor did I speak any Thing to such purpose. I do not believe, nor ever did think any such Thing, and hope that Gentleman himself believes, that no Man in this House hath more Honour for him than I.

Sir John Charle. Let the World see that you do not intend to restrain your Proceedings to the Earl of Clarendon, but make it a general Care; and therefore are concerned in Honour to put the Question.

Resolved, upon the Question,

That the Question be put.

Resolved, That both the Questions propounded by Mr. Vaugh. and put singly in the Affirmative, be carried up the Lords.

December 13.

A Bill was brought from the Lords, to Banish the Earl of Clarendon, and read.

After reading, several Objections being made, and it being alledged, that it was an Abuse put upon the Commons by the Lords, and that a Bill of Attainder being propounded, after some Debate, the House pass'd this Vote:

Resolved, That this House taking notice of the Flight of the Earl of Clarendon, being under an Impeachment of High-Treason by this House; the King's Majesty be humbly desired to Issue out his Proclamation for Summoning the said Earl to appear by a Day, and to apprehend him in Order to his Trial.

Resolved, To send to the Lords for their Concurrence to this Vote.

December 14.

A Message from the Lords for a Conference, at which they deliver'd two Reasons, why they could not Concur.

1. *First, for that they conceive a Proclamation in the way proposed would be ineffectual, since it is not sub pœna Convictionis, which cannot be till Particulars in order to Trial be declared.*

2. *That what the House of Commons hath proposed, and do propose at present, is intended in Order*

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to a judicial way of Proceeding; but since the Earl of Clarendon's Flight, their Lordships upon Consideration of the whole State of Affairs, and of the Kingdom, have upon Grounds of Prudence and Justice, thought fit, for securing of King and Kingdom, to proceed in a Legislative way against the said Earl, and have to that end past and sent down to them a Bill of Banishment and Incapacity against him, with which this Vote is inconsistent.

December 16.

The said Reasons from the Lords being Reported and Considered, and it being Moved that the House would declare themselves unsatisfied with them:

Sir Tho. Cliff. I am against passing a Vote at present upon the Lords Reasons, but read the Bill sent down from thence, and Summons him by it to appear by a Day.

Mr. Trev. Some are against the Bill, because it goes too far, Condemning before Hearing, others would have it to go farther. Summons is in Order to Hearing, Trial, and Judgment; of those he hath made himself incapable by Flight, and hath in his Paper told you, *That he will neither be heard, nor Tried by you*: Tho you expected to have him secured by a general Accusation, yet you never expected Judgment upon it. Then it is said, *This Banishment falls short of Treason*; but we are not to pass Sentence for Crimes, but as a Council propound to the King what is necessary in this Case: Then consider whether this Bill will answer our Ends, and if it doth, Delay will make it worse. I think we should make it reach them. What if he hath Life in other Parts, his Family untainted, and his Children alive, and enjoy his Estate?

Sir Rob. Carr. You have Ordered to consider the Reasons from the Lords, therefore do it.

Mr. Hen. Covent. The Motion to read the Bill is not against your Order, because part of the Reasons given by the Lords is, *That you have a Bill, and till you have read the Bill, you cannot lay by the Reasons*. The Earl of Clarendon is fled, you have a tie upon him in having his Innocent Relations, and by Proceeding farther you make him desperate, you are now in an even way with the Lords; therefore read the Bill.

Mr. Swinf. You may go upon the Reasons, and yet not reject the Bill; for when you sent to the Lords about a Proclamation, and went not upon the Bill, it was, because what the Bill drives at, is the highest Punishment next to Death. Therefore consider what weight is in the Reasons. One of them seeming to put you upon the Bill, they put you thereupon on a Legislative Way; they will neither Secure nor Summon him, but will condemn him Unheard. They cannot Secure him upon a Charge of Treason, nor yet Summon him, but they can Condemn him; and this they put you upon, which is against Honour and Justice, especially to do it upon Reason of State. The Legislative Power of Parliament is great, it hath no Bound, but the Integrity and Justice of Parliaments. If Reason of State be a Motive of Parliament to Banish one Man, so it may be for many. If you go in this Legislative Way, you bring upon your selves all the Dishonour of the Business, but the Lords will have some Excuse,

which you cannot, for they look'd upon the Charge so slight, as not to Imprison him; the Party is gone, because he was not Secured, apprehending (he saith) fear of the Multitude, not of his Trial; so that the Lords not giving Credit to your Charge against him, he says, *he flies not from Justice*. Now if upon this Bill you shall Banish him, it would be said you could not make good the Charge, and therefore laid this Sentence upon him.

The Precedent is also dangerous: If having gone so far in a Judicial way, you should now go in a Legislative. If upon Reason of State, Lords may be Banished, it may be by dozens: As you proceed Justly, so you will be Justified.

Nor is the Danger greater if the Lords go by Proclamation, and he be put into Custody when he comes; if he can practise any Thing, will not he be less capable when under the Proclamation, than when this Bill is Passed, which Condemns him without Hearing, and I am not for any Punishment till Heard. In *Cromwell's* Case, who Moved in *Hen. VIII's* time, to Attaint a Lord Unheard, the Judges declared they might, and it would stand; afterward the said *Cromwell* was Attainted and Condemned Unheard, and such Counsel usually falls upon those that Counsell'd it.

Sir Rob. How. The Earl of Clarendon saith, *That he doth not withdraw from your Justice, but for fear of Tumults*; but that Reason any Man may give for his flying, if it will be an Excuse; but he might have secured himself from Tumults by rendring himself, and his Innocency upon his Trial would have cleared him. This at last may come to a free Conference, then you may be left to go along with the King; the House riseth and doth nothing, and then the World will see that this Business will assure the King of France, That he hath a Man with him so Great, as to hinder us from doing any Thing against him: Therefore as you ought to do something against him, see whether it may not be done by the Bill, by resuming his Lands, &c. if he come not in by a Day.

An Exception may be against this way, Namely, That there is no Attainder, but if there had been such a Bill, the Thing which should sway me should be the Duke of York's Marriage: So that if you Commit this Bill, you may add all Severities, except that of Attainder, and if he come by a Day, then all to be void. If you go by Proclamation, the Lords may not Concur, and you lose your Ends. By this Bill all Favour that he can expect is shewed, and this way will be the best Confutation of the Lords Reasons; therefore Commit the Bill.

Mr. Secretary Morr. I am for Committing the Bill, tho it be condemning Unheard; because he could not but conclude it would be so. *Et volenti non fit Injuria*.

Sir Rich. Temp. You have proceeded against this Earl in all ordinary Ways, and have been baffled by the Lords. In *Edward the Third's* Reign, *Adam de Berry* fled, and a Proclamation went against him, and the Commons neither did, nor ever were bound to deliver their Articles till the Party appeared, and in that Case they delivered not their Articles till the last Day, when he not appearing was Convicted. When you would go by Attainder, they tell you, Deliver special Matter, and we will Sum-

mon

mon him; when you ask a Proclamation, they tell you, Deliver special Matter: If you declare the Matter to the Court, it is upon Record, and all may know it. You have tried all ways Legal and Regular, and they will do you Justice in neither. Now what can you do? except you and the Lords combine in Justice together, he must escape, and if you can be made to differ, he goes away in a Smoak. If you go to the King for a Proclamation, you must return to the Lords for Justice. I am sorry the *Ivy* hath been so near the *Oak*, that you cannot touch it, without touching that. There remains a Bill before you, and in that you are upon equal Terms with the Lords; therefore give him a Day to be heard, and if he come, let him; but then his Penalties are too low for his Crimes; therefore read the Bill, go higher, degrade him of Honours, forfeit his Lands, and whether you will go so far, I leave with you.

Mr. Soll. Gen. It is not possible to agree with the Lords in their Reasons, but the Reason must be because the Bill is good. But if any Man thinks it is good upon the Lords Reasons, he is mistaken; and therefore my Advice is to proceed upon the Bill, tho' not upon the Reasons from the Lords. Some think the Punishment in the Bill too little for the Crime, others too much, because not Summon'd; so that it must fall out, That a Person Impeached by the *House of Commons* must see the *House* rise without any marks of Displeasure upon him: Can any Man be heard, who will not be heard? Why should not you proceed in such a way against him, as whose very Flight amounts to a Confession? And have you not burnt his Paper for reflecting upon the *House*? and can you think he will appear who is departed in despair of the Court? and now you are contending to give him Time.

Then consider the Thing in it self. Suppose the King had a mind to Attaint him, the King can do it without your help, for he may be *Outlawed* for High-Treason; for tho' that be Reversible at Common Law, if he be beyond Sea, yet by two express Acts of Parliament it is otherwise, but the King cannot Banish him without your Concurrence: Suppose him Fled and Attainted, so that the Question is not upon his Life, but his Estate, suppose your Justice satisfied in that, is it not past all manner of Consideration that the King cannot upon Application restore it, so that all you lookt for by Attainder, is done by this Bill of Banishment, for his Life is saved by Flight, as would his Estate by Compassion; but there is something in this Bill, which, without it, you can never get, that is, you put him under your Displeasure, which the King cannot Pardon; and will you have it thought abroad, that the Earl of *Clarendon*, fled as he is, hath been something too hard for the Two Houses?

Sir Tho. Litt. If there be a necessity of differing with the Lords, and I thought the Difference would produce such Effects, I should not speak, but they only tell you 'tis unnecessary and ineffectual. You have Impeached, and are now told if you proceed, it will make Difference; but I fear another greater Danger than this Difference. The World will say you were willing he should fly, because you could not prove; by flying he hath Forfeited his Estate; if the King give it him again it is his Mercy; but do you

Justice: Therefore press for a Proclamation, for the Bill is inconsistent with your Honour.

Mr. Vaugh. I have listned with much Attention to this Discourse, and understand it as little now as at the beginning, the Discourse being nothing adequate to that End. You have Reasons from the Lords why They agree not with you, and if you agree with the Reasons, the Sum is to read the Bill; but if you agree not, you must desire a Conference, and if they concur, you may have a Proclamation, if not (as I think they will not) you are where you were: We suppose him not to be in *England*, and if so; what is the Proclamation more than the King's Writ? it reacheth no Man out of the Kingdom. It's true, in some Cases, if the Persons are gone out of the Land they are Summon'd, and if they come not, their Lands are Seized, but it is not by Proclamation, which signifies nothing if the Party be gone.

Then go on; suppose the Lords join in desiring a Proclamation, the end of which is Appearing and Apprehending; possibly you gain one part, that if he be apprehended, they do Imprison him upon a general Impeachment; but if they agree not, what Benefit have you by it? None: But if he appears, to what is it? there is no Charge, if apprehended, to Answer the general Charge.

Then the Third Way is, if the Lords agree not, that you should go to the King; and there is a more dangerous Rock in that, than in any thing; for we never heard of a Commitment *per ipsum Dominum Regem*, but *per mandatum Domini Regis*, because against the King lies no Damages: What then must you do? many think it Injustice to proceed, if he be not called by Proclamation. But it is plain, if you proceed upon this Bill, you go not upon your Impeachment, but because he is fled from the Justice of the Land, wherewith you have Charged him in burning his Paper; and it imports little, that he saith he is Innocent; for why then doth he fly? Shall we abate him of what he ought to suffer for his saying so? He is fled from the Justice of the Parliament, and therefore is proceeded with; and for what others say, you ought not to regard popular Reasons, but to pursue your own; it is enough for you to hear some Proofs made: When was it known in any Court, that Proofs should be taken only on one side? So that you cannot acquit your own Justice, nor bring him any ways to Answer, he being gone; nor can you have any Effect of the Proclamation, tho' the Lords join in it: Therefore unless you will have nothing done after all this, (for he may not be Guilty of all Charged, who yet hath made himself Guilty of what is Charged by flying) read the Bill.

At last the Question was put, whether the Bill should be Read and Committed.

109 for it.

55 against it.

164

December 18.

The Bill for Banishing the Earl of *Clarendon* was Reported from the Committee, and Read.

Sir Rob. How. I desire that to the *Preface* of the Bill this Addition may be made.

That whereas the Earl of Clarendon was Impeached of Treason by the Commons, who desired he might be secured, but was not, and thereupon is fled.

And this to the End the protesting Lords may be gratified, who took so much Care of the Commons.

Sir Rob. Carr Seconds the Motion.

Sir John Talb. I cannot Concur with that Motion, because we cannot take Notice of what the Lords do.

Sir Rich. Temp. We may take notice of Things in the Lords Books which are Records, and there the Protest is entred; and tho not to gratify them who owned our Right, yet we ought to take Care of our own Right: And that the World may see we have some Cause to Pass this Bill, neither deal so modestly with a Man who flies from Justice, as to use his own Word (*withdraw*) but call it *flying*.

Sir Tho. Gow. Let the Words be, *that having been Impeached, and moved to be Secured, hath withdrawn himself.*

Mr. Solicitor. The Word *Moved*, destroys the Bill it self; the Word of the Bill is to unite the Two Houses, and this Amendment tends to destroy that End, for the Addition to the *Preface* being insisted on, the Lords will add the Reasons for not Committing, and so revive the whole Matter again.

Let the Lords add in their Books what they will, your Books will as much justify you, as theirs them.

Sir Hum. Win. Let the Words be added, whether the Lords agree, or not, that it may appear upon our Books.

Mr. Hugh Boscow. The *Preface* is but History, yet add the Words, and let the Lords insert what they please. I should rather Concur with them, than leave out those Words.

Mr. Vaugh. Put no Question upon these Words, but whether the *Preface* shall go as it is; The Bill in Probability is a safe Bill, because it came from them: But if you begin an Alteration, you your selves render it unsafe; for if you put in

these Words, then the Lords will add, *for want of Special Matter*, and so it will come to nothing.

Then the Bill was read the Third time.

Mr. Vaugh. I am against the Word *Withdrawn*, and for the Word *Flight* instead of it, and in regard the Justice of this Bill depends upon the Word (*Flight*) put it expressly.

Sir Rob. Carr. I am against this Bill, tho' I was as earnest in the Matter as any one while I thought there was Proof, but now none appearing, I am against the Bill, because you are Confirming what the Lords have done.

Mr. Vaugh. Many Men wonder that no Reason is given for passing this Bill, but the Question is mistaken, the Bill is grounded upon his Flight after his Impeachment, and his flying implies some Guilt; if none, it is the safest Argument for any Man to run away, and then there is nothing to catch him. A Proclamation to a Man out of the Kingdom signifies nothing. But in the whole it is plain, that he saith, that finding the King's Justice obstructed in Parliament, he is fled.

Obj. But it will be said, upon bare Flight never was any Man punished.

Ans. If one Man kills another and flies, tho upon his Trial he shall be acquitted, yet he shall never recover his Goods because of his Flight.

There have been several Acts of Banishment, *Spencer*, &c. And tho in this there is something more severe than in them, namely, that none shall Correspond with him; yet there is also some Advantage, namely, that if he come in by the First of *February* all shall be void; for when the Crime is laid, and his Flight makes him Guilty, he ought not to have a Day.

Then the Question was put for passing the Bill.

65 For it.

42 Against it.

107

So the Bill pass'd the Commons, and afterwards obtain'd the Royal Assent.



LXVII. *The Trials of Peter Messenger, Richard Beasley, William Green, Thomas Appletree, John Earles, William Wilks, William Ford, Richard Farrell, Edward Cotton, Edward Bedle, Richard Latimer, John Sharpless, Richard Woodward, Thomas Limerick, John Richardson, * at the Old-Bailey, for High-Treason, in tumultuously Assembling themselves in Moorfields, and other Places, under Colour of pulling down BAWDY-HOUSES, April 4, 1668. 20 Car. II.*

UPON Easter-Monday last, being the 23d Day of March, in the 20th Year of the Reign of our Sovereign Lord the King that now is, it being the usual time of the Apprentices Liberty for their Civil Recreations, a rude Multitude of People met together in Moorfields; where being so Assembled, were instigated by some Factionous Persons amongst them; who, to colour their Design, insinuated into the Rabble the pulling down of *Bawdy-Houses*: Under which colour of reforming *Bawdy-Houses*, they at length raised a great Hubbub; and so increasing in their Disorders, in a tumultuous Manner committed many notorious Crimes. But by the Vigilancy of the Magistrates of the City, with the Assistance of his Majesty's Guards, were at last reduc'd: Some of the Ringleaders whereof were apprehended, and committed to the Goal for their Offences, to receive their Trials according to the known Laws of the Land.

And having been several times examined, upon Confession of some, and pregnant Proof against others, by a special Jury of several Knights, Esquires and Gentlemen, of very great Worth and Esteem, of the County of *Middlesex*;

These Persons following, to wit,

<i>Peter Messenger,</i>	<i>Edward Cotton,</i>
<i>Richard Beasley,</i>	<i>Edward Bedle,</i>
<i>William Green,</i>	<i>Richard Latimer,</i>
<i>Thomas Appletree,</i>	<i>John Sharpless,</i>
<i>John Earles,</i>	<i>Richard Woodward,</i>
<i>William Wilks,</i>	<i>Thomas Limerick,</i>
<i>William Ford,</i>	<i>John Richardson,</i>
<i>Richard Farrell,</i>	

Were indicted of High-Treason, for levying of a Publick War against our Sovereign Lord the King: And at the Goal-Delivery of *Newgate*, held at the Sessions-House in the *Old-Bailey*, *London*, Apr. 1, 1668, and continued till the fourth Day; on which said fourth Day, in the Presence of

Sir *John Kelyng*, Kt. Lord Chief Justice of his Majesty's Court of *King's-Bench*,

Sir *Edward Atkins*,
Sir *Christopher Turner*,
Sir *Richard Rainsford*, } Barons of his Majesty's
Court of *Exchequer*:

Together with Sir *William Wild*, Recorder of the City of *London*; these Prisoners following, viz.

<i>Peter Messenger,</i>	<i>William Green,</i>
<i>Richard Beasley,</i>	<i>Thomas Appletree,</i>

Were first called to the Bar to receive their Trials; where, after Proclamation being made, they severally pleaded to their Indictments, and put themselves for their Trial upon their Country.

The Names of the Jury sworn.

<i>Anthony Hall,</i>	<i>Thomas Jennins,</i>
<i>William Knight,</i>	<i>John Nichols,</i>
<i>Henry Francis,</i>	<i>Ralph Bradshaw,</i>
<i>John Baker,</i>	<i>John Saving,</i>
<i>Robert Shaw,</i>	<i>John Marsh,</i>
<i>Thomas Constable,</i>	<i>Henry Kent.</i>

The Jury being sworn, the Court proceeded to Trial.

Mr. *North*. You Gentlemen of the Jury, these four, *Peter Messenger, Richard Beasley, William Green*, and *Thomas Appletree*, stand indicted for High-Treason; having left their Obedience to our Sovereign Lord the King, and being instigated by the Devil, upon the 24th Day of *March* last past, did contrive a Design to levy War and Rebellion against the King, being at the Head of four or five Hundred arm'd and array'd. If this Matter be prov'd against them, you must find them Guilty.

Mr. *Pemberton*. You Gentlemen of the Jury, these Prisoners at the Bar did contrive and levy War, and fell upon the King's Officers, and beat them, and broke the Prison, and let out the Prisoners, some for Felony: Among the Multitude these were four of them, as we shall endeavour to prove

The Names of the Witnesses call'd and sworn,

*Richard Dowson, James Martin,
John Cowley, Abraham Brookes.
Henry Ball,*

The O A T H.

THE Evidence you shall give between our Sovereign Lord the King and the Prisoners at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

Counsel. Sir, pray tell my Lord what you saw these do on *Easter-Tuesday*.

Witness. My Lord, I saw this *Richard Beasley* at the Head of four or five hundred; he had a Sword, and I took his Sword from him: he had Colours, a green Apron upon a Pole. I heard some of them cry, *Down with the Red-coats*; and I did see *William Green* there too, but not *Appletree*.

Lord Chief Justice. Did they go with the Multitude or no, or were they with them?

Witness. They were with them; but I cannot say they went along with them.

Counsel. Pray tell my Lord what the Multitude said at that Time.

Witness. When we fell on them, they run away.

Ld Ch. Just. Did *Beasley* lead them on?

Witness. They said he was their Captain.

John Cowley, Second Witness.

Counsel. Mr. Cowley, tell my Lord what you saw.

Cowley. My Lord, he cut me and wounded me on the Hand. The Constable charg'd them to be gone, and disperse themselves; with that they struck at the Constable, and knock'd him down.

Ld Ch. Just. Under what Pretence did they pull down any House?

Witness. The Constable and some more of us beat them up *Nightingale-Lane*; I know not what their Pretence was: I saw *Appletree* there, for he was the First that struck at the Constable. This was on *Easter-Tuesday*.

Ld Ch. J. Did you see *Green* there?

Witness. I cannot tell.

Ld Ch. J. Did you see them pull down any House? What did you hear them say?

Witness. They said, *Down with the Bawdy-houses*.

Ld Ch. J. Did you hear them talk of the Red-coats there? Was *Green* amongst them as one that help'd and acted with them?

Witness. I saw him in *Moorfields* on *Monday*, *Tuesday*, and *Wednesday*, shout and throw up his Hat.

Third Witness.

Ld Ch. J. What did you see them do?

Witness. All that I saw, was, that *Peter Messenger* came along with the Colours in his Hand, and I took him and carried him to Prison my self: I did not hear them cry, *Down with honest Houses*, but *Bawdy-houses*: I did not see all those, but only these two, (pointing to two at the Bar.)

Ld Ch. J. Ay, that was the Captain and the Ensign.

Fourth Witness, *Henry Bull*. My Lord, I saw this *Beasley* and *Messenger* in *Moorfields*, pulling down Houses on *Monday*, and on *Tuesday* at the Head of three Hundred; and at that time we routed them. On *Wednesday* they came with four or five Hundred, and cry'd, *Down with the Red-coats*.

James Martin, Fifth Witness.

Ld Ch. J. What can you say?

Witness. All I know is, *Beasley* made a Blow at our Ensign, and struck at him with his Sword.

Ld Ch. J. What was their Pretence?

Witness. I cannot tell that.

Another Witness. I saw *Thomas Appletree* help to pull down *Peter Burlingham's* House, and broke another.

Serj. Wild. What Company had they?

Witness. About Three hundred.

Ld Ch. J. Had they any Colours? What did you hear them declare?

Witness. I heard them declare nothing, for I had like to have been knockt on the Head.

Ld Ch. J. to the Prisoner *Beasley*; Well, what do you say for your self? you hear it is sworn against you, that you were at the head of this Rabble, and they call'd you Captain, and you led them up; and when the Constable came to command Peace in the King's Name, you fell on him, and wounded him, so that he is hardly able to be here this Day: Why did you gather this Multitude together? It will behove you to make your Answer; what Reason had you for it?

Beasley Pris. I do not know the Reason.

Ld Ch. J. I speak to you, that you should give a Reason: After all this Trouble that we have had in this Nation, it is a sad thing that a great Number of giddy-headed People must gather together, under Pretence of Reformation, to disturb the Peace of the Nation again; if you can say no more for your self, there will be little trouble with you.

Serj. Wild. What was the meaning of your gathering together?

Beasley Pris. We went to pull down Bawdy-Houses.

Ld Ch. J. How did you know which were Bawdy-Houses? If you had known them, you might have indicted them, there is a Law against them; but this is a strange kind of Reformation, if a Rabble come, and say, This Man is a Papist, and this keeps a Bawdy-House, and would pull it down; this is a mad Reformation.

Messenger Pris. My Lord, that Man has sworn I was out on *Tuesday*, it was *Wednesday* before I came forth; but staid at home with my Wife, because I would not be among them.

Ld Ch. J. Did not you carry a green Apron on a Pole for your Colours?

Pris. My Lord, as I pass'd along by the Rout, they flung a Bottle at me, and had like to have knockt me down, and tore my Apron off, and charg'd me to carry it on a Pole; and I would fain have come away from them, and could not.

Ld Ch. J. Make this appear, that you would fain have got away, and that they did force you to do what you did, and I shall be glad of it.

Pris. There is none of them here now that were there then.

Ld Ch. J. Then all that you say is of little Use; for it is no great thing to make a Lye to save one's Life.

Pris. God is my Witness —

Ld Ch. J. Have a care what you say.

A Constable (Witness) sworn.

Ld Ch. J. What say you of these four at the Bar?

Const. My Lord, I heard they were pulling down Houses, and I did what I could to preserve the King's Peace; and that Day I did save a great many Houses and Goods. The next Day they were near my own House, and I did endeavour to do the same, and this Fellow with his Company did surprize my Men, and knock'd me down; yet I commanded the Peace, and they beset me round about, and cut me over the Hand: I do remember that *Beasley*. We were in a Place where there were three Turnings, but they knockt me down, and beat me so, that I could not tell who it was that did hurt me.

Ld Ch. J. Do you know any more of this Company?

Const. No, my Lord: for if the Soldiers had not come, they would not have left 'till they had kill'd me.

Couns. Had you your Staff?

Const. Yes; but they took it away from me.

Another Witn. I saw *Messenger* on *Tuesday*, tho he says to the contrary.

Ld Ch. J. *Messenger*, you hear what is said against you; you say you were not out on *Tuesday*: He hath sworn you were at the Head of a Company, with a green Apron on a Stick, and led them up.

Pris. I was not there.

Henry Bull, Wit. I saw him, my Lord, on *Tuesday*, he and *Beasley*, about Eleven of the Clock in *Moorfields*, and they had gather'd a great Multitude of four or five Hundred, and then they made an Attempt to come into our Parish, and they cry'd, *Down with the Read-coats*.

Messenger, Pris. Pray, my Lord, let my Witnesses be called in, for they swear false.

Ld Ch. J. Your Witnesses shall be call'd. A little of due Consideration before-hand would have done you more Good than now.

Mr. Glover, and Mr. Bennet, the Prisoner's Witnesses.

Ld Ch. J. What say you concerning the Prisoner?

Glover. I can say, my Lord, he was 'till Five of the Clock on *Wednesday* at *Mr. Bennet's* House in *Golden-Lane*.

Ld Ch. J. Where was he on *Monday* and *Tuesday*?

Glover. I know not.

Bennet. On *Wednesday* he was at a Kinsman's House.

Ld Ch. J. These two Witnesses give no Account at all of you, where you were on *Monday* and *Tuesday*.

Ld Ch. J. *Greene*, what say you?

Greene. I was not among them.

Ld Ch. J. It is sworn you were amongst them, and threw up your Cap. Were you not knockt down?

Prisoner. Yes, my Lord.

Ld Ch. J. How could you be knockt down if you were not amongst them?

John Cowley Witness.

Ld Ch. J. Did you not see *Greene* in the Multitude?

Cowley. I saw him do nothing; but I saw him with a Staff in his Hand. I did not see him act any thing but follow the Colours.

Greene Pris. I was not among them but as I came home.

Ld Ch. J. You mean you did not take part with them, but you were there; it is sworn you were upon *Tuesday* following your Captain and the Colours; it is sworn by *Mr. Bull* you were among the Rabble, and were knockt down: now if the Jury do not believe that you did act among them, we will leave it to them.

Ld Ch. J. *Appletree*, what say you?

Appletree. As I was passing along (my Lord) I saw a Croud, and I went to know what was the Matter, and there came a Company down, and some running after me did me a Mischief; I did not see the Constable, nor say, *Knock him down*.

Ld Ch. J. It is sworn that you were the first Man that struck the Constable, and that you were at the pulling down of *Burlingham's* House.

Pris. I did not offer to pull down his House, nor strike the Constable.

Abraham Brooks, Witn. My Lord, he was in *Peter Burlingham's* House, and broke it down so that you might have ridden a Horse thro it; I spake to him two or three times to leave off, and if I had not stoop'd suddenly he had struck me down with a Bedstaff.

Cowley Witn. I did see him on *Tuesday* with their Company, and I did see him strike at the Constable.

Ld Ch. Justice, to the Jury. Gentlemen of the Jury, you have heard what these say; the Prisoners are indicted for High-Treason, for levying of War against the King. By levying of War is not only meant, when a Body is gathered together, as an Army is, but if a Company of People will go about any publick Reformation, this is High-Treason, if it be to pull down Inclosures, for they take upon them the Regal Authority; the Way is worse than the Thing. These People do pretend their Design was against Bawdy-Houses; now for Men to go about to pull down Houses, under the Pretence of Bawdy-Houses, with a Captain, and an Ensign, and Weapons; if this Thing be indur'd, who is safe? It is High-Treason, because it doth betray the Peace of the Nation, for every Subject is as much wrong'd as the King; for if every Man may reform what he will, no Man is safe: therefore this thing is of desperate Consequence, we must make this for a publick Example: There is reason we should be very cautious, we are but newly delivered from Rebellion, and we know that that Rebellion first began under the Pretence of Religion and the Law, for the Devil hath always this Vizard upon it; we know that that Rebellion began thus, therefore we have great Reason to be very wary that

We

we fall not again into the same Error, but it should be carried on with a watchful Eye. And because Apprentices hereafter shall not go on in this Road, we will have the solemn Resolution of all the Judges, and therefore you are to find it Specially. You must find the Matter of Fact, and we will assemble all the Judges together in a sober way, to give their Judgment, whether it be High-Treason or no; not that we do doubt of it now, for we know it is High-Treason, but for general Satisfaction. It is prov'd that *Beasley* went as their Captain, with his Sword, and flourish'd it over his Head; *Messenger* was there with his Green Apron on a Pole in *Moorfields* on *Tuesday*, and on *Wednesday* he was in the same Posture again.

Prisoners. My Lord, we would have our Witnesses heard.

Ld Ch. J. You shall have no Wrong done to you.

As for *Green*, it is prov'd he was with them shouting, and casting up his Cap: now the Act that any one does in such a Tumult is the Act of all, if they all join together. He was on *Tuesday* following there, and on *Wednesday* he was taken. And then for *Appletree*, he was the first Man that struck the Constable, and pull'd down *Burlingham's* House.

Edmund Bedle, Richard Latimer, to the Bar.

Bill of Indictment. You that are now call'd, being mov'd thro' the Instigation of the Devil, and having not the Fear of God before your Eyes, have withdrawn your Obedience to our Sovereign Lord the King, and against him did imagine and contrive War and Rebellion the 24th Day of *March*, with four or five hundred Persons in a Warlike Manner, array'd with long Pikes and other Arms, there met and assembled against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

Witnesses sworn.

William Badley,
William Riggs,

John Maldey,
John Williams.

King's Counsel. Gentlemen of the Jury, *Bedle* and *Latimer* stand indicted for High Treason; wanting that Love and Obedience that every Man ought to have of his King, did, the 24th of *March*, assemble themselves together, to the Number of four or five Hundred Persons, to levy War and Rebellion: If we prove this, you must find them guilty of High-Treason.

Goaler of Finsbury Prison, Witness, sworn.

Counf. Tell my Lord what you saw.

Witn. I can charge no particular Person, I was from Home; and when I came home I found the Prison-Doors open, and they had let out their own Company and two others; and I lock'd up the Prison-Doors, and they gather'd together about the Prison, and there came their Captain with his Half-Pike, and commanded me to open the Door. I told them I would not open the Door. They told me, we have been Servants, but we will be Masters now; and if you will not open the Door, we will do your

Business for you by and by. They had Swords, and Belts, and Half-Pikes, and they did push at me; and I came to a Parly with them when I saw there was no Remedy. I let their Captain in, and when he could find none of his Company there he went away; but had it not been for the Company that stood without, I would have kept him fast enough.

Another Witness sworn.

Ld Ch. J. Were any of these that stand at the Bar, at *Clerkenwell*, with a Stick in his Hand?

Witn. Yes, my Lord, I saw *Latimer* there knocking at the Gate, and the Prison was broke open, and there came down Justice *Welsh* to them to disperse them; but they let out two of their own Rabble, and two of the Felons.

Another Witness sworn. Nine of the Clock on *Friday*, I went to the Gate of the *New-Prison*, and they came and clapt a Bar in between the Gates to open them, and I saw *Latimer* throwing Stones at the Windows. Justice *Welsh* being there, would have taken some of them; and they cry'd out, *One die, and all die.*

William Riggs, Witness, sworn. I saw *Bedle*, and took him; their Number was about four or five Hundred; and I got out two Files of Men, and took four Men more, whereof this *Bedle* was one of them.

Judge. What do you say to this?

Latimer. This Man hath a Spite against me, my Lord; for getting up behind the Coach, I let my Whip fall and gave him a Lash.

Ld Ch. J. But what says the other against you? What made you there? And *Bedle*, what do you say for your self?

Bedle, Prisf. My Lord, I was in *Southwark*, and came from thence to *Bishopsgate-Street*, and met with a Friend, and we drank four Flaggons of Beer, so that I got a little too much Drink in my Head, and I stood and look'd a-while at the Prisoners at *Bishopsgate*; and my Uncle coming along, I went with him a little way, and then turn'd about and left him. And there was a Man came and said, *Brother, will you not go and see what they do in the Fields?* and it was my hard Fortune to be among them, but did not any Hurt, blessed be God; but I follow'd them without doing any Harm, and they went down *Old-Street* to *Clerkenwell*; but I did not break the Prison, nor do not know where the Prison is; for there was a Company made up to them, and they began to run.

Ld Ch. J. What did you say when they run away? Did you not say, *Face about?*

Prisf. Your Lordship heard so, but I did not say, *Face about.*

Ld Ch. J. You Gentlemen of the Jury, you see what their Indictment is: They gather'd a multitude together at *Clerkenwell*, and they had a Captain with a Half-Pike, that came to the Prison and forc'd open the Door, and brought out two of their own Crew, and two of the Felons; and they said, they had been Servants before, but now would be Masters; and they cry'd out, *One die, and all die.* And you have three Witnesses that swear, that these two were there, *Latimer* especially. The Keeper says, he was forc'd to come to a Parly with them, and took in their Captain, to give him Satisfaction that there was none other there of their Gang.

Bedle

Bedle says he was there, but he was druuk, which is no sufficient Excuse.

Richard Cotton, *Richard Farrel,*
John Earles, *William Ford,* Call'd
William Wilde, to the Bar.

Their Indictment read.

Sir Philip Howard, Witness, sworn.

Ld Ch. J. *Sir Philip,* speak what you know of these Men.

Sir Ph. I deliver'd these Men into the Constable's Hands.

Counf. Did not you see a Multitude of these People gather'd together in a Warlike Way? if so, tell my Lord.

Sir Ph. There came some sober People and told me that the Tumult was greater than it was when my Lord *Craven* was there, and they did desire my Assistance; and so I went into the Fields, and divided my Men half on the one Side, and half on the other: and the People look'd upon us so contemptibly, that they told us we should quickly be unhors'd; therefore I charg'd my Men not to let any Man come within my Arms.

Ld Ch. J. Had they any Colours?

Sir Ph. They had a Sheet for their Colours, and when they saw my Horse they got into the Field, and stood as if they did not fear us; and I order'd some of my Men to go and take him that had the Colours, and so our Men did; and I call'd for a Constable, but there was no Constable to be found: and I thought my self to govern them, and to bring them into better Order. At length this Man came with his Watch, and I deliver'd them into his Hands, and I believe these are the Men that I deliver'd to the Constable.

Sir Edward Fish, Witness, sworn.

Counf. Pray, Sir, look upon the Prisoners, and see if you know any of them.

Witn. I cannot say that these were any of the Persons that we did take, but there was a Multitude of them gather'd together, and we did desire them to go home; and they took up Brick-bats in their Hands, and said, *They had as much to do there as we had.* I took a Hanger from one of them my self, which is here in the Court.

Robert Hoydon, Witness, sworn.

Counf. Tell my Lord what you heard this Rabble of People say.

Witn. There came a Troop, and they thought it had been the Duke of *York's* Troop, and they ran with Brickbats in their Hands to them, and said, *That if the King did not give them Liberty of Conscience, that May-day must be a bloody Day.*

Another Witness sworn.

Ld Ch. J. Speak what you know of these People.

Witn. My Lord, they ask'd if the Duke of *York* was there, and Answer was made, Yes, thinking they would have been satisfy'd and dispers'd;

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but notwithstanding they came up to the Windmills, and flung Stones amongst us.

Capt. Wilding, Witness, sworn. My Lord, we did desire them, by fair means, to disperse themselves, and go home; they told me, *No, They would be with us ere-long at White-hall.*

Another Captain sworn. My Lord, I was forc'd to make some Resistance, but they flung Stones very thick at us, saying, *These Life-Guard Rogues are but a few;* and because I commanded one of my Officers to seize on one of them, they cry'd, *Knock down the Rogue.*

Another sworn. My Lord, I desir'd them to go home; their Answer was *That we were Rogues and Dogs, and ere-long they would come and pull White-hall down:* and their Word was, *Hey, now or never.*

Constable sworn. My Lord, I had these three at the Bar; but *Wilde* was none of them, pointing to the third.

Ld Ch. J. You say the other were:

Constable. Yes.

Pike and Gillington, Witnesses, sworn.

Pike. I did see this *Cotton* breaking down *Burlingham's* House.

Gillington. I can speak of the tall Man, *Cotton;* I will swear he was one of them.

Ld Ch. J. *Sir Philip Howard* says he deliver'd Five to the Constable, and the Constable says he does not know whether these be the Persons or no, but it is the same thing if they were among those that did it.

Serj. Wilde. Yea, the thing is the same.

Ld Ch. J. You hear the Indictment is for High-Treason, you are Persons of the same Company, what do you say for your selves?

Prisoners. We were not there.

Serj. Wilde. The Constable swears it.

Constable. I cannot say, these were they, but two of them, *Farrel* is one.

Pris. I was walking to *Islington,* and I did march a little way with them, but did nothing.

Ld Ch. J. Where were you taken?

Pris. By *Hollawell-Lane,* and I was all alone, and a Horseman rode after me, and ask'd me, if I were not one of them.

Ld Ch. J. All the Constable can say, is this, There were Men deliver'd to him from the Guard, and this Man does not deny but that the Guard took him, but he did nothing; but many People are walking abroad in the Holiday; it is Pity to take away a Man's Life without sufficient Evidence.

Ld Ch. J. *Farrel,* What do you say?

Farrel. I was with my Father and Mother all the Holidays.

Ld Ch. J. *Cotton,* What say you?

Cotton. I came through *Moorfields* about Noon, and I was taken by one of the Life-Guard.

Serj. Wilde. But you were pulling down a House.

Witn. He was pulling down a House on Monday, I was inform'd, and he was commonly among the Players at Pidgeon-holes; and after he had been pulling down a House, he was looking about to see what he could light of.

Pris. As I have a Soul to save he swears falsely.

Ld Ch. J. Have a care what you say.

You Gentlemen of the Jury, here are five Men more that are indicted for the same Disorder that the rest were, and we have now a little more Discovery of their Rising, and we have discover'd other Colours, for they thought the Duke of York had been in the Fields, and that enrag'd them the more, they taking Sir Philip Howard for the Duke of York; and when they did desire them to disperse themselves and go home, they said, They would not for such Rogues as the King's Life-Guard were, but they would soon be at *White-hall*: but you shall see what a Disguise is put upon it, If the King will not give us *Liberty of Conscience*, *May-day* shall be a bloody Day. This is, Gentlemen, to give us an Alarm, that we may not be too secure: And this must be punish'd as High-Treason, else we do destroy all. I think no body would have the Innocent to suffer: I had rather a guilty Person should escape, than a guiltless Person suffer. You hear the Constable cannot swear that all those were the Men, and some others, because in such a Hurry a particular Person cannot be known: Except you know any of them by sight, I cannot see how you can find them guilty; God forbid.

John Richardson, *Richard Woodward,*
Thomas Limberick, to the Bar.

Couns. You Gentlemen of the Jury, these three that were call'd last to the Bar stand indicted as the others, for levying War and Rebellion in *Holbourn*; you shall hear the Evidence, and if we make good the Evidence, you must find them guilty.

William Rogers, *sworn Witness*. My Lord, I found this Man at the head of a Party, and I took him, and committed him to the charge of a Company.

Ld Ch. J. Was he leading them on? Are you sure he was there?

Witn. He will not deny that he was there, but he made no Resistance at all; for we had three or four Companies ready to surprise them.

Mrs. Burlingham, Witness, sworn. My Lord, this was the first Man that laid hands to pull down my House.

Serj. Wilde. Mistress, was yours a Bawdy-house?

Mrs. Burlingham. No; but they dragg'd me out of it.

Ld Ch. J. Was your House pull'd down?

Husband's Answ. Yes: And all my Goods destroy'd, and Ten Pounds in Gold taken out of my Wife's Pocket.

Another Witness sworn.

Judg. What can you say of *Woodward*?

Witn. I cannot say he did take any thing out of the House that I know of.

Ld Ch. J. I do not ask you that; But did he go along with them, or had he a Staff in his Hand?

Witn. That *John Richardson*, my Lord, is a Tapster; I heard him say he had made Work for us, for he had help'd to pull down a House.

John Hand, Witness, sworn. My Lord, on *Saturday* last at six of the Clock, I heard him in the red Hair say, *I have made Work for you all*; I do not know what he is.

Ld Ch. J. What do you say for your self?

Limerick, Prisoner. My Lord, I went up to see what the Tumult was doing, for I lodg'd hard by; and when they had pull'd down the House, some run one way, and some another; and I was going to *Westminster*, and as I was walking up *Holbourn*, the rest of them were at my Heels.

Ld Ch. J. That was because you was their Captain, and dragg'd the Woman out of the House that says she hath lost all she had. *Woodward*, what say you?

Woodward. My Lord, Mr. Brooks gave me a black Pot to drink, and I staid no longer than the drinking of that.

Ld Ch. Just. What do you say that *Richardson* pull'd down the Woman's House?

Pris. My Lord, there was a Whore that clapp'd hands on me, and I wrung my self from her, and told her that her House should be pull'd down.

Ld Ch. J. Truly I see scarce an Apprentice among you all, and I am glad of it there is no more.

Witn. I dogg'd him home to his Master's House, but did not lay hold on him.

Pris. I am very innocent of any thing of hurt that I did.

Ld Ch. J. Prove it.

Pris. I was alone, How can I prove it? I was not all the Holydays abroad.

The Apprentice's Master. All *Monday* he was at home, and on *Tuesday* he was at home.

Serj. Wilde. It is impossible for him to be one of them; you might mistake.

Ld Ch. J. You Gentlemen of the Jury, in this Case take notice: As for *Woodward*, they say he was there with a Stick in his Hand. I would have you take notice that there is but one Witness: for the other you have his own Brags, if you will believe him, that he pull'd down a House, you have no other; if you will believe him to be a bragging Fool, you may. And now for *Limerick's* Witness, he shall be heard.

The Prisoner's Witness.

Ld Ch. J. What do you know of the Prisoner at the Bar?

Witn. This Man, my Lord, did lie in my House, and he did never stay out after Nine or Ten of the Clock: He was at home every Night betimes, and did give me all his Money to lay up, and he did earn Sixteen Pence a-day.

Another Woman, Witness, sworn.

Ld Ch. J. What can you say?

Witn. My Lord, I can say nothing but that he is a very honest Man.

John Sharpelisse, Prisoner at the Bar.

His Indictment read.

Couns. Gentlemen, he at the Bar stands indicted for High-Treason, and stirring up Rebellion in *Poplar* at the Head of Five hundred Persons, and pulling down Houses in *Ratcliff-Highway*, which we shall endeavour to prove.

John Harding, Owen Maxum, Witnesses call'd, but came not in against the Prisoner.

Ld Ch. J. Gentlemen of the Jury, you know for Matter of Fact you are Judges: if you are not

not satisfied in the Evidence, then you cannot find them guilty. Consider who those Persons are, where the Evidences have not given sufficient Satisfaction.

The Sum of the Jury's Verdict.

THE Jury being dismiss'd to consider of their Verdict, after a short stay they return'd, and found as to *Messenger, Appletree, Beasley, and Greene*, that according to the Time in the Indictment mention'd, they were met together in a riotous manner in *East Smithfield* in *Middlesex*, and about *Moorfields*, under colour to pull down the Bawdy-Houses. That their Captain was *Beasley*, who led them on with his Sword drawn, and that they had their Ensign carry'd by *Messenger*, which was an Apron carry'd upon a Pole, and so they march'd with their Conductor. That they resisted the Constable who charg'd them in the King's Name to keep the Peace, and struck him, and took away his Staff; and that these several Persons were Abettors in that Tumult.

And as to *Bedell and Latimer*, they found that a great Number of People were met together arm'd with Swords, Clubs and Staves, &c. at *Clerkenwel-green*, to break *New-Prison* there; and had their Commander, who had a Pike in his Hand, and came to *New-Prison*, and releas'd the Prisoners, some whereof were committed for Felony; and that when they were commanded to be gone, they cry'd out that they had been Servants, but now they would be Masters; and that these Persons were seen acting in the Tumult, and there taken.

As for *Cotton*, they found, that the riotous Persons were met together upon the 24th of *March* with a great Number of People arm'd with their Swords, and such-like warlike Weapons, for pulling down Bawdy-houses: that when *Sir Phillip Howard* with the King's Guards came up to them, and commanded them to depart, they refus'd; and when it was given out that *Sir Philip Howard* was the Duke of *York*, thinking thereby they would be appeas'd, they were enrag'd the more, and declar'd, that if the King would not give them Liberty of Conscience, they would make *May-day* a bloody *May-day*, threatening to pull down *White-hall*; and very contemptuously slighted the King's Guards, because they were but a small Number: and this *Cotton* was prov'd to be one of them in the Action, and all along acting in the Riot.

And further, as to *Limerick*, he was met with the same Pretence of pulling down of *Bawdy-houses*, being arm'd as the rest were, and was own'd by the Rabble to be the Captain of their Company: That he with his Companions pull'd down the House of *Peter Burlingham*, and stole his Goods. The rest were found Not guilty.

The Jury having thus found it Specially, my Lord Chief Justice commanded the Prisoners again to the Bar, to whom he spoke to this Effect: That we all now see what great Cause we have to bless God, that we live under so merciful a Prince, and so good a Law as we now find we do live under; and that not only one Prince hath been so merciful, but such has been the Graciousness of other former Kings of *England*, that we shall rarely find any Severity us'd in the execution of Penal Statutes, where any fair

means (which constantly hath been us'd) could have any Effect at all. That our Justice is not privately but publickly administred in the sight of all People, like a Beacon that gives warning to all; so that all might take notice thereof, and avoid the like Danger that others have fallen into. That the Prisoners more especially ought to bless God, and seriously to reflect within themselves this great Mercifulness of our King and Law: for hereby they see they have not been serv'd so as they have serv'd others (for then upon the very apprehending of them they might have receiv'd their Execution) but contrariwise, they have had a fair Trial, not by Strangers, but by their own Country and Neighbours, having had the Liberty to speak what they could for themselves, and Witnesses for them, so that if it were possible all might have been found innocent; and he heartily wish'd all could have been so found; and that some, blessed be God, are not found Guilty, and to them he hop'd this would be a sufficient Warning, &c.

Now as to all these Eight, against whom the Verdict was specially found, the Court took further time (because they would advise thereof) before they would give their Judgment whether High-Treason or no, it being declar'd by my Lord Chief Justice to be Matter of Law; and in the mean time these Persons are to remain in safe Custody in his Majesty's Goal at *Newgate*.

And for the other Six, viz.

<i>John Earls,</i>	<i>Richard Farrel,</i>
<i>William Wilks,</i>	<i>John Richardson,</i>
<i>Richard Woodward,</i>	<i>William Ford;</i>

The Jury found them Not guilty, and so acquitted them of the Offence whereof they stood charg'd, who after several Admonitions by the Court for their future good Behaviour, were discharg'd.

The Lord Chief Justice KELING's Report of the Judgment of the Judges in relation to the aforesaid Trial.

Memorandum, That at the Sessions at the *Old Baily*, after *Keling. 70.* *Easter*, in the Twentieth Year of *K. Charles II.* several dissolute Persons having on *Easter Tuesday* and *Wednesday* next before assembled together, and led by Persons whom they call'd Captains, and having Colours, viz. Aprons, &c. on Staves, went to several Places on pretence to pull down Bawdy-Houses, and break open Prisons and set Prisoners at Liberty; and having actually pull'd down some Houses, and broke up the Prison at *Clerkenwell*, and let out four Prisoners there, were by the Direction of the King's Counsel, viz. Mr. Attorney, Sir *Jeffery Palmer*, having Order to proceed against them, he directed four Indictments to be preferr'd against them who were taken, viz. one Indictment against *Peter Messenger, Richard Beasley, William Green, and Thomas Appletree*, and another Indictment against *Edward Cotton*, and a third against *Edward Bedell and Richard Latimer*, and a fourth against *Thomas Limerick*. All the Indictments were, that they with other Persons to the Number of 500,

unknown to the Jurors, being arm'd in a war-like manner with Swords, Half-pikes, Halberts, long Staves, and other Arms offensive and defensive, with Force and Arms, unlawfully and traitterously assembled themselves together, and levied War against the King, &c. And first I told them they had not done well to make so many several Indictments, for by that means the King's Evidence would be broken; whereas if all had been put into one Indictment, the Evidence as to the main Design would have been intire against all: and then the assembling in several Places to the same Intent had made the Matter more foul, and would have been aptly given in Evidence against them all to the same Jury, and the several Acts which each of them did, would have come in better. But however we proceeded upon the Indictments as they were; and after the Evidence given against the four in the first Indictment, when I came to give Directions to the Jury, I told them that altho I was well satisfy'd in my own Judgment, that such assembling together as was prov'd, and the pulling down Houses on pretence they were Bawdy-houses, was High-Treason, because they took upon them Regal Power, to reform that which belong'd to the King by his Law and Justices to correct and reform; and it would be a strange Way and mischievous to all People to have such a rude Rabble without an Indictment to proceed in that manner against all Persons Houses which they would call Bawdy-houses, for then no Man were safe; therefore as that way tore the Government out of the King's Hands, so it destroy'd the great Privilege of the People, which is not to be proceeded against, but upon an Indictment first found by a Grand-Jury, and after upon a legal Trial by another Jury, where the Party accus'd was heard to make his Defence; yet I told them, because the Kings of this Nation had oftentimes been so merciful, as when such Outrages had been heretofore done, not to proceed capitally against the Offenders, but to proceed against the Offenders in the Star-Chamber, being willing to reduce their People by milder Ways if it were possible to their Duty and Obedience; yet that Lenity of the King in some Cases did not hinder the King when he saw there was need to proceed in a severer way, to take that Course which was warranted by Law, and to make greater Examples, that the People may know the Law is not wanting so far to the Safety of the King and his People, as to let such Outrages go without capital Punishment, which is at this time absolutely necessary, because we our selves have seen a Rebellion rais'd by gathering People together upon fairer Pretences than this was: For no such Persons use at first to declare their wickedest Design; but when they see that they may effect their Design, then they will not stick to go further, and give the Law themselves, and destroy all that oppose them. But yet because there was no body of the Long Robe there but my Brother *Wilde*, then Recorder of *London*, and my self, and that this Example might have the greater Authority, I did resolve that the Jury should find the Matter Specially, and then I would procure a Meeting of all the Judges of *England*, and what was done should be by their Opinion, that so this Question might have such a Resolution as no Person afterwards should have

reason to doubt the Law, and all Persons might be warn'd how they for the time to come mingle themselves with such Rabble on any kind of such Pretences: and thereupon the Jury as to the first four in the first Indictment gave a special Verdict to this Effect, viz.

They find that the 24th of *March* last, a great Number of Persons, to the Number mention'd in the Indictment, were assembled in *East-Smithfield* and *Moorfields*, in the County of *Middlesex*, with Arms mention'd in the Indictment, on pretence of pulling down Bawdy-houses; that *Beasley* led them, and was called their Captain, and had in his Hand a naked Sword which he brandish'd over his Head; and that *Messenger* had a piece of green Apron on a Staff, which he flourish'd as Colours in the Head of the Company; and that *Beasley* and he led the Company as their Leaders; that they did the like on *Wednesday* the 25th of *March*, and were breaking down Houses. That *Peverell*, one of the Constables of *Middlesex*, having a Constable's Staff in his Hand, came to them with other Persons to aid him, and charged them to depart and keep the Peace, and thereupon *Beasley* with his Sword struck him, and wounded him; and several Persons assembled with him, struck him down, and took away his Constable's Staff. That the said *William Green* was among them, casting up his Cap, and hollowing, with a Staff in his Hand; and that whilst he was amongst them he was knock'd down by a Party of the King's Soldiers that came to suppress them, and was then taken. That *Beasley* struck at the Ensign that led those Soldiers. That the said *Appletree* was amongst them both Days, and was the first that struck at *Peverell* the Constable, and was amongst them at *Burlingham's* House on *Saffronhill* in the County of *Middlesex*, and pull'd part of the House down, and the next House to it, and struck at one that admonish'd him to be quiet. And if upon the whole Matter, it shall seem to the Court that they are Guilty of the Offence mention'd in the Indictment, then they find them Guilty, &c.

A Special Verdict as to Messenger, Appletree, Beasley, and Green.

On the Second Indictment as to *Cotton* alone, the Jury did find that at the Time and Place mention'd in the Indictment, a great Number of Persons, to the Number mention'd in the Indictment, met together arm'd with Swords, Clubs, Staves, and other Weapons, under pretence of pulling down Bawdy-houses, and had a Cloth on a Staff for an Ensign carry'd before them. And that *Sir Philip Howard*, with a Troop of the King's Guards, found them arm'd in such a seditious Manner, and commanded them to disperse; that they refus'd so to do, and threw Stones at him; that some of them enquir'd who it was that led those Guards, whether it was the Duke of *York*? and being told it was, they presently threw Stones at *Sir Philip Howard* who led the Horse; and some of them said, that unless the King would give them Liberty of Conscience, *May-day* should be a bloody Day; others bid kill the Guards, and others said, that they would come and pull down *Whitehall*; and others said, they would be with them

Special Verdict also as to Cotton.

them at *Whitehall*, (the King's Capital Palace) and that they car'd not for the Guards, for they were but two or three Hundred, and they could easily knock them on the Head; that they continu'd many Hours, till they were dispers'd by the Guards. That *Cotton*, who was indicted, was one of them assembled in this manner, and that *Cotton* was amongst them the next Day when they were assembled in the same Manner, and was pulling down a House in the Parish of *St. Leonard Shoreditch*, in the County of *Middlesex*; and if on the whole Matter, &c.

*Special Verdict
on the third In-
dictment, Be-
dell and Lati-
mer.*

On the third Indictment against *Bedell* and *Latimer*, the Jury find that, the Day and Place mention'd in the Indictment, a great Number of Persons, to the Number mention'd in the Indictment, armed as in the Indictment, did meet together on *Clerkenwell-Green*, in the County of *Middlesex*, on pretence of breaking open Prisons, and releasing Prisoners; that one of them who had a Half-pike in his Hand, own'd himself to be their Captain; that they came so assembled together to a Place there call'd the *New-Prison*, being a publick Prison of the County of *Middlesex*, and then and there said, that they came to search for Prisoners; and brake open the Prison-Doors, and let out four Prisoners, two whereof were committed thither for Felony, and two for other Offences; and that they being charg'd to depart, reply'd, they had been Servants long, but now they would be Masters; that some being taken, they cry'd, *One die, and all die*. That *Latimer* was amongst them, and active in breaking of the Prison, and was with the rest in the Prison after it was broken open; and that *Bedell* was there, and being pursu'd by one of the King's Soldiers, call'd out to the rest of the Company to face about, and not to leave him: And if on the whole, &c.

*Special Verdict
as to Limerick.*

On the fourth Indictment against *Limerick* the Jury find, that the Day, Year and Place in the Indictment mention'd, a great Number of Persons, to the Number, &c. assembled together on pretence of pulling down of Bawdy-houses; and being arm'd *prout* in the Indictment, they march'd in warlike Manner, and the said *Limerick* led them as their Captain with a Club in his Hand, and was own'd by the Company to be their Captain: That the said *Limerick* had the said Persons to the House of *Peter Burlingham*, and they pull'd down the said House, and destroy'd and took away divers Goods of the said *Burlingham's*, to the Value of 30*l*. And if on the whole Matter, &c.

And in *Easter Term* following, all the Judges met at my Chamber, there being then but Eleven. My Lord *Bridgeman*, who was Chief Justice of the Common Pleas, being then Lord Keeper, the Judges were my self, Chief Justice of the *King's Bench*, Sir *M. Hale* the Chief Baron, and my Brother *Atkins*, Brother *Twisden*, Brother *Tyrell*, Brother *Turner*, Brother *Wyndham*, Brother *Archer*, Brother *Rainsford*, Brother *Morton*, and Brother *Wylde*.

And on the whole Matter the Chief Baron *Hale* deliver'd his Opinion, that there was no

Treason in the Case, because he said that the Stat. 1 *Q. Mary*, cap. 12. is, That if any Persons, to the Number of Twelve, or more, assemble to the Intent to pull down Inclosures, &c. with force, and continue together an Hour after Proclamation made for their Departure, it shall be Felony; and if those Actions had been Treason at Common-Law, it had been to no purpose to make it Felony.

But all the other Judges answer'd, That this was the Objection made by some Judges in the Case of *Bradshaw* and *Burton*, which is reported by *Popham* in his Reports, pag. 122, and there it was resolv'd, that if any Persons assembled with Force to alter the Laws, or to set a Price on Victuals, or to lay violent Hands on the Magistrate, as on the Mayor of *London*, and the like, and with Force attempt to put the same in Execution, this is Rebellion and Treason at the Common-Law; and they there resolv'd, that that Statute of 1 *Mary* was to be intended, where Persons, to the Number of Twelve, or more, pretending any or all of them to be injur'd in particular, as by reason of their Common, or other Interest in the Land inclos'd, and the like, assemble to pull it down forcibly in Cases where they have an Interest, or where in particular they are annoy'd or griev'd, that is not Treason: But in case their Act goeth generally to pull down Inclosures, in which they, or any of them, are not particularly concern'd, this Act, if it be put in Execution by Force, is Treason at Common-Law. And it was agreed by us all, that the Statute of 13 *Eliz.* which maketh the Intention in many Cases Treason, extends to nothing, but where if the Act had been done, it had been Treason at the Common-Law.

And therefore all the rest of the Judges did unanimously agree, that this Rising, with Intent to pull down Bawdy-houses in general, or to break open Prisons in general, and let out Prisoners, and putting their Intention in Execution by Force, any of these Instances was a levying War against the King, and High-Treason at Common-Law, within the Declaration of the Statute of 25 *Edw. 3.* and for that, besides the Resolution in *Popham's Reports* before cited, we consider'd the Case of the Apprentices, reported in the second Part of *Anderson's Reports*, p. 4, 5. where it was resolv'd, that by the Statute of 13 *Eliz.* if any intend to levy War for any thing, which the Queen by her Laws and Justice ought to do, and reform in Government as Queen, this shall be an Intendment to levy War against the Queen within that Statute of 13 *Eliz.* And as we said before, nothing can be Treason by the Intention within the Statute, which had not been Treason by the Common-Law, if it had been actually put in Execution. And see the same Book of *Anderson*, Part II. pag. 66. and by the Case of several Persons in *Oxfordshire* rising to pull down Inclosures in general, resolv'd accordingly; in which Case it was also resolv'd, that if any Persons rise and assemble together, with intent to levy War, the Justices of the Peace and Sheriffs may use Force to suppress such Rebels, without any special Commission or Warrant, and this by the Common-Law. And see *Popham's Reports*, p. 121. and a Resolution of all the Judges, 39 *Eliz.* that any Justice of the Peace, Sheriff, or other Magistrate, or any other Subject of the King, may, by the Common-Law,

Law, arm themselves, to suppress Riots, Rebel-
 lions, or resist Enemies, and endeavour them-
 selves to suppress such Disturbers of the Peace:
 But they said the most discreet way was for eve-
 ry one to attend and assist the Justices in such
 Case, or other Ministers of the King in doing
 it: And *Cook, Pl. Cor.* 9. If any levy War to ex-
 pulse Strangers, to deliver Men out of Prison,
 to remove Counsellors, or to any other End
 pretending Reformation on their own Heads
 without Warrant, this is a levying of War a-
 gainst the King, because they took upon them
 Royal Authority. And *Moor's Reports*, pag. 620,
 621. in the Case of the Earl of *Essex*, in which,
 amongst other things, it was resolv'd, that his
 Attempt with Force to remove the Queen's
 Counsellors was High-Treason; and likewise that
 the Earl of *Southampton*, who adher'd to him,
 altho he knew of no other Purpose of the Earl
 of *Essex*, but a private Quarrel against some of
 the Queen's Servants, yet this was Treason in
 him, the Act of the Earl of *Essex* being Rebel-
 lion and Treason; and so it was also resolv'd,
 that all those who went with him out of *Essex-
 House* in aid of him, it was Treason in them,
 whether they knew any thing of his Intent or
 not. And *Cro. Part I.* 583, in *Benstead's Case*,
 it was resolv'd by all the Judges, That going to
Lambeth-House in warlike Manner with Drums,
 and a Multitude, as in the Indictment, to the
 Number of Three hundred, &c. to surprize the
 Archbishop, who was a Privy Counsellor, was
 Treason. And, 2dly, it was resolv'd that the
 Justices of Oyer and Terminer may sit, enquire
 and try Prisoners all in one Day. 3dly, It was
 resolv'd, that the breaking of a Prison, wherein
 Traitors were in durance, and causing them to
 escape, was Treason, altho the Parties did not
 know that Traitors were there. And so to
 break a Prison whereby Felons escape, this is
 Felony, tho they do not know them to be in
 Prison for such Offence. Note, That Resolution
 as to breaking a Prison where Felons, &c. are,
 must (as I think) be intended only where the
 Intent was only to break open one Prison, and
 no more; for if the Design was to break open
 Prisons in general, and they put that in Execu-
 tion as to one Prison, that is High-Treason ac-
 cording to the Books before cited; but then on
 the Evidence it must be prov'd that their Intent
 was such, and by such Proof as satisfieth the Jury.

After this Resolution in general, we went to
 consider the particular Cases as they were found
 upon the several Special Verdicts; and thereupon
 it was agreed by all of us, except the Chief Ba-
 ron, who said he doubted on the main; That as
 to *Messenger* and *Beasley* in the first Verdict, and
 to *Cotton* in the second Special Verdict, and as to
Limerick in the fourth Special Verdict, that the
 Matter, as it was found against these four, was
 High-Treason in them all, and accordingly they
 had Judgment, and were Executed: But as to
Appletree in the first Special Verdict, and as to
Latimer in the third Special Verdict, there was
 Difference in Opinion amongst us, whether the
 Verdict was sufficiently found against them to
 judge it High-Treason or not. For besides the
 Chief Baron, who was against all, my Brother
Atkins, *Tyrell*, *Windham*, and *Wylde*, held that
 the Verdict was not sufficient against those two,
 for to give Judgment that they were guilty of
 Treason; because, they said, it was not expressly

found that they were aiding and assisting. But
 my self, Brother *Turner*, *Twisden*, *Archer*, *Rayns-
 ford*, and *Moreton*, thought the Verdict, as it
 was found against them, to be as full and plain
 as any of the rest. For first, as to *Appletree*, the
 Verdict first finds in general, that the Number
 in the Indictment were assembled, as in the In-
 dictment, with an Intent to pull down Bawdy-
 Houses: That *Beasley* led them as their Captain;
 that *Messenger* had a green Apron upon a Staff,
 which he flourish'd as Colours; and then that
Appletree, the Person now in question, was a-
 amongst them both the Days, and was the first
 that struck at *Peverell* the Constable, and was a-
 amongst them at *Burlingham's House* at *Saffron-
 Hill*, and pull'd part of that House down, and
 the next to it, and struck at one that admonish'd
 him to be quiet; so that here are several Acts of
 Force found to be actually committed by him in
 pursuance of their Design, and then there is no
 need to find him to be Aiding and Assisting: for
 that Clause, we said, was only necessary to be
 found where the Jury find a Person was there a-
 mong them, and find no particular Act of Force
 done by him, but only his Presence, there it is
 necessary that they find he was present Aiding
 and Assisting. And for the same Reasons we held
 the Verdict to be full also against *Latimer*, be-
 cause it was first found that the Multitude was
 assembled, as in the Indictment, on pretence of
 breaking Prisons and releasing Prisoners in gene-
 ral, which is agreed by all (except the Chief Ba-
 ron) to be Treason; and then they find that *La-
 timer* was amongst them, and active in breaking
 open the Prison at *Clerkenwell* (where Prisoners,
 some for Felony, and others were let loose) and
 that he was with the rest in the Prison after it
 was broken open, and so an Act fix'd upon him.
 But altho six of us were well satisfy'd in our Judg-
 ments as to them, yet when I waited on the King,
 I acquainted him there was some Difference in
 Opinion as to those two, upon finding of the
 Special Verdict; and altho the greater Number
 of us were of Opinion, that the Verdict was
 well found as to those also, yet I intreated his
 Majesty to make use of that Difference in Opi-
 nion to shew his Mercy towards them, the ra-
 ther because we had agreed, that as to four of
 them the Verdict was clearly good as to proceed
 to Judgment against them, and that I hop'd
 would be Example enough to deter others from
 the like Practices; and besides it would appear an
 Instance of his Majesty's great Mercy, that he
 would not proceed to the last Extremity against
 any, where there was not a full Concurrence of
 all his Judges: which his Majesty was pleas'd to
 take very graciously, and order'd me to proceed
 accordingly, and so they two were spar'd. But
 as to *Green* in the first Special Verdict, and *Be-
 dell* in the third Special Verdict, we all agreed
 that the Verdict was not full enough as to them,
 for us to judge it Treason in them, because the
 Verdict only finds that they were present, and
 finds no particular Act of Force committed by
 them, and doth not find that they were Aiding
 and Assisting to the rest; and it is possible one
 may be present amongst such a Rabble only out
 of Curiosity to see: and whether they were Aid-
 ing and Assisting is Matter of Fact which ought
 to be expressly found by the Jury, and not be left
 to us upon any colourable Implication; and ac-
 cordingly these two were discharg'd.

LXVIII. *The Trial of ROBERT HAWKINS, Clerk, late Minister of Chilton, at Ailesbury, for Felony, 11 March, 1668. 20 Car. II. Wrote by himself.*

UPON Tuesday, being the 9th of March, 1668, I went to Ailesbury, and got thither about Four of the Clock in the Afternoon, and about the same time came in the Reverend Judges, viz.

Sir Matthew Hale, Knt. (then Lord Chief Baron of his Majesty's Court of Exchequer, but now) Lord Chief Justice of England; and Hugh Windham, Serjeant at Law. And upon Wednesday the 10th of March the Assizes began, and in the Afternoon of the same Day, Larimore (by the Advice of Sir John Croke, who had then got Leave to come to the Assizes) carried his Bill of Indictment against me, to the Grand Jury: Their Names were as followeth,

John Hill, Gent.	Jonathan Tomlins, Gent.
Samuel Grange, Gent.	William Barret, Gent.
Richard Cokeman, Gent.	John Butterfield, Gent.
Jacob Sale, Gent.	William Pedder, Gent.
Thomas Redding, Gent.	John Fosket, Gent.
Thomas Berringer, Gent.	John Sare, Gent.
Clement Summerford, Gent.	John Merydale, Gent.
John Winter, Gent.	Robert Worrel, Gent.
John Burnham, Gent.	George Wells, Gent.
Ralph Rice, Gent.	In all Nineteen.

These were the Gentlemen of the Grand Inquest for the Body of the County of Buckingham, and unto them the foresaid Larimore exhibited his Bill of Felony against me; the Sum and Substance of it, was as followeth:

The Grand Inquest for our Sovereign Lord the King upon their Sacred Oaths present, that Robert Hawkins, late of Chilton, in the County aforesaid, Clerk, did upon the 18th of September, in the 20th Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force, and Arms, &c. at Chilton aforesaid, in the County aforesaid, two Gold Rings, each of them at the Value of Ten Shillings; one white Holland Apron, of the Value of One Shilling Six Pence; two pieces of Gold, each of them at the Value of Ten Shillings, and Nineteen Shillings in Silver, of the Goods and Chattels of Henry Larimore, in the Parish and County aforesaid, then and there being found, then and there Feloniously he did steal, take, and carry away, contrary to the Peace, &c.

This Bill was Signed by the Grand Jury, Billa Vera, and returned to my Lord Chief Baron

Hale, who then sat on the Crown's side, (or upon Life and Death) about Six of the Clock at Night.

Upon Thursday the 11th of March, 1668, my Lord Chief Baron came to the Hall about Eight of the Clock in the Morning, and the Court being set, I rendred my self willing to be tried according to the Laws of this Kingdom. And when the Clerk of the Assizes saw me bow to the Court, he then inform'd my Lord (and said) this is Mr. Hawkins, who stands indicted for Felony; and then the Clerk of the Arraignments read the Bill, which was sign'd and return'd, as aforesaid; and then I was set to the Bar, without any other Prisoners.

Clerk of the Arraignments said, Robert Hawkins, hold up thy Hand, which I then did, and then the Clerk read the Indictment against me as followeth.

YOU stand indicted in Ailesbury, in the County of Bucks, by the Name of Robert Hawkins, late of Chilton, in the County aforesaid, Clerk, for that you the said Robert Hawkins (not having the Fear of God before your Eyes) upon the 18th of September, in the 20th Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force and Arms, &c. at Chilton aforesaid, in the County aforesaid, into the Dwelling-House of one Henry Larimore Feloniously did enter, and two Gold Rings at the Value of Ten Shillings each of them; one white Holland Apron, of the Value of One Shilling and Six Pence; two pieces of Gold, each of them at the Value of Ten Shillings, and Nineteen Shillings in Silver, of the Goods and Chattels of him, the said Henry Larimore, then and there being found, then and there Feloniously you did steal, take, and carry away, contrary to the Peace of our said Sovereign Lord the King, his Royal Crown and Dignity, &c.

How say'st thou, Robert Hawkins, art thou Guilty of the Felony whereof thou standest indicted, or Not Guilty?

Robert Hawkins. Not Guilty, my Lord.

Clerk. How wilt thou be tried?

Rob. Hawk. By God and my Country.

Clerk. God send you a good Deliverance.

Court. Call the Jury, [which the Clerk did.]

Cryer, Call these, viz.

Richard Lambourne.

James Reynolds, Jun.

Robert

Robert Hoare, I challeng'd him.

L. C. B. Set him by.

Edward Butler.

Tho. Coles, I challeng'd him.

L. C. B. Set him by.

Richard Hearnese.

Thomas Sanders of Chilton was challeng'd by *Larimore*, contrary to Custom.

Edward Carter.

John Goodwyn.

William Porter.

John Ringham.

William Cannon, Jun.

William Welch.

Edward Cope.

Francis Rusbell.

All these being in Number Fifteen, but three of them were challeng'd, two of them by me (I being inform'd they were no Friends to the Church of England) and for the third, viz. *Mr. Tho. Sanders*, he was challeng'd by *Larimore* contrary to Custom, without shewing any Reason, he being a Neighbour that knew us both, and the Business, better than any of the rest of the Jurors. The other Twelve were sworn as followeth,

Clerk. Rob. Hawkins, Hold up thy Hand; which I did.

Marshal. Richard Lambourne, Lay thy Hand upon the Book; look upon the Prisoner.

YOU shall well and truly Try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge according to your Evidence, So help you God: Kiss the Book. And so were all the rest sworn.

Clerk. Cryer, count these. *Richard Lambourne*, *James Reynolds*, two, &c. Twelve good Men, and true, stand together, and hear your Evidence.

Clerk. Cryer, make a Proclamation.

O Yes, &c.

IF any Man can inform my Lords, the King's Justices, the King's Serjeant, or the King's Attorney, of any Murders, Felonies, or Treasons, done, or committed by the Prisoner at the Bar, before this Inquest be taken, between our Sovereign Lord the King, and the Prisoner at the Bar, let them come forth and they shall be heard, for now the Prisoner at the Bar stands upon his Deliverance. And all others bound by Recognizance to give in Evidence against the Prisoner at the Bar, come forth and give your Evidence, or else you will forfeit your Recognizances.

Clerk. Cryer, call the Witnesses.

Henry Larimore, Sen. the Prosecutor.

Richard Mayne, Jun. Constable.

Tho. Beamfly, Tythingman (Brother in Law to the said *Larimore*.)

Dodsworth Croke, Esq; (Sir *John Croke*'s eldest Son.)

John Cox.

Henry Larimore, Jun. (Son to the said *Larimore*, near Twenty Years old, and not Baptized.)

Mary Keen.

Joan Beamfly (Sister to the said *Larimore*.)

Margaret Larimore (Wife to the said *Larimore*.)

John Chilton.

William Croke, Gent. (Son to Sir *John Croke*.)

John Boyse.

Thomas Welch.

Samuel Salter.

John Stop, (Sir *John Croke*'s Man.)

Francis Luce.

William Mantill, alias *Miles* (Nephew to the said *Larimore*.)

Richard Mantill, alias *Miles* (Brother-in-Law to the said *Larimore*.)

Tho. Croxtone, of *Weston on the Green*, in the County of *Oxon*, Yeoman.

Nicholas Sanders.

Christopher Bethum.

Edward Good, of *Long Crendon*, Clerk, (a Person that committed a Riot and forcible Entry upon my Church at *Chilton*.)

All these (being in Number 22.) were Witnesses procur'd (by Sir *John Croke* and *Larimore*) and sworn against me.

Clerk. Rob. Hawkins, Hold up thy Hand. [Which I did.]

Here the Indictment was again Read.

The Clerk speaks to the Jury thus. Look upon the Prisoner, you that be sworn. You shall understand that the Prisoner at the Bar hath been Arraign'd upon this Indictment, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Your Charge is, to enquire whether the said *Robert Hawkins* be guilty of this Felony (in Manner and Form as he stands indicted) or Not Guilty; if you find him Guilty, you shall enquire what Goods and Chattels, Lands and Tenements he had at the Time of committing this Felony, or at any time since; if you do find him Not Guilty, you shall enquire if he fled for the same; if you do find that he fled for the same, you shall enquire what Goods and Chattels, as if you had found him Guilty: If you find him Not Guilty, and that he did not flee for the same, you shall say so, and no more; and hear the Evidence.

Henry Larimore, the Prosecutor, was sworn as followeth. *Mr. Larimore*, lay your Hand upon the Book, look upon the Prisoner.

THE Evidence that you shall give unto the Court, and to the Jury, between our Sovereign Lord the King, and the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God. Kiss the Book.

Here I took Pen, Ink and Paper, to take Notes at the Bar.

Larimore said, May it please your Honour, my Lord, upon Friday the 18th of Sept. in the Year of our Lord 1668, between Twelve and One a Clock at Noon, I lock'd my Doors fast, and left no body in my House, putting the Keys in my Pocket. I went to a Hemp-plot, about two Furlongs from my House, to pluck Hemp; where I, and the rest of my Family, continued till an Hour

Hour and half of Sun-set, and then coming home, found my Doors wide open: So I went in, and run up the Stairs into my Chamber (or upper Loft, over my inward Chamber where I lie.) I then hearing a Noise in the Chamber where I lie, just under me, I peeped down through some of the Chinks of the Loft-boards, there I saw this Mr. *Hawkins* (pointing with his left Hand towards me, but having his Face all that time towards the Judge) ransacking and rifling of a Box, in which Box was then, amongst other Goods, one white Holland Apron, a Purse, and in that Purse was, at that time, two Gold Rings, each of them of the Value of 10 s. two Ten-Shilling Pieces of Gold, and Nineteen Shillings in Silver, all the which said Gold Rings, Gold and Silver (except one small Piece of Silver or two) I then saw this Mr. *Hawkins*, that is now the Prisoner at the Bar, take and turn out of this very Purse, which I do now shew unto your Honour; and he did then steal and carry away all the foresaid Rings and Money, with the said Holland Apron. All these things, my Lord, I saw him take out of my Box and Purse, for I was all that time looking through the Chinks of the Board. And when Mr. *Hawkins* heard some Noise above, I further saw the Prisoner now at the Bar go out of my said Lower Room where my Box was, and glanc'd by the Stair-foot Door, and so run out of my House, with a great Bunch of Keys in his Hand, down my Yard, and hid himself in a Close where there were some Beans and Weeds. All this, my Lord, I saw with my own Eye. Moreover, my Lord, I having a Warrant from Sir *Richard Pigott* to search for the said Rings and Money, &c. I did upon the next Day (it being Saturday, and the 19th of September) after Mr. *Hawkins* had robbed me, call *Richard Mayne*, Jun. the Constable, and Mr. *Tho. Beamslly*, Tythingman; with some others of our Town, to search Mr. *Hawkins*'s House for my said Money and Goods, which the Day before I saw him steal from me: But he refusing to open his Doors, or to let us search; when we saw that, the Constable broke open his Doors, and then we went in, and searching his House, I did then find in an inward Room below Stairs, in a Basket hanging on a Pin (put amongst Papers and Rags, and other Trumpery) this Gold Ring, and this Five-Shilling Piece of Silver. And I do swear, that this Ring and Piece of Silver is one of the same Rings and Pieces of Silver which the Day before I saw the Prisoner now at the Bar take out of this very Purse, it being Friday the 18th of September, and an Hour an half before Sun-set. This was the Sum and Substance of *Larimore*'s Evidence, whereupon my Lord Chief Baron asked *Larimore* these Questions.

Lord Chief Baron Hale. Are you sure, *Larimore*, that you left your Doors lock'd, when you went out to pluck Hemp?

Larimore. Yes, my Lord, I am sure I did.

L. C. B. When?

Lar. Between Twelve and One of the Clock at Noon, my Lord.

L. C. B. Upon what Day was it?

Lar. It was upon the 18th of September last past, my Lord.

L. C. B. Upon what Day of the Week was it?

Lar. It was upon Friday, my Lord.

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L. C. B. In what Year was it?

Lar. It was in the Year of our Lord 1668, my Lord.

L. C. B. Are you sure that your Chamber-Door where your Box stood was lock'd at that time?

Lar. I cannot certainly tell, my Lord.

L. C. B. Was the Box lock'd at that time?

Larimore to this Question paus'd a while, and gave no Answer.

Marshal. My Lord desires to know whether your Box was lock'd at that time when you lost your Money and Goods out of it.

Lar. It was lock'd, my Lord.

Clerk. Was it at that time lock'd, by the Oath you have taken?

Lor. It was lock'd, if it shall please your Honour.

L. C. B. Were the Locks of the Doors and Box broken?

Lar. My Lord, I cannot certainly tell, but I do believe that they were pickt open with some Pick-lock or false Key.

L. C. B. Did you see him, that is now the Prisoner at the Bar, in your House at that time, and in that Posture, by the Oath you have taken?

Lar. I did then see him that is now the Prisoner at the Bar in my House, my Lord, as I said before.

L. C. B. At what time of the Day was it that you saw him in your House?

Lar. It was an Hour and half before Sun-set.

L. C. B. said to me, Sir, will you ask *Larimore* any Questions before we call more Witnesses?

Hawkins. Yes, my Lord, if I may have Leave.

L. C. B. Sir, you may proceed to your Questions.

Hawkins. I humbly thank your Honour.

Hawkins. I pray, my Lord, ask *Larimore* if he be sure that I am the Person that robb'd him?

L. C. B. *Larimore*, answer to the Question.

Lar. Yes, my Lord, I am sure he is the Person that robb'd me, for I know him very well.

Hawk. Why did you say before Sir *John Croke*, when I was before him, that you could not say that I had stolen them.

Lar. I said no such thing, this all that were there can justifie.

Hawk. My Lord, I desire to know of *Larimore* if he be sure that it was upon a Friday, and the 18th of September 1668, and an Hour and half before Sun-set, when he saw me in his House robbing him?

Lar. replied, that it was upon that Day and Time, as near as he could guess.

Hawk. Why (when *Larimore* found his Doors open, which he expected to have found lock'd) did not he call some of his Neighbours to assist him in searching his House, and to secure me, or any other Person which he might find robbing him, rather than to run up Stairs by himself to alarm any Person that was in his House, and thereby giving them Opportunity to escape?

Larimore said, He did not then so well consider of it as now; but being willing, seeing his Doors open, ran up the Stairs to know what the Matter was, and looking through the Chinks of the Loft, saw me in his House, as aforesaid.

G g g g

Hawk.

Hawk. Larimore, did you speak to me when you saw me, or endeavoured to stay me?

Lar. replied, That he was for that time so amazed, that he could not speak to me.

Hawk. My Lord, I think he is still in great Amazement.

Hawk. Was my House the first, or the only House you searched?

Lar. replied, No.

Hawk. If you saw me commit the Robbery in your House, why then did you search other Houses for the Goods which you saw me steal?

Lar. replied to this, That he had been robbed at several other times.

Hawk. Why did not you then rather send out Hue and Cries to apprehend my Person, than to search my House; and why did not you charge me with flat Felony before Sir *Richard Pigott*, of whom you had your Warrant, if you saw me rob you?

Lar. to these Questions made no direct Answer.

L. C. B. Mr. *Hawkins*, will you ask *Larimore* any more Questions?

Hawk. No, my Lord, not at present; but when I come to my Defence, I hope I shall be heard.

L. C. B. You shall be heard at large, and so shall they.

Hawk. I humbly thank your Honour.

Clerk. Ass. Larimore, who shall be next called?

Lar. Call *Henry Larimore* the younger.

Clerk. Cryer, call *Henry Larimore* the younger: who answered, Here, Sir.

Marshal. Lay your Hand upon the Book, look upon the Prisoner.

Hawk. My Lord, may I be heard a Word?

L. C. B. Yes Sir, you may go on.

Hawk. I humbly thank your Honour.

Hawk. My Lord, is it usual to admit Persons that are not Baptized to give Evidence upon a Trial of Life and Death? for that Person which is now about to be sworn (I suppose) is not Baptized.

L. C. B. Sir, a Person that is not Baptized may be sworn, and give Evidences, in Cases of Felony.

Hawk. My Lord, I submit, but am not fully satisfied in it, and if occasion be I shall crave Counsel in that Point, it being Matter of Law, and not of Fact.

L. C. B. The Jury may consider of it.

Hawk. My Lord, I doubt not but they will weigh of what Validity the Oath and Evidence of such a Person is.

Mar. Larimore the younger, Lay your Hand upon the Book, look upon the Prisoner.

The Evidence that you shall give to the Court, between our Sovereign Lord the King and the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God. Kiss the Book.

Larimore Jun. My Lord, upon the 18th of September, I came home a little after my Father, and coming in the Yard, I saw this Mr. *Hawkins* (that is now at the Bar) run out of my Father's House, with a great Bunch of Keys in his Hand, and run down my Father's Yard, and hid him-

self in a Close with Beans and Weeds; and when I came into my Father's House, I asked him what Mr. *Hawkins* did there: He answer'd me, that he had done too much there, for he had robbed him.

L. C. B. What Day of the Week was it?

Lar. Jun. It was upon a Friday.

L. C. B. In what Year was it?

Lar. It was this last September, my Lord.

L. C. B. Will you ask him any Questions?

Hawk. Yes, my Lord, if I may be permitted.

L. C. B. You may proceed to your Questions.

Hawk. I humbly thank your Honour.

Hawk. Larimore, are you sure that I am the Person which you saw run out of your Father's House?

Lar. Yes, I am sure that you are the same Person that I then saw run down my Father's Yard.

Hawk. What time of the Day was it when you saw me?

Lar. It was an Hour and an half before the Sun was down.

Hawk. Was your Father within when you came there?

Lar. He was within when I came there, and I asked him as aforesaid.

Hawk. Did your Father say no more to you, than what you have related? and did not he enquire which way I ran, or went?

Lar. He said no more, but that you had robbed him.

Hawk. My Lord, and you of the Jury, Is it likely, that when the Father had seen me commit a Robbery in his House, and the Son coming in immediately upon it, that the Father would not ask of him which way I went?

Hawk. My Lord, I have done with him at present.

Lar. Sen. My Lord, pray let *Joan Beamsly* be called next.

Clerk. Cryer, call *Joan Beamsly*.

Cryer. Joan Beamsly. She answer'd, Here, Sir.

Joan Beamsly, Lay your Hand upon the Book, look upon the Prisoner, *The Evidence that you shall give shall be the Truth, &c.*

Joan Beamsly. May it please your Honour, my Lord, upon Friday the 18th of September last past, about an Hour and half before Sun-set, as I was going to Milking in the Street (near *Larimore's* House) I met *Henry Larimore* the younger, and being at that time much troubled with the Tooth-ach, I told him of it, desiring him to help me to some hot Water, for I believed that might give me Ease; *Larimore* reply'd, that if I would go with him to his Father's House, he would help me to some: So going both together, we saw this Mr. *Hawkins* (that is now the Prisoner at the Bar) run out of *Larimore's* House, with a great Bunch of Keys in his Hand, and run down *Larimore's* Yard into a Close of Beans and Weeds, and there hid himself; and when we came into *Larimore's* House, I there heard young *Larimore* ask his Father what Mr. *Hawkins* did there; *Larimore* told his Son that he had done too much there, for he had robbed him. [When my Lord Chief Baron *Hale* heard how these three Witnesses agreed in their Evidence, he said, Here is enough sworn (if believed) to hang twenty Men.]

Hawk.

Hawk. I doubt not but to clear my self, notwithstanding their Evidence, if I may be heard.

L. C. B. You shall be heard.

Hawk. I humbly thank your Honour.

L. C. B. Larimore, have you any more Witnesses?

Lar. Yes, if it may please your Honour, a great many more.

L. C. B. Who are they? call them.

Lar. Call *Richard Mayne*, Constable.

Clerk. Cryer, call *Richard Mayne*, Constable; who answer'd, Here, Sir. And being sworn, said as followeth.

Mayne. My Lord, upon *Saturday* the 19th of *September* last past, came *Henry Larimore* Sen. to me, and giving me a Warrant from Sir *Richard Pigott* to search, commanded me (amongst others) to search Mr. *Hawkins* for some Money and Goods, which he had lost; and when I saw his Warrant, I went to *Tho. Beamsly*, Tythingman, and charged him, with three or four others, to assist me; and coming to Mr. *Hawkins's* House, he denying to open his Doors, I broke them open, and I went into his House, and *Henry Larimore* Sen. did find in a Basket this Gold Ring, and Five-shilling-piece of Silver (Mr. *Hawkins* himself being by whilst he found them) so we had him before Sir *John Croke*, who committed him to Prison, and so on *Sunday* Morning we brought him to *Ailesbury*. This also was sworn by *Dodsworth Croke*, Esq; *Tho. Beamsly*, and young *Larimore*.

L. C. B. said to me, Will you ask these Witnesses any Questions?

Hawk. Yes, my Lord, if I may be permitted.

L. C. B. You may go on to your Questions.

Hawk. I humbly thank your Honour.

Hawk. *Mayne* Constable, did *Larimore* desire you to search my House alone, and did he then tell you, that he saw me rob him the Day before?

Constable. *Larimore* did desire me to search several Houses, but did not say to me that he saw you rob him.

Hawk. Where is the Warrant upon which you broke upon my House? I desire to see it.

Const. Here it is.

Hawk. Was it *Larimore* himself that found the Ring and Five-shilling-piece?

Const. It was *Henry Larimore* the elder that found it.

Hawk. Was I in the same Room when he found them?

Const. You were in the same Room when he found them.

Hawk. This was proved false, by Mr. *Charles Wilcox* and *Nicholas Faulkner*, which Persons kept me in the Hall, whilst they pretended to find them in the Buttery.

Hawk. Constable, why did you compel me to go before Sir *John Croke*, which you knew was my Adversary?

Const. We did not force you before him.

Hawk. This I proved to be so, by *Michael Reed*, Gent. Mr. *Tho. Saunders*, Mr. *Wilcox*, Mr. *Goulder*, *Robert Casemore*, and many others that saw it.

Hawk. Constable, why did you advise the Jaylor, Mr. *Burch*, to load me well with Irons?

Const. I did not advise him to do so.

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Hawk. Pray, my Lord, ask the Jaylor, Mr. *Burch*, what the Constable said to him when he brought me thither.

Clerk. Mr. *Burch*, inform the Court what the Constable said to you, when he brought Mr. *Hawkins* to you as a Prisoner.

Jaylor. My Lord, when the Constable delivered Mr. *Hawkins* to me on *Sunday* Morning, he said, that Mr. *Hawkins* was a notorious Pick-lock, and that he was confident he could pick every Lock about the Prison, and therefore he advised me to watch him narrowly, and load him well with Irons.

Thomas Beamsly being sworn, his Evidence being the same in Effect with the Constable's, for Brevity sake I omit; but I craved leave to ask him a Question or two, which being granted, were as followeth.

Hawk. *Beamsly*, Pray what Discourse had you with Mr. *Wilcox* upon the 19th of *September*, presently after my House was broken up, concerning the time when (as your Brother pretended to you) he lost the Ring and Five-shilling-piece of Silver?

Beamsly. He did not remember that he had any Discourse with Mr. *Wilcox* about that.

Hawk. Did you not say to Mr. *Wilcox*, that your Brother *Larimore* told you that he had lost the Stone Ring, and Five-shilling-piece of Silver, which (as he pretended was found in my House) before the difference began betwixt me and your Brother; and moreover that your Brother said he had an intent to search for the same a Month before?

Beamsly replied, that he did not remember any such Discourse.

Hawk. My Lord, may I be heard a Word or two?

L. C. B. You may go on.

Hawk. I humbly thank your Honour.

Hawk. My Lord, I suppose that I can prove these Particulars.

1. That *Larimore* told *Beamsly* that he had lost this Gold Ring and Five-shilling-piece of Silver now in Question, before there was any difference between *Larimore* and my self, which began in *Michaelmas* Term 1667. This was proved by Mr. *Wilcox*.

2. And that *Larimore* confess'd upon his Oath before Sir *John Croke* (upon the 19th of *Sept.*) when I was committed, that he lost the said Ring and Piece of Silver about a Month before, which must be about *Aug. 19*. This was proved by Mr. *Brown*, *Faulkner*, and others.

3. I can prove that *Larimore* told Sir *Richard Pigott*, when he went for his Warrant to search, that he did suspect several Persons for robbing him of this Gold Ring and Five-shilling-piece, and that I was only one of the suspected Persons. This Sir *Richard Pigott* did acknowledge to be true.

But now he swears that he saw me steal the Gold Ring and Five-shilling-piece out of his House on *Friday* the 18th of *September*, an Hour and half before Sun-set, 1668.

Hawk. I pray, my Lord, and you that are of this Jury, take notice of this, and compare the times out of his own Mouth; but more of this when I come to make my Defence.

L. C. B. Larimore, have you any more Witnesses?

Lar. Yes, my Lord.

L. C. B. Call them, who are they?

Lar. Call *Margaret Larimore*.

Clerk. Cryer, call *Margaret Larimore*, the Wife of *Henry Larimore*.

Cryer. *Margaret*, the Wife of *Henry Larimore*. She being sworn said, that, when she was a Servant to *Larimore*, which now is her Husband, she had seen Mr. *Hawkins*, at several unseasonable Hours in the Night (when her Master was in bed) lying lurking in and about her Master's House, Yard, Windows, and Doors, and said, that she believed he lay there for no good Intent.

Hawk. My Lord, may I ask this Woman a Question or two?

L. C. B. You may do so, if you please.

Hawk. I humbly thank your Honour, I'll promise you to be brief.

Hawk. At what time was it, *Margaret Larimore*, that you saw me lurking in your Master's Yard, as you have said?

Marg. Lar. It was in the Night-time.

Hawk. But how long may it be since?

Marg. Lar. I can't tell, it might be about the time that my Master was robbed.

Hawk. Did you speak, or call to me, when you saw me there?

Marg. Lar. No, for I was affrighted at it. This same was also sworn by *Richard Mantill*, alias *Miles*, Son-in-Law to the said *Larimore*, and also by *William* his Son, which for brevity sake I omit farther to relate.

L. C. B. *Larimore*, have you any more?

Lar. Yes, my Lord, to prove that this Ring and Five-shilling-piece is mine.

L. C. B. Call them, who are they?

Lar. Esq; *Dodsworth*, Sir *John Croke's* eldest Son, and Mr. *Good*, Minister of *Long Crendon*, my Lord.

Clerk. Cryer, call *Dodsworth Croke*, Esq; and *Edward Good* of *Long Crendon*, Clerk: both answer'd, Here, Sir. They both being sworn, Mr. *Dodsworth Croke* said as followeth, (taking the Ring in his Hand, turned it up and down, and looked very narrowly upon it within and without, and put it upon his Finger, and pulling it off several times in the Face of the Court and Country, he then inform'd my Lord) That he was confident, that this was *Larimore's* Ring; and for his Proof and Credit, tells the Court that he had pawned it to *Larimore*.

Mr. *Good* took the Five-shilling-piece into his Hand, and swore, that he being at *Buckingham* Sessions last, about some Trouble which I had put him to, he then wanting some Money, did pawn a Five-shilling-piece to this *Larimore* for other Money; and he desiring of him to take care that he had the same Piece again, *Larimore* told him that he put a Mark upon it: So seeing a Mark upon this Five-shilling-piece, he swore that he did verily believe that this was the same Five-shilling-piece which he had pawned to *Larimore* at the Sessions before.

L. C. B. said to me, Sir, if you will ask the Witnesses any Questions, you may.

Hawk. I humbly thank your Honour for that Freedom; but I do humbly conceive that the proving of the last point, viz. that the Ring and Five-shilling-piece was either *Larimore's* own

Goods, or pawn'd to him, is not much material to my Case; for I am free to confess (as much as I can have ground to believe) which is, that *Larimore* might have the Ring and Five-shilling-piece of Silver in his Possession; but the Charge against me is, that I stole them from him, which I do flatly deny, and do not doubt of clearing my self when I come to my Defence, if I may be heard.

L. C. B. Sir, you need not question but you shall be heard.

Hawk. I humbly thank your Honour, and crave leave to be heard a Word or two (if it be not unseasonable.)

L. C. B. You may go on.

Hawk. May it please your Honour, and the Jury, to take notice that Mr. *Good* swears he believes this to be the Five-shilling-piece that he pawned to *Larimore* last Sessions at *Buckingham*, but I desire to know if *Larimore* swears that this is that Piece which Mr. *Good* pawned then to him, for he best knows.

L. C. B. *Larimore*, what say you to that?

Lar. My Lord, I do swear that this is the same Five-shilling-piece which Mr. *Good* pawned to me, the last Sessions at *Buckingham*.

Hawk. Then, my Lord, and the Jury, be pleased to observe, That Sessions was held upon the 9th and 10th of July, 1668, but the Difference between me and *Larimore* (for Tythes) was begun in *Michaelmas-Term*, 1667, which is near nine Months before that Sessions; and notwithstanding *Larimore* did say to his Brother *Beamsly*, upon the 19th of September, that he had lost this very Ring and Five-shilling-piece of Silver before the Difference began, which is impossible, my Lord, as appears by the Oaths of *Larimore* and Mr. *Good*; for how could he be robbed of that Five-shilling-piece nine Months before he had it? And that he did say the very Words to his Brother *Beamsly* we have already proved, by the Testimony of Mr. *Wilcox*.

L. C. B. said, Mr. *Hawkins*, was this Suit for Tythes begun by you against this *Larimore* before the time that *Larimore* swears this Felony was committed?

Hawk. Yes, my Lord, for I began that Suit for Tythes in *Michaelmas-Term*, 1667, and *Larimore* swears that I robb'd him upon the 18th of September, 1668, which is, my Lord, about a Year after. My Lord, it is an easy way thus for the Fanaticks to pay Tythes; if they can but hang up the Clergy, they may cease all their future Pleading for Liberty of Conscience.

Now *Larimore* began to stumble, and shew his Malice in prosecuting me unjustly, by his multiplying of feigned Felonies, wherewith he did then endeavour to load me, of which I appeared innocent.

L. C. B. *Larimore*, have you any more?

Lar. Yes, my Lord, Pray call *John Chilton*.

Clerk. Cryer, call *John Chilton*.

Cryer. *John Chilton*: who answered, Here, Sir; and being sworn, my *L. C. B.* said to him, Come *Chilton*, what can you say to this Business?

John Chilton said, My Lord, I can say nothing but that I am paid for my Boots.

L. C. B. What Boots?

Chilt. My Lord, I am paid for my Boots.

L. C. B. Our Business is not now about Boots, but however, come, and tell me what thou meanest by them?

Chilt.

Chil. My Lord, Mr. *Hawkins* brought me a pair of Tops, to put new Legs to them, which I did; and he coming by my Shop, told me he wanted his Boots; I reply'd, they were done: but I being then about to go out, did promise Mr. *Hawkins* to lay them in my Window, so that he might take them as he went home, which accordingly he did; and when I came home, I went to Mr. *Hawkins*, who at that time was at Sir *John Croke's* House, where he contented me for my Work before we parted: And this is all that I can say, my Lord.

L. C. B. What is this to the purpose? can you say any more, *Chilton*? if you can, go on.

Chil. My Lord, Mr. *Hawkins* paid me honestly for the Boots: But as soon as he began to demand the Tythes of *Chilton*, and did sue for them, then they lay at me Night and Day to have me charge Mr. *Hawkins* with flat Felony, for stealing the said Boots out of my Shop; but I told them, that I laid them in my Shop-Window for him, and did bid him take them as he came back; and he paid me for my Work, and therefore I cannot say he stole them.

L. C. B. Who were they that desired you to charge Mr. *Hawkins* with the stealing of your Boots?

Chil. This *Larimore*, Mr. *Dodsworth Croke*, *Richard Mayne* the Constable, *Miles* and *John Sanders* (who is since dead, my Lord.)—*Larimore* here interrupted *Chilton*, and said, My Lord, I have five or six Witnesses that can prove that all this is false which *Chilton* hath sworn.

L. C. B. Call them, for I'll hear all, if I sit till Night.

Then *Larimore* call'd *Dodsworth Croke*, *William Croke*, *John Stop*, *Thomas Welch*, *Samuel Salter*, and *William Sanders*; all these being sworn, the Sum and Substance of their Evidence was to this Effect.

That they had heard *John Chilton* say that I had stolen a pair of Boots from him, to which *Chilton* (being then upon his Oath) said, that Mr. *Hawkins* did no otherwise than what before I have sworn; and he further added, that he never said that I had stolen any thing from him, for he had no reason for it.

L. C. B. Did this *Larimore* desire you to charge this Mr. *Hawkins* with Felony? and when did he desire you to do so?

Chilton. My Lord, *Larimore*, and the rest that I have named, desired me to charge Mr. *Hawkins* with flat Felony, for stealing the said Boots, as soon as he demanded the Tythes of *Chilton*; and they would have forced me to fetch a Warrant from a Justice of Peace to search for them, and did further threaten me, in case I would not do it, that Sir *John Croke* would indict me at the Assizes, as one accessory to the stealing of my own Goods.

L. C. B. Was *Larimore* one of them?

Chil. Yes, my Lord, and he said, that he would make me swear that Mr. *Hawkins* had stole my Boots, and for that End did serve me with a Subpoena to be here.—Here *Larimore* the second time interrupted *Chilton*, and said, My Lord, this Fellow (pointing at *John Chilton*) is hired by Mr. *Hawkins* to swear this.

Chil. reply'd, No, my Lord, I am not hired by Mr. *Hawkins* to swear, but I might have

been hired, or borne out, if I would but swear that Mr. *Hawkins* stole my Boots, by one *Croxstone*.

L. C. B. How! what is that! hired, or borne out to swear? by whom, and how? tell me the Story.

Chil. My Lord, I am not hired to swear by Mr. *Hawkins*, but if I would swear that he stole my Boots out of my Shop, I might have been borne out in so doing. For *Tho. Croxstone*, of *Weston on the Green*, in the County of *Oxon*, told me upon *Monday* last, it being the 8th of *March* 1668, that if I would but swear what he would have me against Mr. *Hawkins* (viz. that he stole my Boots) he would bear me harmless; but I replied, that it went against my Conscience to do it. I added farther, that if I should be so wicked as to swear it, Mr. *Hawkins* can prove the contrary by Mr. *William Croke* and others; to which *Larimore* replied, that I need not fear what Mr. *Croke* knew in that case, for he is one of us, and will not justify any thing that may tend to our Prejudice. I farther told him that I durst not do it; for if I should, Mr. *Hawkins* might make me fly the Country, as *Smart* did *Wheeler*: To which *Croxstone* replied, that if I would swear it, he would bear me out against the said Mr. *Hawkins* as far as an Hundred Pound would go, and if that would not do, as far as Five Hundred Pound would go.

L. C. B. How! bear you out to swear! What *Croxstone* is this that would do so? this is not likely to be true.

Tho. Croxstone said, My Lord, I said no such thing.

L. C. B. I do not believe it to be true.

Chilton run in, and said, As I live and breath, my Lord, *Croxstone* did say, if I would swear that Mr. *Hawkins* had stole my Boots, he would bear me out, as I said before, and if I made any doubt of it, he would give me Bond to make good his Promise.

L. C. B. said, This is strange.

Croxstone. My Lord, I said I would bear him out in speaking the Truth, and no otherwise.

Hawk. My Lord, may I be heard?

L. C. B. Yes, you may go on.

Hawk. I thank your Honour. My Lord, pray let me ask Mr. *Croxstone* two or three Questions.

L. C. B. So you may, go on.

Hawk. Mr. *Croxstone*, do you confess that you did promise to bear out *Chilton* (as you said before) in swearing the Truth?

Croxstone. Yes, Sir, I did, and no otherwise.

Hawk. Was it not about the Boots?

Croxstone. Yes, Sir, it was so.

Hawk. Did not you desire *Chilton* to swear that I had stolen his Boots, after that he had told you I had paid him for them, and thereupon promise to bear him out against me, in 100 or 500 l.

Croxstone. I think you cannot prove it against me.

Hawk. I pray, my Lord, and you of this Jury, consider that this *Chilton* is one of *Larimore's* Witnesses, and swears for the King, yet he swears that he had given me Orders to take those Boots, and that I then paid him for Legging of them, and that he had repeated this to *Larimore* and *Croxstone* several times; and after all this, *Larimore* and *Croxstone*, with others, us'd their utmost En-

Endeavours to persuade *Chilton* to charge me with Felony for stealing them, and *Croxstone* promised him to bear him out in so doing, as far as 100*l.* would go, and if that would not do, as far as 500*l.* and give him Bond for his Security, &c. My Lord, if this amounts not to a Subornation, I am mistaken. But, my Lord, I have two Witnesses more to prove the same against Mr. *Croxstone*, and I pray that they may be heard.

L. C. B. Who are they?

Hawk. *Ann Scoly*, and *John*, the Son of Mr. *Tho. Sanders*. Both these being called, justified in Court what *Chilton* had sworn against Mr. *Croxstone*: Upon which my Lord Chief Baron said to *Croxstone*, Come, you did ill to sollicite Persons to swear these things which you knew were false; and 'tis farther added, that this made not for the King, but rather for the Prisoner at the Bar. After all this, a rude Fellow (*Thomas Welch*) came in, and said, My Lord, I did hear *Chilton* say, that Mr. *Hawkins* had stole a pair of Boots from him.

L. C. B. What, more Boots still? Come, *Larimore*, have you any more?

Larimore said, Yes, my Lord, one Mr. *Boyce*; who being sworn, said, That at a certain time, he coming into a House at *Chilton*, found this Mr. *Hawkins*, now the Prisoner at the Bar, and one *James Noble* (which *Noble* was then drunk, and asleep upon a Bed) and I saw Mr. *Hawkins* have his Hand in *Noble's* Pocket, and the said *Noble* told me, that at that time he lost a Gold Ring and a piece of Gold out of his Pocket.

L. C. B. said to me, Sir, what say you to that?

Hawk. My Lord, I desire to know if there be any Bill or Indictment against me for it.

Clerk. There is none, my Lord, that I do know of.

Hawk. I desire, my Lord, that *Noble* may be sworn, if he be here.

Lar. He is not here, my Lord.

L. C. B. Why was not that *Noble* here himself to prosecute?

Lar. I could not find him, my Lord.

Hawk. I desire to know whether *Boyce* came hither of his own Accord, or if he be *Subpœna'd* to be here; (if so) by whom, and who bears his Charges?

Boyce. I was *Subpœna'd* by *Larimore*, and he bears my Charges, my Lord.

Hawk. How long was it since, Mr. *Boyce*, that you saw my Hand in *Noble's* Pocket, as you said before?

Boyce. It may be near two Years ago, my Lord.

Hawk. Did you see me pick (or take) out of the said *Noble's* Pocket, the said Ring, or piece of Gold, or any thing else?

Boyce. I saw your Hand in *Noble's* Pocket, but did not see you take any thing out of it.

Hawk. Did *Noble* ever tell you, that I had pick'd his Pocket of the said Ring, or piece of Gold, or any thing else?

Boyce. No; but said, he lost them at that time.

Hawk. But you say that *Noble* was drunk at that time, and if so, it's possible he might be mistaken.

Boyce. So he was drunk, and asleep likewise.

L. C. B. I think you were all drunk.

Hawk. *Boyce*, you might have done well, to have told Mr. *Noble* of this, when he told you that he had lost his Ring and piece of Gold; but can you say any thing touching *Larimore's* being robb'd, or do you know that I am the Person that robb'd him?

Boyce. No not I, my Lord, I cannot charge him.

Hawk. But you say that *Larimore Subpœna'd* you to be here, and that he bears your Charges?

Boyce. Yes, my Lord, and so he does.

Hawk. Mr. *Boyce*, if this be all you can say for *Larimore*, you will hardly requite his Charges.

Hawk. My Lord, may I be heard, as to the Evidence of *Boyce*?

L. C. B. You may go on.

Hawk. I humbly thank your Honour.

Hawk. This *Boyce* swears, my Lord, that about two Years last past he saw my Hand in *Noble's* Pocket, and that *Noble* told him, he then lost a Gold Ring and piece of Gold. My Lord, I think (with Submission to your Honour and the Court) I am not bound to answer to this Charge, because there is no Indictment exhibited against me for it, nor is *Noble* himself here to prosecute, or can *Boyce* swear that I pick'd *Noble's* Pocket, or that *Noble* ever told *Boyce* I did (as he himself swears.) But, my Lord, I observe in this the Malice of *Larimore's* Heart, as well as in that of the Boots; for *Boyce* swears that he can say nothing to *Larimore's* Bill of Robbery, and yet he forces him to come from *London* hither, to start a senseless Story about *Noble's* Ring and Gold, which is of near two Years standing. My Lord, if there had been any Truth in it, why was not *Noble* himself here to prosecute it? and why did he let it rest so long? I say again, my Lord, if it had been true that I had pick'd *Noble's* Pocket, and if *Larimore* had known it, I pray, my Lord, and you of the Jury, what had that concern'd *Larimore*? but, my Lord, I am as clear of picking *Noble's* Pocket, as I am of stealing *Chilton's* Boots, and as clear of both these, as I am of robbing this Fellow *Larimore*, that now calls my Life in question: Nay, if he can fairly prove me guilty of one, I am willing to suffer as guilty of all.

My Lord, I am bold to appeal to your Honour, whether it be a fair Prosecution in *Larimore*, to stir up *Chilton* falsely to charge me with Felony in stealing his Boots, when I had not only a Right in them, but also Leave from him to take them, and paid him for his Work, which *Larimore* himself knows. Nay, my Lord, if I had never paid *Chilton* for his Legs, the Tops being mine, by Law it had not been Felony, but a Trespass, because I had Leave from him to take them, and a Right in them, the Tops being mine. And again, my Lord, I appeal to your Honour, whether it be fair in *Larimore* for him to ride up and down City and Country, to bring a Multitude of Witnesses together that can say nothing to his Bill (as *Boyce* swears he cannot:) If this doth not discover Malice in a Prosecutor's Heart, I know not what doth; and if that appears to your Honour and the Jury, to be in him, how far that ought (as well by Law as Equity) to frustrate his Evidence, I am willing to leave to your Honour and the Jury, and so I have done as to *Boyce's* Evidence.

L. C. B.

L. C. B. Larimore, have you any more?

Larimore. Yes, my Lord, *John Cox*, and *Francis Lucy*. They being both sworn:

John Cox said, My Lord, I being in *Mr. Hawkins's* Company not long since, one asked him, how he thought to come off at the Assizes: *Mr. Hawkins* reply'd, he cared not much for this Plot (tho he should be Convicted,) for they could but burn him in the Hand for it, and that he could bite out.

Lucy being sworn, said, that he heard *Mr. Hawkins* confess, that he owed *Larimore* 15 s. but because he had dealt so unjustly with him, he would make it cost *Larimore* fifteen times 15 s. before he would pay him.

L. C. B. said, This makes little to the purpose.

Come, *Larimore*, Have you any more?

Lar. I think not, my Lord.

L. C. B. If you have any more Witnesses, call them, and they shall be heard, and do not say, when I am gone, that your Witnesses could not be heard.

Lar. My Lord, I confess they have been fully heard, and I have no more to say.

L. C. B. said to me, Sir, you have heard the Indictment against you, and the Evidence to prove it; you have heard the Charge, now say what you can for your own Defence, and you shall be heard.

Hawk. I humbly thank your Honour; and I hope, my Lord, because the Evidence is large, I shall have the more time allowed me to make my Defence; and if so, I doubt not but fully to open this Conspiracy.

L. C. B. Do not fear that; for as they have been heard at large, so shall you likewise (God forbid else.)

Hawk. I humbly thank your Honour, and do promise to be as brief as conveniently I can: And as I intend to offer nothing but the naked Truth, so I will say no more (if I am not misinform'd) than I can prove to be true. And, my Lord, because it may seem necessary for me to offer many Things by way of Defence, in answer to so great a Charge; to save time, I pray that it may not be expected by your Honour, or the Jury, that I should call Witnesses to prove every Particular: But when I offer such Things as are most material, if either your Honour, or the Jury, be not fully satisfied touching the Truth of such material Points, I do humbly pray, that I may be called upon to prove them; for when I am not called upon for Proof, I shall, under Favour, my Lord, take it for granted that I am believed. And for Method herein, if I may have leave, I do intend this.

1. In General, to shew how improbable it is, that I should be guilty of this Robbery, and also deliver some Hints to move the Court and Jury to question whether this Prosecutor (*Larimore*) was robbed at all, or no.

And 2dly, More particularly to examine the Evidence, as to Matter of Fact.

L. C. B. Go on, Sir, to your Defence.

Hawk. May it please your Honour, and you of this Jury, I begin with the first part of my Defence, which is to hint how unlikely it is, that I should be guilty of robbing this *Larimore*.

1. *Larimore* is generally known to be a notorious Anabaptist, and an Enemy to the Church of England, and a Hater of the Ministry in ge-

neral; but more particularly, he is most envious and malicious against my self, because I sued him for Tythes, and caused him to be indicted for not coming to Church, or Baptizing his Children: For which Reason his Malice against me hath appeared notorious several Ways, as, amongst others,

1. By dissuading all that owed me any Money, not to pay me.
2. By his inducing those to whom I owed Money, to Arrest and trouble me.
3. By dissuading those that I sued for Tythes, not to agree with me; he promising them, that *Sir John Croke* and himself would force me to run the Country e're-long.
4. By his continual tormenting, and vexing me with his false Arrests, and illegal Indictments.
5. By his constant Endeavour to dissuade my Friends from any ways relieving me, or mine, in my greatest Wants and Necessities, advising them to starve us.

My Lord, and this Jury, if you are not fully satisfied in any of these Particulars that I have alledged, I am ready to prove them; but if this be granted, they are no doubt sufficient Arguments to prove the Malice of his Heart. Again, I say, that it is no ways possible that *Larimore* was robbed at all; and of this Opinion are most of his Neighbours round about him, as may appear by this Certificate, which followeth.

WE do humbly Certify, That *Henry Larimore* of Chilton, in the County of Bucks, Labourer, is a notorious Anabaptist, an Enemy to the Church of England, and a perfect Hater of all Ministers of the same, but in particular, most Inveterate and Malicious against *Robert Hawkins*, Clerk, late Minister of the Church of Chilton aforesaid; for that he doth not only seek and design utterly to ruin the said *Mr. Hawkins* himself, but makes it his Business, and daily Practice, to instigate others to do the like, and for no other Cause, as he hath often confessed himself, but for that the said *Mr. Hawkins* hath caused him to be Indicted for not coming to Church, and Sued him for Tythes; And we do verily believe, and are fully satisfied in our Consciences, that the said *Mr. Hawkins* is not at all guilty of the pretended Felony, in stealing the Ring, and piece of Silver, which the said *Larimore* hath charged him with, but that it is meer Contrivance inchoated, and set on foot by the said *Larimore*, *Sir John Croke*, and others, on purpose to revenge themselves. And we do also believe, that the said *Mr. Hawkins* is a very honest Man, and that he is a very able Minister, and a true and faithful Labourer in God's Word, and never heard that he was ever suspected in the least of Felony, till this Malicious Prosecution, which is by the said *Larimore*, and others, whom the said *Mr. Hawkins* sueth for Tythes,

Witness our Hands, March 8, 1668.

<i>Michael Read</i> , Gent.	The Widow <i>Paverell</i>
<i>William Read</i> , Gent.	<i>Robert Sanders</i>
<i>Mrs. Bulstrode</i> , Widow.	<i>Christopher Hinton</i>
<i>Mr. John Bulstrode</i>	<i>John Mortimer</i> , Sen.
<i>John Turner</i>	<i>Mr. John Daniel</i>
<i>Joseph Parsons</i>	<i>Mr. John Clarke</i>
<i>Nicholas Faulkner</i>	The Widow <i>Clare</i>
<i>Mr. William Bulstrode</i>	<i>William Landsdell</i>
<i>John Chilton</i>	<i>William Bouden</i>

John

John Newman
 Thomas Coles
 The Widow Newman
 Robert Barlow
 Theophilus Sanders
 John Sanders
 John Mortimore, Jun.
 Mr. Henry Golder
 Mr. Thomas Sanders
 Mr. Henry Lovell
 Mrs. Lovell, Widow.
 Owen Gibson
 Mr. Tho. Sanders, Sen.
 Robert Casemore
 Edward Jarvice
 Thomas Green
 Edward Barker
 John Grace
 John Freeman
 Richard Carr
 John Carr
 John Acreman
 Thomas Whyte
 Thomas Ludet
 The Widow Meades
 Richard Toms
 Joseph Nero
 Richard Low
 John Culledge
 Richard Waude
 Theophilus Hinton
 Edward Clarke
 Jeffery Hart
 Richard Budd
 John Budd
 Thomas Higgs
 Roger Gye
 Robert Coxhead
 William Hitchcock
 John Powell
 Luke Turner
 Richard Badger

John Golder
 John Newton
 William Collet
 John Beckley
 Richard Kemp
 The Widow Acreman.
 Robert Flint
 William Beckly
 Robert Hicks
 John Barney
 Robert Steele
 Stephen Toms
 Robert Willet
 William Neighbour
 Will. Chittle
 Henry Parker
 William Ash
 John Golder, Jun.
 William Golder
 William Tipping
 Richard Goodwyn
 John Bosly
 Moses Collings
 Roger Carr
 John Cato
 William Hayward
 Edward Hollyman
 Abraham Quelch
 John Pymm
 John Carter
 William Toms
 Robert Bud
 William King
 Cadwalider Crawton
 William Ash
 Thomas Whyte, Sen.
 Thomas Whyte, Jun.
 David Turner
 Jonathan Hand
 John Young
 John Bedford
 John Norcutt.

By this Certificate, which you see subscribed with above an Hundred Names, wherein many others (for brevity sake) are omitted, altho I made no use of it upon my Trial; yet the World may see what an Opinion Larimore's Neighbours had concerning him, and his (pretended) Robbery; which Certificate I have for that Purpose here inserted.

2. It is not likely that Larimore was robb'd, because he did not declare it to his Neighbours immediately, which doubtless he would have done, had any such thing befallen him.

3. Nor is he certain (as to the time,) when he was Robbed.

For 1. He told his Brother Beamsly, that he had lost the Ring and Five-shilling-piece (in Question) before there was any difference between him and I: As may appear by this Certificate, under Mr. Willcox's own hand, which is as followeth.

T Hese are to Certify all whom it may concern, that Thomas Beamsly of Chilton, Tythingman, told me, Charles Willcox of Long Credon (upon September 19, in the 20th Year of his Majesty's Reign, An. Dom. 1668.) That the Five-shilling-piece of Silver, and the Stone-ring, which Larimore pretended he found in Mr. Hawkins's House, were both lost before there was any difference

between the said Larimore and the said Mr. Hawkins; and he further added, that his Brother Larimore told him, that he had an intent to search for the same Ring and Five-shilling-piece, above a Month before he did. This I can, and will depose, whensoever I shall be thereunto required.

Witness my Hand
 Octob. 1, 1668.

Charles Willcox.

By this Certificate, it appears (by Larimore's own Confession to his Brother Beamsly) that he had lost this Ring, and Five-shilling-piece, before there was any difference between him and I; and seeing I began my Suit for Tythes in Michaelmas Term, 1667, against him, and others, as it is well known to the Inhabitants of Chilton, (and also may appear by the Records of the Exchequer.)

This is the first time, that Larimore said he had lost the Ring, and Five-shilling-piece.

And that this is false, must needs appear, by what Mr. Good and Larimore have already sworn in open Court, viz. that Mr. Good pawned the Five-shilling-piece to Larimore at Buckingham Sessions last, (which Sessions were held upon the 9th and 10th of July, 1668.) which is near nine Months after the difference began.

And moreover, Larimore confessed upon his Examination before Sir John Croke, when I was Committed, (which was upon the 19th of September, 1668) that he had lost the Ring and Five-shilling-piece a Month before, which must (consequently) be about the 19th of August, 1668. And if so, how is it possible that he could have lost them before the Difference began betwixt us, which was above ten Months before?

3. He now swears in open Court, that he saw me steal the said Gold Ring, and Five-shilling-piece of Silver, out of his House, upon Friday the 18th of Sept. 1668, (precisely) an Hour and half before Sun-set; all which times being compared together, can no ways be possible; for which, I dare appeal to all that hear it. Nor is it likely, in case he could prove that he was robb'd (which I am confident, he never can) that I am the Person that robbed him; as may appear upon these considerations, amongst others.

1. Is it likely that I should commit a Robbery in my own Parish, (in the day time) where all that saw me, must needs know me, and at the House of such a Person as this Larimore is, that had solemnly swore (but a little before) that he would take away my Life, as may appear, by what his Son said to Anne Scholy?

2. Is it probable, that if I were Guilty, I would not have made my Escape, having twenty four Hours time, and four or five Hours notice after they first attempted to search my House; or that in all that time, I could find no better place to conceal a Ring, and Five-shilling-piece, than in a little Basket with two or three Eggs, (which all that time was hanging upon a Pin.)

Again, if Larimore saw me rob him upon the 18th Day of Sept. 1668, (as he swears he did) why did not he then secure me? He swears I ran away, why did not he send out Hue and Crys, to discover, and apprehend me? But the said Larimore was so far from doing it, that he

never declared it to any of his Neighbours, nor to the Constable, when he commanded him to search, as may appear as well by the Search it self, (in that they searched other Houses before they searched mine) as by the Constable's Oath, who swears, that *Larimore* said not any thing to him, that he had seen me rob him, nor did the said *Larimore* declare it to Sir *John Croke*; for if he had, Sir *John* (no doubt) would have inserted it in the *Mittimus*, which he hath not done; Nor did he declare it to Sir *Richard Pigott*, from whom he fetch'd his Warrant to search, as may appear by the Contents of it. Whereupon, my Lord Chief Baron *Hale* calling to the Constable for the Warrant, (which being deliver'd) the Judge (himself) immediately espied, that the said Warrant bore date a Day before the Robbery was committed; which when my Lord observed, he asked *Larimore* if he fetched this Warrant to search for this Ring, and Five-shilling-piece; to which *Larimore* replied, he did; and then my Lord asked *Larimore* upon what Day he was Robbed, he replied, upon *Friday*, the 18th of *September*, 1668.

L. C. B. How comes it then to pass, *Larimore*, that the Warrant bears date the 17th Day, and you swear, that the Prisoner at the Bar did not Rob you till the 18th Day? This is likely to be true.

Larimore to this replied, that he was robbed at several other times.

Hawk. (My Lord) may I be heard a word?

L. C. B. You may go on.

Hawk. I humbly thank your Honour. And I hope the Jury will take notice how *Larimore* hath ensnared himself, by the date of the Warrant, which my Lord first discovered. And whereas *Larimore* replies, that he was Robbed at several other times, he may have credit, (but by those only that can believe all that he hath said and sworn;) For he saith that he was robbed before he and I differed, which must be before *October*, 1667, and he told Sir *John Croke* likewise (when I was committed) that he was robbed of the foresaid Goods but a Month before, which must needs be about the 19th of *August*, 1668, but now he swears in Court, that he saw me steal these Goods on *Friday*, the 18th of *September* 1668, which must needs be impossible, that I should rob him at three several times of the same Ring and Five-shilling-piece; and besides this, it is improbable, that he should be robbed before, *October* 1667, and again in *Aug.* 1668, because he never declared any of these Robberies to any Person, before the 16th of *Sept.* 1668, upon which Day, he and Sir *John Croke* concluded upon this Conspiracy, as hereafter we shall make appear; And moreover *Larimore* (himself) confessed even now, that he fetch'd this Warrant to search for this very Ring and Five-shilling-piece (which now he denies.) By this, all may see, how notoriously he contradicts himself.

L. C. B. said to *Larimore*, Thou art very cunning, to be provided with a Warrant, a day before you was robbed. It seems you knew upon the 17th day, that you should be robbed on the 18th day, and also, that this Person (now at the Bar) should Rob you. Surely, you can Divine. Here the People began to cry out shame on *Larimore*.

L. C. B. said to me, Sir, but if you were in-

nocent of this Robbery, why did you refuse to open your Doors, or to have your House Search'd?

Hawk. My Lord, I had several Reasons, that moved me so to do.

1. In General, most of those Persons that were present, were my inveterate Enemies, and several of them had threatned to ruin me, and my Family; and therefore, I had reason to suspect, that they came to injure me, either in my Possession, or Goods; For the first, Sir *John Croke*, and *Larimore*, had often threatned to pull down my House, and for that end, had hired several Persons to make a Forcible Entry upon it, and particularly, they had lately hired *Jaires* the Son of *Leonard Styres* of *Thame*, (in the County of *Oxon*) by a Ladder to climb up, and run down my Chimney, and open my Doors, when we were all Abroad: And about the same time they also contracted with one *Christopher Tyler* of *Chilton* for the same purpose. And 2. I feared the seizing of my Goods by the said Persons, because they had then a Writ of *Levary* (or Execution) to seize them, which *Larimore's* Son had a few days before in part executed, and he was then present; And if these reasons are not sufficient, I have more to justify my act, in refusing to have them search my House, which was all (my Lord) I ever denied, for I then declared my self willing that Mr. *Sanders* the other Constable, (he being then at the next Door) might charge whom he pleased, and search as narrowly as he could.

L. C. B. said, Mr. *Hawkins*, can you prove what you have said?

Hawk. Yes, my Lord; which Particular shall I prove?

L. C. B. Prove that about the Ladder, if you can.

Hawk. I pray, my Lord, call *John Acreman*: He being called, did fully justify what I said concerning their intended Forcible Entry, and added farther, that he did help to set up the Ladder for that purpose, being called by Sir *John Croke's* own Sons, they and *Larimore* standing by all that time to watch. And touching the second Particular, concerning the seizing of my Goods, Mr. Sheriff himself can justify, that they had then in their Hands such a Writ: (my Lord) he is in Court, if your Honour please to call him.

And for the 3d particular, that I shewed my self willing that Mr. *Sanders* should search, I can prove (my Lord) by these Witnesses following, viz. *Michael Reed*, Gent. Mr. *Thomas Sanders*, Mr. *Henry Golder*, *Robert Casemore*, Mr. *Charles Willcox*, and several others that were present. My Lord Chief Baron hearing these Reasons fully proved, commended my Discretion, in not opening my Doors; and he added further, that he should have done as much himself, saying it was a foul business; and the Judge (then looking towards Sir *John Croke* with an angry Countenance,) said to me, Sir, is this Sir *John Croke* concerned in this business?

Hawk. If it may please your Honour (my Lord) with permission, I suppose that Sir *John Croke* is deeply concerned in this Conspiracy, and I doubt not but to make it appear to the World, (if I may be heard.)

L. C. B. You need not fear that, for you shall have time; go on.

H h h h

Hawk.

Hawk. I humbly thank your Honour; and I crave leave to call two Witnesses, viz. Mr. *Charles Willcox*, and Mr. *Samuel Brown*; both these being called, Mr. *Willcox* said, If it may please your Honour, my Lord, upon *Friday* the 18th of *September*, 1668, I was at *Larimore's* House in *Chilton*, (from Noon till it was near Night) with *Larimore*, a driving of some bargain about *Tyles*, and other things; and, my Lord, Mr. *Hawkins* was not at *Larimore's* House all that Afternoon, nor did I hear any thing at all then, that *Larimore* was robb'd, which (my Lord) I must needs have done, if he had been robbed that Afternoon, for I was there.

L. C. B. At what time came you to *Larimore's* House, Mr. *Willcox*? take heed what you say.

Willcox. Before Noon, my Lord.

L. C. B. Mr. *Willcox*, how long did you stay there?

Mr. Willcox. Until it was near Night, my Lord.

L. C. B. Was *Larimore* with you all that time?

Mr. Willcox. Yes, my Lord, for we were about to bargain for some *Tyles*, and other things.

L. C. B. Are you sure that it was upon the 18th of *September* that you was at *Larimore's* House?

Mr. Willcox. I am sure, my Lord, that it was upon the 18th of *September* that I was there, and the Day before Mr. *Hawkins's* House was broke open.

L. C. B. What Day of the Week was it upon?

Mr. Willcox. It was upon a *Friday*, my Lord, and Mr. *Hawkins's* House was broken open on the next Day, it being *Saturday*.

Lar. It was upon *Thursday*, my Lord, that Mr. *Willcox* was at my House, it was not upon that Day that my House was robb'd, but the Day before.

Sir *Ralph Verney* replied, No, no, *Larimore*, it could not be on the *Thursday*, that Mr. *Willcox* and you were together at your House, for that was the 17th Day of *September*, and that was the Day you was busied in fetching your Warrant from Sir *Richard Pigott*.

L. C. B. It is well observed, Sir, and so he was, and therefore it could not be on the *Thursday* that Mr. *Willcox* was with him at his House.

Sir *Richard Pigott* replied, I am sure (my Lord) that *Larimore*, and that Fellow the Constable, were both at my House upon the 17th of *September*, as my Warrant testifieth.

L. C. B. At what time was it, Mr. *Willcox*, when you came that Day from *Larimore's* House?

Mr. Willcox. It was about Sunset, my Lord, for it was dark by that time I got to my House at *Crendon*.

L. C. B. How far is it from your House at *Crendon*, to *Larimore's* House?

Mr. Willcox. It is about a Mile and half, my Lord.

L. C. B. Were not the ways bad at that time?

Mr. Willcox. No, my Lord, the ways were very good.

L. C. B. Did not you stop, or stay, or meet with some body by the way that might hinder you?

Mr. Willcox. No, my Lord, I went a good pace, it being near Nighr, my Lord, I was afraid of being benighted, and yet it was dark by that time I got home.

L. C. B. You that are of the Jury, do you know this Mr. *Willcox*, of what credit is he?

Jury. We have known him a long time, and we know no harm by him.

L. C. B. He looks with an honest Face, and you *Larimore*, do you know what that honest Man, Mr. *Willcox*, says? do you know him; and did you ever see him at your House?

Lar. Yes, my Lord, I know him well.

L. C. B. *Larimore*, do not you remember that he was at your House on *Friday* the 18th of *September*, 1668?

Larimore replied, No, my Lord, sure it was not upon that Day that I was robbed.

My *L. C. B.* *Hale* replied, *Larimore*, No, in my Conscience thou say'st well, for it seems you were not robbed upon the same Day, that you have sworn you saw the Prisoner at the Bar commit this Robbery.

Hawk. My Lord, or upon any other Day, (as I do verily believe.) And here many of the People cryed out, that they believed as much.

L. C. B. If that Man Mr. *Willcox* speaks true, then all is false that *Larimore*, his Son and Sister, hath sworn, &c.

Come Mr. *Hawkins*, said my Lord Chief Baron, have you any more to say?

Hawk. I have one Witness more, that I desire may be called, viz. Mr. *Samuel Brown*.

L. C. B. Yes, yes, call him; come Mr. *Brown*, what can you say?

Mr. Brown said, My Lord, I can say something, but I dare not speak.

L. C. B. Why dare you not? Come, speak the Truth, and spare not, and say no more.

Mr. Brown said, I dare not speak, for Sir *John Croke* and this *Larimore* have threatned me, that if I came down to this Affizes, to testify what I heard about this Plot, Sir *John Croke* said, he would fling me in the Goal, and load me with Action upon Action of 1000*l.* and ruin me and my Family.

When the Judge and the Justices heard Mr. *Brown* relate this, every Eye began to be fixt upon Sir *John Croke*, and the People asked which was that Sir *John Croke*? Then my Lord Chief Baron *Hale* commanded the Clerk of the Affizes to give Mr. *Brown* a Writ of Privilege, to protect him home again; which being immediately done in Court, my *L. C. B.* said, Come Mr. *Brown*, let us now hear what you can say to this business?

Mr. Brown said; If it may please your Honour, (my Lord) upon *Wednesday*, the 16th of *September* last past, (early in the Morning) as I lay in my Bed at Sir *John Croke's* House in *Chilton*, hearing a great Noise, (I being then entrusted by Sir *John Lentall* as Keeper to Sir *John Croke*, which is a Prisoner at the King's Bench,) I fearing that they were contriving some way for him to escape, I started suddenly out of Bed, (having nothing on but my Shirt,) and stood at the Dining-Room Door behind the Hangings, and then, my Lord, I heard this *Larimore* tell Sir *John Croke* that he had undone him, by causing him to contend with the Parson. Sir *John Croke* asked him why? *Larimore* replied, because this *Hawkins* will undoe me, for he hath entered

entered me into most Courts of *England*, and summoned me into the Crown-Office and Chancery, and I cannot maintain so many Suits: Sir *John Croke* replied, Is that all? Come, Brother *Larimore*, be contented, we will have one Trick more for *Hawkins* yet, which shall do his Work. *Larimore* replied, Sir *John*, you have put me upon too many Tricks already, more than I can manage, and the Parson is too hard for us still. Sir *John* replied, [If thou wilt but Act, I will hatch enough to hang *Hawkins*.] *Larimore* replied, but how shall we bring this to pass? Sir *John Croke* made Answer, [Can'st not thou convey some Gold or Silver into Mr. *Hawkins* his House, and have a Warrant ready to search his House, and then our Work is done.] *Larimore* replied, Sir, if we could but bring this to pass, it might do well, but I know not how. Sir *John Croke* said to *Larimore*, Do you but go to Sir *Richard Pigott*, and inform him, that you have lost some Money and Goods, and desire his Warrant to search for them, (which Sir *Richard* neither can nor will deny you) and then take *Dick Mayne* the Constable, (who is one of us, and will do whatever we desire him,) and go and search Mr. *Hawkins*'s House, and there you will find these things; and then charge him with flat Felony, and force him before me, and no other Justice, and I'll send him to Goal without Bail, [And we will hang him at the next Assizes.] Come, (said Sir *John Croke*) Brother *Larimore*, let us go and drink our Morning's Draught, and we will consult more about this Business. And so, my Lord, I heard no more for that time. But—

L. C. B. That was enough, and too much too, but however, Mr. *Brown*, go on.

Mr. *Brown*. So upon *Saturday* next, (being the 19th of *Sept.* 1668.) I having been abroad (and towards Night) coming up the Town, I was informed that Mr. *Hawkins* (as *Larimore* pretended,) had robbed him: I then began to think more seriously upon what I had heard pass the *Wednesday* before, between Sir *John Croke* and this *Larimore*, and coming to Sir *John*'s House, I saw a Paper lying upon the Hall-Table full of Writing, and *Larimore* with the Constable, and several others, had brought Mr. *Hawkins* before Sir *John Croke*, who committing Mr. *Hawkins* for Robbing *Larimore*, as he pretended, took up the said Paper and read it to the Constable, and said, that it was Mr. *Hawkins*'s *Mittimus*, which said *Mittimus* was written before Mr. *Hawkins* came to Sir *John Croke*, as all that were there can justify. And on *Sunday* Morning I went to an Alehouse, where they had kept Mr. *Hawkins* all Night, and there I saw Mr. *Hawkins* go to the Goal, and then my Heart began to tremble, and yet I durst not discover any thing of what I had heard; but coming home, I said to Sir *John Croke*, Sir, What, they have carried the poor Parson to the Goal? Sir *John Croke* replied, [Yes, let him go, and the Devil go with him, and more shall follow after;] have I not often told you, that if my Brother *Larimore* and I did but lay our Heads together, none are able to stand against us? I replied, Yes, Sir *John*, I have often heard you say so, but I never believed it until now.

L. C. B. Mr. *Brown*, is all this true which you have related?

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Mr. *Brown*. Yes, my Lord, all that I have said is true, and there sits Sir *John Croke* (pointing to him with his Finger) who knows, that every Word that I have said is true.

L. C. B. If but ever a Word that Mr. *Brown* says be true, it is as foul a Conspiracy as ever was heard of.

About this time Sir *John Croke* stole away from the Bench, without taking his Leave of my Lord Chief Baron, or any of the Justices.

My *L. C. B.* said, Is this Sir *John Croke* a Gentleman, and contrives such Plots as this? I never in all my Days heard of the like: But I think once in this Place, I met with one something like it, but this far exceeds that, if this be true that Mr. *Brown* hath said.

But you of this Jury, there is an honest Man, (said my Lord, pointing to Mr. *Wilcox*) he overthrows all; if that be true which he said, then all that is false which *Larimore*, his Son, and Sister hath sworn.

Larimore said, My Lord, what I have sworn, as to Mr. *Hawkins*, is true.

My *L. C. B.* reply'd, Come, *Larimore*, thou art a very Villain.

Larimore said, I wish that the Ground may open, and swallow me, if any thing that I have sworn against Mr. *Hawkins* is false.

L. C. B. replied, Come, come, *Larimore*, thou art a very Villain; nay, I think thou art a Devil.

Hawk. I hope your Honour, and this Jury, are by this time fully convinc'd, that Sir *John Croke* is concerned in this Plot; for, my Lord, he hath appeared all along to be the Grand Contriver of it, as appears by Mr. *Brown*'s Testimony, and by what he said to *Larimore* before me and others. See their Charge in those Words.

L. C. B. Hales replied, I am fully satisfied, and so (I think) are all that heard it; And he said to the Justices, Gentlemen, where is this Sir *John Croke*? They reply'd, He is gone.

L. C. B. Is Sir *John Croke* gone? he said, Gentlemen, I must not forget to acquaint you (for I thought that Sir *John Croke* had been here still) that this Sir *John Croke* sent me this Morning two Sugar-Loaves for a Present, praying me to excuse his Absence Yesterday. I did not then know, so well as now, what he meant by them, but to save his Credit, I sent his Sugar-Loaves back again. Mr. *Harvey*, did you not send Sir *John* his Sugar-Loaves back again?

Clerk of the Assize. Yes, my Lord, they were sent back again.

L. C. B. I cannot think that Sir *John Croke* believes that the King's Justices come into the Country to take Bribes, I rather think, that some other Person (having a Design to put a Trick upon him) sent them in his Name. And so taking the Letter out of his Bosom, shewing it to the Justices, said, Gentlemen, do you know this Hand? To which some of them replied, they believed it might be Sir *John Croke*'s own Hand; which Letter being compared with his *Mittimus* (for he had no Clerk) and some other of his Writings there, it plainly appeared to be his own Hand. So my *L. C. B.* seeing that, (putting up the Letter again into his Bosom) said, he intended to carry that to *London*; and he added farther, that he would relate the Foul-

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ness

ness of the Business, as he found Occasions fit for it.

L. C. B. said, Mr. *Hawkins*, have you any more?

Hawk. My Lord, I hope that the Jury, and your Lordship is fully satisfied as to my Innocency, if so, my Lord; but if not, I humbly desire to know wherein I have not given full Satisfaction, and if any thing else shall be alledged against me, I humbly crave Time and Leave to answer it; for, my Lord, I am confident, I can give a fuller Satisfaction, if what I have said already be too short.

L. C. B. You of the Jury, what do you think? the Prisoner at the Bar desires to know whether you are satisfied as to the Indictment; if not, you may do well to declare wherein you are not satisfied.

Jury. It is a very plain Case, my Lord.

L. C. B. And I think so too, but it is a very foul one.

L. C. B. said to me, Sir, have you any more?

Hawk. My Lord, I humbly thank your Honour and the Court, for that great Patience, and Liberty I have had, and intend to say no more, but with *Quintilian* I conclude, *Innocentia melior est quam Eloquentia*, Innocence is better than Eloquence.

My Lord Chief Baron Hale's Directions to the Jury were to this Effect.

L. C. B. said, You that are of the Jury, the Prisoner at the Bar stands indicted for Robbing this *Larimore*, and you have heard at large both the Prosecutor's Evidence to prove him Guilty (which if you do believe) I never heard a fuller. And 2dly, You have also heard the Prisoner's Defence, wherein (as I think) he hath as fully answered the same Charge. I shall, First, repeat the Evidence against him, which consists of two Branches; the first is the Prosecutor's Proof of this Indictment; and secondly, his charging him with other Crimes of the like Nature, as the stealing of *Chilton's* Boots, and the picking of *Noble's* Pocket.

1. For to prove him guilty of Robbing him, he observes this Method:

First, He himself swears that he saw the Prisoner at the Bar commit the Robbery.

Secondly, His Son and Sister swears that they saw him run out of the House at the same time.

Thirdly, He brings in four or five Persons that swear the Gold Ring, and the Five-Shilling Piece, was found in the House of him that is now the Prisoner at the Bar.

Fourthly and Lastly, He proves by two Witnesses, that the Gold Ring and Five-Shilling Piece was pawned to him.

And for the First of these, *Larimore* swears that upon Friday the 18th of September last past, he lockt his Doors, between Twelve and One of the Clock at Noon, and went out, (leaving no body at home,) to pluck Hemp, about two Furlongs from his House, where he stay'd with the rest of his Family till within an Hour and a half of Sunset; at which time, he coming home, found his Doors open, and ran up into his Chamber, and there through the Chinks of the Loft-boards, he swears that he saw the Prisoner,

now at the Bar, ransacking, and rifling of a Box, in the which was at that time a Holland Apron, and a Purse, in which Purse was two Gold Rings, two Pieces of Gold, and nineteen Shillings in Silver, all which said Rings, Gold, and Silver, with the said Apron, he swears that he did see the Prisoner now at the Bar turn out of the said Purse, take, and Feloniously carry away, except one Piece or two of the Silver, and shews the very Purse out of which he saw him take them. If you compare the Evidence with the Indictment, you may see the Policy of the Prosecutor, For, he would gladly seem a moderate Prosecutor, by Indicting him for Felony only, as the stealing of Rings and Money, &c. But by his Evidence, he would as gladly charge him with Burglary also, for he swears, he broke open or pick'd the Locks of his Doors, and Box, which by Law is the same.

And Secondly, To corroborate this his Evidence, he brings in two Witnesses more, viz. his Son, and Sister *Beamsly*, and they swear that they did, at the same time, see the Prisoner that is now at the Bar, run out of *Larimore's* House, with a great bunch of Keys in his Hand, and he hid himself amongst Beans and Weeds: And note the Keys, to intimate that by the help of those, he pick'd *Larimore's* Locks.

Thirdly, He brings in his Son, *Dadsworth Croke*, the Constable, and Tything-man, which all swear that they found this Gold Ring and Five-Shilling Piece of Silver in a Basket hanging upon a Pin, in the House of the Prisoner at the Bar, with a few Eggs, which the Prisoner at the Bar the Day before had stolen from him.

And Fourthly and Lastly, He brings in one of Sir *John Croke's* Sons, and Mr. *Good*, who swear, that the one pawn'd the Ring, the other the Five-Shilling Piece to *Larimore*.

Thus *Larimore* swears he saw the Prisoner rob him, his Son and Sister swear that they saw him run out of the House, the same time four more swear, that they found the Ring and Five-Shilling Piece in his House upon search; And Lastly, two swear that the Ring and Five-Shilling Piece was pawned to him. If all this be true, he must needs be guilty, and if so, altho' I have a great Respect for his Calling, yet that shall no ways excuse him, but rather aggravate his Crime.

And thus much touching the Indictment.

And Secondly, He seems to charge him with other Acts of the like Nature; as

1. He brings in one *Chilton* to swear that the Prisoner at the Bar did steal a pair of Boots from him, and four or five Persons swear, that they did hear *Chilton* say he did.

2. He brings one *Boyce* from London, a Person, I think, of no great Credit, he swears, that he saw the Prisoner at the Bar, about two Years ago, have his Hand in the Pocket of one *James Noble*, and that *Noble* said, that he lost a Gold Ring, and Piece of Gold at the same time. This, (if true) would render the Prisoner now at the Bar obnoxious to any Jury. Thus far the Evidence against the Prisoner at the Bar.

Now we come to the Prisoner's Defence, which because it is so full, I shall be the briefer in it. The Parts of his Defence were two, as himself observed.

1. He

1. He shews how too improbable it is.

And 2. How impossible that he should be guilty of this Charge.

First, That it is not likely that *Larimore* was robbed at all, because he did not declare it to any of his Neighbours, as soon as he saw the Robbery committed; again, he varies as to the time when it was done, for that he told his Brother *Beamsly*, that he had lost the Ring and Five-Shilling Piece, before there was any Difference between him and the Prisoner at the Bar, as appears by Mr. *Willcox*, and that Difference began in *Michaelmas* Term, 1667: And before Sir *John Croke* he confessed that he had lost this a Month before the Prisoner (*viz.* Mr. *Hawkins*) was committed, which must be about the 19th of *August*, 1668. And in Court he swears that he saw the Prisoner at the Bar rob him of the same Gold Ring, and Five-Shilling Piece of Silver, upon *Friday* the 18th of *September* 1668, an Hour and half before Sunset; all this cannot be true; and for the Warrant, that bears Date a Day before the Robbery was committed: Whereupon the Judge said to *Larimore*, Come, thou art a cunning Fellow, for thou went'st to Sir *Richard Pigott* for a Warrant on the 17th Day, and wast not robb'd untill the 18th Day; *Larimore*, thou knewest, it seems, upon the 17th Day, that thou should'st be robbed on the 18th Day, that the Prisoner now at the Bar should rob thee: Surely, thou can'st Divine, if all this be true. Again, is it likely, that when the Prisoner at the Bar was charged with flat Felony at his own Doors, the Constable likewise threatening to break open his House to search, if he had been guilty, his Wife and himself having the Opportunity of going abroad after they had so Charged him, while they were gone to consult with Sir *John Croke*, as the Prisoner at the Bar sufficiently proved they did, by the Testimony of several Witnesses, (as Mr. *Reed*, Mr. *Sanders*, and others) that in all that Time he would not have made his Escape, or at least found a more convenient Place to convey a Ring, and Five-Shilling Piece, than to let it remain all that time in a little Basket with a few Eggs, hanging on a Pin? Again, Who came first into the Room where this Egg-Basket hung? why *Larimore*; and who took down the Basket? *Larimore*; who turn'd out the Eggs? *Larimore*; and who had the dressing of the Eggs? *Larimore*. He is a special Cook; you Gentlemen of the Jury, it is an easie thing for *Larimore* to juggle a Ring and Five-Shilling Piece into a Basket, he being the first that came into the Room; as he put up his Hand to take down the Basket, he might with ease enough convey such things as those were into it. All this, and many more, are probable Circumstances to move you and me to believe, that it is not possible that the Prisoner at the Bar is guilty of this Robbery; but that I must leave to you to consider of.

Again, The Prisoner at the Bar proves the whole Business to be but a meer Contrivance of Sir *John Croke's* and this *Larimore's*, on purpose to ruin him, as is fully made manifest by the Testimony of Mr. *Brown*, who justifies, that upon *Wednesday* the 16th of *September* last past, and but two Days before this pretended Robbery, he heard Sir *John Croke* advise this *Larimore* to fetch a Warrant to search the House of the Prisoner at the Bar, and then to convey Gold and Silver

into it; which having done, charge him with flat Felony, and bring him before the said Sir *John Croke*, and no other Justice, he then promising to the said *Larimore* to commit him to the Goal without Bail, and hang him at the next Assizes, which is now: And, as I take it, they do aim at it. You of this Jury, if you do believe what Mr. *Brown* saith, it is as foul a Conspiracy, as ever was heard of: And I am apt to think it may be probable, because that Sir *John Croke* and *Larimore* did threaten to cast this Mr. *Brown* into Prison, and so ruin him, if he came down and testified his Knowledge about this Business, which thing is of a very ill Consequence. Again, it seems likely that Mr. *Brown* may be credited, if you compare their Actions with the Times; for upon *Tuesday* Sir *John* Arrested the Prisoner upon a feign'd Action of an 100*l.* Upon *Wednesday* the Plot was concluded upon by Sir *John Croke* and *Larimore*, as may appear by Mr. *Brown's* Testimony. On *Thursday* they procured of Sir *Richard Pigott* the Warrant to search. On *Friday*, *Larimore* pretends that he was robbed (tho' in Truth there appears no such thing.) Upon *Saturday* the Prisoner's House was broke open, and he apprehended; and upon *Sunday* he was carried to the Goal: It was a good Week's Work. But there is an honest Man, said my Lord Chief Baron (pointing at Mr. *Willcox*) he knocks down all; for he justifies, that he came to *Larimore's* House upon *Friday* the 18th of *September* last past (it being the same Day that he swears he saw the Prisoner at the Bar robbing him, and an Hour and half before Sun-set) and there continued till it was near Night; and he further saith, that *Larimore* was with him all that Afternoon. And he said, that *Larimore* was not robbed that Afternoon, nor was Mr. *Hawkins* there at that time. If this that Mr. *Willcox* saith be true, then all that *Larimore*, his Son, and Sister hath sworn, must need be false.

And as touching the Boots, *Chilton* swears that he had legg'd a pair of Boots for the Prisoner at the Bar, and laid them in his Shop-window, for him to take along with him as he went by, which he did, and paid him for his Work; and yet this *Larimore*, Sir *John Croke*, *Croxstone*, and others, did use their utmost Endeavours, to stir up this *Chilton* to indict the Prisoner at the Bar for stealing of them (*Croxstone* promising him to bear him out in it.) This can argue nothing else but Malice in those Persons: And for that which *Boyce* swears, is a Story that can argue nothing else; for neither is *Noble* here to prosecute, nor can *Boyce* swear that the Prisoner at the Bar did pick his Pocket, or that *Noble* ever said he did.

Thus I have repeated the Evidence to prove him Guilty, and have not I think omitted any thing in it that is material. Which if you do believe, he must needs be Guilty. And also the Prisoner's Defence, which I think is sufficient. It is a plain Case, and I suppose you need not go from the Bar, but that I leave to you.

And so the Jury not stirring from the Bar, which the Clerk observing, he called the Jury, who severally answered to their Names; which being done, the Clerk of the Arraignment asked whether they were all agreed upon their Verdict.

Jury. Yes, we are all agreed.

Clerk. Who shall speak for you?

Jury.

Jury. Our Fore-man.

Clerk. Robert Hawkins, Hold up thy Hand. Which I did.

Jury, look upon the Prisoner at the Bar, How say you? Is he Guilty of the Felony whereof he stands indicted, or Not Guilty?

Fore-man of the Jury said, Not Guilty, my Lord.

L. C. B. Hale said to the Jury, You have found like Honest Men: I do believe, that he is Not Guilty. And he said to *Larimore*, Thou art a very Villain.

Jaylor said, Is Mr. *Hawkins*, my Lord, discharged of his Imprisonment?

L. C. B. reply'd, Yes, yes, he is discharged, paying his Fees.

Hawk. May it please your Honour, my Lord, I am poor; and this, with other Troubles, which they have unjustly occasion'd, hath cost me a great deal of Money already.

L. C. B. I cannot help that, nor can I give away other Mens Rights; if they will not remit their Fees, you must pay them.

Hawk. I humbly thank your Honour, and shall observe your Lordship's Commands.

And so the Court arose, there being no other Business but my Trial the whole Morning, which lasted from Eight until One. So as soon as my Trial was over, Sir *John Croke*, *Larimore*, and the rest of that Crew, fled privately out of *Ailesbury*, and durst not stay.



LXIX. *The Trial of WILLIAM PENN and WILLIAM MEAD, at the Old-Baily, for a Tumultuous Assembly, the 1st, 3d, 4th, and 5th of September, 1670. 22 Car. II. Wrote by themselves.*

P R E S E N T

Sam. Starling, *Mayor.*
Tho. Howel, *Recorder,*
Tho. Bludworth, *Alderm.*
William Peak, *Alderm.*
John Robinson, *Alderm.*

Richard Ford, *Alderman.*
Joseph Shelden, *Alderman.*
John Smith, }
James Edwards, } *Sheriffs.*
Richard Browne.

Cryer.



Yes! *Thomas Veer*, — *Busbel*, *John Hammond*, *Charles Milson*, *Gregory Walklet*, *John Brightman*, *William Plumsted*, *Henry Henley*, *Thomas Damask*, *Henry Michel*, *William Lever*, *John Bailly.*

The Form of the OATH.

“ You shall well and truly Try, and true Deliverance make betwixt our Sovereign Lord the King, and the Prisoners at the Bar, according to your Evidence. So help you God.

The Indictment sets forth, That *William Penn*, Gent. and *William Mead*, late of London, Linnen-Draper, with divers other Persons to the Jurors unknown, to the Number of 300, the 14th Day of *August*, in the 22d Year of the King, about Eleven of the Clock in the Forenoon, the same Day, with Force and Arms, &c. in the Parish of *St. Bennet Grace-Church* in *Bridge-Ward*, London, in the Street called *Grace-Church Street*, unlawfully and tumultuously did Assemble and Congregate themselves together, to the Disturbance of the Peace of the said Lord the King: And the aforesaid *William Penn* and *William Mead*, together with other Persons to the

Jurors aforesaid unknown, then and there so Assembled and Congregated together; the aforesaid *William Penn*, by Agreement between him and *William Mead* before made, and by Abetment of the aforesaid *William Mead*, then and there, in the open Street, did take upon himself to Preach and Speak, and then and there did Preach and Speak unto the aforesaid *William Mead*, and other Persons there, in the Street aforesaid, being Assembled and Congregated together, by Reason whereof a great Concourse and Tumult of People in the Street aforesaid, then and there, a long time did remain and continue, in contempt of the said Lord the King, and of his Law, to the great Disturbance of his Peace; to the great Terror and Disturbance of many of his Liege People and Subjects, to the ill Example of all others in the like Case Offenders, and against the Peace of the said Lord the King, his Crown and Dignity.

What say you, *William Penn* and *William Mead*, are you Guilty, as you stand Indicted, in Manner and Form, as aforesaid, or Not Guilty?

Pen. It is impossible, that we should be able to remember the Indictment *verbatim*, and therefore we desire a Copy of it, as is customary in the like Occasions.

Recorder.

Recorder. You must first plead to the Indictment, before you can have a Copy of it.

Pen. I am unacquainted with the Formality of the Law, and therefore, before I shall answer directly, I request two Things of the Court. First, that no Advantage may be taken against me, nor I deprived of any Benefit, which I might otherwise have received. Secondly, that you will promise me a fair hearing, and liberty of making my Defence.

Court. No Advantage shall be taken against you; you shall have Liberty; you shall be heard.

Pen. Then I plead Not Guilty in Manner and Form.

Clerk. What sayest thou, *William Mead*, art thou Guilty in Manner and Form, as thou standest indicted, or Not Guilty?

Mead. I shall desire the same Liberty as is promised *William Penn*.

Court. You shall have it.

Mead. Then I plead Not Guilty in Manner and Form.

The Court adjourn'd until the Afternoon.

Cryer. O Yes, &c.

Clerk. Bring *William Penn* and *William Mead* to the Bar.

Obser. The said Prisoners were brought, but were set aside, and other Business prosecuted. Where we cannot chuse but observe, that it was the constant and unkind Practices of the Court to the Prisoners to make them wait upon the Trials of Felons and Murderers, thereby designing, in all probability, both to affront and tire them.

After five Hours Attendance, the Court broke up and adjourned to the third Instant.

The third of September, 1670, the Court sate.

Cryer. O Yes, &c.

Clerk. Bring *William Penn* and *William Mead* to the Bar.

Mayor. Sirrah, who bid you put off their Hats? Put on their Hats again.

Obser. Whereupon one of the Officers putting the Prisoners Hats upon their Heads (pursuant to the Order of the Court) brought them to the Bar.

Record. Do you know where you are?

Pen. Yes.

Record. Do not you know it is the King's Court?

Pen. I know it to be a Court, and I suppose it to be the King's Court.

Record. Do you not know there is Respect due to the Court?

Pen. Yes.

Record. Why do you not pay it then?

Pen. I do so.

Record. Why do you not pull off your Hat then?

Pen. Because I do not believe that to be any Respect.

Record. Well, the Court sets forty Marks a piece upon your Heads, as a Fine for your Contempt of the Court.

Pen. I desire it might be observed, that we came into the Court with our Hats off (that is, taken off) and if they have been put on since, it was by Order from the Bench; and therefore not we, but the Bench should be fined.

Mead. I have a Question to ask the Recorder, Am I fined also?

Record. Yes.

Mead. I desire the Jury, and all People to take notice of this Injustice of the Recorder; who spake to me to pull off my Hat? and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the Guidance of his Holy Spirit, for he is not far from every one of you.

The Jury sworn again.

Obser. *J. Robinson, Lieutenant of the Tower*, disingenuously objected against — *Bushel*, as if he had not kiss'd the Book, and therefore would have him sworn again; tho indeed it was on purpose to have made use of his Tenderness of Conscience in avoiding reiterated Oaths, to have put him by his being a Jury-man, apprehending him to be a Person not fit to answer their Arbitrary Ends.

The Clerk read the Indictment, as aforesaid.

Clerk. Cryer, Call *James Cook* into the Court, give him his Oath.

Cler. *James Cook*, lay your Hand upon the Book.

The Evidence you shall give to the Court, betwixt our Sovereign the King, and the Prisoners at the Bar, shall be the Truth, and the whole Truth, and nothing but the Truth. So help you God.

Cook. I was sent for, from the Exchange, to go and disperse a Meeting in Gracechurch-Street, where I saw Mr. Penn speaking to the People, but I could not hear what he said, because of the Noise: I endeavoured to make way to take him, but I could not get to him for the Crowd of People; upon which Capt. Mead came to me, about the Kennel of the Street, and desired me to let him go on; for when he had done, he would bring Mr. Penn to me.

Court. What Number do you think might be there?

Cook. About three or four Hundred People.

Court. Call *Richard Read*, give him his Oath.

Read being sworn was ask'd, What do you know concerning the Prisoners at the Bar?

Read. My Lord, I went to Gracechurch-Street, where I found a great Crowd of People, and I heard Mr. Penn preach to them; and I saw Capt. Mead speaking to Lieutenant Cook, but what he said, I could not tell.

Mead. What did *William Penn* say?

Read. There was such a great Noise, that I could not tell what he said.

Mead. Jury, observe this Evidence, He saith he heard him Preach, and yet saith, he doth not know what he said.

Jury, take notice, he swears now a clean contrary thing to what he swore before the Mayor when we were committed: For now he swears that he saw me in Gracechurch-Street, and yet swore before the Mayor, when I was committed, that he did not see me there. I appeal to the Mayor himself, if this be not true. But no Answer was given.

Court. What Number do you think might be there?

Read. About four or five hundred.

Pen.

Pen. I desire to know of him what Day it was?

Read. The 14th Day of August.

Pen. Did he speak to me, or let me know he was there; for I am very sure I never saw him.

Cler. Cryer, call ——— into the Court.

Court. Give him his Oath.

—— My Lord, I saw a great Number of People, and Mr. *Penn* I suppose was speaking; I saw him make a Motion with his Hands, and heard some Noise, but could not understand what he said. But for Capt. *Mead*, I did not see him there.

Rec. What say you, Mr. *Mead*, were you there?

Mead. It is a Maxim in your own Law, *Nemo tenetur accusare seipsum*, which if it be not true Latin, I am sure it is true English, *That no Man is bound to accuse himself*: And why dost thou offer to insnare me with such a Question? Doth not this shew thy Malice? Is this like unto a Judge, that ought to be Counsel for the Prisoner at the Bar?

Rec. Sir, hold your Tongue, I did not go about to insnare you.

Pen. I desire we may come more close to the Point, and that Silence be commanded in the Court.

Cryer. O yes, All manner of Persons keep Silence upon Pain of Imprisonment ——— Silence in the Court.

Pen. We confess our selves to be so far from recanting, or declining to vindicate the Assembling of our selves to Preach, Pray, or Worship the Eternal, Holy, Just God, that we declare to all the World, that we do believe it to be our indispensable Duty, to meet incessantly upon so good an Account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God who made us.

Brown. You are not here for worshipping God, but for breaking the Law; you do your selves a great deal of Wrong in going on in that Discourse.

Pen. I affirm I have broken no Law, nor am I Guilty of the Indictment that is laid to my Charge; and to the End the Bench, the Jury, and my self, with these that hear us, may have a more direct Understanding of this Procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment.

Rec. Upon the Common-Law.

Pen. Where is that Common-Law?

Rec. You must not think that I am able to run up so many Years, and over so many adjudged Cases, which we call Common-Law, to answer your Curiosity.

Pen. This Answer I am sure is very short of my Question, for if it be Common, it should not be so hard to produce.

Rec. Sir, will you plead to your Indictment?

Pen. Shall I plead to an Indictment that hath no Foundation in Law? If it contain that Law you say I have broken, why should you decline to produce that Law, since it will be impossible for the Jury to determine, or agree to bring in their Verdict, who have not the Law produced, by which they should measure the Truth of this Indictment, and the Guilt, or contrary of my Fact?

Rec. You are a sawcy Fellow, speak to the Indictment.

Pen. I say, it is my place to speak to Matter of Law; I am arraign'd a Prisoner; my Liberty, which is next to Life it self, is now concerned: You are many Mouths and Ears against me, and if I must not be allowed to make the best

of my Case, it is hard. I say again, unless you shew me, and the People, the Law you ground your Indictment upon, I shall take it for granted your Proceedings are meerly Arbitrary.

Rec. The Question is, whether you are Guilty of this Indictment?

Pen. The Question is not whether I am Guilty of this Indictment, but whether this Indictment be legal. It is too general and imperfect an Answer, to say it is the Common-Law, unless we knew both where, and what it is: For where there is no Law, there is no Transgression; and that Law which is not in being, is so far from being Common, that it is no Law at all.

Rec. You are an impertinent Fellow, will you teach the Court what Law is? It's *Lex non scripta*, that which many have studied thirty or forty Years to know, and would you have me to tell you in a Moment?

Pen. Certainly, if the Common-Law be so hard to be understood, it's far from being very Common; but if the Lord *Coke* in his *Institutes* be of any Consideration, he tells us, That Common-Law is Common Right, and that Common Right is the Great Charter-Privileges: Confirmed 9 Hen. 3. 29. 25 Edw. 1. 1. 2 Edw. 3. 8. *Coke Instit.* 2. p. 56.

Rec. Sir, you are a troublesome Fellow, and it is not for the Honour of the Court to suffer you to go on.

Pen. I have asked but one Question, and you have not answer'd me; tho the Rights and Privileges of every *Englishman* be concerned in it.

Rec. If I should suffer you to ask Questions till to Morrow Morning, you would be never the wiser.

Pen. That is according as the Answers are.

Rec. Sir, we must not stand to hear you talk all Night.

Pen. I design no Affront to the Court, but to be heard in my just Plea: And I must plainly tell you, that if you will deny me Oyer of that Law, which you suggest I have broken, you do at once deny me an acknowledged Right, and evidence to the whole World your Resolution to sacrifice the Privileges of *Englishmen* to your sinister and Arbitrary Designs.

Rec. Take him away. My Lord, if you take not some Course with this pestilent Fellow, to stop his Mouth, we shall not be able to do any thing to Night.

Mayor. Take him away, take him away, turn him into the Bale-dock.

Pen. These are but so many vain Exclamations; Is this Justice or true Judgment? Must I therefore be taken away because I plead for the Fundamental Laws of *England*? However, this I leave upon your Consciences, who are of the Jury (and my sole Judges) that if these Ancient Fundamental Laws, which relate to Liberty and Property, (and are not limited to particular Persuasions in Matters of Religion) must not be indispensably maintained and observed, Who can say he hath Right to the Coat upon his Back? Certainly our Liberties are openly to be invaded,

Obser. At this time several upon the Bench urged hard upon the Prisoner to bear him down.

ded, our Wives to be ravished, our Children flav-
 ed, our Families ruined, and our Estates led a-
 way in Triumph, by every sturdy Beggar and
 malicious Informer, as their Trophies, but our
 (pretended) Forfeits for Conscience sake. The
 Lord of Heaven and Earth will be Judge be-
 tween us in this Matter.

Rec. Be silent there.

Pen. I am not to be silent in a Case wherein I
 am so much concerned, and not only my self,
 but many ten thousand Families besides.

Obser. They having rudely baled him into the
Bale-dock, William Mead they left in Court, who
 spake as followeth.

Mead. You Men of the Jury, here I do now
 stand, to answer to an Indictment against me,
 which is a Bundle of Stuff, full of Lyes and False-
 hoods; for therein I am accused, that I met *Vi*
& armis, illicite & tumultuose: Time was when
 I had Freedom to use a carnal Weapon, and then
 I thought I feared no Man; but now I fear the
 Living God, and dare not make use thereof, nor
 hurt any Man; nor do I know I demeaned my
 self as a tumultuous Person: I say, I am a
 peaceable Man, therefore it is a very proper
 Question what *William Penn* demanded in this
 Case, An Oyer of the Law, on which our Indict-
 ment is grounded.

Rec. I have made Answer to that already.

Mead, turning his Face to the Jury, saith,
 You Men of the Jury, who are my Judges, if
 the Recorder will not tell you what makes a
 Riot, a Rout, or an unlawful Assembly, *Coke*,
 he that once they called the Lord *Coke*, tells us
 what makes a Riot, a Rout, and an unlawful
 Assembly — A Riot is when three, or more,
 are met together to beat a Man, or to enter
 forcibly into another Man's Land, to cut down
 his Grass, his Wood, or break down his Pales.

Obser. Here the Recorder interrupted him, and
 said, I thank you, Sir, that you will tell me what
 the Law is; scornfully pulling off his Hat.

Mead. Thou may'st put on thy Hat, I have
 never a Fee for thee now.

Brown. He talks at random, one while an In-
 dependent, another while some other Religion,
 and now a Quaker, and next a Papist.

Mead. *Turpe est doctori cum culpa redarguit ip-
 sum.*

May. You deserve to have your Tongue cut
 out.

Rec. If you discourse on this Manner, I shall
 take Occasion against you.

Mead. Thou didst promise me, I should have
 fair Liberty to be heard; Why may I not have
 the Privilege of an *Englishman*? I am an *English-
 man*, and you might be ashamed of this deal-
 ing.

Rec. I look upon you to be an Enemy to the
 Laws of *England*, which ought to be observed
 and kept, nor are you worthy of such Privileges,
 as others have.

Mead. The Lord is Judge between me and
 thee in this Matter.

Obser. Upon which they took him away into the
Bale-dock, and the Recorder proceeded to give the
 Jury their Charge, as followeth.

Rec. You have heard what the Indictment is,
 It is for preaching to the People, and drawing
 a tumultuous Company after them, and Mr.
Penn was speaking; if they should not be dis-
 turbed, you see they will go on; there are three

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or four Witnesses that have proved this, that he
 did preach there; that Mr. *Mead* did allow of
 it: after this, you have heard by substantial Wit-
 nesses what is said against them: Now we are
 upon the Matter of Fact, which you are to
 keep to, and observe, as what hath been fully
 sworn, at your Peril.

Obser. The Prisoners were put out of the Court
 into the *Bale-dock*, and the Charge given to the
 Jury in their Absence, at which W. P. with a
 very raised Voice, it being a considerable distance
 from the Bench, spake.

Pen. I appeal to the Jury, who are my Judges,
 and this great Assembly, whether the Proceed-
 ings of the Court are not most Arbitrary, and
 void of all Law, in offering to give the Jury
 their Charge in the Absence of the Prisoners; I
 say, it is directly opposite to, and destructive of,
 the undoubted Right of every *English* Prisoner,
 as *Coke* in the 2 *Instit.* 29. on the Chap. of *Mag-
 na Charta*, speaks.

Obser. The Recorder being thus unexpectedly
 lash'd for his extra-judicial Procedure, said, with
 an enraged Smile,

Rec. Why, ye are present, you do hear, do
 you not?

Pen. No thanks to the Court, that command-
 ed me into the *Bale-dock*; and you of the Jury,
 take notice, that I have not been heard, neither
 can you legally depart the Court, before I have
 been fully heard, having at least ten or twelve
 material Points to offer, in order to invalidate
 their Indictment.

Rec. Pull that Fellow down, pull him down.

Mead. Are these according to the Rights and
 Privileges of *Englishmen*, that we should not be
 heard, but turned into the *Bale-dock*, for mak-
 ing our Defence, and the Jury to have their
 Charge given them in our Absence? I say these
 are barbarous and unjust Proceedings.

Rec. Take them away into the Hole: To hear
 them talk all Night, as they would, that I
 think doth not become the Honour of the Court;
 and I think you (*i. e.* the Jury) your selves would
 be tired out, and not have Patience to hear
 them.

Obser. The Jury were commanded up to agree
 upon their Verdict, the Prisoners remaining in the
 stinking Hole. After an Hour and half's time eight
 came down agreed, but four remained above; the
 Court sent an Officer for them, and they accordingly
 came down. The Bench used many unworthy Threats
 to the four that dissented; and the Recorder, ad-
 dressing himself to *Bushel*, said, Sir, You are
 the Cause of this Disturbance, and manifestly
 shew your self an Abbettor of Faction; I shall
 set a Mark upon you, Sir.

J. Robinson. Mr. *Bushel*, I have known you
 near this fourteen Years; you have thrust your
 self upon this Jury, because you think there is
 some Service for you: I tell you, you deserve to
 be indicted more, than any Man that hath been
 brought to the Bar this Day.

Bushel. No, Sir *John*, there were threescore
 before me, and I would willingly have got off,
 but could not.

Bloodw. I said, when I saw Mr. *Bushel*, what
 I see is come to pass, for I knew he would never
 yield. Mr. *Bushel*, we know what you are.

May. Sirrah, you are an impudent Fellow, I
 will put a Mark upon you.

Obser. *They used much menacing Language, and behaved themselves very imperiously to the Jury, as Persons not more void of Justice than sober Education: After this barbarous Usage, they sent them to consider of bringing in their Verdict, and after some considerable time they returned to the Court. Silence was call'd for, and the Jury call'd by their Names.*

Cler. Are you agreed upon your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. Look upon the Prisoners at the Bar; how say you? Is *William Penn* Guilty of the Matter whereof he stands indicted in Manner and Form, or Not guilty?

Fore-m. Guilty of Speaking in *Gracechurch-street*.

Court. Is that all?

Fore-m. That is all I have in Commission.

Rec. You had as good say nothing.

May. Was it not an unlawful Assembly? you mean he was speaking to a Tumult of People there?

Fore-m. My Lord, This is all I had in Commission.

Obser. *Here some of the Jury seemed to buckle to the Questions of the Court; upon which, Bushel, Hammond, and some others, opposed themselves, and said, they allowed of no such Word, as an unlawful Assembly in their Verdict; at which the Recorder, Mayor, Robinson and Bloodworth took great occasion to villifie them with most opprobrious Language; and this Verdict not serving their Turns, the Recorder express'd himself thus:*

Rec. The Law of England will not allow you to part till you have given in your Verdict.

Jury. We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good say nothing; therefore go and consider it once more, that we may make an end of this troublesome Business.

Jury. We desire we may have Pen, Ink and Paper.

Obser. *The Court adjourn'd for half an Hour; which being expired, the Court returns, and the Jury not long after.*

The Prisoners were brought to the Bar, and the Jury's Names called over.

Cler. Are you agreed of your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. What say you? look upon the Prisoners: Is *William Penn* Guilty in Manner and Form, as he stands indicted, or Not guilty?

Fore-m. Here is our Verdict; holding forth a piece of Paper to the Clerk of the Peace, which follows;

WE the Jurors, hereafter named, do find *William Penn* to be Guilty of Speaking or Preaching to an Assembly, met together in *Gracechurch-street*, the 14th of August last, 1670. And that *William Mead* is Not guilty of the said Indictment.

Fore-m. *Thomas Veer, Charles Milson,
Edward Bushel, Gregory Walklet,
John Hammond, John Bailly,
Henry Henley, William Lever,*

*Henry Michel, James Damask,
John Brightman, Wil. Plumsted.*

Obser. *This both Mayor and Recorder resented at so high a rate, that they exceeded the Bounds of all Reason and Civility.*

May. What, will you be led by such a silly Fellow as *Bushel*? an impudent canting Fellow? I warrant you, you shall come no more upon Juries in haste: You are a Fore-man indeed, *addressing himself to the Fore-man*, I thought you had understood your Place better.

Rec. Gentlemen, you shall not be dismiss'd till we have a Verdict, that the Court will accept; and you shall be lock'd up, without Meat, Drink, Fire, and Tobacco; you shall not think thus to abuse the Court; we will have a Verdict, by the help of God, or you shall starve for it.

Pen. My Jury, who are my Judges, ought not to be thus menaced; their Verdict should be free, and not compelled; the Bench ought to wait upon them, but not forestall them. I do desire that Justice may be done me, and that the Arbitrary Resolves of the Bench may not be made the Measure of my Jury's Verdict.

Rec. Stop that prating Fellow's Mouth, or put him out of the Court.

May. You have heard that he preach'd, that he gathered a Company of tumultuous People, and that they do not only disobey the Martial Power, but Civil also.

Pen. It is a great Mistake; we did not make the Tumult, but they that interrupted us: The Jury cannot be so ignorant, as to think, that we met there, with a Design to disturb the Civil Peace, since (1st) we were by Force of Arms kept out of our lawful House, and met as near it in the Street, as their Soldiers would give us leave; and (2^{dly}) because it was no new thing (nor with the Circumstances express'd in the Indictment) but what was usual and customary with us; 'tis very well known that we are a peaceable People, and cannot offer Violence to any Man.

Obser. *The Court being ready to break up, and willing to huddle the Prisoners to their Goal, and the Jury to their Chamber, Penn spoke as follows.*

Pen. The Agreement of Twelve Men is a Verdict in Law, and such a one being given by the Jury, I require the Clerk of the Peace to record it, as he will answer it at his Peril. And if the Jury bring in another Verdict contradictory to this, I affirm they are perjur'd Men in Law: And looking upon the Jury, said, You are *Englishmen*, mind your Privilege, give not away your Right.

Bush. &c. Nor will we ever do it.

Obser. *One of the Jury-men pleaded Indisposition of Body, and therefore desired to be dismiss'd.*

May. You are as strong as any of them; starve them; and hold your Principles.

Rec. Gentlemen, You must be contented with your hard Fate, let your Patience overcome it; for the Court is resolved to have a Verdict, and that before you can be dismiss'd.

Jury. We are agreed, we are agreed, we are agreed.

Obser. *The Court swore several Persons, to keep the Jury all Night without Meat, Drink, Fire, or any other Accommodation; they had not so much as a Chamber-pot, tho' desired.*

Cry.

Cry. O Yes, &c.

Obser. *The Court adjourns till Seven of the Clock next Morning (being the 4th Instant, vulgarly call'd Sunday) at which time the Prisoners were brought to the Bar: The Court sat, and the Jury called to bring in their Verdict.*

Cry. O Yes, &c. — Silence in the Court, upon pain of Imprisonment.

The Jury's Names called over.

Cler. Are you agreed upon your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. What say you? Look upon the Prisoners at the Bar; is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form as aforesaid, or Not guilty?

Fore-m. *William Penn* is guilty of Speaking in *Gracechurch-street*.

May. To an unlawful Assembly?

Busb. No, my Lord, we give no other Verdict than what we gave last Night; we have no other Verdict to give.

May. You are a factious Fellow, I'll take a Course with you.

Blood. I knew Mr. *Busbel* would not yield.

Busb. Sir *Thomas*, I have done according to my Conscience.

May. That Conscience of yours would cut my Throat.

Busb. No, my Lord, it never shall.

May. But I will cut yours so soon as I can.

Rec. He has inspired the Jury; he has the Spirit of Divination, methinks I feel him; I will have a positive Verdict, or you shall starve for it.

Pen. I desire to ask the Recorder one Question, Do you allow of the Verdict given of *William Mead*?

Rec. It cannot be a Verdict, because you were indicted for a Conspiracy, and one being found Not guilty, and not the other, it could not be a Verdict.

Penn. If Not guilty be not a Verdict, then you make of the Jury and *Magna Charta* but a meer Nose of Wax.

Mead. How! is Not guilty no Verdict?

Rec. No, 'tis no Verdict.

Pen. I affirm, that the Consent of a Jury is a Verdict in Law; and if *William Mead* be Not guilty, it consequently follows, that I am clear, since you have indicted us of a Conspiracy, and I could not possibly conspire alone.

Obser. *There were many Passages, that could not be taken, which past between the Jury and the Court. The Jury went up again, having received a fresh Charge from the Bench, if possible to extort an unjust Verdict.*

Cry. O Yes, &c. Silence in the Court.

Cour. Call over the Jury. Which was done.

Cler. What say you? Is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form aforesaid, or Not guilty?

Fore-m. Guilty of speaking in *Gracechurch-street*.

Rec. What is this to the Purpose? I say, I will have a Verdict. And speaking to *Edw. Busbel*, said, You are a factious Fellow; I will set a Mark upon you; and whilst I have any thing to do in the City, I will have an Eye upon you.

May. Have you no more Wit than to be led by such a pitiful Fellow? I will cut his Nose.

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Pen. It is intolerable that my Jury should be thus menaced: Is this according to the Fundamental Laws? Are not they my proper Judges by the great Charter of *England*? What hope is there of ever having Justice done, when Juries are threatned, and their Verdicts rejected? I am concerned to speak, and grieved to see such Arbitrary Proceedings. Did not the Lieutenant of the *Tower* render one of them worse than a Felon? And do you not plainly seem to condemn such for factious Fellows, who answer not your Ends? Unhappy are those Juries, who are threatned to be fined, and starved, and ruined, if they give not in Verdicts contrary to their Consciences.

Rec. My Lord, you must take a Course with that same Fellow.

May. Stop his Mouth; Jaylor, bring Fetters, and stake him to the Ground.

Pen. Do your Pleasure, I matter not your Fetters.

Rec. Till now I never understood the Reason of the Policy and Prudence of the *Spaniards*, in suffering the Inquisition among them: And certainly it will never be well with us, till something like unto the *Spanish* Inquisition be in *England*.

Obser. *The Jury being required to go together to find another Verdict, and stedfastly refusing it (saying they could give no other Verdict than what was already given) the Recorder in great Passion was running off the Bench, with these Words in his Mouth, I protest I will sit here no longer to hear these Things; at which the Mayor calling, Stay, stay, he returned, and directed himself unto the Jury, and spoke as followeth:*

Rec. Gentlemen, we shall not be at this trade always with you; you will find the next Sessions of Parliament there will be a Law made, that those that will not conform shall not have the Protection of the Law. Mr. *Lee*, draw up another Verdict, that they may bring it in Special.

Lee. I cannot tell how to do it.

Jur. We ought not to be return'd, having all agreed, and set our Hands to the Verdict.

Rec. Your Verdict is nothing, you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve; and I will have you carted about the City, as in *Edward* the Third's time.

Fore-m. We have given in our Verdict, and all agreed to it; and if we give in another, it will be a Force upon us to save our Lives.

May. Take them up.

Offic. My Lord, they will not go up.

Obser. *The Mayor spoke to the Sheriff, and he came off of his Seat, and said,*

Sher. Come, Gentlemen, you must go up; you see I am commanded to make you go.

Obser. *Upon which the Jury went up; and several sworn to keep them without any Accommodation, as aforesaid, till they brought in their Verdict.*

Cry. O yes, &c. The Court adjourns till to Morrow Morning, at seven of the Clock.

Obser. *The Prisoners were remanded to Newgate, where they remained till next Morning, and then were brought unto the Court, which being sat, they proceeded as followeth.*

Cry. O yes, &c. Silence in the Court, upon pain of Imprisonment.

Cler. Set *William Penn* and *William Mead* to the Bar. Gentlemen of the Jury, answer to

your Names; *Tho. Veer, Edw. Bushe, John Hammond, Henry Henly, Henry Mitchell, John Brightman, Charles Milson, Gregory Walklet, John Bailly, William Leaver, James Damask, William Plumstead.* Are you all agreed of your Verdict?

Jur. Yes.

Cler. Who shall speak for you?

Jur. Our Fore-man.

Cler. Look upon the Prisoners. What say you? is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form, &c. or Not guilty?

Fore-man. Here is our Verdict in Writing, and our Hands subscribed.

Obser. The Clerk took the Paper, but was stoppt by the Recorder from reading of it; and he commanded to ask for a positive Verdict.

Fore-man. That is our Verdict; we have subscribed to it.

Cler. How say you? is *William Penn* Guilty, &c. or Not guilty?

Fore-man. Not guilty.

Cler. How say you? is *William Mead* Guilty, &c. or Not guilty?

Fore-man. Not guilty.

Cler. Then hearken to your Verdict; you say that *William Penn* is Not guilty in Manner and Form as he stands indicted; you say that *William Mead* is Not guilty in Manner and Form as he stands indicted, and so you say all?

Jur. Yes, we do so.

Obser. The Bench being unsatisfied with the Verdict, commanded that every Person should distinctly answer to their Names, and give in their Verdict, which they unanimously did, in saying, Not Guilty, to the great Satisfaction of the Assembly.

Rec. I am sorry, Gentlemen, you have followed your own Judgments and Opinions, rather than the good and wholesome Advice, which was given you; God keep my Life out of your Hands; but for this * the Court Fines you forty Marks a Man; and Imprisonment till paid. At which *Penn* stepped up towards the Bench, and said:

Pen. I demand my Liberty, being freed by the Jury.

May. No, you are in for your Fines.

Pen. Fines, for what?

May. For Contempt of the Court.

Pen. I ask, if it be according to the Fundamental Laws of *England*, that any English-Man should be Fined or Amerced, but by the Judgment of his Peers or Jury; since it expressly contradicts the fourteenth and twenty-ninth Chap. of the great Charter of *England*, which say, No Free-man ought to be amerced, but by the Oath of good and Lawful Men of the Vicinage.

Rec. Take him away, take him away, take him out of the Court.

Pen. I can never urge the Fundamental Laws of *England*, but you cry, Take him away, take him away. But it is no wonder, Since the Spanish Inquisition hath so great a place in the Recorder's Heart. God Almighty, who is just, will judge you all for these things.

Obser. They baled the Prisoners into the Baledock, and from thence sent them to Newgate, for Non-payment of their Fines; and so were their Jury. But the Jury were afterwards discharged upon an Habeas Corpus, returnable in the Common-Pleas, where their Commitment was adjudged illegal. *Vaugh. Rep.* 135 — 158.

LXX. *Proceedings in the CASE of ANTHONY Earl of SHAFTSBURY, † at the King's-Bench, the 27th and 29th of June, 1677. Trin. 29 Car. II.*

THIS Day the Earl of Shaftsbury was brought to the Bar upon the Return of an Alias Hab. Corp. directed to the Constable of the Tower of London; the Effect of the Return was, that *Anthony Earl of Shaftsbury*, in the Writ mentioned, was Committed to the Tower of London, 16 Feb. Anno Dom. 1676, by Vertue of an Order from the Lords Spiritual and Temporal then in Parliament assembled: the Tenor of which Order followeth in hæc verba.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the Constable of His Majesty's Tower of London, his Deputy, or Deputies, shall receive the Bodies of *James Earl of Salisbury, Anthony Earl of Shaftsbury, and*

Philip Lord Wharton, Members of this House, and keep them in safe Custody, within the said Tower, during His Majesty's Pleasure, and the Pleasure of this House; for High Contempts committed against this House: And this shall be a sufficient Warrant on that Behalf.

To the Constable of the Tower, &c.

J. Browne Cler. Par.

The Earl of Shaftsbury's Council prayed that the Return might be Filed, and it was so, and Friday following appointed for debating the Sufficiency of the Return, and in the mean time directions were given to his Council to attend the Judges and Attorney-General, with their Exceptions to the Return, and my Lord was re-

* See *Yelv.* 23. *Hardr.* 409. *Kelyng* 51, 58. *Noy.* 48. *Throckmorton's Case*, Trial V, Vol. I. p. 78.

† He with others had been committed to the Tower by the House of Lords during the King's Pleasure, or the Pleasure of the House, for moving a Question in Parliament about the Legality of a Prorogation. *Burn. Hist. own times*, Vol. I. p. 401. See his Character, *ibid.* 96.

manded till that Day; and it was said, that tho the Return was filed, the Court could remand or Commit him to the *Marshalsea* at their Election.

On Friday the Earl was brought into Court again, and his Council argued the Insufficiency of the Return.

Williams said, That the Cause was of great Consequence, in regard that the King was touched in his Prerogative; the Subject was touched in his Liberty, and this Court in its Jurisdiction.

1st. The Cause of Commitment which is returned, is not sufficient, for the general Allegations of high Contempts is too uncertain, for the Court cannot judge of the Contempt, if it doth not appear in what act it consists.

2^{dly}. It is not known where the Contempts were committed, and in favour of Liberty, it shall be intended they were committed out of the House of Peers.

3^{dly}. The time is uncertain, so that, peradventure, it was before the last Act of General Pardon.

4^{thly}. It does not appear whether the Commitment were on a Conviction or Accusation only.

It cannot be denied, but that the Return of such a Commitment, by any other Court, would be too general and uncertain, *More. 893.*

Astwish was Bailed on a Return, *quod commissus fuit per mandatum. N. Milit. Dni. Custod. Magn. Sigil. Angliæ virtute cujusdem contemptus in curia facti*, and in that Book, that divers other Persons were bailed on such general Returns, and the Cases have been lately affirmed in *Bushel's Case*, reported by the late Lord Chief Justice *Vaughan*, where it is expressly said that such Commitment and Return being too general and uncertain, the Court can't believe in an implicate manner, that in truth the Commitment was for Causes particular and sufficient.

Vaughan's Reports, 140. Accord. 2 Inst. 52, 53, & 55. and the 1 Rolls. 218. and though the Commitment of the Jurors was for acquitting *Penn and Mead, contra plenam & manifestam evidentiam*: It was resolved to be too general, for the Evidence ought to appear as certainly to the Judge of the Return, as it appears before the Judge authorized to Commit. *Rush. Case. 137.*

Now this Commitment being by the House of Peers will make no difference; for in all Cases where a Matter comes in Judgment before this Court, let the question be of what nature it will, the Court is obliged to declare the Law, and that without distinction, whether the question began in Parliament or no. In the Case of *Geo. Binion in C. B.* there was a long Debate, *Whether an Original Writ might be Filed against a Member of Parliament, during the time of Privilege*; and it was urged, that it being during the Session of Parliament, the termination of the Question did belong to the Parliament: But it was resolved that an Original might be filed; and *Bridgman*, then Chief Justice, said, that the Court was obliged to declare the Law in all Cases that came in Judgment before them. *H. 4. Ed. 4. Rut. 4. 7. 10. in Scacc. In Debt by River versus Cousin*, the Defendant pleads that he was servant of a Member of Parliament, *& Ideo Capi seu arrestari non debet*, and the Plaintiff prays Judgment, and afterwards by Advice of all the

Judges the Judgment was entered. *Videtur Baronibus, quod tale habetur Privilegium quod Magnates, &c. Et eorum familiares capi seu arrestari non debent, sed nullum habetur privilegium, quod non debent Implacitari, ideo respondeat ouster.* So in *Triviniard's Case*, a question of Privilege was determined in this Court. *Dyer 60. in 14 Ed. 3. in the Case of Sir John and Sir Jeoffrey Stanton*, which was cited in the Case of the Earl of *Clarendon*, and is entred in the Lords Journal.

An Action for Waste depended between them in the Common-Pleas; and the Court was divided, and the Record was Certified into the House of Lords, and they gave direction that the Judgment should be Entred for the Plaintiff; afterwards on a Writ of Error brought in this Court that Judgment was Reversed, notwithstanding the Objection, that it was given by Order of the House of Lords; for the Court was obliged to proceed according to the Law in a matter that was before them in point of Judgment. Not long since the Earl of *Bristol* Exhibited an Accusation against the Earl of *Clarendon* to the House of Lords, and it contained divers matters, whereof some did arise out of Parliament, and it was referred to the Judges to consider whether that Procedure was Parliamentary; and the 4th of July 1663, it was resolved by the Judges, that the Lords ought not to proceed only upon an Impeachment by the Commons, when the matters arise out of the House.

The Construction of all Acts of Parliament are given to the Courts of *Westminster*, and accordingly they are Judges of the Validity of Acts of Parliament, they have searched the Rolls of Parliament, *Hub. 109.* Lord *Hunsdon's Case*, they have determined, whether the Journal be a Record, *Hub. 110.* When a point comes before them in Judgment, they are not foreclosed by any Act of the Lords, but ought to Judge according to the Law, by which the Realm is governed, and not by the Lords: If it appears that an Act of Parliament be made by the King and Lords without the Commons, that Act is *Felo-de-se*, and the Courts of *Westminster* ought to judge it void, *4 H. 7. 18. Hub. 111.* and accordingly they ought to do, if this Return contain in it that which is fatal to it self. It hath been a question often resolved in this Court when a Writ of Error in Parliament, shall be a *Superfedeas*, and this Court hath determined what shall be said to be a Session of Parliament, *1 Rolls. 29.* and if the Law were otherwise there would be a failure of Justice. If the Parliament were dissolved, there would be no question but the Prisoner should be discharged on a *Habeas Corpus*, and yet then the Court must examine the Cause of Commitment, and by Consequence a matter Parliamentary, and the Court may now have Cognizance of the matter, as clearly as when the Parliament is dissolved. The Party would be without remedy for his Liberty, if he could not find it here, for it is not sufficient for him to procure the Lords to determine their Pleasure for his Imprisonment, for before his Enlargement he must have the Pleasure of the King to be determined, and that ought to be in this Court, and therefore the Prisoner ought first to resort hither.

Let us suppose (for it does not appear in the Return, and the Court ought not to Enquire of any matter

matter out of it,) that the supposed Contempt was a thing done out of the House; it would be hard for this Court to remand him: Suppose he were removed to a Foreign Prison, during the Pleasure of the Lords: No doubt, but that would have been an Illegal Commitment against *Magna Charta* and the Petition; there the Commitment would have been expressly Illegal, and it may be this Commitment may be no less; for if it had been Expressly shewn, and if he be remanded, he is Committed by this Court, who are to answer for his Imprisonment.

But 2. The limitation of the Imprisonment during the Pleasures of the King and the House is Illegal and uncertain; for since it ought to determine in two Courts, it can have no certain Period, a Commitment until he shall be Discharged by King's Bench and Common Pleas is Illegal; for the Prisoner can't apply himself in such a manner as to obtain his Discharge. If a Man be committed to further order, *Coke* saith, he is Baylable presently, for that Imports till he shall be delivered in good course of Law, and if this Commitment have not that Sense, it is Illegal, for the Pleasure of the King is that, which shall be determined according to Law in his Courts, as where the Stat. of *Westminster*, 1 Chap. 15. declares that he is not repleviable, who is taken by Command of the King, this does not extend to an Extra-judicial Command, but in his Courts of Justice, to which all matters of Judicature are delegated and distributed. 2 *Inst.* 186. and 187.

Wallop, To the same purpose, cited *Bushe's* Case, *Vaughan*, 137. that the Return for high Contempts was not sufficient, and the Court that made the Commitment in this Case makes no difference in the Case, for otherwise one may be Imprisoned by the House of Peers Unjustly, for a matter relievable here, and yet shall be without any manner of relief, by such a Return; for on supposition that this Court ought not to meddle where the Person is Committed by the Peers, any Person at any Time and for any Cause may be subject to a perpetual Imprisonment at the Pleasure of the Lords.

And the Law is otherwise, for the House of Lords is the Supream Court, yet their Jurisdiction is limited by the Common and Statute-Law, and their Excises are examinable in this Court, for there is a great difference between the Errors and Excise in and of a Court between an Erroneous Proceeding without Jurisdiction, which is void and a meer Nullity, 4 *H.* 7. 18. 6. in the Parliament the King would have one attainted of Treason, and lose his Lands, and the Lords assented, but nothing was said of the Commons, wherefore all the Justices held clearly that it was no Act, and he was restored to his Land, and without doubt in the same Case if the Party had been Imprisoned, the Justices might have made the like Resolution that he ought to have been discharged.

It is a Solecisme that a Man shall be Imprisoned by a limited Jurisdiction, and it shall not be examinable, whether the Cause were within their Jurisdiction or not. If the Lords without the Commons should grant a Tax, and one that refused to pay it should be Imprisoned, the Tax is void; but by a general Commitment the Party shall be remediless if so be the Lords should award a *Capias* for Treason or Felony.

By these Instances it appears that their Jurisdiction was restrained by the Common Law, and it is also restrained by divers Acts of Parliament, 1 *Hen.* 4. Chap. 14. no Appeals shall be made, or any ways pursued, or where a Statute is made a Power is Implicitly given to this Court by the Fundamental Institution, which makes the Judges Expositors of Acts of Parliament; and peradventure if all this case appeared upon the Return, this might be a Case in which they were restrained by the Stat. 4 *Hen.* 8. Chap. 8. That all the Suits, Usements, and Condemnations, &c. many time from henceforth, at any time to be put or had upon any Members for any Bill speaking or reasoning of any matters concerning the Parliament to be Communed or Treated of, shall be utterly void and of no effect; now it does not appear, but this is a Correction and Punishment Imposed upon the Earl, contrary to the Statute. There is no question now made of the Power of the Lords, but it is only urged that it is necessary for them to declare by Vertue of what Power they proceed, otherwise the Liberty of every *English* Man shall be subject to the Lords, whereof they may deprive any of them against an Act of Parliament, but no usage can justify such a proceeding. *Elsemore's* Case of the *Post Nati*. 19. The Duke of *Suffolk* was Impeached by the Commons of High Treason, and Misdemeanors, the Lords were in doubt whether they should proceed upon such a general Impeachment to Imprison the Duke, and the advice of the Judges being demanded, and their Resolution given in the Negative, the Lords were satisfied. This Case is mentioned with design to shew the respect given to the Judges, and that the Judges have determined the highest matters in Parliament. At a Conference held between the Lords and the Commons, 3d April, 4 Car. concerning the Right and Privilege of the Subject, it was declared and agreed, that no Freeman ought to be Committed or restrained by Commitment of the King or Privy-Council, or any other (in which the House of Peers is included) unless some Cause of Commitment, Restraint, or Detainor be set forth, for which by Law he ought to be Committed, &c.

Now if the King, who is the Head of the Parliament, nor the Privy-Council, which is a Court of State, to which Secrecy is so necessary, may not Imprison without shewing Cause, *a fortiori*, the Lords in Parliament can't, which are a Court of Law as well as a Court of State, and therefore ought not to proceed in an Illegal manner. 'Tis true in 1. *Rolls*. 192. *Rusworth's* Case, *Coke* is of Opinion that the Privy Council may Commit without shewing Cause, but in his more Mature Age he was of another Opinion, and accordingly the Law is declared in the Petition of Right.

Smith argued to the same purpose, and said, A Judge cannot make a Judgment unless the Fact appears to him, and on an *Habeas Corpus*, the Judge can only take notice of the Fact returned; it is lawful for any Subject that finds himself agrieved by any Sentence or Judgment to Petition the King in an humble manner for redress, and where the Subject is restrained of his Liberty, the proper place for him to apply himself unto is this Court, which hath the Supream Power as to this purpose, over all Courts, and on

on an *Habeas Corpus* issuing hence, the King ought to have an Account of his Subject, *Rolls. Hab. Corp.* 64. *Witherly's Case*; and though the Commitment be by the Lords, yet if it be Illegal, this Court is obliged to discharge the Prisoner, as well as if he had been Illegally Imprisoned by any other Court; the House of Peers is a high Court, but the *King's Bench* hath ever been Intrusted with the Liberty of the Subject, and if it were otherwise in case of Imprisonment by the Peers, the Power of the King was less absolute than the Power of the Lords.

It does not appear but that this Commitment was for Breach of the Privilege, but nevertheless if it were, this Court might give relief, as appears in *Sir George Bigmore's Case* before cited, and *Mich.* 12. *Ed.* 4. *Rut.* 20. for the Court which has Power to judge what is Privilege, has also Power to judge what is Contempt of Privilege; if the Judges may judge of an Act of Parliament, *a fortiori*, they may judge of an Order of the Lords, 20 *Ed.* *Butcher's Case*, where he in Reversion brought an Action of Waste, and dyed before Judgment, and his Heirs brought an Action for the same Waste, and the King and the Lords determined that it did lie, and commanded the Judges to give Judgment accordingly for the time to come; but by *Ryley.* 39. it appears that it is only an Order of the King and the Lords, and that was the cause the Judges conceived that they were not bound by it, but 39. 3. 13. and ever since have Judged the contrary if it be admitted. For that for Breach of Privilege may Commit, yet it ought to appear on the Commitment that that was the Cause, for otherwise they may be called a Breach, which is only a refusal to answer to a matter whereof the House of Lords is restrained to hold Plea by the Stat. of the 1st of *Hen.* 4. and for a Contempt committed out of the House they cannot Commit, for the Word Appeal in the Statute extends to all Misdemeanors, as it was resolved by the Judges in the *Earl of Clarendon's Case*, *July*, 1663. If the Imprisonment be not lawful, the Court cannot remand him to his wrongful Imprisonment, for that would be an Act of Injustice, to Imprison him, *De novo*, *Vaughan.* 156. It does not appear whether the Contempt was a Voluntary Act, or an Opinion, or an Inadvertency, and he has now suffered five Months Imprisonment already; false Imprisonment is not only where the Commitment is unjust, but where the Imprisonment is too long. 2 *Inst.* 53. In this Case if this Court cannot give Remedy, peradventure the Imprisonment shall be perpetual; for the King, as the Law is now taken, may Adjourn the Parliament for 10 or 20 Years.

But all this is said on Supposition that this Session has continuance, I conceive that by the King's giving his Royal Assent to several Laws which have been Enacted, the Session is determined, and then their Order for the Imprisonment is also determined, *Brook Parliament.* 86. Every Session in which the King Signs Bills is a Day of it self, a Session of it self, 1 *Car.* 1. 7. A Special Act is made, that the giving the Royal Assent to several Bills, shall not determine the Session. ('Tis true, 'tis there said to be made for the avoiding all Doubts.) In the Stat. 16 *Car.* 1. there is a Proviso to the same purpose, and also 12 *Car.* 2. 1. and 22 and 23 *Car.* 2. 2. 1. 11. *Ro.* 2. *No.* 12.

By the Opinion of *Coke*, 4. *Inst.* 27. the Royal Assent does not determine; but the Authority on which he relies, don't warrant his Opinion; for first in the Parliament, *Roll.* 1 *H.* 7. it appears that the Royal Assent was given to the Act, for the reversal of the Attainder of the Members of Parliament, the same Day it was given to the other Bills; and the same Year the same Parliament Assembled again, and then 'tis Probable, that the Members which had been attainted were present, and not before. 8 *R.* 2. *No.* 13. is only a Judgment in Case of Treason, by Vertue of a Power reserved to them on the Statute, 25 *Ed.* 3. *Rot. Parliament.* 7 *H.* 4. *No.* 29. is not an Act of Parliament, 14 *Ed.* 3. *N.* 789. The Act is first entred on the Roll, but on Condition the King will grant their other Petitions, the Inference my Lord *Cook* makes, that the Act for the Attainder of Queen *Katherine*, 33 *H.* 8. was passed before the determination of the Session, yet it was on a Judgment given against her by the Commissions of *Oyer and Terminer*, and the subsequent Act is only an Act of Confirmation; but *Cook* ought to be excused, for all his Notes and Papers were taken from him, so that this Book did not receive his last Hand, but 'tis observable he was one of the Members of the Parliament, 1 *Car.* 1. when the special Act before mentioned was made; and no Instance can be given where an Act was passed, and afterwards the Parliament did proceed in that Session, only where there was a precedent Agreement between the King and the Houses; so I conclude that the Order is determined with the Session, and the *Earl of Shaftsbury* ought to be Discharged.

Eyres argued to the same effect; That the Warrant is not sufficient, for it does not appear that it was made by the Jurisdiction is desired in the House of Peers; for that is *coram Rege in Parlamento*, so that the King and the Commons are present in supposition of Law, and the Writ of Error in Parliament is *Inspecto Recordo nos consilio & advisamento Spiritualium & Temporalium, & Communitatum in Parlamento predict' existent'*, &c. it would not be difficult to prove that anciently the Commons did assist there, and now it shall be intended that they were present; for there can be no Averment against the Record. The Lords do several Acts as a distinct House, as the *Debating Bills*, the *Enquiring of Breaches of Privileges*, and the Warrant in this Case being by the Lords *Spiritual and Temporal*, cannot be intended otherwise, but that it was done by them in their distinct Capacity, and then the Commitment being during the Pleasure of the King and the House of Peers, it is manifest that the King is Principal, and his Pleasure ought to be determined in this Court.

If the Lords should commit a great Minister of State, whose Advice is necessary for the King and the Realm, it cannot be imagined that the King shall be without remedy for his Subject, but that he may have him Discharged by his Writ out of this Court.

This present Recess is not ordinary Adjournment; for it is entred in the Journal that the Parliament shall not be Assembled at the Day of Adjournment, but Adjourned or Prorogued to another Day, if the King do not signify his Pleasure by Proclamation.

Some other Exceptions were made to the Return.

1. That

1. That no Commitment is returned, but only a Warrant to the Constable to receive him.

2. The Return does not answer the Mandate of the Writ; for that is to have the Body of *A. E. of S.* and the Return of the Warrant is for the Imprisonment of *A. Ashley E. of S.*

Serjeant *Maynard* argued to maintain the Return; *The House of Lords is the Supream Court of the Realm; 'tis true this Court is superior to all Courts of ordinary Jurisdiction. If this Commitment had been by any Inferior Court, it could not have been maintained: But the Commitment is by a Court that is not under the Controul of this Court; and that Court is in Law sitting at this time, and therefore the expressing the Contempt particularly, is a Matter that continues in the Deliberation of that Court: 'Tis true, this Court ought to determine what the Law is in every Case that comes before them, and in this Case the Question is only whether this Court can judge of a Contempt committed in Parliament during the same Session of Parliament, and discharge one committed for such Contempt. When a Question of Privilege ariseth in an Action depending in this Court, the Court may determine it; but now the Question is, Whether the Lords have Capacity to determine their own Privileges, and whether this Court can controul their Determination, and discharge during their Session a Peer committed for Contempt. The Judges have often demanded what the Law is, and how a Statute should be expounded of the Lords in Parliament, as on the Statute of Amendments, 40 Ed. 3. 34. 6. 8. Co. 157. and 158. a fortiori. The Court ought to demand their Opinion, when a Doubt ariseth on an Order made by the House of Lords now sitting.*

As to the Determination of the Imprisonment, doubtless the Pleasure of the King is to be determined in the same Court where the Judgment was given.

As to the Determination of the Session, the Opinion of *Coke* is good Law, and the Addition of Provisoes in many Acts is only in *Majorem cautelam*.

Sir *Will. Jones, Att. Gen.* To the same Effect, as to the Uncertainty of the Commitment, it is to be considered that this Case differs from all other Cases in two Circumstances: 1. The Person which is committed is a Member of the House by which he is committed (I do not take upon me to say that the Case would be different if the Person committed were not a Peer.) 2. The Court that does commit is Superior to this Court, and therefore if the Contempt had been particularly shewn, of what Judgment soever this Court should have been as to the Contempt, yet they would not have discharged the Earl, and thereby take upon them a Jurisdiction over the House of Peers.

The Judges in no Age have taken upon them the Judgment of what is *Lex & consuetudo Parliamenti*; but here the Attempt is to engage the Judges to give their Opinion in a Matter whereof they might have refused to have given it, if it had been demanded in Parliament. 'Tis true, if a Writ be brought where Privilege is pleaded, the Court ought to judge of it as an Incident to the Suit whereof the Court was possess'd; but this will be no Warrant for this Court to assume a Judgment of an Original Matter arising in Parliament, and that which is said of the Judges Power to expound Statutes, cannot be denied.

But it is not applicable to this Case, by the same Reason that this Commitment is question'd, every Commitment of the House of Commons may be likewise question'd in this Court. It is objected, that there would be a Failure of Justice if the Earl should not be discharged; but the contrary is true; for, if he be discharged, there would be a Failure of Justice for Offences in Parliament, and therefore the Earl would be discharged from all Manner of Punishment for his Offence, if he be discharged (for he must be discharged or remanded; for the Court cannot Bail but where they have a Jurisdiction of the Matter) and so deliver'd out of the Hands of the Lords, who only have Power to punish him.

It is objected, that the Contempt is not said to be committed in the House of Peers, but it may well be intended to be committed there; for it appears he is a Member of that House, and that the Contempt was against the House; and besides, there are Contempts whereof they have Cognizance, tho' they are committed out of the House. It is objected, that 'tis possible this Contempt was committed before the General Pardon; but surely such Injustice shall not be supposed in the Supream Court, and it may well be supposed to be committed, during the Session in which the Commitment to Prison was.

It would be great Difficulty for the Lords to make their Commitments so exact and particular, when they are employ'd in the arduous Affairs of the Realm; and it has been adjudged on a Return out of *Chancery*, of a Commitment for a Contempt against a Decree, that it was good, and yet the Decree was not shown.

The Limitation of the Imprisonment is well, for if the King or the House determine their Pleasure, he shall be discharged, for then 'tis not the Pleasure of both that he should be detained, and the Addition of those Words *during the Pleasure*, is no more than was before implied by the Law; for if those Words had been omitted, yet the King might have pardon'd the Contempt, if he had but express'd his Pleasure under the Broad Seal. If a Judgment be given in this Court, that one shall be Imprison'd during the King's Pleasure; his Pleasure ought to be determined by Pardon, and not by any Act of this Court, so that the King would have no Prejudice by the Imprisonment of a great Minister, because he could discharge him by a Pardon. The double Limitation is for the Benefit of the Prisoner, who ought not to complain of the Duration of his Imprisonment, since he has neglected to make Application for his Discharge in an orderly way.

I confess by the Determination of the Session, the Orders made the same Session are discharged, but I shall not affirm whether this present Order will be discharged or no, because it is a Judgment. But this is not the present Case, for the Session continues notwithstanding the Royal Assent given to several Bills, according to the Opinion of *Cook*, and all the Judges. *Hutton*. 61, 62. Every Proviso in an Act of Parliament is not a Determination of what was the Law before; for they are often added for the Satisfaction of those that are ignorant of the Law.

Turner, Solicitor Gen. To the same Effect, in the great Case of *Mr. Selden*, 5 Car. 1. the Warrant

rant was for notable Contempts committed against us and our Government, and stirring up Sedition; and altho' that be almost as general as that in our Case, yet no Objection was made to it for that Clause in any of the Arguments, *Rushworth's Collections*, 18, and 19, in the Appendix. But I agree that this Return could not have been maintained if it were out of an Inferior Court, but during the Session this Court can take no Cognizance of the Matter, and the Inconvenience would be great if the Law were taken otherwise; for this Court might judge one way, and the House of Peers another: which doubtless would not be for the Advantage and Benefit of the Subject. For the avoiding of this Mischief, it was agreed by the whole Court in the Case of *Barnardiston* and *Somes*, that the Accord for the double Return could not be brought in this Court until the Parliament had determined the Right of Election, lest there should be a Difference between the Judgments of the Courts.

When a Judgment of the Lords comes to this Court, tho' it be of a Reversal of a Judgment of this Court, the Court is obliged to execute it; but their Judgment was never examined or corrected here. In the Case of the Lord *Hollis*, it was resolved that this Court had no Jurisdiction of a Misdemeanor committed in Parliament; when the Parliament is determined, the Judges are the Expositors of the Acts, and are intrusted with the Lives, Liberties and Fortunes of the Subject, and if the Session were determined, the Earl might apply himself to this Court, for the Subject shall not be without a Place where he may resort for the Recovery of his Liberty, but this Session is not determined: For the most part the Royal Assent is given the last Day, as saith *Plowden*, *Partridge's Case*; yet the giving the Royal Assent does not make it the last Day of Parliament without a subsequent Resolution or Prerogative, and the Court judicially takes notice of Prorogation and Adjournments of Parliament. *Cro. Jac.* 111. *Ford versus Hunten*, and by Consequence no Order is discontinued, but remains as if the Parliament were actually Assembled. *Cro. Jac.* 342. *Sir Chr. Hauden's Case*, so that the Earl ought to apply himself to the Lords, who are his proper Judges.

It ought to be observed, That this Attempt is *Primæ Impressiois*, and though Imprisonment upon Contempt hath been frequent by the one and the other House, till now no Person ever sought Inlargement here: The Court was obliged in Justice to grant the *Habeas Corpus*, but upon the whole Matter being disclosed, it appears upon the Return, that the Cause belongs *ad aliud examen*; they ought to remand the Party.

As to the Limitation of the Imprisonment, the King may determine his Pleasure by a Pardon under the Great Seal of *England*, as in the Case of *Reinger* and *Flagoffa*, *Plowden* 20.

As to the Exception that no Commitment is returned, the Constable can only shew what concerns himself, which is the Warrant to him directed; and the Writ does not require him to return any thing else.

As to your Exception, that he is otherwise named in the Commitment than in the Writ: The Writ requires to have the Body of *A. Earl*

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of *S. Quocunque nomine Censeatur* in the Commitment.

After this, my Lord *Shaftsbury* made a Speech; the Substance thereof followeth.

My Lords,

I DID not intend to have spoke one Word in this Business, but something hath been objected and laid to my Charge by the King's Council, Mr. *Attorney* and Mr. *Solicitor*, that enforceth me to say something for your better Satisfaction. They have told you that my Counsel in their Arguments said, That this Court was greater than the House of Peers, which I dare to appeal to your Lordships and the whole Court, that it was never spoken by them, I am sure was not by any Directions of mine. What is done by my Counsel, and by me, is, That this is the most proper Court to resort unto, where the Liberty of the Subject is concerned. The Lords House is the Supream House of Judicature in the Kingdom; but yet there is a Jurisdiction that the Lords House does not meddle with. The King's Counsel hath mention'd, as a Wonder, That a Member of the Lords House should come hither to diminish the Jurisdiction of the Lords. I acknowledge them to be Superior to this, or any other Court, to whom all Appeals and Writs of Error are brought; and yet there are Jurisdctions that they do not challenge, and which are not natural to them, or proper for them. They claim not to meddle in Original Causes, and so I might mention in other things; and I do not think it a Kindness to any Power or Body of Men, to give them such Powers that are not natural or proper to their Constitution. I do not think it a Kindness to the Lords to make them absolute and above the Law, for so I humbly conceive this must do, if it be adjudged that they by a general Warrant, or without any particular Cause assigned, do commit me, or any other Man, to a perpetual and indefinite Imprisonment: And, my Lords, I am not so inconsiderable a Person, but what you do in my Case, must be Law for every Man in *England*.

Mr. *Attorney* is pleased to say, I am a Member of the Lords House, and to lay weight on the Word *Member*. It is very true, I am one of them, and no Man hath a greater Reverence or Esteem for the Lords, than my self: but, my Lords, I hope my being a Peer, or a Member of either House, shall not lose my being an *Englishman*, or make me to have less Title to *Magna Charta* and the other Laws of *English Liberty*.

My Opinion is not with one of my Counsel, who argued very learnedly, That the passing an Act by the King's Royal Assent can make a Sessions, because the usual Proviso was not in it. It was without any Instruction of mine to mention that Point.

The King's Counsel tells your Lordships of the Laws and Customs of Parliament; and if this was so, I should submit: But this Case of mine is *Primæ Impressiois*, and is a new way, such as neither Mr. *Attorney* nor Mr. *Solicitor* can shew any Precedent of, and I have no other Remedy nor Place to apply to than the Way I take.

K k k k

Mr.

‘ Mr. *Attorney* confesseth that the King’s Plea-
 ‘ sure may release me without the Lords. If so,
 ‘ this Court is *Coram Rege*. This Court is the
 ‘ proper Place to determine the King’s Pleasure.
 ‘ This Court will and ought to judge of an Act
 ‘ of Parliament void, if it be against *Magna Char-*
 ‘ *ta*, much more may judge an Order of the House,
 ‘ that is put in Execution to deprive any Subject
 ‘ of his Liberty. And if this Order of Commit-
 ‘ ment be a Judgment, as the King’s Counsel af-
 ‘ firms, then it is out of the Lords Hands, and
 ‘ properly before your Lordships, as much as the
 ‘ Acts which were lately passed, which I pre-
 ‘ sume you will not refuse to judge of, notwith-
 ‘ standing that the King’s Attorney-General saith
 ‘ that this Parliament is still in Being. I take it
 ‘ something ill that Mr. *Attorney* tells me I might
 ‘ have applied elsewhere.

‘ My Lords, I have not omitted what became
 ‘ my Duty towards the King; for besides the
 ‘ Oath of Allegiance I took as a Peer, or an
 ‘ *Englishman*, there is something in my Breast
 ‘ that will never suffer me to depart from the
 ‘ Duty and Respect that I owe him; but I am
 ‘ here before him, he is always supposed to be
 ‘ here present, and he alloweth his Subjects the
 ‘ Law.

‘ My Lords, they speak much of the Cu-
 ‘ stom of Parliament; but I do affirm to you,
 ‘ there is no Custom of Parliament that ever
 ‘ their Members were put out of their own
 ‘ Power; and the Inconveniences of it will be
 ‘ endless.

‘ Mr. *Attorney* was pleased easily to answer the
 ‘ Objection of one of my Counsel; If a great
 ‘ Minister should be so committed, he hath the
 ‘ Cure of a Pardon, a Prorogation, or a Dissolu-
 ‘ tion: but if the Case should be put, why forty
 ‘ Members, or a greater Number, may not as
 ‘ well be taken away without Remedy in any
 ‘ of the King’s Courts, he will not so easily
 ‘ answer; and if in this Case there can be no
 ‘ Relief, no Man can foresee what will be here-
 ‘ after.

‘ I desire your Lordships well to consider what
 ‘ Rule you make in my Case, for it will be a
 ‘ Precedent that in future Ages may concern e-
 ‘ very Man in *England*.

‘ My Lords, Mr. *Attorney* saith you must ei-
 ‘ ther release or remand me; I differ from him in
 ‘ that Opinion. I do not insist upon a Release:
 ‘ I have been a Prisoner above five Months al-
 ‘ ready, and come hither of Necessity, having
 ‘ no other way to get my Liberty, and there-
 ‘ fore am very willing to tender your Lordships
 ‘ Bail, which are in or near the Court, good as
 ‘ any are in *England*, either for their Quality
 ‘ or Estate, and I am ready to give any Sum or
 ‘ Number.

‘ My Lords, this Court being posselt of this
 ‘ Business, I am now your Prisoner.

The Court deliver’d their Opinion *Seriatim*.

Sir *Tho. Jones*, Justice. Such a Commitment
 by an ordinary Court of Justice, would have
 been ill and uncertain; but the Cause is different
 when it comes before this High Court, to which
 so much Respect has been paid by our Predeces-
 sors, that they have deferred the Determination

of Doubts conceived on an Act of Parliament,
 until they have received the Advice of the Lords:
 and now, instead thereof, it is demanded of us
 to control the Judgment of all the Peers, given
 on a Member of their own House, and during
 the Continuance of the same Session. The Cases
 where the Courts of *Westminster* have taken Cog-
 nizance of Privilege, differ from this Case: for
 in those it was only an Incident to the Case be-
 fore them, which was of their Cognizance; but
 the direct Point of the Matter is now the Judg-
 ment of the Lords.

The Course of all Courts ought to be confi-
 der’d, for that is the Law of the Court, *Lane’s*
Case, 2 *Rest.* and it has not been affirmed, That
 the Usage of the House of Lords has used to ex-
 press the Matter more particularly on Commit-
 ments for Contempts, and therefore I shall take
 it to be according to the Course of Parliament.
 4 *Inst.* 50. It is said that the Judges are Assistants
 to the Lords, to inform them of Common Law;
 but they ought not to judge of any Law, Cu-
 stom, or Usage of Parliament.

The Objection as to the Continuance of the
 Imprisonment, has received a plain Answer, for it
 shall be determined by the Pleasure of the King,
 or of the Lords: and if it were otherwise, yet
 the King could pardon the Contempt under the
 Great Seal, or discharge the Imprisonment under
 the Privy-Seal.

I shall not say what would be the Consequence
 (as to this Imprisonment) if the Session were de-
 termined*, for that is not the present Case: but
 as the Case is, the Court can neither Bail nor
 Discharge the Earl.

Wild, Justice. The Return, no doubt, is il-
 legal; but the Question is of a Point of Juris-
 diction, Whether it may be examined here? This
 Court can’t meddle with the Transactions
 of the most High Court of Peers in Parliament
 during the Session, which is not determined;
 and therefore the Certainty or Uncertainty of
 the Return is not material, for it is not exami-
 nable here: but if the Session had been determi-
 ned, my Opinion would be, that he ought to be
 discharged.

Rainsford, Chief Justice. This Court has no
 Jurisdiction of the Cause, and therefore the Form
 of the Return is not considerable. We ought
 not to extend our Jurisdiction beyond its due Li-
 mits, and the Actions of our Ancestors will not
 warrant us in such an Attempt.

The Consequence would be very mischievous
 if this Court should deliver a Member of the
 House of Peers and Commons who are commit-
 ted, for thereby the Business of Parliament may
 be retarded; for it may be the Commitment was
 for evil Behaviour, or indecent Reflections on o-
 ther Members, to the Disturbance of the Affairs
 of Parliament.

The Commitment in this Case is not for safe
 Custody, but he is in Execution of the Judg-
 ment given by the Lords for the Contempt;
 and therefore if he should be Bailed, he would
 be delivered out of Execution; for a Contempt
in facie Curiae there is no other Judgment or Ex-
 ecution.

This Court has no Jurisdiction, and therefore

* This was the Case afterwards of the Earl of Danby, N^o 78.

he ought to be remanded. I deliver no Opinion whether it would be otherwise in Case of a Prorogation.

Twisden, Justice, was absent, but he desired Justice *Jones* to declare that his Opinion was, That the Party ought to be Remanded.

So the Earl was remanded to Prison, and staid there 'till another Session of Parliament; when his Application to an inferior Court was Voted a Breach of Privilege by the Lords, for which the Earl was to answer his Contempt at the Bar of the House.

On the 22d of *February* he was accordingly brought to the Bar, where he offered to acknowledge his asserting the Dissolution of the Parlia-

ment to be an unadvised Action, and to beg their Lordships Pardon for his Offence in bringing an *Habeas Corpus*.

Upon which the House proceeded to a Resolution, That the Lord *Shaftsbury* should make his Submission and Acknowledgment in a Form prescrib'd by that House; and accordingly a Declaration was prepar'd for that purpose. The Lord *Chancellor* read the Words to him, and the Lord *Shaftsbury*, kneeling, repeated them at the Bar, and then withdrew. So the House ordered the Lords with white Staves to acquaint his Majesty, That they had received Satisfaction from the Earl of *Shaftsbury*, in the Matter of the *Habeas Corpus*, and the other Contempt, and pray'd him to discharge the Earl from his Confinement, which was done.



LXXI. *The Trial of JAMES MITCHEL*, in Scotland, for attempting the Murder of Dr. JAMES SHARP, Archbishop of St. Andrews†, and Wounding the Bishop of Orkney, the 7th of January, 167⁷. 29 Car. II.*

JAMES *Mitchel* being indicted for an Attempt to murder the Archbishop of *St. Andrews*, in *July* 1668, was committed Prisoner to the *Tol-booth* at *Edinburgh*; whereupon the Lord Commissioner and the Lords of the Privy-Council appointed a Committee to examine him, viz. Lord *Linlithgow*, Preses (President); *Hatton*, Treasurer Depute; *Dundonald*, *Ross*, and *Murray*, Justiciaries; *Craigy*, *Collington*, &c. When he was brought before the Committee, he was persuaded to make Acknowledgment of the Fact; a Relation whereof is thus given by himself.

‘ My Indictment I take up in these two Particulars: First, As they term it Rebellion and Treason, anent which I answered to My Lord Chancellor in Committee, that it was no Rebellion, but a Duty which every one was bound to have performed in joyning with that Party, and I: In the Year 1656, Mr. *Robert Lighton* being then *Primar* in the College of *Edinburgh*, before our Laureation, tendered to us the *National Covenant*, and *Solemn League and Covenant*; upon mature Deliberation, I found nothing in them, but a short Compend of the Moral Law, only binding us to our Duty towards God and towards Men in their several Stations; and I finding, that our banished King’s Interest lay wholly included therein, and both Coronation and Allegiance Oaths, &c. and they being the Substance of all Loyalty; and my Lord, it was well known, that then many were taking the Tender, and forswearing *Charles Stuart*, Parlia-

ment and House of Lords, I then Subscribed both, the doing of which My Lord Chancellor would have stood at no less Rate, if as well known, than this my present adhering and prosecuting the Ends thereof doth now; and when I was questioned what then I called Rebellion, I answered, it is in *Ezra* vii. 26. *And whosoever will not do the Law of God and of the King, &c.* But being questioned before the Commissioner and the Council thereanent, I answered as I said to My Lord Chancellor before: In the Year 1656, Mr. *Robert Lighton* being then *Primar* in the College of *Edinburgh*, before our Laureation, he tendered to us the National and Solemn League and Covenant: He stopt me, saying, I’le wad ye are come here to give a Testimony: And then being demanded what I called Rebellion, if it was not Rebellion to oppose his Majesty’s Forces in the Face: To the which I answered, viz. My Lord Chancellor, if it please your Grace, I humbly conceive they should have been with us; meaning, that it was the Duty of these Forces to have joined with us, according to the National and Solemn League and Covenant; at which Answer I perceived him to storm: But, saith he, I heard ye have been over Seas, with whom did ye converse there? Answer, With my Merchant. But, saith he, With whom in particular? Answer, With one *John Mitchel*, a Cousin of mine own. Saith he, I have heard of him, he is a Factor in *Rotterdam*; to which I conceded. But, saith he, did ye not converse with Mr. *Livingston*, and such as he? to which I answered, I conver-

* Burnet’s Hist. of his own Times, Vol. I. p. 413 ---- 416.

† About two Years afterwards, in 1679, he was actually murder’d by the Mob, as he was going home in his Coach. Ibid. 476.

‘ sed with all our banished Ministers. To which
 ‘ he replied, Banished Traitors; ye will speak
 ‘ Treason at the Bar. Then he answered himself,
 ‘ saying, But they would call the Shooting at
 ‘ the Bishop an Heroick Act. To which I an-
 ‘ swered, That I never told them any such thing.
 ‘ But where did you see *James Wallace* last? An-
 ‘ swer, Towards the Borders of *Germany*, some
 ‘ Years ago. But what ailed you at my Lord
 ‘ *St. Andrews*? (pointing at him with his Finger)
 ‘ Answer, My Lord Commissioner, the grievous
 ‘ Oppression and horrid Blood-shed of my Bre-
 ‘ thren, and the eager Pursue after my own, as
 ‘ it appeareth this Day to your Grace, and to all
 ‘ his Majesty’s honourable Privy-Council. After
 ‘ which he commanded to take me away, that
 ‘ they might see what to do next with me.

‘ The Second is, the Shooting of the Shot in-
 ‘ tended against the Bishop of *St. Andrews*,
 ‘ whereby the Bishop of *Orkney* was hurt; to
 ‘ which I answered My Lord Chancellour in pri-
 ‘ vate, viz. That I looked on him to be the
 ‘ main Instigator of all the Oppression and Blood-
 ‘ shed of my Brethren that followed thereupon,
 ‘ and the continual pursuing after my own; and,
 ‘ my Lord, as it was creditably reported to us
 ‘ (the Truth of which your Lordship knows bet-
 ‘ ter than we) that he kept up his Majesty’s Let-
 ‘ ter inhibiting any more Blood upon that Ac-
 ‘ count, until the last Six were Execute: And I
 ‘ being a Soldier, not having laid down Arms,
 ‘ but being still upon my own Defence, and ha-
 ‘ ving no other End nor Quarrel at any Man
 ‘ (but according to my Apprehension of him)
 ‘ that as I hope in Sincerity, with fixing either
 ‘ my Sense or Action upon the Covenant it self,
 ‘ as it may be understood by the many Thousands
 ‘ of the Faithful, besides the Prosecution of the
 ‘ Ends of the same Covenant, which was, and in
 ‘ that Point the Overthrow of Prelates and Pre-
 ‘ lacy, and I being a declared Enemy to him on
 ‘ that Account, and he to me in like manner. So
 ‘ I never found my self obliged, either by the
 ‘ Law of God, or Nature, to set a Centry at his
 ‘ Door for his Safety, but as he was always to
 ‘ take his Advantage, as it appeareth, so I of him,
 ‘ to take any Opportunity offered. Moreover,
 ‘ we being in no Terms of Capitulation, but on
 ‘ the contrair, I, by his Instigation, being exclu-
 ‘ ded from all Grace and Favour, thought it my
 ‘ Duty to pursue him at all Occasions: Also, my
 ‘ Lord, Sir *William Sharp* making his Apology,
 ‘ anent his unhandsome and cheating way taken,
 ‘ he took me under the Pretence to have spoken
 ‘ with me about some other Matters. I not
 ‘ knowing him until five or six of his Brothers
 ‘ and his Servants were laying fast hold on me,
 ‘ they being armed of purpose, desired I would
 ‘ excuse him, seeing what he had done was up-
 ‘ on his Brother’s Account, which Excuse I ea-
 ‘ sily admitted, seeing that he thought himself o-
 ‘ bliged to do what he did to me without Law or
 ‘ Order, in the behalf of his Brother; much more
 ‘ was I obliged to do what I did, in the behalf
 ‘ of many Brethren, whose Oppression was so
 ‘ great, and whose Blood he caused to be shed in
 ‘ such Abundance. Moreover, he persisting in
 ‘ his bloody Murthers, as witnesseth the wound-
 ‘ ing of Mr. *Bruce* at his Taking, by his Emissa-
 ‘ ries, some few Days before that fell out con-
 ‘ cerning himself, I was desirous, if by any means
 ‘ in taking him away I could, to have put a Stop

‘ to the then currant Persecution. Thus far I
 ‘ have truly resumed what passed. My Confes-
 ‘ sion was made upon Oath and Promise made to
 ‘ me upon Life and Safety, and indeed the Pro-
 ‘ mise made to me by my Lord Chancellour was
 ‘ in these Words; *Upon my great Oath and Re-
 ‘ putation, if I be Chancellor, I shall save your Life,
 ‘ and if ye will not confess, the Council will take a-
 ‘ nother way to make it out, which I took for the
 ‘ Boots, as I found afterwards.*

After two Years Imprisonment, upon the
 18th of Jan. 1676, he was unawares, at Six a
 Clock of the Night (about the time of the in-
 closing of the Wards) called forth before the
 Committee.

At his Appearance, the Lords Justiciaries ob-
 scuring themselves by putting their Hands upon
 their Faces, and leaning upon their Elbows upon
 the Table: My Lord Preses said, Sir, Ye are
 brought here before the Committee, to see if you
 will adhere to your former Confession, or not.
 To which he answered, My Lord, it is not un-
 known to your Lordship, and others here pre-
 sent, that by the Council’s Order I was remitted
 to the Lords Justiciaries, before whom I received
 an Inditement, at my Lord Advocat’s Instance,
 wherein I was indited both of Life and Fortune,
 although, my Lord, Fortune have I none. To
 which Inditement I answered at three several Dy-
 ets, being deserted by my Lord Advocat. I hum-
 bly conceive, that both by the Law of the Na-
 tion, and the Practice of the House at that time,
 I ought to have been set at Liberty, yet notwith-
 standing I was, contrary both to Law, Justice,
 and Equity, returned to Prison. And upon what
 Account I am brought this Night before your
 Lordship, I know not. To the which my Lord
 Preses answered, Ye are not accused here, neither
 upon Life nor Fortune, but to see whether you
 will adhere to your former Confession. To
 which it was answered, I am not convinced of
 any Crime, therefore I know not any such Con-
 fession as your Lordship alleages. To which my
 Lord Treasurer Depute replied, He is one of the
 most arrogant Rogues, Cheats, Liars, and what
 not. To which he replied, My Lord, if there
 were fewer of such Persons of whom your Lord-
 ship have been speaking, in the Nation, I would
 not be standing this Night at your Bar: But my
 Lord Advocat knows, that what hath been al-
 leaged against me, is not my Confession. To
 which he replied, Do you not remember that
 before the Lord Commissioner and the Council
 ye said such and such things? To which it was
 replied, That my Lord Commissioner never en-
 quired about any such thing; only he said, he
 heard that I had been abroad, and over Seas, and
 enquired with whom I did converse there; to
 which it was replied, With my Merchant, my
 Lord; But with whom in particular? to which
 I answered, With one *John Mitchel*, a Cousin
 of mine own; so that there was no such Discourse
 before the Council. But, says my Lord Preses,
 we will make a sharper thing make you to con-
 fess. To which it was replied by the Pannel, I
 hope your Lordships are Christians and not Pa-
 gans. To which the Treasurer Depute added,
 saying, That the Pannel was no Christian. To
 which the Pannel replied, My Lord, you know
 the old Proverb, *Turpe est Doctori &c.* And so he
 was returned to Prison for that Night.

Upon the 22d Day, he being called before the said Committee who sat in the Town's Council-House, at which time my Lord Preses said to him: Sir, ye are called here again to see if ye will adhere to your former Confession, (opening a Paper to the Pannel, and alleaged it to be subscribed by him.) To which it was answered, My Lord, I acknowledge no such thing. Then he replied, Sir, ye see what is upon the Table before you; I shall see if that can cause you do it. To which it was answered, By that Torture you may cause me blaspheme God, as *Saul* did compel the Saints; you may by that Torture cause me to speak amiss of your Lordship; to call myself a Thief, a Murtherer, or Warlock, and what not, and then pannel me upon it: But if ye shall, my Lords, put me to it, I here protest before God and your Lordship, that nothing extorted from me by Torture shall be made use of against me in Judgment, nor have any force against me in Law, or any other Person whatsoever; but to be plain with your Lordship, I am so much a Christian, that whatever your Lordship shall legally prove against me, if it be a Truth, I will not deny it. But, my Lord, on the contrary, I am so much a Man, yea, and a *Scots* Man, that I never held myself obliged, either by the Law of God or Nature, or by the Law of Nations, to become my own Accuser. Then said my Lord Depute Treasurer to the Preses, He hath the Devil's Logick, and sophistcats like him. Ask at him whether or not that be his Subscription? To which he answered, he acknowledged no such thing. To which *Hattoun* answered, Bid him say, Yea, or Not. Then my Lord Preses said, (pointing his Hand to the Boot) You see what is before you, say either Yea, or Not. He answered, I say Not; and so he was returned to close Prison as before.

Upon the 24th Day they solemnly assembled, to wit, with their Robes in the Parliament-House, where the Lords of the Session sit, at which time the Executioner was present with the Boots, and the Pannel being brought as before to the Bar, the Lord Preses said, You are now brought here to see if you will yet confess before you be put to Torture. But the Pannel knowing, according to the rate of the *Spanish* Inquisition, that always the more he confessed, either concerning himself, or any other Person, the more severely the Torture would be made use of, to make him confess more; therefore he answered after this manner: My Lord, I shall study Brevity by speaking a few Words what I have to say, to wit, That I have been now these two full Years in Prison, and more than one of them in Bolts and Fetters, and upward of thirty Weeks in close Prison, so that my Imprisonment hath been more intolerable to me than the Pains of many Deaths, if I had been capable thereof: Yea, and it is well known, that within a shorter Time in regard of my Imprisonment, several have made away themselves rather than endured the Affliction of a Prison; but, my Lord, an Obedience to the express Commandment of God hath made me to undergo all Hardships I have hitherto met with, and to undergo this present Torture, to wit, the Preservation of my Life, and the Lives of others, as far as it is in my Power, and to keep off innocent Blood from your Lordship, and your Families and Relations, which by shedding of mine, doubtless you would bring

upon yourselves, Posterity, and Relations, Wrath from the Lord, to the consuming thereof, until there should be no Remnant nor Escaping. And now, my Lords, I do again protest before God and your Lordships, that whatever may be extorted from me by Torture, may not be made use of against me, nor any other Person in Judgment, nor have any force in Law. And so, my Lords, I have done: You may call the Men whom you have appointed to your Work. After which they caused the Maser to call upon the Executioner, and two Officers appointed for that effect, who tyed him in an armed Chair, and brought the Boots, and enquired which of his Legs they should take; but they, after speaking amongst themselves, commanded the Executioner to take any of them, upon which he laid the left Leg upon the Boot, but the Pannel lifted it out again, saying, Seeing ye Judges have not determined it, take the best of the two, for I freely bestow it in the Cause; and laid his right Leg into the Torture; after which the King's Advocate said, I shall speak but one Word or two, but notwithstanding continued his Discourse for a considerable time; so when he had made an end, the Pannel answered thus; My Lord Preses, the Advocat's one Word or two hath multiplied to so many, that my Memory cannot serve me, in the Condition wherein I am, to resume them so as to answer them in particular: But I shall answer to the Scope of his Discourse. First, Whereas he hath been speaking to the Sovereignty of the Magistrat, I shall say somewhat more than he hath said, to wit, that the Magistrat whom God hath appointed, is God's Deputy, and that both the Throne and the Judgment is the Lord's, while he judgeth for God, and according to the Law of God, and that a great part of his Office is to deliver the Oppressed out of the Hand of the Oppressor, and to shed no innocent Blood, according to the Commandment of God to *Zedekiah* by the Prophet *Jeremiah*, Chap. xxii. 3. And, my Lords, Disobedience to his Commandment brought the Wrath of God upon him, his Princes, and the whole Nation of the *Jews*, Chap. xxxvii. Secondly, My Lord Advocat hath been hinting at the Sinfulness of Lying upon any Account: It is answered, my Lords, that not only Lying is sinful, but also a pernicious speaking of the Truth is a horrid Sin before God, while it tendeth to the shedding of innocent Blood, as witnesseth that of *Doeg*, *Ps.* lii, compared with *1 Sam.* xxii. 29. But what my Lord Advocat hath forged against me is false, so that I am standing upon my former Ground, viz. the Preservation of my Life and the Lives of others, as far as it lies in my Power, the which I am expressly commanded to do by the Lord of Hosts. After which, the Clerk's Servant being called by the Advocat, they interrogate him of many Questions, upward to the Number of Thirty, only to see if they could catch him in a Contradiction, or to see if they could find out any Person to witness against him; but he understanding their Drift, answered as followeth: My Lords (not knowing that I shall escape this Torture with my Life) therefore I beseech you to remember what *Solomon* says, *He who sheweth no Mercy, shall have Judgment without Mercy.* And if there be any here present, as I hope there are few or none, yet if there be any such here, whose Disposition is so eager in

pur-

purſuing after innocent Blood, that nothing leſs than a full Draught will ſatisfy them, I ſay, let ſuch remember what is ſpoken, *Rev. xix. 5, 6. Thou art righteous, O Lord, which waſt, and art, and ſhalt be, becauſe thou haſt judged thus, for they have ſhed the Blood of the Saints and Prophets, and thou haſt given them Blood to drink, for they are worthy, &c.* And now, my Lords, I do freely from my Heart forgive you who are Judges ſitting upon the Bench, and the Men who are appointed to be about this Piece of horrid Work, and alſo theſe who are vitiating their Eyes beholding the ſame. And I do intreat, that God may never lay it to the Charge of any of you, as I beg that God may be pleaſed for his Son Chriſt's ſake to blot out my Sins and Iniquities, and never lay them to my Charge here nor hereafter.

Queſt. Are you that Mr. James Mitchel who was excepted out of the King's Act of Grace and Favour, or not? *Anſw.* I never committed any ſuch Crime deſerving me to be excluded, but rather to be included, protected and defended. *Q.* Know you any more of that Name? *A.* Yes, there are two within *Midlothian*; and what know I, but there may be more elſewhere? *Q.* When knew you of the Riſing in Arms, *Anno 1666*? *A.* My Lords, I knew of when the reſt of the Citizens knew of it. *Q.* When was that? *A.* When there came a Meſſenger to the Council for that effect, and when *Dalzel* and his Soldiers marched out at the Weſt Port in order thereto. *Q.* Went not you out of the Town with Captain *Arnot*? *A.* No. *Q.* Where did you meet with James Wallace? *A.* I did not know him at that time. *Q.* Was you at *Air*? or did you joyn with the Rebels there, or any where elſe? *A.* I never joyned with any ſuch. To which my Lord *Hattoun*, Treafurer Depute, replied, ſaying, My Lord, he never acknowledges theſe Men to be Rebels. To which the Pannel answered, My Lord, I ſhall in answer to what is ſpoken follow *Solomon's* Advice, in that he ſays, at ſome times even a Fool by holding his Peace, will be reputed Wiſe. Whether or not *Hattoun* took it to be ſpoken of him, I cannot tell, but there was nothing replied thereto by any of them. *Q.* Where was you at the time of *Pentland*? *A.* In *Edinburgh*. *Q.* Where was you before it? *A.* In *Edinburgh*. *Q.* Where was you after it? *A.* In *Edinburgh*. *Q.* Where did you lodge before that time? *A.* In one *Girſell Whiteford's*. *Q.* Where did you ſtay at that time, and was you ſtill in the Town, or not? *A.* My Lord Advocate, I do not know what you mean by being ſtill in the Town, for you may call it out of the Town, if I was at the *Wind-mill*, or at *Leith*. *Q.* What, was you no where further abroad, than at ſuch Places? *A.* My Memory cannot ſerve me now, after ten Years Space, to determine where I was; neither do I keep a Diurnal of times paſt, nor is it my Duty ſo to do; neither do I think any Man's Memory here preſent can ſerve him for ſo long a time: But this I judge, that it is my Duty every Day to be about my lawful Employment and Calling, according as God hath commanded, and therewith to reſt ſatisfied. *Q.* What took you out of the Town at that time? *A.* I was making my ſelf ready to go over to *Flanders*. *Q.* With whom went you? *A.* With one *John Forreſter*, an *Oſtender*. *Q.* How long was it after *Pent-*

land before you went? *A.* I cannot tell. *Q.* Can you not give it a gueſs? *A.* About a Month or ſix Weeks. *Q.* What was you doing all that time? *A.* I was making my ſelf ready, and thereafter there came a contrary Wind. *Q.* Who was Merchant in the Ship? *A.* I enquired not. *Q.* But went not the Merchant along with you? *A.* No. *Q.* What was the Reaſon of that? *A.* It was the time of the *Dutch* War againſt the *Engliſh*, and at ſuch times Merchants of Ships do not hazard their Perſons with their Goods, but commits their Affairs to Factors abroad. *Q.* How long ſtayed you there? *A.* About three Quarters of a Year. *Q.* Why ſtayed you ſo long there? *A.* It was a Space before I was ready to return, and thereafter the Report of Peace came, which thereafter followed, and I thought it better to wait a little time than hazard in War. *Q.* With whom came you home again? *A.* With *Dutchmen*, who were *Amſterdamers*. *Q.* Was there no *Scotsman* with you? *A.* I have told you, my Lords, I came home with *Dutchmen*. *Q.* Who was the Shipper of the Ship? *A.* I cannot remember, but he came to *Lime Kilns* for a Loading of Coals from Sir James Hacket. *Q.* What Goods fetcht you home? *A.* I cannot now remember the Particulars. *Q.* Where did you enter them? *A.* I made the beſt ſhift I could to ſhun the Cuſtomers. At which Sir *William Parvas* riſeth to cauſe call the Excife-men; to which the Pannel replied, O Sir *William*, it was out of your time and theirs. *Q.* Did you know *Peniry*? *A.* Yes. *Q.* Is he living? *A.* No. *Q.* Did you know Sir James *Stirling*, and Mr. *Robert Ferguſon*? Are they alive? *A.* They are both dead, the one in this Town, and the other in the *Indies*, being called by the *Indian* Merchants to be a Miniſter in one of their Plantations. *Q.* Knew you *William Young*, and whoſe Tenant he was? *A.* Yes, I both knew him, and that he was a Tenant of Sir *John Gibſon's*. *Q.* Bought you a Horſe from him at that time? *A.* I never bought a Horſe from him. *Q.* From whom had you a Horſe, when you went out of the Town? *A.* There was none in the City who had a Horſe to lend for Hire, who would have reſuſed me for my Money. *Q.* But of whom had you a Horſe? *A.* Where I could have none, I took me to my Feet.

Which Examination being ended, the Executioner being commanded thereto, took down his Leg from off a Cheſt upon which it had been lying the whole time in the Boot, and it being ſet upon the Ground, he began to thruſt in the Shafts, and drive the Wedge. And at every Stroak they enquired, if I had any more to ſay. To which it was answered, No more, my Lords; and thus it continued to the Number of Nine Stroaks, upon the Head of the Wedge, at the end of which he fell by into a little Swarfe thro the Extremity of Pain, at which the Executioner cryed out, Alas! my Lords, he is gone, he is gone. Then they commanded to leave off the Torture, and riſing from their Seats went away. After which he was returned to the *Tolbooth*, being carried by his Friends in the Chair in which he was tyed during the time of his Torture.

He ſtill continued Priſoner in the *Tolbooth* till the 7th of Jan. 1678, when they proceeded againſt him before the Juſtices, as follows:

XXIX CAR. II. 1678.

Curia Justiciariae. S. D. N. Regis tenta in Prætorio, Burgi de Edenburgi Septimo die Mensis Januarii, 1678. Per honorabiles viros Dominos Archibaldum Primrose de Caringtoun Justiciarium Generalem, Jacobum Fouclis de Colintoun, Robertum Nairn de Strathurd, Joannem Lockhart de Castlehill, Davidem Balfour de Ferret, & Thomam Murray de Glendoick, Commissionarios Justiciariae dicti S. D. N. Regis. Curia legitime affirmata.

Intran' Mr. JAMES MITCHEL, Prisoner.

INDYTED and Accused, forasmuch as be the Common-Law and Law of Nations, and the Law of this Kingdom, Murder and the Assaulting and Attempting upon any Person or Persons be way of Forethought Fellonie & *per insidias & industriam*, of purpose and design to Kill, are most atrocious and detestable Crymes, destructive to and against the Being of Humane Society, and is severly punishable, but especially when the samen are committed upon the Persons of Counsellors and other Officers who doe represent Authoritie, and are lyable to the Mistakes and Malice of wicked Persons for doing their Duty, or when the samen are committed upon the Persons of Churchmen, Bishops or Ministers, who are of the Sacred Function; who be the Laws of all Nations are priviledged and secured, as much as can be, from the Malice and sacrilegious Attempts of wicked Persons. And particularly, it is Statute be the fourth Act of the sixteenth Parliament of King James the Sixth, That whatsoever Person invades or persues any of the Lords of Session, secret Council, or any of his Majesty's Officers, for doing of his Majesty's Service, shall be punished with Death. And be the seventh Act of the first Parliament of his Majesty's Royal Father in Anno 1633, intitulat, *Anent the invading of Ministers*, it is Statute that the same shall be extended to all Archbishops, Bishops, and Ministers whatsoever. And be the fourth Act of his Majesty's second Parliament, and second Session of the same, it is Statute, That whatsoever Persons shall be guilty of the Assaulting the Lives of Ministers, that they shall be punished with the pain of Death and Confiscation of their Moveables. And be the Laws and Acts of Parliament of this Kingdom, the Mutilation and Dismemberation of any of his Majesty's Subjects, be way of Forethought Felonie, is ane high and capital Crime, and punishable with the pain of Death. Nevertheless, it is of Veritie, That ye having shaken off all Fear of God and Conscience, Respect and Regard to his Majesty's Authoritie and Laws, and conceiving a deadly Hatred and Malice against a Reverend Father in God, James Archbishop of St. Andrews (a Person who had never known or seen you, so as to take notice of you, and much less had given you any Offence) without any Ground or Quarrell, and upon Account only that he was

advanced and promoted to be Archbishop, and to be of his Majesty's Privie Council, and did serve God and his Majesty faithfullie in the saids Stations and Offices; you did dayly contrive, resolve and design the Murder and Assassination of the said Archbishop: And in order thereto, having provyded yourself with a pair of long Scots Iron Pistols near Musket bore, you did upon the Nynth Day of July 1668, or ane or other of the Days of the said Moneth, proceed and take the Opportunity to execute and goe about your horrid and cruel Design, when the said Archbishop in the Afternoon of the said Day did come down his own Stair, and was going to his Coach, being to go abroad upon his Occasions with a Reverend Father in God, Andrew Bishop of Orkney. And you having a charged Pistol with Powder and Ball, did most cruelly and feloniously Assault the saids Bishops, and did fire, discharge, and shot the said Pistol upon them, being within the said Coach; and God of his Goodness having preserved the Archbishop whom you intended to Murder, you did by the said Shot grievouslie Wound the Bishop of Orkney, to the great hazard and danger of his Life; so that having for a long tyme, and with great Pain, Torture, and expence of Blood, languished of the said Wound, being in a most dangerous Place in the joyning of the Hand and Arm, where there is a Confluence of Nerves and Fibres, he never did recover his Health to that measure and Vigour that he had, or might have had if he had not gotten the said Wound. And he was mutilat and dismembred as to his Arm and Hand, so that he could make no use of the same, but languished thereof until he dyed. And after you had attempted and committed the said Assassination and Villanie *tanquam insidiator & per industriam*, and be way of Forethought Fellonie, ye did goe away and escape throw the Multitude and Throng that had gathered upon the Noise of the said Shot, having another charged and bended Pistol in your Hands, of purpose and design to have killed any Person who should have offered to take and apprehend you. The foresaid Attempt and Villanie being without any Parallel, the Circumstances being considered, *viz.* That it was committed by one who professed to be of the Reformed Religion, and who did pretend to be and serve as a Chaplain in several Families; that it was committed to the great Scandal and Disadvantage of Christian Religion, and especially of the Protestant Reformed Religion, the Professors and Preachers of the same having so much declared against, and be their Preaching and Wrytting having exprest their Detestation of such Attempts and Practices committed by Persons, and ouned by Wrytters of the Roman Profession: And that it cannot be instanced that any of the Protestant Religion was guilty of any Attempt upon the Account of Religion: And that the worst of Men being ashamed to commit such Villanies; for covering of the same, and for their Security, doth take the Opportunitie of Darknes and Solitude, in Corners and solitary Places; Your Malice was so implacable, that you was prodigal of your own Lyfe to be Master of the Lyfe of the said Archbishop; and in the High Street of *Edinburgh*, and in the Day-light, and in the face of the Sun, and before many Witnesses, near or at a litle distance from

from the said Coach, where you could not but expect to be presently seized upon, you did devote your self and did adventure to commit the said most villanous and wicked Attempt. Yet notwithstanding of all the saids Aggravations and Circumstances of Horror and Remorse, you did continue in your implacable Malice, and did converse and keep Correspondence with *Robert Cannon of Mondrogatt*, and with ——— *Welsh of Cornlie*, and ——— *Mac Cleland of Barscop*, declared and excepted Rebels and Traitors; had divers Meetings with them, and upon Discourse concerning the said Attempt, every one of the saids Persons putting it upon one another, when it was put to you, you said and uttered these or the like Speeches, *Shame fall the misse*, and that *ye should make the Fire hotter*: And after the tyme and Attempt forsaide in the Year 1668, and subsequent Years, Moneths, and Days of the saids respective Years, and in ane or other of them, your guilty Conscience disquieting and persuing you, you did rove and go abroad several tymes to *Holland, England and Ireland*, until Divine Justice did drive and bring you back to this Kingdom, that Justice might be satisfied and vindicat in some measure where you had committed so great Villanies. After your Return you did proceed to that height of Boldness and Confidence, or rather Impudence, that you did repair to and live in *Edinburgh*, and was married there with your Wyfe, who is yet living, by *Mr. John Welsh*, who is a declared and excepted Traitor, and Forefault for his Accession to the Rebellion 1666. And your Boldness was so great in out-daring both God and Authoritie, that for a long tyme ye have been lodged and has kept a Shop near that Place where the Archbishop doth and is in use to lodge when he is in *Edinburgh*, until at length ye was discovered and apprehended, having upon you when you was taken the same Pistol which ye shot when ye committed the said Attempt, which was found under your Coat charged with Powder and three Ball, of purpose to attempt again and execute your bloodie Design against the said Archbishop, at least against any Person who should offer to take you. From all which Premises, it is evident that ye are guilty of the saids atrocious Crymes of Murder and Assassination by way of forethought Fellonie, and is a *Percussor & sicarius*, and of Mutilation, and of the other Crymes above-mention'd: And therefore the saids Pains ought to be inflicted upon you as ane Murderer and Assassinat, and as guilty of the Crymes forsaids, in ane exemplarie manner to the Terror of others.

Persuer,

Proctors in Defence.

Sir George Mac Kenzie of
Rosehaugh, our Sovereign
Lord's Advocate.

Sir George Lockhart.
Mr. John Eleis.

His Majesty's Advocate produced ane Warrant from his Majesty's Privy Council for persuing the said *Mr. James Mitchel*, whereof the Tenor follows. *Edinburgh*, the sixth Day of December 1677. The Lords of his Majesty's Privie Council do hereby grant, order, and warrant to Sir George Mac Kenzie of Rosehaugh, his Majesty's

Advocate, to raise and persue a Criminal Process before the Lords Commissioners of Justiciary against *Mr. James Mitchel* for the Assassination attempted by him upon the Archbishop of Saint Andrews and the Bishop of Orkney. Extract be me *sic subscribitur*, Al. Gibsone.

Master John Eleis Advocate produced ane Act of his Majesty's Privy Council empowering Sir George Lockhart and him to appear for the Pannals Defence, whereof the Tenor follows. *Edinburgh* the third Day of January, 1678, the Lords of his Majesty's Privie Council, having considered a Petition presented in behalf of *Mr. James Mitchel* Prisoner, representing, that he is upon Munday next to undergo a Trial before the Justices at the instance of his Majesty's Advocate, as the alleged Person who shot a Pistol at the Archbishop of St. Andrews: Yet no Advocate will undertake to appear for him, without they be speciallie commanded so to do. And therefore supplicating, that Sir George Lockhart and Mr. John Eleis, Advocates, may be ordered to that Effect, the saids Lords doe hereby order and recommend the said Sir George Lockhart and Mr. John Eleis to appear and plead for the Supplicant before the Justices, in the Cause abovementioned, upon Munday next, and other Dyets of that Process, and appoints Intimation to be made hereof to the said Sir George Lockhart and Mr. John Eleis, and to the Petitioner. Extract be me, *sic subscribitur*, Al. Gibsone.

His Majesty's Advocate declares he passes from my Lord Justice General as a Witnes in this Cause.

Mr. John Eleis, Advocate, as Proctor for the Pannal, declares, that they sustain my Lord Justice General to be a Judge in this Cause notwithstanding of his being cited as a Witnes both by Persuer and Defender.

Mr. James Mitchel Pannal denyes the *Dittay*, and any pretended Confession alledged emmitted be him.

Mr. John Eleis for the Pannal alledges, that he cannot pass to the Knowledge of any Assyse: And the Conclusion that the Pannal has committed Murder, cannot be inferred from the Subsumption of the Lybell, because be the Laws of this Kingdome, the Civil Law, the common Opinion of Doctors, the Law and general Custom of all Nations, *Nudus conatus & affectus sine effectu*, even in the most atrocious Crymes, except Treason, Parricide, and other excepted Crymes, is not punishable by Death. And it were against all Reason, seeing Punishments ought to be proportional to the Crymes, that a naked and simple Design of Murder should be punished as Murder that had taken Effect. *Et in criminibus gravioribus & gravissimis, viz. Adulterium, Furtum, Sodomie, &c.* the naked Design is not punished *pœna ordinaria*, even by the Civil Law. And tho *Lex Cornelia de sicariis* by ane extraordinary stretch does declare *si quis cum telo ambulaverit*, yet it is but a Statutory Law, and deregot to by the Law of Nations, and the special Laws of our Nation, in sua far as Murder in our Law is defined to be, and has only place in *Interfectis per felloniam*, and these who were killed upon forethought Fellonie. (2do) In sua far as the Lybell concludes him guilty of Assassination, the same is no ways relevant, it being both a Term and a Cryme unknown in our Law. And be the Laws and Acts of Parliament of

of this Nation, the Subjects of *Scotland* are to be governed by the Laws of *Scotland*. And tho' the Cryme of Affasination were a Point of *Dittay* by our Law, as it is not; yet it is not, nor cannot be pretended he was hyred for that Effect, nor is it lybelled. (3^{tio}.) In sua far as the Lybell concludes the Pain of Death for Mutilation of the Bishop of *Orkney*; it is answered, that the same is no ways relevant. And the said Conclusion cannot be inferred from the Subsumption, because the Act of Parliament does only declare Demembration to be punished as Slaughter. (2^{do}.) The said Act declares Demembration to be only punished as Slaughter when it proceeds upon forethought Fellonie. (3^{tio}.) The said Act requires another Qualification, viz. That it be persued be the Partie: None of which can be subsumed upon in this Case, because it is not lybelled that the Bishop was dismembred, or had his Hand cut off, but only had a Wound in the Hand. And the Lybell does expresse bear, That the Bishop of *Orkney* got the Shot in the Hand accidentallie, when the Design was against the Bishop of Saint *Andrews*, and so was not upon forethought Felonie as to him. And lastlie, the Bishop's nearest of Kine does not concurr nor persue, which is a special Requisite in the said Act of Parliament. Like as the said Act is *exolet*, and in no Register can it be made appear that any Person was capitallie punished for Dismembration: But upon the contrary, many accused and condemned in Arbitrarie Punishments. So that the Lybell is no ways relevant as to that Article, for the Reasons foresaid; speciallie seeing Dismembration is not so much here as lybelled or pretended. And whereas it is insinuat, that the Bishop did languish and dye of the said Wound: It is answered, that the Lybell is no ways relevant, he conceived, because it is not lybelled that the Wound was *ex sua natura* lethal or mortal. And it is offered to be proven, that the Bishop did live several Years thereafter, and go about his ordinary Function as a Bishop, by Preaching, &c. which is a sufficient Ground of Exculpation and Defence.

4^{to}. In sua far as the Lybell is founded upon the Act of Parliament anent invading of Counsellors, it is answered, That this present Case does not fall under the Compass of the said Act of Parliament, because it is not lybelled that the Cause of the pretended Invasion of the Archbishop was upon the account he was in the Prosecution of his Majesty's Service; but upon the contrar it may appear strange to any rational Man *Quorsum* & *cui bono* he could have done it.

5^{to}. As to the Acts anent invading of Ministers, they import no capital Punishment, but only Confiscation of Moveables. And as to which the saids Acts are opposed, and as to the Act 1670, it is posterior to the Fact lybelled.

In sua far as the Lybell seems to be founded on a Confession; and in sua far as the Confession may be made use of as a sole or conjunct Probation, the Pannal does object against the samen upon the Grounds and Reasons following. *Primo*, If any such Confession was emmitted by the Pannal, which he has absolutlie denied in Presence of your Lordship (no ways acknowledging the Lybell) no respect can be had thereto: And it is not probatorie, because

the samen is extrajudicial & *extra Bancam*, in regard it is not made in Presence of the Assyse, who are Judges to the Probation, which is expresse contrar to the 90 Act, 7. Parliament, King *James* 6, which requires the hail Probation to be led in Presence of the Assyse and Partie. And which Act of Parliament was not only made for Securitie of Pannals, as to a just and legal Procedure against them; but also that the Assysers to whom the Trust of the Lives of the Subjects of this Kingdon is committed, as to the Point of Probation, might not proceed upon Fame and Report, but upon a clear Probation before them. For if that were not, the Assyse would be altogether deprived to know how the Confession was emmitted, if spontaneously or *ex constantia vel trepidatione*, or *spe venie*. And the most that ever was sustained in this Case, was, that the Assyse did find a Partie guilty upon a Confession emmitted before a *Quorum* of the Justices in a fenced Court. *Esto* the said pretended Confession should be sustained probative, as for the Reasons above-represented (the Pannal with all Submission to your Lordships humbly conceaves) it cannot: Yet, if any such Confession was, it is null because it was *elicete spe venie* & *immunitatis*. And for proving thereof, the Pannal does repeat his Exculpation, which he conceaves is relevant in Law; and craves the Witnesses therein to be examined upon the Contents thereof. (2^{do}.) The said Confession being emmitted *extra Judicium* & *spe venie*, as said is, *est in se nulla*, and cannot be confirmed or validat by the Testimonie of any Witnesses whatsoever. And to evidence that the Pannal's Lyfe was never intended to be taken upon the said pretended Confession: The same (if any was) is opposed; by which it evidently appears that he was examined upon Oath, as to the most material part of the Cryme, viz. his Complices, which makes it more than evident, that it being *in materia criminale* & *Capitale*, in which Oaths cannot be taken by Law, renders the Confession null and invalidat, at least makes it evident that the Lybell has been restricted *ad civiles effectus*.

My Lord Advocat insists in the first Place upon the fourth Act of the sixteent Parliament, *James* 6. By which *nudus conatus* attempting and invading, tho nothing follow, is found relevant to infer the pain of Death. But so it is that the said Mr. *James Mitchel* did attempt the killing the Archbishop of Saint *Andrews*, a Privy Councillour; which Attempt *devenit ad actum proximum*, the said Mr. *James* having done all that was in his Power. And as to the Quality adjected in the Act, insinuating the Defence, that it must be proven that it was for doing of his Majesty's Service; it is replied, That this Qualitie is inferred, and cannot, nor requires not to be otherways proven, than by a presumed Inference. For the Design of the Attempter being ane Act of the Mind and the Secret of the Heart, it cannot be otherways proven, but simplie by the attempting a Secret Counsellour, or any of his Majesty's Officers, against whom the Pannal could have no Quarrel, but for doing of his Duty, and therefore the Law still concludes the same, except the Pannal will offer to condescend upon another relevant Reason, viz. any private Fead; for if it were otherways,

ways, the Act would be absolutely useless, since any Person might attempt or kill a Privie Counsellour, it being impossible to prove what was the Designe. And this Act was designed meerly to make all Attempts against Privie Counsellours punishable by Death; for otherwise it could be no Fence nor Protection for Privie Counsellours, if it were onlie granted to them under a Qualitie which were impossible to be proven. Nor can this seem hard, since the Subjects have only themselves to blame, who attempt against the Lives of Privie Counsellours. And it were very ridiculous to think, that if the Brother of a Pannal should attempt to kill the Judge or King's Advocate immediatlie after a Process, that it were necessar to prove the Designe otherways than by the natural Contingencie which obviously aryses from the Qualitie and Circumstances of the Perpetration: But in this Case as Mr. *James Mitchel* is a Person who can condescend upon no private Offence betwixt the Archbishop and him, they being absolute Strangers to one another; so besides the Presumption of Law above-specified, it is offered in Fortification of the Act, That, *Primo*, the said Mr. *James* ownes himself to be of a Profession who hates and execrates that Hyerarchie, and of which Sect the unhallowed Penman of *Nephtalie* declares it lawful to Kill those of that Character. *2do*. It is notour and offered to be proven, that Mr. *James* himself defended that it was lawful to kill such, and indeavoured by wrested Places of Scripture to defend himself, and gain Profelytes thereby. And if need were, as there is none, it is specificklie and distinctly offered to be proven, that he acknowledged that the Reason why he shot at the Archbishop, was, because he thought him a Persecuter of the nefarious and execrable Rebels who appeared on *Pentland-Hills*: Nor can Designs nor Acts of the Mind be otherways proven than by such emmitted Declarations, Arguments and Acknowledgments. Likeas in the whole Course of our Law, the invading or attempting any of that Sacred Function is still declared equivalent to Killing: And tho the last Act be posterior, yet it is sufficient to demonstrate and clear. And, *3tio*. By the Common Law *conatus* and indeavour is *in criminibus atrocissimis* punishable by Death, *ubi reus devenit ad actum proximum* & *omne quod in se erat fecit*, which is in it self most reasonable, since the Atrocitie of the Cryme should put the same even beyond ane Attempt. And there can be nothing more just than that the Extraordinaryness of a Cryme should have ane extraordinarie Allowance. And Guilt attempted in atrocious Crymes, such as sacrilegious Assassination, is in the Eye of the Law as great and greater than the stealing ane Horse or Cowe, speciallie where Securitie from the Effect proceeded from no Innocencie in the Committer, who did all he could; But from the special Providence of God disappointing the Effect of a Cause he so much hated. And *Carpsovius* requires only three Qualifications to make Indeavour punishable by Death: *Primo*, *Quod eventum erat ad actum mortis proximum*. (*2do*.) *Quod non stetit per Assassinum quin consummaretur delictum*. (*3tio*.) *Quod occidendus fortuito casu tantum Evaserit*; all which concurr but too well here. And that *in omnibus criminibus atrocissimis Conatus* is punishable, is clear

from *Gothofred. tit. de Conatu*, from *Covarrivius in Clementina, Si furiosus*, num. 6. And particularlie in the Cryme of Assassination *totidem verbis*, by *Matheus de Siccariis*, num. 3. *Assassinus tamen nihil prodesse debet solusque conatus capite puniendus*, a great Instance whereof is given in a Decision by *Gothofred* in the Senate of *Savoy*, where Death was inflicted upon a Person who but struck with a Batton. And whereas it is pretended that Assassination is no Cryme in our Law, and that it is only inferred where the designe of Murdering proceeds from the Committers taking Money: It is answered, that this part of the Defence is most groundless: And our Nation would be more barbarous than those of *Lapland* or the *Tartars*, if the lying in wait with a constant designe to Kill clandestinely & *per insidias* any Person who had never offended us, should not be raised to a higher Degree of Detestation than ordinar Murder. For, though the Law does not always punish a meer Indeavour when designed against such as have offended us, when Nature pleads some Excuse from the greatnes of Passion and Resentment, or where the Partie killed gave some Occasion by doing the Wrong, or where the suddenness of the Design allowed no tyme to consider or repent; yet where a Person after mature Deliberation ryppens his own Villanie, and resists the Motions of Reason and the Inspirations of God Almighty, by lying in wait to kill a Person who never offended, the Law thinks the Common Wealth can never be secured as long as such a Viper is alive, who wants nothing but Opportunitie to kill Mankind one by one. And the Specialitie of taking Money is only demonstrative, and not restrictive, since the Guilt in this, and such like Cases, is greater and more dangerous than that of taking Money. For, he who takes Money will not kill but in Darknes, and where he may escape; but the Sun, and the Cross, and the Confluence of all the World, cannot secure against Murders, where the Partie imagines that the Cryme deserves Heaven, or at least where he thinks that these of his Perswasion will rise in a Tumult upon the Streets for his Defence. Likeas since the Law has inferred Death *ob conatum* in the Crymes of *Raptus robbrie*, &c. much more should it infer Death in this unparalleled and execrable Cryme.

As to what is alleadged against the Acts of invading Ministers; it is answered, That the first Act appoints that it shall be punished with all Rigor. And the 7 Act, King *Charles* 1. and the last Act is sufficient, tho' posterior to the Cryme, to declare what was the meaning of that General of punished with all Rigor. And since our Law makes the Attempting of such as are doing his Majesty's Service Capital, that General ought to be extended to Death, since lesser Crymes and other Crymes are for the same Reasons which are applicable to this, punishable by Death: Nor can there be any Hazard in this, since there is a Law for the future. And no Man shall ever dye for so great a Cryme in our Nation.

Whereas it is alleadged, that here the Pannal did only confess upon hopes of Lyfe: It is replied, that *Primo*, The Promise of Lyfe from a Judge, who could not grant the same, cannot defend, especiallie where no threatening preceeded; and where it is clear that what was confessed,

fest was founded on other Presumptions & *indicia*. Nor is this relevant, except the Pannal could offer to prove, *First*, Threatning, to the Fear whereof he yeelded; *2do*. That he expresse-ly pactioned that this Confession should not operate against him, which is very clear from *Bossius, tit. De confessis per torturam, Num. 12.* where he states the Case, and concludes, that a spontaneous Confession, though Lyfe were promised, does not defend: Nor is the Guilt less, nor the Truth less, that a Judge promise. And if this were sufficient, every Judge might make himself King, and grant Remissions at his Pleasure. And though this might weigh with the Judge who promised; yet the Law considers the Par-*tie* confessing still guiltie, and so does never se-*cure* him. *Et quod potest condemnari tenent, Cinus Cod. de iis qui ad Ecclesiam effugiant, Alciad. lege de verborum significatione*; and *Clarus* himself sayes, That *Ego suspicor opinionem Ceni esse majus commu-nem*; but giving his own Opinion rather as a private Man than as a Lawyer, he sayes, *Ego ta-men non condemnarem ad mortem nisi aliis indiciis fuerit gravatus, Ergo reus indiciis gravatus est morte plectendus*, which is most just and reasonable. For, though the Law be jealous where a meer fillie Innocent confesses to a Judge, who may terrifie him, or have an Interest in causing him confess to lay the blame off his Friends, yet where the Confession proceeded from a Person suspect by all the World, by a Person who publicly in all Places since has owned the Deed; who fled upon that Account; who was taken with unlawful Weapons, unfit for his Profession, and the specifick Weapons which committed the Attempt; who condescended upon all the Cir-cumstances, and declared that he gloried in be-ing a Martyr upon that Account: In being seen run away immediatly upon doing of the Deed with a Pistol in his Hand; in being found out in a thousand Lies and Prevarications when he was examined; in having renewed his Confes-sion publicly: It were but to scorn the Law and Massacre Mankind, to think that a Con-fession so adminiculat should not bind the Con-fessor, who can alleadge nothing of any Threat-ning used against him by the Judge to whom he confessed. And Lawyers do in that Case con-sider the qualitie of the Judge as severe, unjust, rigid or partial: but the Confession is alleadged to be made here upon Promise of Lyfe given by my Lord Chancellor, whose benign, gentle Temper frees him from all Suspicion. And the proponing of Exculpation acknowledges the Deed to be done by Mr. *James Mitchel* the Pan-nal, against which the Protestation denying the Lybell cannot be sustained, being *Contraria facto*, as is evident to any rational Man; and that the Pannal cannot either pretend *alibi*, nor any other pretence of Error, for excuseing his Retraction: so his Majesty's Advocate op-*pones* his Confession, bearing no Qualification. And though he is very secure that the Exculpa-tion cannot be proven, yet since it is notorly known that he is the Committer, and that this may be a Preparative to other Pannals, against whom no Probation is ordinarlie had, but Con-fessions *elicit*e by Judges, with fair and gentle Promises, he *mordicus* adheres to the Relevancie. For, as *Bossius* says, *Et si Judex dixerit nihil mali eveniet tibi vel etiam promittat ut liberabitur Majus tamen communis est opinio Confessionem valere quia*

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Judex etiam poterat ita fingere ad veritatem inve-niendam. And as this is most advantageous to the Common Wealth and Mankind, so there can be no Hazard to a private Pannal, since if he can but astruict his own Innocencie; or the reason of his Error, by alleadging that he was *alibi*, or that there was severe Threatnings or Torture used, the same will still be allowed to qualifie his Confession. But the general Presumption lies, that a Judge will not damn his own Soul, stain his Function, ruin his Fame, expose him-self to the Terrors of God Almighty, by allu-ring a Confession from a poor Innocent.

As to what is objected against the Confession as extrajudicial and before an incompetent Judge: It is replied, That Confessions are of all Probations the most infallible, since Witnes-ses may, but it cannot be presumed a Man will wrong himself: And the Rise of that Maxime, That extrajudicial Confessions are not relevant, was only to exclude Probation upon Confessions emmitted where there was no Judge nor no de-sign of Inquirie. But the Confessor being louse and inconsiderate, and under no Reason of Ad-*vertance*, did at random own a Deed of which they were most innocent, either for Ostentation, or to please the Companie, or in Raillerie: But, to say that a Man should not be judged by what he deliberatlie confesses, where he knows the Designe is to inquire into the Cryme, and that the Event must be a Criminal Trial, is without all Foundation or Probability of Reason: Nor can Judges or Assysers be so much convinced by what Witnesses will say, who may have Malice, or be brybed, or mistaken; as what proceeds from a Man's own Breast deliberatlie and in cold Blood, which in Effect is oft tymes the Inspira-tion and Influence of Almighty God, who to show his Love to Justice and Kindness to Man-kind, draws even from the greatest of Malefac-tors the clearest Confessions. And since Men do not use to bring Witnesses when they commit Crymes, nor can the Nature of the Thing allow Probation by Wrytt, to cut off Confessions in these Cases were to make Crymes for ever pass unpunished, and to make Law, which is found-ed upon Principles of Reason, and the good of the Common Wealth, evanish in meer Terms of Art and hard Words, contrar to the Designe of Lawyers and the solid Principles of sincere Truth.

That this Confession is then Judicial is clear, being taken by Authoritie of the Privie Coun-cil, the Supream Judicatorie of the Nation, and where the Design was to expiscate this Truth. And the Pannal knew that he was upon a Tri-al for his Lyfe: Nor can the Incompetencie of that Judicatorie be here alledged, since as the Session is a Judicatorie meerly Civil, so the Council is a Judicatorie above both, compre-hending the Power of both. And being so far competent in the Cognition of Crymes, that they take Precognitions in criminal Causes; they modifie and qualifie the Sentences of the criminal Court; they determine intricate Ca-ses remitted to them be the Justices in Point of Law. And the King, and the greatest part of the Criminal Court being there; it were ab-surd to think, that a Confession emitted before them should not prove. And if in a Precogni-tion a Par*tie* should confess, and so the Trial there cease, what could be more absurd than to think

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think that this Confession should not bind, especially seeing Confessions emitted before the Lords of Session in Cases of Improbation, and Decrees following thereupon, are a sole, a final, and plenarie Probation before the Justice Court? Likeas that Principle in Law, That *Confessio coram Judice incompetente* does not hold, is, where *Judex est incompetens tam ad Inquisitionem quam ad accusationem*, as, in *forum penitentiae*, such as Kirk Sessions, or *forum mere civile*, Neither of which can be said in this Case where the Judge before whom the Confession was emitted is the ordinary Judge of Inquisition, and Trial in Criminal Causes & *Judex non solum Jurisdictionis prerogabilis*; but a Judge who originallie and generallie examines all the Pannals of Scotland. Likeas this Confession was made in Presence of his Majesty's Privie Council and the King's Commissioner, in whom all the Judicatories of the Kingdom doe eminentlie reside. And who might have sent the Pannal to the Scaffold without ane Assyse, seeing *in consitentem nullae sunt partes Judicis*.

Whatever favour may be allowed to Retraction of Confessions *facta ex Incontinenti, ubi potest docere de errore*; yet what Reason can there be where a Pannal denies without shewing of Proofs of his Innocencie? And therefore *Bossius, tit. de Confessis, Num. 64.* concludes *Est etiam necessarium allegare errorem ceterum si simpliciter revocaverit Confessus non est audiendus*. And *Num. 70.* he adds, *Quia fateor quod quis non auditur simpliciter dicendo post confessionem: Non est verum quod confessus fui, tamen si per testes constare potest de innocentia majus attenditur veritas quam confessio*. And since Minors in Law are obliged *docere de errore*, when they revock, it were absurd to think that the Law would be so ridiculous, that a Man confessing before a grave Judicatorie should have Libertie to retract without shewing any Reason of his Retraction: And the Guilt rather grows *per inficiationem*, and by that impudent Lye, than is lessened by the Retraction.

In the Case likewise where Debates are concerning the Validity of a Confession, Lawyers consider whether what was confest was or can be adminiculated by other collateral Probation, *Argumenta & indicia*, and whether the Probation be *veri similis*; whereas here this Confession is adminiculated by many other Circumstances, such as Persons who saw him run away, by his owning of the Principle since, by his fleeing, &c. So that here neither can he instruct why he retracts, and the thing confest is *adminiculate & circumstantiis & indiciis*. As to the Objection founded upon the Act of Parliament, that the Probation must be in Presence of the Assyse: It is replied, that the whole Frame of that Act is grosslie mistaken; for the Design of that Act was to correct a barbarous Custom, whereby Accusers were allowed to solist and to produce to them such Wrytt and Witnesses as they pleased for Probation of the Cryme, to preclude the Pannal of what he could say against the same, since false Papers might be thrown in as Confessions and Proofs: But that cannot reach in this Case, where a Confession is produced before a Pannal and his Proctors, and they heard to object against the same. Nor can it be urged from this Act that no Paper can be relevant but what is owned by the Pannal in Presence of the Assyse; for wedaylie see that Letters produced

under the Pannal's Hand, though he should deny his Subscription, will be sustained: And it will be sufficient to prove by Witnesses, that he did subscribe, or by comparison of Letters. Likeas this Act of Parliament does not exclude that Confessions before the Lords of Session in Matters of Falshood, and Decrees following thereupon, may not probative before the Justices. Likeas Confessions taken before the Justices, tho' no Assyse be present, do without all Controversie and Debate prove the Cryme: Yet neither can the Justices condemn without ane Assyse, nor does that Act of Parliament militate more against that Case than against this. And in the Case of *Finlay Mac Gibbon*, a Confession taken in the *Tolbooth* without a fenced Court, and before one Judge, was found sufficient to infer the pain of Death both by the Council and Justices. And it is admired how it can be thought that Presumptions can be sustained as the Foundation of a criminal Sentence, as we daylie see; and that Witnesses which in effect are but presumptive, and a Man's own Confession emitted seriousslie and in cold Blood, should not be sufficient. And as there could be nothing more dangerous to the Common-wealth, than that Crymes should be thus rendered unsearchable; so what Hazard can there be to the People on the other hand, or the Pannal, when they are made their own Judges. And to take off all possibilitie of Danger, it shall be allowed to them to prove Error, Force, Innocence, or Mistake. And this Probation has been in all Ages and Nations sustained as uncontraverted, as, *David* ordained the Person who said he had killed *Saul* immediatlie to be executed without further Inquirie, giving as the undoubted Reason that he had condemned himself out of his own Mouth; and which is registrate in Scripture, to secure the Image of God against those who would deface it. And if such Confessions should be sustained in any Case, much more in this, where the Nature of the Cryme is atrocious, and the manner of the Discovery extraordinarily difficult. And if either Attrocitie or Difficultie prevails with Lawyers to remitt something of its ordinarie Rigor in exacting clear Probation, as we see in *criminibus exceptis & criminibus domesticis*, much more where both these concurr, ought a Man's own Confession to be admitted. And whereas ordinarily Pannals are penitent first when examined, the Horror of the Crymes softning their Hearts; that their Confessions then should not prove, is very strange: And it were impossible and fruitless to expect, that after they are imprisoned amongst a Company of other Malefactors, and after they have a kind of Men towards the Law to teach them the Art of Retraction, and that their Conscience turns Callus, and acquainted with the Idea of their own Cryme, a sincere Confession may be then expected from them.

My Lord Advocat declares, he does not insist against the Pannal for conversing with Rebels at this tyme, and upon the shooting at a Bishop or Minister before the late Act of Parliament, Anno 1670, to infer ane Arbitrary Punishment: And insists upon Mutilation as Capital upon the Act of Parliament anent Demembration, which is *reddere membrum inutile*. And a Man is as much dismembred when he has ane useless Hand, as if he had no Hand; and insists upon the 28 Act

Parl. 3 James 4. wherein Slaughter and Mutilation upon forethought Fellonie are equiparate, and the Pannal declared to be punished by Death in both these Cases, but refers the Punishment of Mutilation to be qualified by the Justices, according to what shall be found here proven, and to what has been the Custome of the Justice Court formerlie in such Cases.

Sir George Lockhart duplyes, That the Lybell is no ways relevant, as founded upon the fourth Act 16. Parl. King Ja. 6. And the Defence is no ways eleided by the Alleadgances, contained in the Reply. For, *Primo*, The Lords of Justiciarie would be pleased to take Notice, that there is no Specialitie in the Case of this Act of Parliament, as to Privie Counsellours; but that it extends to all his Majesties Officers, and consequently the meanest Officer being invaded in the Terms and under the Qualification contained in the Act of Parliament, might plead the Benefite thereof. And if the Lybell should be sustained in general Terms without the expresse Qualification in the Act of Parliament, the simple Act of Invasion of a Lyon Herald, though neither Death nor Wound followed on it, would infer the pain of Death; but that no such thing is the meaning, nor can subsist with the Act of Parliament, is so clear and evident, as it was impossible for the Witt of Man to expresse the Qualification to be lybelled and positively proven in more plain and direct Terms than is sett down in the said Act. In sua far as the Act of Parliament requires be way of Provision and Condition in the Statutory part thereof in thir Termes; it being verified and proven, that any of the saids Counsellours, Sessioners, and Officers, was persued and invaded for doing of his Highness Service, shall be punished to the Death. And there is great Reason and Necessitie for this Qualification, because the Act of Parliament intending contrary to the general Custom of Nations, and of this Kingdom, in all other Crymes that *Conatus & attentatum*, which is only relevant in the Cryme of Treason, should be reputed *Crimen consummatum* in case of Invasion of any of his Majesty's Officers. Therefore the Law requires this Qualification in Matter of Fact, That it be verified that the Person invaded was doing his Majesty's Service; in which Case the Cryme had a respect in the Construction of Law, as done against his Majesty's Authoritie, which he was then executing. And this Qualification in Matter of Fact, that it was for doing of his Majesty's Service, is not here so much as lybelled. And in the common Opinion of all Lawyers, as may appear by *Julius Clarus*, §. *Affasinum*, Num. 2. *Ubi agitur de imponenda poena alicujus Constitutionis specialis requiritur quod concurrent omnes qualificationes de quibus in ipsa Constitutione*. And *Quest. 85. Num. 9.* he has the same Words, *Ubi agitur de imponenda poena alicujus specialis Constitutionis oportet quod in eo casu verificentur omnes qualitates in ipsa Constitutione expressas, alias pana non committitur, & hæc* (says he) *est doctrina communiter ab omnibus recepta*, and most especiallie when it is not ane extrinseck Qualitie and Aggravation, but where it is a Qualification required by Law it self as *intrigans delicti*, and as *Gomes.* sayes, it is *alterativum poene*, and therefore it must be *totidem verbis* lybelled and positivly proven.

And as to that Pretence that it is presumed and inferred from the Circumstances, and the Way and Manner of the committing of the Fact it self, and that *Propositum* and Design cannot be otherways proven *nisi per indicia & conjecturas*: It is duplyed, That the Qualification required by the Act of Parliament is *toto celo* different from the Design: For, if a Person did invade any of his Majesty's Officers in doing of his Majesty's Service, and would pretend that he had no Design to invade, certainly the Pretence were absurd. And in that Case the Design *presumitur ex natura attentati*: But the discharging of his Majesty's Service is not a Design, but a Matter of Fact, which consists in ane extrinseck Action, and must be proven, and may and does often occur. As for Instance, If a Magistrat should be invaded in the actual Execution of his Majesty's Authoritie, or if the Invader should be so transported with Rage, as when he invades a Judge, to tell him, that it was because he has unjustlie decerned. These and the like Cases are indeed the Terms of the Act of Parliament. And there simple Invasion, though no Wounds followed, being directlie levelled against his Majesty's Authority, *Nudus conatus & affectus delinquendi reputatur pro effectu*. And as this is clear from the expresse Words of the Act of Parliament, and which being *in materia correctoria & criminale*, is strictly to be interpret; so it is unanswerable evidenced from the Act of Parl. K. Ch. 1. of blessed Memorie, by which it is provyded, that the Invasion and Violence done to Ministers is punishable, conform to the Act of Parliament 1587, to which it relates, which is Confiscation of Moveables, and declares that the said Act is to be extended to Archbishops and Bishops, from which the Pannal's Proctors argue thus, If by the posterior Act of Parliament in Anno 1633, the Invasion and Violence done to Archbishops and Bishops is not punishable with the Pain of Death, but only ane Arbitrary Punishment, how is it possible that the 4. Act Parl. 16 Jam. 6. should infer the pain of Death upon the Invasion, as it is circumstantiat and lybelled, wherein nothing is lybelled, but that the Archbishop was invaded, who was a Privie Counsellour, and not the Qualification that is required by the Act of Parliament, that it was for doing of his Majesty's Service.

As to that Alleadgance, That the Pannal cannot condescend upon any private Ground of Quarrel or other Reason why he did invade the Archbishop: It is answered, if this Alleadgance were sustained, it were contrar to the Act of Parliament lybelled upon, which does not require the Pannal to prove, but says that it must be tryed and verified, that the Invasion was for doing of his Majesties Service; and so his Majesties Advocate must prove the same by a clear and positive Probation, as a Point in Matter of Fact.

As to that Pretence that the Pannal did glorie that he had committed the Fact and Invasion lybelled, and indeavoured to justifie the same, and perswade others that it was lawful: It is duplyed, That as the saids Qualifications are altogether disowned, so they are no ways the Qualifications in Matter of Fact required by the Act of Parliament, viz. That the Invasion and Violence was for doing of his Majesties Service, which is indispensibly required upon the Reasons abovementioned, otherways the Act of Parliament

Parliament should have said no more, But that all Invasions of his Majesties Privie Counsellours, or other Officers, should be punished with the pain of Death; whereas the Act of Parliament thought it fit, necessar and just for all Mens Securitie, that a single Act of Invasion of any of his Majesties Officers, however it might be punished *pœna arbitraria*, yet should not import or inferr the pain of Death.

In sua far as the Dittay is founded upon the Common Law, and that it is *Assasinium*, in which *Conatus & attentatum habentur pro crimine consummato*: It is answered, the Dittay is noways relevant, because it is not founded upon any Law or Act of Parliament of this Kingdom. And the Common Roman Law cannot be the Foundation of criminal Dittays, whereby to draw in Hazard the Lives of any of his Majesties Subjects. Likeas there is clear, exprefs and positive Acts of Parliament to the contrar, as the 48 Act Parl. 3 Ja. 1. Act 79 Parl. 9 Ja. 4. Declaring that the Laws of no other Realm are to be regarded, especiallie whereupon to found Criminal Indytments. And albeit by the Common Law *Conatus in homicidio* especiallie where it was *homicidium dolosum*, and designed to be committed *proditorie & per insidias* was punished as *crimen Consummatum*; yet all Lawyers agree, as may appear by *Julius Clarus*, Quest. 102. *Farm.* Quest. 80. and by the Authorities by them cited, That by the general Custom of all Nations, *in omni genere homicidii affectus conatus & attentatum* is not punishable *pœna ordinaria delicti*, and so cannot inferr a capital Punishment or pain of Death, as is concluded in this Indytment. As to that Pretence that the Cryme lybelled is the Cryme of Assasination, in which *Nudus conatus* is sufficient, especiallie *si devenerit ad actum proximum*: It is answered, *Primo*, That all Lawyers agree in this, that *crimen Assasinii* is only where a Person does hyre or conduce another to commit the same *interveniente prætio*. And for which *Julius Clarus*, §. *Assasinium*, where he so descryves the Cryme. And *Matheus de Criminibus* does so descryve the same, and does expresse lie assert that unless Money or Reward intervene, the Cryme of Assasination cannot be committed, where the Words are, *Crediderem tamen nisi merce certa & sceleri proposita & constituta fuerit sive in specie seu corpore sive in pecunia numerata non posse enim videri assasinium*. And there is no Lawyer extant did ever otherways descryve the Cryme; and there is great Reason why Money or Reward should be considered in the Constitution of this Cryme, because the Law did consider the Cryme with Respect to the Hazard; and the Hazard lay where Persons were hyred or conducted by Infidels giving Money or other Reward to kill Christians. And albeit even in the proper Cryme of Assasination it self in some particular Nations, where the said Cryme was too frequent, as in *Italie*, *Conatus* is punishable: Yet *Julius Clarus* in the same §. and others does maintaine, that by the general Custome of most Nations, in the precise Cryme of Assasination, *Conatus seu attentatum* is not punishable with the Pain of Death. But the Pannal has no Reason to insist upon this; the Matter of Fact lybelled being no ways the Cryme of Assasination, but only that which Lawyers call a Designe to commit Murder *proditorie & per insidias*. In which all agree, that by the Custom of all Nations *Conatus faciendi non reputatur pro facto*.

As to that Point of the Dittay founded upon the Mutilation of the deceased Bishop of Orkney, conform to the 28 Act Parl. 3 James 4. It is answered, that denying that the deceased Bishop of Orkney was mutilate so, albeit it could be proven, it cannot inferr the pain of Death; *First*, because it is clear by the said Act of Parliament, that it is not in the Case of Mutilation, but Demembration. And it were a strange Imagination to think that if a Partie were mutilate, or lost a Finger, that the pain of Death could be inferred. And there is a great difference betwixt Mutilation and Demembration: Mutilation being onlie ane Inabilitie or Privation of the Use; whereas Demembration is the intire Loss of the Member. And it is a Principle in Law, that Acts of Parliament, especiallie *in casu criminale & capitale*, cannot be extended *de casu in casum etiam ex veritate vel paritate rationis*; and that *Cortici verborum adberendum est & Casus ommissus habetur pro omisso*. And here there is no Paritie of Reason, both the Prejudice and Deformitie being far greater in Demembration than Mutilation.

And whereas it is pretended, That though the Pannal's Confession had been *elicite sub spe impunitatis*, that yet it is not sufficient whereupon to liberate from capital Punishment, because a Judge cannot remitt a Cryme: And that *Bossius* and others are clear, That notwithstanding of any such Confession upon Promise of Impunitie, yet a Judge might and ought to condemn *ad pœnam ordinariam delicti*; it is answered, The Pretence does not eleid the Defence, because, supposing it should be proven that the Confession was *elicite sub spe veniæ*, and upon Assurance of Lyfe. Such a Confession so elicite, cannot be a Ground whereupon to violate the Faith and Impunity given; and far less can such a Confession (though any could be proven) being retracted be considered as a Confession: And as to which Law and Lawyers are very clear and positive. The Law is, *Lex. 3. Cod. de Custode reorum*, and Lawyers, as may appear by *Matheus de Criminibus*, Quest. 16. where his exprefs Words are, *Querunt an Confessio promissa Impunitate & spe veniæ elicita sufficiet ad condemnandum? Respondendum, Non sufficere, tametsi enim in Judicis potestate non sit promittere impunitatem adeoque ex promissione non obligatur, tamen dolo extorta est, & per hanc fraudem etiam Innocentes illaqueari possunt*. And *Bossius* in that Title *De Confessis*, after he has stated the Case, resolves it thus, *Tutius tamen est ut dicamus requirere perseverantiam & est ex mente Doctorum & cum ratione quin negari non potest quitalis Confessio sit obumbrata*, and says, it were against Humanitie it self to condemn *ad pœnam ordinariam delicti* in such a Case. And *Julius Clarus*, cited be his Majesties Advocate, sayes, *Ego non condemnarem ad mortem*, and which is indeed the constant and irrefragable Opinion of all Lawyers, and Practice of all Criminal Tribunals. And whereas it is pretended, that *Julius Clarus* subjoins these Words, *Nisi aliis indiciis sit gravatus*, and his Majesties Advocat condescends upon several Presumptions: It is answered, that if his Majesties Advocat will lay aside the Confession, and adduce such a presumptive Probation, whereupon the Panal may be condemned, then he may plead the Benefite of that Qualification: But the Presumptions condescended upon any remote Conjectures, and no ways concluding;

cluding; and the Pannal after the alleadged committing of the Fact, did return and live peaceable for several Years, and denys the Fact, and cannot otherways be convict thereof. And if any pretended Confession should be made use of, either *per se*, or in *modum adminiculi*, it cannot be divided from the Qualitie under which it was granted, which the Pannal offers to prove, was upon expresse Assurance. And whereas it is pretended, that the granting of an Assurance and Impunitie is upon the Matter a Remission which no Inferior Judge can grant, but that notwithstanding he may and ought to condemn; it is answered, *Primo*, it will appear by the Probation of what Character and Qualitie the Granter of the Assurance was.

2do. Lawyers do not consider whether a Judge *potest veniam concedere*, or remitt a Cryme: But a Confession being *elicite sub spe venie*, is not a full and absolute Confession, but a qualified, and cannot be made use of, and the Qualitie not performed and made good. And it were a Prejudice to Publick Interest, and a way to preclude the Ingenuitie of all Confessors, if notwithstanding of the Interposition of Publick Faith and the granting of Assurances, and the eliciting of Confessions *sub spe venie*, these Confessions might be made use of, and the Qualitie and Condition upon which it was emitted altogether neglected, which is downright inconsistent with the Opinion of Lawyers and the Practices and Customs of Criminal Judicatories.

As to what is pretended, that though this Confession be not emitted before the Lords of Justiciarie, yet it was not extrajudicial or revocable, because it was deliberatlie given, and before a Committee, who had Authoritie from the Lords of his Majesties Privie Council: It is answered, this Point is of extraordinarie Importance and Consequence, as to the Lives and Fortunes of his Majesties Subjects, and as to the Lords of Justiciarie and the Procedure of the Inquest, who are Judges to the Probation; and therefore it is represented in behalf of the Pannal, That admitting any pretended Confession should be produced, yet if it was not emitted before the Lords of Justiciarie, it is not a judicial, but an extrajudicial Confession, & *fidem non facit*, as to the Probation of the Cryme. As to which, *Primo*, There is an universal Concord in the Opinion of all Lawyers, and in the Practice and Customs of Criminal Judicatories, and as to which the Lords of Justiciarie are desyred to cast their Eye upon all who have wrytten upon this Point. And as *Clarus* says, *Non invenies dissentientem in Mundo*; and it is strange that all Lawyers and the Custom of all Nations should have hallucinat in this Point. For which the Pannal's Proctors cite *Julius Clarus*, *Quest. 55. Farin. Quest. 81.* and many others.

2do. Lawyers are likewise clear, that Confessions emitted *Coram Judice competente sed non sedente pro Tribunali* is but an extrajudicial Confession, and much more where it is *Confessio emissa coram Judice incompetente*. And when the Question is, who is to be repute *Judex incompetens*, it is positiveli resolved, That *omnis Judex* is *incompetens* who could not proceed *ad Condemnandum*, as to the Cryme anent which the Confession is emitted. And certainly though any Confession were produced emitted before a Committee of the Lords of Privie Council, they have no

criminal Jurisdiction so as to proceed *ad condemnandum in crimine capitale*; that being clear by *Craig dieg. 8.* that *ex eorum Statutis nec periculum vite, hereditatis aut omnium fortunarum subire posse*. And whereas it is urged that the Lords of Privie Council have a mixed Jurisdiction, and may proceed be way of Precognition & *per modum Inquisitionis*, and may resolve doubtful Cases and qualifie Sentences: It is answered, That it is not denyed but the Lords of Privie Council have and doe very well deserve that Jurisdiction; but as to criminal Jurisdiction in capital Crymes, it is only competent to the Lords of Justiciarie: And the Precognitions, or previous Inquisitions, tend not *ad Condemnationem*, but only as to this, whether to stop or remitt to the Lords of Justiciarie. And nothing is considered as a judicial Confession, but where there is *formatus processus*, and where a Partie is called *coram Judice competente*, and is *sub instante periculo vite*, and knows that the infallible Import of his Confession is to that very Effect for his Condemnation, none of which can be pretended where the Confession is emitted *coram Judice incompetente ad Condemnandum*.

And whereas it is alleadged, That a Confession in the Opinion of Lawyers cannot be retracted, unless the Party could *docere de errore*, and purge his Innocencie, and did it *ex incontinente*: It is answered, the Alleadgance is groundless; for though Confession were emitted *coram Judice competente pro Tribunali*, it might be retracted *ex incontinente* if he were able *docere de errore*: And there is no Lawyer ever required it in other Terms. But where the Confession is emitted *coram Judice incompetente fidem non facit quoad probationem delicti*, and may be retracted either *ex incontinente* or *ex intervallo*, and without showing of any Error or purging of Innocence, such Confessions in Law amount not to any Probation, no more than as Lawyers argue if the Depositions of Witnesses taken in *uno Judicio* would *fidem facere* either in *Casu civile aut criminale in alio Judicio*. And certainly there is less Reason for Confessions where Parties disown the same, and retracts them if emitted; and much more here where the pretended Confession was *elicite sub spe venie*, so far was the Pannal from thinking that the emitting of this Confession was in order to Condemnation, speciallie seeing it neither is, nor can be proven, that the said pretended Confession was so much as judiciallie given in face of Privie Council, where his Grace the Duke of *Lauderdale*, being then his Majesties Commissioner, was present: And though it were, the Pannal's Proctors will not debate the Import of his Grace's Commission, but remitts the same to the Commission it self, in Case it be offered to be proven, that the Confession was emitted before him and the Lords of Privie Council.

And whereas it is alleadged that the Act, 9 Parl. King *James 6.* ordaining all Probation to be led in Presence of the Assyse does not concern the Case, and is misunderstood, seeing here the Confession will be produced in Presence of the Assyse: It is answered, The Act of Parliament is clear to the contrar, and can admit of no such Interpretation. For albeit the Narrative of the Act of Parliament was onlie *causa impulsiva*, and the Statutorie Part of the Act of Parliament is clear and positive, that all Probation should be adduced in presence of the Assyse,

Assyse, who are Judges of the Probation. And of all other Probation there is the greatest Reason that the verie Act of Confession should be in presence of the Assyse, who are Judges to the Probation, and who are to proceed upon Oath, and whose Consciences are to be satisfied and instructed as to the Way, Manner, Conditions and Terms whereupon such Confessions were elicite; all which are concealed where there is nothing produced to them but a Confession taken without their Presence, especiallie seeing the Pannal alleadges and offers to prove that several Points of Fact and other Particulars, were condescended upon and declared, none of which are mentioned in this pretended Confession; all which should have been insert, and could not be divided, as being in *Articulo conexo*.

And whereas it is pretended that Decrees pronounced before Lords of Session, is *Probatio probata*; whereupon Assysers may and ought to condemn: It is answered, the Argument is in *materia disparata*, and does not concern the Matter of Confession, and is only in the special Case of Falshood, and that upon a special Reason, because the Investigation of Falshood depended upon a Tryall and Concourse of many and violent Presumptions, which may require a long Tract of Tyme and Examination of Parties and Witnesses. It were impossible that such Tryalls could be adduced before ane Inquest; these depending several Years many tymes before the Session before they can be brought to a close: And therefore Law and Custom in that Case has sustained a Decree of the Lords of Session as a Probation in *Judicio criminale*; but it is absolutlie denyed that it would in any other Cryme. And certainlie if the Cryme of Theft were persued civille before the Lords of Session *ad damnum & interesse*, though the Theft should be proven or confest before the Lords of Session, it would not *fidem facere in Judicio criminale*, as is evident by the Authoritie of Lawyers who agree, that *acta probatoria in uno processu fidem non facit in alio*: Nay, which is more, *acta probatoria in uno processu fidem non facit in alio processu coram eodem Judice*. And as to the Instance of the *Prætiq*; of Mac Nabb, the Pannal opposes the same, wherein there were Depositions of Witnesses; and though many tymes in the Adjournal-Bookes, the Cases of Confessions emitted has been obtruded, yet it cannot be instanced that ever the Lords of Justiciarie did by Interloquitor sustaine the same as Probation; but on the contrar it does appear in the Case of *Frazer*, in the Year 1641, That Sir Thomas Hope being then his Majesty's Advocate, declared, that a Confession emitted before a Shirref Depute, who has a Criminal Jurisdiction in some Cases in the Terms allowed by Law, and who beyond all doubt is Judge competent *per modum Inquisitionis*; yet so convinced was he, that it was ane extrajudicial Confession, that he only insisted therein in *modum adminiculi*, and joyned it with the other Probation mentioned in that *Prætiq*; which was *per se* convincing and sufficient: As also since his Majesty's happy Restauration in the Case of one *Robertson*, although the Confession was emitted before one of the Lords of Justiciarie and his Majesty's Advocate for the tyme; yet he was so convinced of the Insufficiencie of the same, that after it was pro-

duced *per modum probationis*, he took up the same even in that State of the Process when the Assyse was sworn. And as to the Instance of Divinitie in *David's Practice*, it does not concern the Point of Law, and cannot be made appear that the Partie retracted his Confession; and it is a *Prætiq*; that either *nimum* or *nihil probat*. In respect whereof, &c.

The Lords Commissioners of Justiciarie continue the advysing of this Debate till the Nynth Day of this Instant, at two a Clock in the Afternoon; And ordaines Assysers and Witnesses to attend ilk Person under the Pain of ane hundred Merks.

The said Day John Grabame Post-master, Patrick Grabame his Brother, — Keith of Ludgubarne, Matthew Colvill Writer in Edinburgh, Alexander Leivingstone Ensigne to Captain Wyrhame, Walter Kennoway Merchant in Edinburgh, James Fletcher of New Cranston, John Achmoutie Ensigne to the Castle of Edinburgh, being oft tymes called to have compeared before the Lords Commissioners of Justiciarie this Day and Place in the Hour of Cause to have past upon Mr. James Mitchel's Assyse, as they who were lawfully cited to have made their Appearance for the Effect forsaide, lawfull tyme of Day bidden, and they nor none of them enterand nor appeirand; The Lords Commissioners of Justiciarie therefore, be the Mouth of Gilbert Mair, Macer of Court, decerned and adjudged the forenamed Persons, and ilk ane of them, to be in ane Unlaw and Amerciament of ane hundred Merks Scots, which was pronounced for Doom.

Curia Justiciarie S. D. N. Regis tenta in Prætorio Burgi de Edenburgi, Nono die Mensis Januarii, 1678, Per honorabiles viros Dominos Archibaldum Primrose de Caringtoun Justiciarium Generalem, Jacobum Foulclis de Colintoun, Robertum Nairn de Strathurd, Joannem Lockhart de Castlehill, Davidem Balfour de Ferret, & Thomam Murray de Glendoick, Commissionarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

Intran' Mr. JAMES MITCHEL Prisoner.

INDYTED and Accused for the Crymes of Assassination, invading of Privy Counsellours, Ministers and others, *ut in die precedente*.

Persuer,

Procters in Defence.

Sir George Mac Kenzie of Rosebaugh, our Sovereign Lord's Advocate.

Sir George Lockhart.
Mr. John Eleis.
Mr. John Stewart.

The Lords Commissioners of Justiciarie having considered the *Dittay* and Debate relating thereto, find that Article of the *Dittay* founded upon the fourth Act, 16 Parl. King James 6. bearing

bearing the Pannal's invading by shooting and firing of a Pistol at his Grace the Archbishop of St. Andrews, a Privie Counsellour, for doing of his Majesty's Service, relevantlie lybelled, his Majesty's Advocate proving the Presumption in his Replye, viz. That the Pannal said that he did make the said Attempt and Invasion because of the Archbishop his persecuting those that were in the Rebellion at *Pentland*, or some Words to that purpose, relevant to inferre the Paine contained in the forsaide Act of Parliament, and remitt the same to the Knowledge of ane Assyse.

And likewise find that part of the *Dittay* anent the invading of Bishops and Ministers, relevant to inferre ane arbitrary Punishment, and remitt the samen to the Knowledge of ane Assyse.

And siclike that Article of the *Dittay* anent the invading, wounding and mutilating of the Bishop of *Orkney*, relevant to inferre ane arbitrary Punishment, and remitt the samen to the Knowledge of ane Assyse.

And also having considered that part of the Debate anent the Pannal's Confession made and emitted before ane Committee appointed be Authoritie of Council to receive it, and thereafter adhered to and renewed in Presence of his Majesty's high Commissioner and Lords of Privie Council convened in Council, find it is Judicial and cannot be retracted.

And also having considered the Debate and Defence against the said Confession, viz. That the same was emitted upon Promise or Assurance of Impunitie of Lyfe and Limb, find the samen relevant to secure the Pannal as to Lyfe and Limb, reserving to the Commissioners of Justiciary to inflict such arbitrary Punishment as they shall think fit, in case the Defence shall be proven, and remitts the samen to the Knowledge of ane Assyse.

A S S I S A.

— Gordon of Cairneborrowe.

David Burnet, Merchant in Edinburgh.

James Wood at the Colledge Port, Chan.

David Forsyth, Taylor.

Robert Campbel, Apothecary.

Capt. Andrew Dick.

David Bruce, Gentleman.

John Hay of Baro.

Thomas Comlie, Vintner.

Mr. Alexander Achmoutie, Ensigne.

Capt. John Binning, Vintner.

Alexander Levingstone, Ensigne.

William Steinson younger, Merchant.

Charles Scot of Bonnetoun.

Peter Wishart, Lieutenant.

The Assyse lawfullie sworn, no Objection in the contrar.

His Majesty's Advocate for Probation adduced the Pannal's own Confession, with the Witnessses after deponing; of the whilk Confession, the Tenor followes.

Edinburgh, 10 February 1674. In Presence of the Lord Chancellor, Lord Register, Lord Advocate, and Thesaurer Depute, Mr. James Mitchel, Prisoner, being called, did freelie confess he was the Person who shot the Pistol at the Archbishop of St. An-

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draws, when the Bishop of Orkney was hurt thereby, in the Year 1668, and depones upon Oath, that no living Creature did perswade him to it, or was upon the Knowledge of it. Sic subscribitur,

James Mitchel.
Roths.

A. Primrose.

John Nisbet.

Ch. Maitland.

Master William Paterson, Advocate, purged of partial Counsel, and solemnly sworn, depon's, he met a Man with a Pistol in his Hand in *Black-frier Wynd*, immediatlie after the Pistol was shot at the Archbishop, but knows not the Pannal, nor if he was the Person that shot. And this is the Truth, as he shall answer to God.

Will. Paterson, A. Primrose, J. p. d.

Patrick Vanse, Keeper of the *Tolbuith* of Edinburgh, purged of partial Counsel, and solemnly sworn, depon's, That a Day or two before or after the Pannal was examined be the Council, he confest to the Deponent, that he shot a Pistol at the Archbishop of Saint Andrews, and escaped down *Black-frier Wynd*, and went up the *Cowgate* and into Mr. Robert Ferguson's House, and patt on a Pirivick, and then came to the Street and searched for the Man that shot the Pistol. Being demanded if he heard Mr. James Mitchel justifie the Deed; he depon's, he remembers it not. Sic subscribitur,

P. Vanse. A. Primrose, J. p. d.

Mr. John Vanse, Son to the Keeper of the *Tolbuith*, purged and sworn: Being interrogate, if he heard the Pannal acknowledge the Deed of shooting at the Bishop, or defend it, depon's, That being in Conference with the Pannal in the Prison-house, he inquired at him how he or any Man could be accessorie to so impious ane Act, as to kill a Man in cold Blood who had not wronged him; he said it was not in cold Blood, for the Blood of the Saints was reiking at the Cross of Edinburgh. Sic subscribitur,

John Vanse, A. Primrose, J. p. d. Com.

John Bishop of Galloway, being purged of partial Counsel, sworn and examined, depon's, That the first tyme he saw the Pannal was in Sir William Sharp's outter Rouse, where he saw a Pistol, which was said to be taken from him, out of which (as he supposes) there were three Balls taken; and that the Pistol was like to the Pistol produced. Depon's, that at that tyme the Pannal did not confess any Guilt, but seemed to be in a great Consternation, and fell a trembling. And that the Deponer hearing that he had made a Confession, went to Prison to speak to him about it, who acknowledged to the Deponent, that he had made Confession of that Attempt against the Archbishop before the Chancellor, and some others of the Council; and that he had hopes of Lyfe, and desired the Deponer to interceed for him. And the Deponer having asked him how he could do such a Deed against ane innocent Man: He answered, that he thought him ane Enemy to the Godlie, and that they could not be in Securitie so long as he was alive. And the Deponer having inquired of him if he was sorry for it; he did not say he was sorry for it, but if it were to doe
M m m m again

again he would not do it. And this is the Truth, as he shall answer to God. *Sic subscribitur,*

Jo. Gallovidien, A. Primrose, J. p. d.

Doctor *Christopher Irvin*, purged of partial Counsel, and solemnly sworn, depon's, that he was the first Chirurgeon that came to the Bishop of *Orkney* after he received the Shot, and that he did see a Ball fall out of his Sleeve, so that he knew that it was with a Shot, and that the Bones were fractured, and that they cured him so as he was able to lift his Hand towards his Head; but there was still Scales coming out of the Orifice of the Wound. Depon's, the Bishop said he got the Wound when he was laying his Hand upon the Archbishop's Coach. *Sic subscribitur,*

Irvin, A. Primrose, J. p. d.

John Jossie, Chirurgeon, purged, sworn and examined, depon's, That he was called to the Bishop of *Orkney's* Cure, and that he had a Wound betwixt the Wrist and the Elbow, which did cast out several small Bones at the two small Orifices; and that the Bishop was not able to lift his Hand towards his Head. *Sic subscribitur,*

Jossie, A. Primrose, J. p. d.

William Borthwick, Chirurgeon, purged of partial Counsel, solemnly sworn and examined, depon's, conformis to *John Jossie* in all things. *Sic subscribitur,*

Will. Brothwick.

John Earle of Rothes, Lord High Chancellor of *Scotland*, being sworn, and the Confession under Master *James Mitchel's* Hand being shown to him, depon's, he was present and saw Mr. *James Mitchel* subscribe that Paper; and depones that he heard him make the Confession contained therein, and that he thereafter heard him ratify the same at the Council-Bar, in presence of the King's Commissioner and Lords of Privie Council sitting in Council, and that his Lordship subscribed the said Confession. Depones, That his Lordship the Advocate, and Thesaurer Depute, were appointed by the Privie Council to examine Mr. *James Mitchel*. And being interrogate, if after they had removed the Pannal to the Council-Chamber, whether or not his Lordship did offer to the Pannal upon his Confession to secure his Lyfe in these Words, Upon his Lordship's Lyfe, Honour and Reputation: Depon's, that he did not at all give any Assurance to the Pannal for his Lyfe; and that the Pannal never sought any such Assurance from him: And his Lordship does not remember that there was any Warrant given be the Council to his Lordship for that effect; and if there be any Expressions in any Paper which may seem to infer any thing to the contrary, his Lordship conceaves it has been insert upon some Mistake. *Sic subscribitur,*

Rothes, A. Primrose, J. p. d.

Charles Maitland of *Hatton*, Lord Thesaurer Depute, being sworn, and the Confession under Mr. *James Mitchel's* Hand being shewen unto his Lordship, depon's he was present when Mr. *James Mitchel* made that Confession, and his Lordship first heard him make it verballie, and

then he saw him subscribe it; and that his Lordship subscribed it also, and at that tyme there was nothing spoken of any Assurance: But when the Pannal was asked by some of the Committee, upon what Account he committed that Fact; he seemed at first unwilling to answer, but thereafter said, it was because the Archbishop is an Enemy to the good People or Godlie People in the West. Depon's, that within few Days thereafter, at a Meeting of the Council, where the Duke *Lauderdale* then his Majesty's Commissioner was present, the Pannal being brought to the Bar, and the Confession produced being shewen to him, he acknowledged the same to be his Hand Wrytt; adhered unto and renewed the same in presence of his Majesty's Commissioner and Council: And depones that he did not hear the Pannal either seek Assurance of his Lyfe, or any other Person offer the same to him. *Sic subscribitur,*

Ch. Maitland, A. Primrose, J. p. d.

John Duke of Lauderdale, being sworn, depon's, That his Grace was present, as the King's Commissioner in Council, when Mr. *James Mitchel* was brought to the Bar. Depon's his Grace saw the Pannal's former Confession made at the Committee of Council shewen to him, and he acknowledged it to be his Confession, and that he did adhere thereto and renew the same in presence of his Grace and the Council. His Grace heard no Assurance given to him, and that his Grace did not give him any Assurance, nor gave Commission to any others to give him any Assurance, and could not do it, having no particular Warrant from his Majesty for that effect. *Sic subscribitur,*

Lauderdale, A. Primrose, J. p. d.

James Archbishop of Saint Andrews, being sworn, depon's, That that Day that the Pannal did fire a Pistol at his Grace, he had a View of him passing from the Coach and crossing the Street, which had such Impression upon his Grace, that upon the first sight he saw of him after he was taken, he knew him to be the Person who shot the Shot. Depon's, his Grace saw him at the Council-Bar in presence of his Majesty's Commissioner and the Council acknowledge his Confession made before the Committee, and heard him adhere thereto and renew the same; and that there was no Assurance of Lyfe given him, nor any sought be him there. Depon's, that his Grace himself did never give him any Assurance, nor gave Warrant to any others to doe it; only he promised at his first taking, that if he would freely confess the Fault, and express his Repentance for the same at that tyme, without farther troubling Judicatories therein, his Grace would use his best Indeavour to favour him, or else leave him to Justice: But that he either gave him Assurance, or gave Warrant to any to give it, it is a false and malicious Calumny; and that his Grace made no Promise to *Nicoll Somervell* other than that it was best to make a free Confession. And this is the Truth, as he shall answer to God. *Sic subscribitur,*

St. Andrews, A. Primrose, J. p. d. Com.

The Pannal, Mr. *James Mitchel*, after swearing of the Assyse, produced ane Copie of ane pretended Act of Council, and craved that the Register

Register of Council containing the said Act might be produced. And after the Examination and Depositions of the Witnesses upon the *Dittay* and Exculpation, the Pannal and his Proctors farther urged, that the Register of Council might be produced. Seeing the Pannal produced an Instrument against Mr. *Thomas Hay*, one of the Clerks of Council, for giving an Extract thereof; and the Pannal and his Proctors alleadged, that the Register of Council containing the said Act was produced in Court the Day before, and that the said Act was read be several Members of Court; and being once produced, and an Instrument taken against one of the Clerks of Council, who with the other Clerk were cited as Witnesses be his Majesty's Advocate, the Clerks ought to be ordained either to give an Extract or produce the Register containing the forsaid Act; and the Pannal and his Proctors desyre to be heard in Wrytt upon the said Act of Council.

His Majesty's Advocate answers, That he was not obleidged to produce a Register for the Pannal; and if any such pretended Act was, he should have used a Diligence and cited the Clerks of Council for producing of the Registers, or giving an Extract; which the Pannal not having done, he cannot be allowed a Diligence in this State of the Process. And if any such Act of Council was, it was unwarrantable and could not be made use of, after the Lord Chancellor, the Duke of *Lauderdale*, the Lord Thesaurer Depute, and other Lords of Council had deponed that there was no such Assurance given, as is either pretended by the Exculpation, or insinuate by the pretended Act of Council. And be the Coppie produced it is evident, That the Designe thereof is to take from the Pannal any pretended Favour he pleads; and if the Act be founded one, it cannot be divided; so that ane meer Narrative must prove, and the Statutorie Words should not prove; especiallie seeing there is nothing more notour and ordinary, than for the Council not to consider a Narrative if the Statutory Words be Right. And as the Pannal pretends that his Confession cannot be divided from the Assurance given, but that it must be taken with the Qualitie; so much less must this Act be divided. And the pretended Act is long posterior to the Pannal's Confession, and even posterior to a former Dyet in the Justice Court appointed for the Pannal's Trial for the said Cryme. And farther, no such Assurance could have been granted, seeing none but his Majesty can grant Remissions.

The Pannal and his Proctors desyred the Coppie produced to be read.

His Majesty's Advocate consents to the Reading of the pretended Coppie of the Act of Council, and which being publictly read, is of the Tenor following.

Edinburgh, 12 March, 1674.

THE Lord Commissioner his Grace, and the Lords of his Majesty's Privie Council having appointed a Committee of Council to examine Mr. *James Mitchel*, Prisoner in the *Tolbuith* of *Edinburgh*; the said Mr. *James* being brought before the said Committee, did

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make a free and voluntarie Confession of his Accession to the Rebellion, and rising in Arms in the West; and that after he had Notice of the same, he went from *Edinburgh* with Colonel *Wallace* and others, and joyned with the Rebels there, and from thence came alongs and was with them until the Night before the Fight at *Pentland-hills*; and that at the Desyre of Captain *Arnot*, he came then to *Edinburgh* to speak to some Persons there concerning them. And being examined upon the Attempt made upon the Person of the Archbishop of St. *Andrews*, and who shot the Pistol at the said Archbishop, when the Bishop of *Orkney* was hurt in the Moneth of *July* 1668. he did declare that at that tyme, and the Day that the said Attempt was made he was in the Town of *Edinburgh*; and that he had bought the Pistol, which was about him, charged with three Balls when he was apprehended, about that tyme when the Bishop was shot, from *Alexander Logan*, Dage-maker in *Leithwynd*: But refused that he was the Person that made the said Attempt, until having retired a pace with one of the said Committee, he did confess upon his Knees that he was the Person, upon Assurance given him by one of the Committee, as to his Lyfe, who had Warrant from the Lord Commissioner and the Council to grant the same. And did thereafter confess frelie, before all the Lords that was upon the said Committee, That he shot the forsaid Pistol at the said Archbishop, and did subscribe his Confession in Presence of the said Committee, which is also subscribed by them. And thereafter the said Mr. *James* in presence of the Commissioner his Grace and Council, did renew and adhere to the said Confession, both as to the Accession to the Rebellion and the Attempt forsaid; and acknowledged he made the said Attempt because he thought that the said Archbishop had ane Hand in troubling and persecuting these that were in the Rebellion. And nevertheless, being brought before the Lords Commissioners of the Justiciarie, and asked if he did own the Confession forsaid, he did altogether refuse to answer and adhere to his saids Confessions, notwithstanding he was told by the Lords Commissioners of Justiciarie and his Majesty's Advocate, that if he would adhere to his saids Confessions, he should have the Benefite of the said Assurance; and if otherways, that he should lose the same. Therefore the Lord Commissioner his Grace, and the Lords of his Majesty's Privie Council, do declare, That they are free, and that the said Mr. *James* ought not to have the Benefite of any such Promise or Assurance, and that the same is altogether void; and that the Lords of the Justiciarie and the Assyse ought to proceed without any Respect to the same. And farther do declare, That the said Mr. *James Mitchel* is the Person intended and meant in the Proclamation in the Years 1666, and 1667; discharging any Intercomoning with the Rebels therein mentioned, and excepting the said Mr. *James*, and the other Persons therein, from his Majesty's Favour and Indempnitie, and no other under the Name of Mr. *James Mitchel*, though there had been any other of that Name involved in the said Rebellion.

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The Pannal and his Proctors renew their Desire, and crave to be heard to debate upon the Act of Council in Wrytt.

The Lords Commissioners of Justiciarie considering that the Copie of the pretended Act of Council produced was never urged, nor made use of, nor any Diligence craved for producing the Registers of Council, until this Afternoon that the Assyse was sworne, after which no Diligence can be allowed nor granted in this State of the Process be the Law of the Kingdom, and Practique of this Court; especiallie, seeing it appears be the said Coppie, that the Designe was to take away any Assurance that the Pannal could have pleaded; and that the Truth of the Narrative of the Coppie founded upon insinuating that there was an Assurance, is cancel'd be the Depositions of the Duke of *Lauderdale*, then his Majesty's Commissioner, the Lord Chancellor, and other Members of the Committee and Council: The saids Lords therefore ordaine the Assyse to inclose and return their Verdict to Morrow at Two a Clock in the Afternoon.

Curia Justiciarie S. D. N. Regis tenta in Pretorio Burgi de Edenburgi, Decimo die Mensis Januarii, 1678, per Honorabiles viros Dominos Archibaldum Primrose de Caringtoun, Justiciarium generalem, Jacobum Foulis de Colingtoun, Robertum Nairn de Strathurd, Johannem Lockhart de Castle-hill, Davidem Balfour de Ferret, & Thomam Murray de Glendoick, Commissionarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

The said Day the Persons who pass upon the Assyse of Master *James Mitchel*, returned their Verdict in presence of the saids Lords: Whereof the Tenor followes.

As to the first part of the Lybell, founded upon the 4 Act, 16 Parl. King *James 6*. The Chancellor and whole Assyse, with one Voice, find it proven conform to the Lords Interloquitor.

As to the Invading of Bishops and Ministers, and Wounding the Bishop of *Orkney*, siclike proven with one Voice.

As to the third part of the Lords Interloquitor concerning his Confession, first before a Committee, and thereafter before his Majesty's High Commissioner and Council, the whole Assyse with one Voice find it proven conform to the Lords Interloquitor.

As to the fourth and last part of the Interloquitor concerning the Exculpation, the whole Assyse with one Voice find it no ways proven. And further concerning the Exculpation, when the Pannal was pressing it stronglie upon my Lord Chancellor, the whole Assyse heard his own Confession and Acknowledgment of the Fact. *Sic subscribitur,*

Jo. Hay, Chancellour.

After opening and reading of the whilk Ver-

dict of Assyse, the Lords Commissioners of Justiciarie, by the Mouth of *Adam Auld*, Dempster of Court, Decerned and Adjudged the said Mr. *James Mitchel* to be taken to the *Grass Mercat* of *Edinburgh*, upon *Fryday* the Eighteenth Day of *January* Instant, betwixt Two and Four Aclock in the Afternoon, and there to be Hang'd on ane Gibbet till he be Dead, and all his Moveable Goods and Gear to be Escheat and inbrought to his Majesty's Use; which was pronounced for Doom. Upon which Day he was Executed according to the Sentence.

He had prepared a Speech, which he intended to have delivered, but being interrupted by the beating of Drums he threw it over the Scaffold; it was as follows.

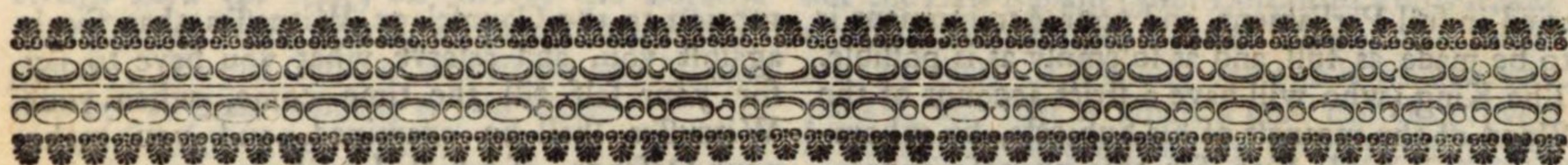
Christian People,

IT being rumoured abroad immediatly after I had received my Sentence, that I would not get liberty to speak in this Place, therefore I have not prepared a formal Discourse and account of these pretended crimes, for which I was accused and sentenced, neither did I think it very necessary, the fame of your process having gone so much abroad, what by a former enditement given me near four Years since, the dyet whereof was suffered to desert in respect the late Advocat could not find a just way to reach me, with that extrajudicial confession they opposed unto me. All know he was zealous in it, yet my charity is such unto him, that he would not suffer unwarrantable zeal so far to blind him, as to overstretch all Lawes of the Land beyond their due limits, in prejudice of the life of any natural Subject, and next by an extreame enquiry of torture, and then by exiling me to the Bais, and after all, giving me a new enditement at the instance of the new Advocat, who before was one of mine, when I received the first enditement, to which new enditement and debate in that process I remit you, and particularly to these two defences of extrajudicial confession, and to the promise of Life given to me thereupon by my Lord Chancellor, upon his own, and the publick faith of the Kingdome, upon the verity whereof I am ready to die, and consent to lay down my Life. And I hope, your Charity will be such to me (a dying Man) as not to misconstrue me therein, especially when it is so notourly adminiculat by an Act of the secret Council, and yet denyed upon Oath by the Principal Officers of State, present in Council at the making of the said Act, and which the Act bears to have been present thereat; the Duke of *Lauderdale* being then his Majesty's Commissioner, and which Act of Council was by the Lords of Justiciary their Interloquitor most illegally repelled, but I shall have charity to some of these Lords, whom I knew would have given Law and Justice place, even as to my just absolution, if they had not been overpowered by the plurality of Votes of those who were over-awed and dared by the Lords of the Secret Council. But that will not absolve their Consciences at the last day. As to my Advocats and Lawyers, I ingeniously acknowledge their Care, Fidelity and Zeal in my Defence, and which, I hope, shall be some standing Fame to them for this, and all future Generations. So
thus

thus much as a short account of that Affair, for which I am brought unjustly to this Place. But I acknowledge my particular and privat Sins have been such, as have merited a worse death unto me; But I die in the hope of the Merits of Jesus Christ to be freed from those eternal Punishments due to me for Sin; yet I am confident, God doth not plead with me in this for my privat and particular Sins; but I am brought here, that the work of God may be made manifest, and for the trial of Faith, *Joh. ix. ver. 3.* and *1 Pet. i. ver. 7.* and that I may be a witness for his despised Truth and Interest in this Land, who am called to seal the same with my Blood. And I wish heartily that this my poor Life may put an end to the Persecution of the true Mem-

bers of Christ in this Kingdome, so much cheated by these perfidious Prelates, and in opposition to whom, and in testimony of the cause of Christ, I at this time willingly lay down my Life. And I thank God, that he hath thought me so worthy as to do the same for his glory and Interest. Finally, conceiving it a Christian Duty in a singular and extraordinary case anent my particular judgment concerning both Church State, it is evidently declared and manifested more fully elsewhere. So farewell all earthly enjoyments, and welcome Father, Son and Holy Spirit, into whose Hands I commit my Spirit.

JAMES MITCHEL.



LXXII. *The Trial of PHILIP Earl of PEMBROKE and MONTGOMERY, at Westminster, for the Murder of NATHANAEL CONY, the 4th of April, 1678.*
30 Car. II.



ABOUT Nine of the Clock the Prisoner with his Guard came from the Tower, with the Ax before him, and went into the Room appointed for him. Between the hours of Eleven and Twelve at Noon, the Lords, Judges, and Assistants of the House, came in order, two and two, from the House of Lords, to the Court erected in *Westminster-Hall*, with four Maces before them, and before the Lord High-Steward four more, besides his own Serjeant and Purse-bearer, with Garter King at Arms, and the Deputy Black-rod bearing the White Staff. After Obeisance made to the Throne, each Lord, and the others, took their places, the Serjeants, with their Maces erect, kneeling, four on each side of the Throne.

Then the Clerk of the Crown in Chancery on the right hand, and the Clerk of the Crown in the Kings-Bench on the left hand, making three Reverences to the Lord High-Steward, came up to his Seat, and there both kneeling, the Clerk of the Crown in Chancery delivered the Commission for the Office of High-Steward (*pro hac vice*) to his Grace, who delivered it to the Clerk of the Crown in the Kings-Bench to read, and then they both in the same manner went back to their Seats at the Table.

Then the Clerk of the Crown in the King's Bench said as followeth.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes: My Lord High-Steward of *England* straitly chargeth and commandeth all manner of Persons here assembled, to keep silence, and give ear to his Majesty's Commission, unto my Lord High-Steward his Grace directed, upon pain of Imprisonment.

Then all the Peers and Assistants standing up, and uncovered, he read the Commission *in hæc verba.*

Clerk of the Crown. *Carolus, &c.*

Serjeant. God save the King.

Then Garter and the Usher that held the Staff, making three Reverences to his Grace, Garter on his knees presented him the white Staff, which his Grace delivered to the Usher, who likewise kneeled to hold the same, during the rest of the Ceremony.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. My Lord High-Steward of *England* his Grace straitly chargeth and commandeth all manner of Persons here present, to be uncovered, upon pain and peril shall fall thereon.

Then the Clerk read the *Certiorari* to the Commissioners, before whom the Indictment was found, to return the same into the House of Lords with the Return *in hæc verba.*

Clerk of the Crown. *Carolus, &c. Virtute, &c.* Serjeant at Arms, make Proclamation.

Serjeant. O yes: Constable of the Tower of *London* return thy Precept and Writ to thee directed, and bring forth thy Prisoner *Philip Earl of Pembroke and Montgomery*, on pain and peril shall fall thereon.

The Constable of the Tower of *London* being a Peer, by Sir *John Robinson* his Lieutenant returned his Precept, and with the Ax born on his left hand, the edge from him, the Earl of *Pembroke* was brought to the Bar, the Lord High-Steward of *England* having then ordered the Judges to be covered, spake to the Prisoner as followeth.

† *Lord High Steward.* My Lord of *Pembroke*, Your Lordship is now brought before this Great Assem-

† *Earl of Nottingham.*

bly

bly in order to your Trial, wherein you have to maintain all that can concern you in this World, your Estate, your Honour and your Life it self. There is no less a Crime charged on you, than the Murther of one of the King's Subjects, and this is not charged on you by common Voice and Fame, nor by the growing Rumour of the multitude, but by the grand Inquest of this County, which was made up of Gentlemen of good Quality and Consideration. Though all this amount to no more than a bare Accusation, (for God forbid that they who neither did nor could hear the Evidence on both sides, should any way pre-judge your Trial by their partial Examination) yet it hath produced the Presentment of such a Crime, as is attended with extraordinary and unusual Circumstances.

And now for this Fact your Lordship is to be tried in full Parliament, and your Arraignment is to be made as full and as solemnly as is possible. The King (who will have a strict account of the Blood of the meanest of his Subjects, by whomsoever it is shed) hath for this purpose appointed an High-Steward: And now your Lordship is to be tried not by a select number of Lords, but by the whole House of Peers, who are met together to make Inquisition for this Blood.

Doubtless the shame of being made a Spectacle to such an Assembly as this, and the having a Man's faults and weaknesses exposed to the notice and observation of such a Presence as this is, to a generous Mind must needs be a penance worse than Death it self; for he that outlives his own Honour, can have very little joy in whatsoever else he lives to possess.

In such a state and condition as this is, it will be very fit for your Lordship to recollect your self with all the care and caution you can; it will be necessary for you to make use of the best temper, and the best thoughts you have, when you come to make your defence; let not the disgrace of standing as a Felon at the Bar, too much deject you; no man's credit can fall so low, but that if he bear his Shame as he should do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man despair, that desires and endeavours to recover himself again, much less let the terrors of Justice affright you; for though your Lordship have great cause to fear, yet whatever may be lawfully hoped for, your Lordship may expect from the Peers.

It is indeed just cause of dreadful apprehensions, when you consider how strict and impartial the Judicature is which you stand before, and how impossible it is that any Consideration of your Lordship's Relation or Family, shall have any kind of Ingredience into their Lordships Judgment; nay you have cause to fear all this will make against you, when you consider how the Quality of the Offender doth aggravate the Crime.

You have reason to fear and be dismayed again, when you consider how severe, and how inexorable the Rule of Law is, in the Case of Blood; and how certain it is that the Lords will make that Rule of Law the measure of your Life or Death: But yet, my Lord, there are other Considerations that may support you.

Your Lordship may be sure that they will receive no proof against you, but direct and positive Evidence; it will not be left to any proof,

but such proof, as by the manifest plainness of it, deserves to be called Evidence. In the next place, your Lordship shall suffer no prejudice for want of Counsel, for where there are any advantages that the Law can give you, this Court takes it self obliged in Honour to put you in mind of it; nor can your Lordship suffer an Inconvenience, by having Counsel to plead against you, for no Arguments nor Skill can pervert their Lordships Justice; you shall not fall by the charms of Eloquence; nothing shall load or press you but your own Crime, and even that burthen may be alleviated, if there be any room for an Abatement, so far as it doth not contradict what they owe to the King, to themselves, to the Law, and to the Justice of the Kingdom.

Hearken therefore (my Lord) to your Indictment with patience and attention, give no Interruption to the Counsel or Witnesses that speak against you, and reserve what you have to say for your self till the time come, when your Witnesses shall be examined, and you make your Defence, of which I will give you notice. And this you may rely upon, that when you do come to speak for your self, you shall be heard with as much favour and candor as the matter will bear; and when my Lords have heard all that can be said on both sides, doubtless their Lordships will give such a Judgment in the Case, as is fit for you to receive, such a Judgment as becomes this great Court, and such a Judgment as is suitable to that known Equity, which their Lordships do always observe in all their Proceedings.

Lord High-Steward. Read the Indictment to my Lord.

Clerk of the Crown. *Philip Earl of Pembroke and Montgomery,* hold up your Hand.

Which he obeyed by holding up his Right Hand.

Cl. of Cr. You stand indicted by the Name of *Philip Earl of Pembroke and Montgomery, late of the Parish of St. Martins in the Fields, in the County of Middlesex, for that you not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 4th of February, in the 30th Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. with Force and Arms, at the Parish aforesaid, in the County aforesaid, in and upon one Nathanael Cony, Gent. in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice forethought, did make an Assault; and that you the said Philip Earl of Pembroke and Montgomery, with the Right Fist of you the said Philip, &c. the said Nathanael Cony, in and upon the Left part of the Head of the said Nathanael Cony, then and there feloniously, wilfully, and of your Malice aforethought, did strike and bruise, and him the said Nathanael Cony, with your Right Fist aforesaid, did beat and throw down to the Ground; and that you the said Philip, &c. the said Nathanael Cony so lying upon the Ground, in and upon the Head, Neck, Breast, Belly, Sides and Back, of him the said Nathanael Cony, then and there feloniously, wilfully, and of your Malice before-thought did strike and kick, by reason of which said kicking and bruising of the said Nathanael Cony on the said Left part of the Head of the said Nathanael Cony with the said Fist of you the said Philip,*

Philip, &c. and of the beating and throwing him to the Ground aforesaid; and also by reason of kicking of the said Nathanael Cony with the said Feet of you the said Philip, &c. on the Head, Neck, Breast, Belly, Sides and Back of the said Nathanael, be the said Nathanael Cony, from the aforesaid 4th Day of February in the aforesaid Year, to the 10th of the same Month of February, in the Parish aforesaid, did languish, and languishing did live; on which said 10th Day of February in the Year aforesaid, be the said Nathanael Cony, of the striking and bruising, beating and kicking died; and so you the said Philip, &c. the said Nathanael Cony, at the Parish aforesaid, in the County aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of your Malice forethought, did Kill and Murder, against the Peace of our said Sovereign Lord the King, his Crown and Dignity. How say you, Philip Earl of Pembroke and Montgomery, Are you Guilty of this Felony and Murder whereof you stand indicted, or Not Guilty?

E. of Pemb. Not Guilty.

Cl. of Cr. Culprit, How will you be tried?

E. of Pemb. By my Peers.

Cl. of Cr. God send you a good Deliverance. Serjeant at Arms, make Proclamation.

Serj. O yes, if any one will give Evidence for our Sovereign Lord the King, against Philip Earl of Pembroke and Montgomery, the Prisoner at the Bar, let them come forth and they shall be heard, for the Prisoner stands at the Bar upon his Deliverance.

Then Sir William Dolben, Knt. the King's Serjeant at Law, Recorder of the City of London, opened the Indictment thus:

Sir William Dolben. May it please your Grace my Lord High-Steward of England, and the rest of my Noble Lords,

Philip Earl of Pembroke and Montgomery stands indicted, for that he, the 4th Day of February last, in the Parish of St. Martins in the Fields, in the County of Middlesex, of his malice fore-thought did make an assault upon one Nathanael Cony, in God and the King's peace there being; and that he the said Philip Earl, &c. with his right Fist, on the left part of the Head of the said Nathanael, then and there feloniously did strike and bruise, and with his right Fist aforesaid him did cast and throw down to the ground, and being so on the ground, with his Feet did kick and strike, of which said striking, bruising and kicking, the said Nathanael Cony, from the said 4th of February, to the 10th of February following, did languish and then died; and so the Jurors do upon their Oaths say, That the said Philip Earl of Pembroke, &c. the said Nathanael Cony, at the Parish and County aforesaid, feloniously, willfully, and of his malice fore-thought, did murder, against the King's peace, his Crown and Dignity. To this Indictment the Earl of Pembroke hath pleaded Not guilty, and put himself upon his Peers for his Trial: We who are of Counsel for the King, shall produce our Evidence to confirm this Accusation, with what it is, and of what nature, his Majesty's Attorney-General will acquaint your Grace, and the rest of you my Noble Lords.

Then Sir William Jones, Attorney-General, (who being called by Writ, as Assistant to the House, was within the Bar) opened the Evidence to this effect.

Att. Gen. May it please your Grace my Lord

High Steward of England, and the rest of my Noble Lords; Philip Earl of Pembroke and Montgomery stands here Indicted for the Murther of Nathanael Cony: That my Lord of Pembroke was the cause of his death, I humbly conceive will need very little question before your Lordships, for we have such proof that it was his hand threw him down, and his feet that trod upon him and kicked him, which was the cause of his death, that it cannot be denied: but whether or no this killing amount to Murther, may be a matter of further controversie; and I hold it my duty to acquaint your Grace and my Lords, what the proof is, and then what we have to offer to prove it to be an offence even of this nature.

My Lords, I know to maintain an Indictment of Murther, there must be a proof of Malice; but the Law is plain (your Lordships know it, and my Lords the Judges will tell it you) that there are two sorts of Malice, the one is Malice express'd, and that is when a man can be proved to have born before-hand an ill-will and hatred to the person he killed; this sort of Malice we pretend not to be in this case: But there is another sort of Malice, which also in Law gives the denomination of Murder to the killing of a man, which is Malice implied, when any one shall without any provocation given by the party slain, bring another by violence to his Death; For our Law supposeth, and that upon good ground, that no man without a Provocation would kill his Brother, unless he had Malice to him before-hand; and that is the Malice that falls out to be the Ingredient of this case, for the poor unfortunate Gentleman that was killed, did not for ought that did appear to me, (and I have had all the proof given at the Coroner's Inquest under my Examination) give the least Provocation to this Noble Lord. Some have thought that a person might be guilty of malicious Murther, though the party killed had given the Murtherer a blow; but I shall not contend for so strict a construction of a Provocation, for there was not in this case a blow struck, no nor an angry word given: all that I can find came from Mr. Cony was, to complain that a Friend of his that came into the Company with him, was turned out of doors; and sure such a thing will never be taken to be a Provocation, at leastwise such a one as will take away Malice implied. I shall now (my Lord) give your Lordships an account of the nature of our Evidence, as to the Fact, and that (my Lords) in short; for as I shall not use any aggravation above what the Cause requires, so I shall not tire your Grace, and my Lords, with any long Speech, but barely open the Evidence, and tell you in short what will come in proof before you.

It was on Sunday the 3d of February, that my Lord of Pembroke and his Company were drinking at the House of one Long in the Hay-Market, (I am sorry to hear the day was no better employed by them) and it was the misfortune of this poor Gentleman, together with one Mr. Goring, to come into this House to drink a Bottle of Wine; my Lord of Pembroke saw them coming in, and knowing Mr. Cony, was very importunate with him to join Company: he at first refused, because of his Friend, and told his Lordship they had business together; but no denial he would take, and so at last they did go into my Lord's Room. After some distance of time, when it was

near twelve of the Clock at Night, there fell out a difference between my Lord, and Mr. Goring, (the Gentleman that came in with Mr. Cony) who (it seems) gave my Lord of Pembroke some words, which provoked him to express his distaste of them, by throwing a Glass of Wine in his face; which injury Mr. Goring so far resented, as that he was about to draw his Sword, but was prevented by some of the Company, and put out of the Room to avoid further mischief. This Gentleman Mr. Cony that was killed, was not at all concerned in the matter of the difference, but only desired to go out of the Room, that he might look after his Friend who was thrust out of doors. He knew not why, (without any Provocation, as you will hear by and by) my Lord of Pembroke falls upon him, strikes him with one blow to the ground, and when he was there trod upon him on his Back, on his Belly, on his Side, and kicked him so that the poor Gentleman fell into a Swound, and was after some time with some difficulty brought to himself again: after they had perceived there was Life in him, they lifted him up, and laid him down on some Chairs that were in the Room, and thinking too much had been done by them already, they take their leaves of him, and commit him to the care of the Drawer. He was not (as it should seem) so carefully attended by the Drawer, whose ignorance could not look after him as his condition required, and so fell down off the Chairs again divers times. After some time, early in the morning he was carried away in a Sedan to his own Lodging, and being there put to Bed, as he grew a little more and more recovered out of his stupefaction, so he grew more and more in pain, and sent for Doctors and Chirurgeons to consult with, by whom he had all the means used that was possible to have saved his Life; but it proved there was so much Blood forced out of his Veins, and gathered into one place of his Body, by those Blows and Bruises, that he could not be recovered, and so after a Week's time passed in intolerable pain, died: But yet all the time of his dying, and even constantly to his death, he did complain that it was my Lord's Bruises brought him into that condition. It will also be prov'd, that after his death, upon view of the Body by the Coroner and his Jury, there was the appearances of those Blows and Abuses, by broad Bruises in several parts of the Body, and this some of the Jury will testifie. This in short is the matter of the Evidence, which we shall briefly prove, and then submit it all to your Lordships Judgment.

L. H. St. Call the Witnesses together, and speak out Mr. Attorney.

At. Gen. Those we shall call first are Mr. Henry Goring, Mr. Richard Savage, Mr. John Shelly, and Capt. Fitz-Patrick.

Cl. of Cr. The Evidence which you and every one of you shall give for our Sovereign Lord the King, against Philip Earl of Pembroke and Montgomery, the Prisoner at the Bar, shall be the truth, the whole truth, and nothing but the truth: So help you God.

L. H. St. Mr. Attorney, whom do you begin with?

At. Gen. Mr. Henry Goring.

L. H. St. Stand forward, Goring.

At. Gen. Pray Sir acquaint my Lords of the manner of your coming with Mr. Cony to Mr. Long's, and what happened there.

L. H. St. Sir, you must speak so loud that I may hear.

Goring. May it please your Grace, Mr. Cony and I did on Sunday, the 3d of February last, dine in the City, we staid very late there, and I must ingenuously confess, we had drank more than was fit for us to have done; after that (if it please your Grace) I offered to set down Mr. Cony at his Lodgings, but he was so very ceremonious, that he would see me at home; it seems Long's House, the Tavern in the Hay-market, was in the way, and Mr. Cony would needs have us drink another bottle of Wine ere we parted: It was late, and the door shut, but we knocking pretty hard for admittance, did get it opened, and as soon as the door was opened, Mr. Cony went towards the Bar, and made some noise, being in drink; my Lord of Pembroke was then in a low room in the House, and knowing Mr. Cony, (as I thought) came and asked him, if he would come in and drink with him; he replied, My Lord, I am with a Friend, and we have some business together: At length my Lord asked me very civilly to come in, and we did after some time come in, and when we were in, my Lord drank to me, as I remember, and we stood round the Table a while, and at last sate down in some Chairs, for we were not so much ourselves as to be able to stand all the while; then there was, it seems, some Dispute between my Lord of Pembroke and me, wherein my Lord did conceive I had done him some injury, and threw a glass of Wine in my face.

Att. Gen. What kind of Discourse was that, pray Sir?

Goring. Truly (may it please your Grace) I cannot remember all the Discourse, because I was so much in drink at that time; they say, it was about Families and Play, I cannot positively say what it was; but after my Lord of Pembroke rose up to draw his Sword, and I laid my hand on mine.

Att. Gen. Well Sir; and what followed then?

Goring. Captain Savage stept in between my Lord and me, and the Drawer came bustling about, and took me and shoved me out of the room; while I was thrusting out I heard a noise behind me, and I saw my Lord make somewhat towards Mr. Cony; but more I cannot say what was done, because Mr. Savage was between my Lord and me. When I was out of the room, I found my Sword gone, and my Hat and Perriwig; I then made a noise at the door, and would not go away till I had recovered my things; the Man of the House (who was in bed, it seems, for he was then undrest, and in his Night-gown) came and asked me what was the matter? I told him, I had been in that room with my Lord of Pembroke, where I had received some ill usage, and had lost my Hat and Perriwig; and they had broken a piece of my Sword, and taken it from me, which I desired to have again; and (said I) Mr. Cony, I doubt, is in danger, for there is quarrelling within, and I desired to come in to see what they did with him.

Att. Gen. Well Sir, when you came in, what then?

Goring. Upon this, the Master of the House did desire me to go into a room, and a Gentlewoman (his Sister, as I after understood) did also press me to go into another room, and promised they would bring Mr. Cony to me; upon

on which I went into a Room there by, but it was something long before I heard from them; and being under some Impatience, they at last came and told me, Now, Sir, you may go in, if you please: when I came in, I found a Gentleman lying along upon the Chairs, and no body else in the Room; I began to be suspicious (for I was then, as I thought, somewhat soberer) that he had some Wound, and took the Candle and walked about him, and would fain have awakened him, but could not by all my Endeavours; the Drawer told me, he was only dead-drunk, and would in a little time come to himself; upon which I desired them to lay some Blankets upon him, and some Pillows under him, and set some more Chairs, to make the Place broader, that he might not fall down; and I ordered the Drawer to be sure to watch with him till he awaked, and make a good Fire, which he promised to do.

The next Day Mr. Cony sent to my Lodging to come and see him, but I did not that Day, because I did go out early, and did not return till late; but the very next Day after, (being Tuesday) when I came to him, Harry, (said he) I was very much abused the other Night in my Lord's Company; I am sorry for that (said I) with all my Heart; and I asked him, how he came to be abused; My Lord of Pembroke (said he) threw me down, and there some body trod upon me and kicked me, and he shall know that he has abused me, and that I expect Satisfaction for it, I hope you will let him know so much, and carry him a Challenge from me: Mr. Cony, (said I) who did tread upon you? I know not, (said he) for I was in a Swoon, either my Lord of Pembroke, or some of his Creatures for him. I never had the Honour to know my Lord of Pembroke before, nor above one or two of the Gentlemen that were with him then in the company.

Att. Gen. Sir, had you any Discourse with him afterwards?

Goring. Yes, every Day till Thursday at Night.

Att. Gen. Did he complain of much Pain?

Goring. Yes, constantly in his Belly, his Sides, and his Shoulders.

Att. Gen. What did he tell you was the Cause of his Death?

Goring. He said it was my Lord of Pembroke that had done him the Injury in throwing him down; who trod on him, or kicked him, he could not tell, but said, my Lord should answer for it to him.

Att. Gen. Do you remember what Part he complained of most?

Goring. His Belly.

Att. Gen. And what else?

Goring. I think his Sides and Shoulders.

Att. Gen. What Distance of Time was it between your being thrust out of the Room, and your coming in, and finding him upon the Chairs?

Goring. About half an Hour.

L. H. St. Mr. Goring, you say you saw no Stroke given by my Lord of Pembroke to Mr. Cony.

Goring. No truly, may it please your Grace, I saw my Lord make towards him, but Mr. Savage was between my Lord and me, and I was put out of the Room.

L. H. St. You did not hear Mr. Cony charge

my Lord with kicking him, or stamping on him?

Goring. He did not in my hearing charge him with stamping on him, but that he threw him down, and that then some one did kick him.

Att. Gen. My Lords, We have done with this Witness.

L. H. St. My Lord of Pembroke, Will your Lordship please to ask that Witness that spoke last, any Questions, for now is your time?

E. of P. No, my Lord.

Att. Gen. Then we desire Mr. Savage may be examined: Mr. Savage, pray do you acquaint his Grace and my Lords what you know of this Business.

Savage. May it please your Grace, I was in company with my Lord of Pembroke at Mr. Long's House in the Hay-Market, when Mr. Cony came in, and making a great Noise at the Bar, my Lord of Pembroke being in a lower Room, looked out at the Door, and seeing who it was, my Lord saluted him very kindly, and told him he was glad to see him, and desired him to walk into his Room. Mr. Cony told him he had a Friend at Door, and desired his Lordship to admit him, which my Lord embraced very kindly: And then Mr. Cony goes to the Door and calls Mr. Goring, desiring him to come in, and they came together into the Room; my Lord desired them to sit down and drink a Glass of Wine, which they did, and after some time falling into Discourse, Mr. Goring began to make use of some impertinent Language to my Lord, and amongst the rest told him he was as good, or a better Gentleman than he was.

Att. Gen. Goring did?

Savage. Yes, Goring did; upon which my Lord threw a Glass of Wine in his Face, and immediately stepped back and drew his Sword: Mr. Goring was going to draw, but I came up to him, and took his Sword from him, and broke a Piece of it, and upon my Perswasion my Lord put up his Sword again; but for fear there might be more Words, I took Mr. Goring in my Arms, and shoved him out of the Room: And whilst I was thrusting him out of Doors, I heard a Noise of a Bustle behind me, and leaving the Drawer to keep Mr. Goring out, I saw my Lord of Pembroke strike Cony with his right Hand, who immediately fell down, and then gave him a kick; and so upon that, finding him not stir, I took Mr. Cony, being on the Ground, (I and my Lord together, for I was not strong enough to do it my self) and laid him on the Chairs, and covered him up warm, and so left him.

Att. Gen. You say, my Lord struck him a Blow.

Savage. Yes, he did strike him.

Att. Gen. On what Part?

Savage. I suppose on the Face.

Att. Gen. You say, Sir, my Lord of Pembroke did kick him when he was upon the Ground.

Savage. Yes.

Att. Gen. Did he kick him once, or oftner?

Savage. But once, that I saw.

Att. Gen. Pray, Sir, on what Part was it?

Savage. Somewhere on the Body, but I cannot tell what Part.

Att. Gen. With what Force did his Leg move?

Savage. Not with a very great Force.

Att. Gen. How high was his Leg lifted up?

Savage. He pushed his Leg with a quick motion forwards.

Att. Gen. When you took him up he was senseless, you say; pray, Sir, how long was it ere he was brought to Life again?

Savage. Two or three Minutes.

Att. Gen. What Means did you use to bring him to himself?

Savage. We chafed him over the Temples, and such things.

Att. Gen. When he came to Life again, did he speak?

Savage. He did open his Eyes, but did not speak.

Att. Gen. What followed then?

Savage. We laid him upon some Chairs gently, for his Pulse was almost gone, that we could feel.

Att. Gen. Did his Eyes continue open after he was revived?

Savage. Not long; for I asked him if he knew me, he seemed to shake his Head, as if he did, and then closed his Eyes again.

Att. Gen. Before that Accident, what Condition was he in? Was he able to talk?

Savage. He was very drunk, but he did say something.

Att. Gen. What Discourse had he before he was struck down?

Savage. I cannot well remember, but I think he proposed Play to my Lord.

Att. Gen. Why did my Lord strike *Cony*?

Savage. I cannot tell, I was then putting *Goring* out of the Room, and hearing the Noise of my Lord's Motion towards *Cony*, I looked back and saw my Lord strike him.

Att. Gen. What Language did he use to my Lord, to provoke him to it?

Savage. I cannot tell any at all.

Att. Gen. Did you see Mr. *Cony* after that time, and what did he then say to you?

Savage. I went two Days afterwards to see Mr. *Cony*, who told me he was then in a pretty good Condition. He asked me whether my Lord had struck him? I told him, Yes. Truly, said he, I did not know that my Lord had struck me, but finding my self so much in pain, I thought I had fallen, partly through my Drink, and partly through my Fits I used to have.

Att. Gen. We (my Lord) have now done with this Witness.

L. H. St. My Lord of *Pembroke*, will you ask Mr. *Savage* any Questions?

E. of P. No, my Lord.

L. H. St. Mr. *Savage*, I think you say you saw my Lord of *Pembroke* kick him once; in your Judgment, was that Kick of such Force as to give any great Bruise?

Savage. I did (my Lord) see him kick him once, but not with any great Force, as I conceive.

L. H. St. You did not hear Mr. *Cony* complain my Lord had kick'd him?

Savage. No; for, as I told your Lordship, when I was to see him two Days after, he asked me the Question, and said he did not know it before.

L. H. St. Mr. Attorney, pray on with your Witnesses.

Att. Gen. We shall next call Mr. *John Shelly*: Mr. *Shelly*, pray tell his Grace and my Lords your Knowledge in this untoward Accident.

Shelly. May it please your Grace, I was in the Room at *Long's*, when Mr. *Cony* and Mr. *Goring* came in; they were both very far in Drink, in so much that *Goring* could hardly stand, but desired he might have leave to sit down, which he had: Mr. *Goring* in a little time proposeth Play to my Lord, and my Lord told him he would throw with him for 500*l.* and was sending away for the Money; but then Mr. *Goring* would not Play: I believe (said my Lord to him) you are an idle Fellow, that you will propose these things and not pursue them: Upon that Mr. *Goring* tells my Lord, his Name was a better Name than his Lordship's, and he a better Gentleman than my Lord: Then my Lord takes some Wine, and threw in his Face; hereupon Mr. *Goring* steps back, and drew his Sword, and my Lord did the same: Captain *Savage* steps in between them, and keeps my Lord, while *Goring* was put out of the Room: my Lord then desired Mr. *Cony* to go out with his Friend: Said he, I do not know upon what Account my Friend is sent out; whereupon my Lord hit *Cony* a Box on the Ear, and that threw him down.

Att. Gen. Pray, Sir, before my Lord struck him, did not *Cony* give my Lord some ill Language?

Shelly. He only said as I told you before, I know not upon what Account my Friend is turned out of Doors.

Att. Gen. Did you see my Lord strike him?

Shelly. Yes.

Att. Gen. Whereabouts?

Shelly. On the Head, with his Fist, or his Hand.

Att. Gen. Did he fall at the first Blow?

Shelly. Yes.

Att. Gen. Did he afterwards say any thing?

Shelly. No.

Att. Gen. Did you see my Lord kick him?

Shelly. No.

Att. Gen. Did you see my Lord hold up his Foot to do it?

Shelly. Yes.

Att. Gen. How high?

Shelly. A pretty Height.

Att. Gen. Pray what became of the Gentleman afterwards?

Shelly. They took him up in their Arms, and laid him upon some Chairs.

Att. Gen. Did you see him laid there?

Shelly. Yes.

Att. Gen. Was he senseless when he was taken up?

Shelly. Yes.

Att. Gen. What was the Reason do you think that he did not open his Eyes, and keep them open?

Shelly. Truly, I believe his Drink, as well as the Blows.

Att. Gen. The one as well as the other.

Shelly. Yes.

Att. Gen. What then did they do with him?

Shelly. They laid Blankets upon him, and Pillows under him, and laid him upon the Chairs.

Att. Gen. How many Chairs?

Shelly. As many as reach'd his length.

Att. Gen. Who did you leave him in charge withal?

Shelly. With the Drawer.

Att. Gen. Did he speak between the time of his first Fall, and your going away?

Shelly.

Shelly. No.

Att. Gen. Did you see him after?

Shelly. Yes, three Days after.

Att. Gen. What did he then say to you?

Shelly. That he had a Fit, but was pretty well recovered.

Att. Gen. When was it you saw him after that?

Shelly. On the *Saturday* after, and then he told me the same again.

L. H. St. Did he impute any thing to my Lord of *Pembroke*?

Shelly. He said nothing at all to me of the Ground of his Illness, but that which I have told your Grace.

L. H. St. My Lord of *Pembroke*, will your Lordship ask this Witness any Questions?

E. of P. No, my Lord.

Att. Gen. Then We for the King desire to examine Mr. *Fitz-Patrick*. Captain *Fitz-Patrick*, pray tell my Lord High-Steward, and my Lords the Peers, what you know.

Fitz-Pat. My Lord, I was in the Room at *Long's* with my Lord of *Pembroke*, and my Lord was walking about the Room, and he hears a Noise without, and steps to the Door, where opening the Door half, he saw Mr. *Cony* at the Bar, who was just come in, and seeing my Lord, comes to salute him, my Lord returning into the Room, said to him, Will you come in and joyn Company? Mr. *Cony* answered, I have my Friend here, my Lord; and brings Mr. *Goring* to my Lord, who saluted him kindly, and desired them both to walk in: Upon which all we that were in the Room stood up, and the Drawer gave them Chairs; after the drinking about of a Glass or two, Mr. *Goring* (both being drunk) said, amongst other Discourse, I will drink, I will play, I will fight with any Man. Who is this Gentleman, said my Lord of *Pembroke*, that I should never hear of, or know him? How, said *Goring*, ('Sblood) not hear of me? My Name is *Goring*, a Name and Family as good as any Gentleman's in *England*. There is no body doubts it, said my Lord. Your Betters, said *Goring*; and then my Lord threw the Wine in his Face; and *Goring* going to draw, was put out of the Room by Mr. *Savage*, and my Lord, upon some Words from *Cony*, struck him down with his Hand.

Att. Gen. What Words were those?

Fitz-Pat. When I asked my Lord the Reason why he struck *Cony*, he told me, it was because *Cony* had told him *Goring* should not go out of the Room till he knew the Reason of it.

Att. Gen. Did you hear him say so?

Fitz-Pat. No, not I, but my Lord upon my asking, gave that for the Reason.

L. H. St. What was the Reason?

Fitz-Pat. Because Mr. *Cony* told him, *Goring* should not go out of the Room, till he knew some Reason for it: After my Lord had struck him, I was on the other Side of the Table, and could not see whether my Lord did stamp on him, or kick him; but I saw my Lord's Knee stir, and if he did kick him, he kickt him but once, for we ran in and took him up to lay him upon the Chairs, and taking his Handkerchief out of his Pocket to wipe his Face, we pluckt out of his Pocket with it some false Dice, which we afterwards put into the Hands of Mr. *Long*, to prove that they intended and proposed Play;

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and after we had laid him on the Chairs, and wrapt him up warm, we left him.

Att. Gen. How was he after he was taken up?

Fitz-Pat. He open'd his Eyes, but being very drunk before, could not keep them open, but shut them again; and we made a Bed for him on the Chairs, and having wrap'd him up warm, we left him, and ordered the Drawer to make him a Fire.

L. H. St. Did you hear him speak after he was up?

Fitz-Pat. No, my Lord: Mr. *Savage* spoke to him, and asked him, if he knew him; he only lookt on him, and by a turn of his Head seem'd to answer him Yes.

L. H. St. On the Oath you have taken, did you hear him speak to my Lord of *Pembroke* at any time before he was struck?

Pat. Yes, my Lord, he had spoken before, and I saw his Lips make a Motion towards my Lord, but what he said, I know no otherwise than as I said before.

L. H. St. My Lord of *Pembroke*, Will your Lordship ask this Witness any Questions?

E. of P. No, my Lord.

Att. Gen. We have now, my Lord, done with the Witnesses that were by when the Fact was committed; by all whom your Lordships hear, the Blows were all given by my Lord of *Pembroke*, and in their Company; they are all Gentlemen of Quality, and therefore, I believe, speak the Truth: We will now call some Witnesses that were with the unfortunate Gentleman in his Sickness, whereof one was his Physician, another his Nurse, and others, who were often with him, and after his Death had a View of the Body. These will give your Grace and my Lords an Account, that he died of those Wounds, and Bruises he then received; they are these four, Dr. *David Bruce*, Mr. *Thomas Hemes*, Mr. *Charles Jackson*, and *Alice Avery*.

Cl. of Cr. Hearken to me, you four. The Evidence that you and every of you shall give for our Sovereign Lord the King, against *Philip* Earl of *Pembroke*, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

L. H. St. Whom do you call first, Mr. Attorney?

Att. Gen. Dr. *Bruce*, my Lord: Pray, Sir, acquaint my Lord High-Steward his Grace, and my Lords the Peers, what you know of Mr. *Cony's* Sickness, and the Cause of his Death, as you apprehend.

Dr. *Bruce.* May it please your Grace, all that I can evidence in particular of Mr. *Cony's* Sickness is this: On *Monday* Morning after his being in company of the Earl of *Pembroke*, I was sent for to come to Mr. *Cony's* Lodgings, and about Ten of the Clock I came; he was then in Extremity of Pain in both Shoulders, so that he could not move, and his Pains were so acute, that he could not admit of touching: Upon the abating of those Pains by my Application the next Day, he then began to complain of Pains in his Belly, but those not so extreme as those in his Shoulders; after some Applications thereto, he complain'd of both, but in a little time was so eased, that he kept well all Night, and till Nine or Ten the next Morning. The next Day, which was *Wednesday*, when I came to

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see him, I told him of the common Report of his being kickt; he seemed displeased that such a thing should be reported, and throwing down the Bed-cloaths, shewed me his Belly, but I could not see any Blemish upon it then, either by discolouring or bruising; I found him indeed very backward in receiving Remedies, but left him then in a hopeful way of Recovery, but I saw him not after, because being sick my self, I could not attend him.

Att. Gen. Did he complain of any Hurt about him then?

Bruce. Only in his Belly.

Att. Gen. Did you then see his Belly?

Bruce. Yes, Sir, for he threw away the Cloaths.

Att. Gen. Did you see upon his Breast, or any where else?

Bruce. He did not complain of any Ail there, so I lookt not for any thing.

Att. Gen. What did he complain of when you came first to him?

Bruce. Only his Shoulders.

Att. Gen. And after his Belly?

Bruce. Yes.

L. H. St. Hark you, Doctor, what Day was that you came to look on his Belly, whether he had any Bruises or no?

Bruce. Wednesday Morning, my Lord.

L. H. St. And then you say upon your Oath, you saw there no Swelling or Discolouring?

Bruce. None at all, my Lord. I gave it in upon my Oath before the Coroner, and the same I say now.

Att. Gen. We have done with the Doctor, my Lord.

L. H. St. My Lord of *Pembroke*, will your Lordship examine him to any thing?

E. of P. No, my Lord.

Att. Gen. Then there is Mr. *Hemes*; pray, Sir, acquaint my Lords what you know of this Gentleman, Mr. *Cony*, and first pray you tell his Grace when you came to him first.

Hemes. It was on Monday Morning after this Accident, about Eight of the Clock.

Att. Gen. Did he send for you?

Hemes. Yes, Sir.

Att. Gen. How did you find him when you came?

Hemes. In great Extremity of Pain, and very sore, complaining of Pains over all his Body, especially on his Shoulders and Buttocks. Then the Doctor, who came in soon after, did apply Plaisters to him, and when he anointed him he was so sore, that he could not endure any one to touch him, nor could we tell how to turn him in his Bed, or how to place him so as to apply the Ointment, but were fain to get a Sheep skin to wrap him in, and by Pillows, and a broad Joint-stool, raise him up by degrees: I did then look upon his Body, but saw no Swelling or Bruise there.

L. H. St. Did you see his Belly?

Hemes. No, my Lord, but he did complain of an inward Grief there.

Att. Gen. When did he first complain of that?

Hemes. The first Morning when I came.

Att. Gen. What Words did he then use? tell the very Words he used, if you can remember them.

Hemes. No, Sir, I cannot; but he complained of a great Soreness in his Belly, and an inward Soreness.

Att. Gen. Where, in what part of his Body?

Hemes. In his Belly, I say.

Att. Gen. Well, now go on; How long did you continue with him? How many Days did you come to him?

Hemes. I came to him every Day all along.

Att. Gen. Were you with him till the Day he died?

Hemes. Yes; there was indeed a new Physician sent for, but I saw him all along usually once a Day.

Att. Gen. Did he complain more than once of his Belly?

Hemes. Yes, all along from the first Morning.

L. H. St. Did you see him opened after he was dead?

Hemes. Yes, my Lord.

L. H. St. What can you say as to what you saw on him then?

Hemes. When he was opened, in the lower part of his Belly there was a great deal of Blood gathered together on both the *Hypocondria's*, which is not usual; I cannot tell the Meaning of it, the Physician knows that best.

Att. Gen. Was it congealed black Blood?

Hemes. It was of an ugly Colour.

Att. Gen. What Colour?

Hemes. Of a blackish livid Colour.

Att. Gen. Have you observed it often so in others? Have you used to see People opened at other times?

Hemes. No indeed, not I, but very seldom.

Att. Gen. Well then, stand down you, for we have done with you.

L. H. St. My Lord of *Pembroke*, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Then call your next Witness.

Att. Gen. That is Mr. *Jackson*. Pray you, Sir, tell my Lords what you know of this Business: When were you sent for to Mr. *Cony*?

Jackson. On Wednesday.

Att. Gen. What Acquaintance had you with him?

Jackson. I had a very particular Acquaintance with him, and I lookt upon him as a Person of a strong, healthy Constitution, and not subject to any Dangerous Distemper; my Acquaintance with him was of twelve Years standing, and therefore I must needs know him pretty well. Upon the *Wednesday*, after this Accident, hearing he was very weak, I went to visit him, and when I came, he told me, he had been troubled with very unusual Swooning, and then fell into one of them, but with some Cordials we revived him again, when we thought all of us he had been dead. The *Friday* and *Saturday* before he died, I was with him all Day, he complained of great Grievs in his Belly, he said, he had great Torment there, and believed he had received some ill Usage lately, which occasioned these Pains.

Att. Gen. From whom had he received it?

Jackson. He was very sparing in telling whom it came from.

Att. Gen. Who did he name?

Jackson. He said, he was a drinking with my Lord

Lord of *Pembroke*; but he was in such Pains, that I could not ask him many Questions which he would answer.

Att. Gen. Where were his Pains?

Jackson. In his lower Belly, and he had sometimes strange fainting Fits.

Att. Gen. When did he first complain of his Fits to you?

Jackson. On the *Wednesday*.

Att. Gen. When did he die?

Jackson. On *Monday* following.

Att. Gen. Did he complain on *Saturday* of his Belly?

Jackson. Yes.

L. H. St. What discourse had you further with him?

Jackson. None but what I tell your Lordship, that I can remember.

L. H. St. My Lord of *Pembroke*, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Who's next then, Mr. Attorney?

Att. Gen. *Alice Avery*, my Lord, who was his Nurse—Were you attending upon Mr. Cony in the time of his Sicknes?

Avery. Yes, I was.

Att. Gen. Pray tell my Lord your whole knowledge.

Avery. When he came in on the *Monday* Morning, I found he was very ill, and could not well stand: Sir, said I to him, sure you are very much in Beer; No, said he, I am very sore, and full of pain: Sir, said I, I believe you have been in some bad Company: Yes, said he, I have been in some Company, where I have received a great deal of wrong, I am not able to go nor stand, I have been beaten and kickt more than ordinary, I was never so abused in all my Life; and upon his dying-Bed he wished to God, he had never been in my Lord of *Pembroke's* Company, for he did think in his Conscience my Lord had been the death of him.

Att. Gen. Speak that again.

Avery. He wished to God he had never been in my Lord of *Pembroke's* Company, for he did think in his Conscience that he had been the death of him.

L. H. St. How long before he died was that?

Avery. About two or three Hours before he died.

Att. Gen. Did he continue sensible to the time that he died?

Avery. Yes, to the last Minute.

Att. Gen. How often did he complain of his Pain?

Avery. All along from the time he came out of my Lord of *Pembroke's* Company.

Att. Gen. What time did he come home?

Avery. About seven or eight of the Clock on *Monday* Morning.

Att. Gen. Where and what part did he complain of then?

Avery. His Sides and all parts about him.

Att. Gen. How often did you discourse with him about his pain?

Avery. Every day divers times, from the time he came home till he died.

Att. Gen. And he spoke those Words a little before he died?

Avery. Yes, and often complained of his being abused,

L. H. St. My Lord of *Pembroke*, will you ask this Woman any Questions?

E. of P. No, my Lord.

L. H. St. Have you any more Witnesses, Mr. Attorney?

Att. Gen. Now, my Lord, we shall call three more that had a view of the Body after his death, upon the Coroner's Inquest, who will give your Grace an Account what appearances of Murther were there visible; and they are, *Richard Wheeler*, *William Brown*, *Thomas Roberts*.

Cl. of Cr. Lay your hands on the Book: The Evidence, &c.

Att. Gen. Which is Mr. *Brown*? Did you see the Body of Mr. Cony after he was dead?

Brown. Yes, my Lord, I was one of the Coroner's Inquest, which after view of the Body went into another House; but some of us seeing the Body swelled at that rate as it was, and being unsatisfied of the Cause, went back again to look upon it, and there I saw upon his right Breast a great black Bruise; and I looked upon the Cawl, which was all wasted away; and on his left Side again a great black Spot, and in the bottom of his Belly a quantity of very ill-lookt Blood.

Att. Gen. When was this you saw it? what day? how long after his death?

Brown. The day after he died.

Att. Gen. Where did you observe any Hurt and Bruise upon him besides?

Brown. As he lay before he was opened, we saw him all over swelled at a prodigious rate, and black and blue in divers places; so that I was unsatisfisied till I had seen the inward parts, and therefore went up and saw what I said before.

L. H. St. Did you know the Gentleman before?

Brown. No, my Lord.

L. H. St. My Lord of *Pembroke*, do you desire to ask him any thing?

E. of P. No, my Lord.

L. H. St. Then go on Sir.

Att. Gen. *Richard Wheeler*, pray tell my Lord what you know.

Wheeler. My Lord, I was summoned upon the Jury by the Coroner, and according to my duty I made such an inspection as I could into the Body; I did observe upon his right Breast a very black and great Bruise, and on the left side of his Belly a very black and great Bruise, which was indeed of another-guise colour than that of settled Blood, for I have of my own knowledge had a sad experience of that kind.

Att. Gen. Did you know the Gentleman before?

Wheeler. Yes, I knew the Gentleman very well, and I had not known him to be the same person then, but by their description that were about him, for all the parts of his Body were most violently swelled.

Att. Gen. Did you see the settled Blood at the bottom of his Belly?

Wheeler. Yes; and as I was informed, that was occasioned by his being forced to lie on his Back continually, because his pain would not suffer him to move: that on the Side, and Ribs, was a perfect Bruise.

Att. Gen. Where is Mr. *Roberts*? Did you see this Gentleman's Body after his Death?

Roberts.

Roberts. I saw the Body after it was opened, and viewed the inward lower parts of the Belly, where there was a quantity of Blood gathered together.

Att. Gen. Was it more black in that part than in others?

Roberts. It was black congealed Blood.

Att. Gen. How broad were the Spots?

Roberts. About the breadth of my hand.

L. H. St. Mr. *Roberts*, did you see the left side of the Belly bruised?

Roberts. Yes, my Lord; and (as I said) in the lower inward parts black congealed Blood.

L. H. St. Was there any swelling?

Roberts. Yes, my Lord, very much.

L. H. St. The Doctor that was examined before, said there was no swelling nor discolouring.

Att. Gen. He did so, my Lord; but this was several days after that.

L. H. St. My Lord of *Pembroke*, will you examine these Men?

E. of P. No, my Lord.

Att. Gen. My Lord, we have but one Witness more for the King, and that is Mr. *Charles Cony*, who is Brother of the Gentleman that died, who will give you an account what he said in his sickness; and the Sayings of a dying Man in such circumstances are remarkable.

Cl. of Cr. *Charles Cony*, harken to your Oath. The Evidence, &c.

Att. Gen. Now Mr. *Cony*, tell his Grace and my Lords the occasion of your Brother's Sickness and Death.

Cony. May it please your Grace, on *Monday* the 4th of *February* I was sent for by my Brother, about nine of the Clock in the morning, to come to speak with him, but not believing his business to be urgent, deferred my going; the Messenger immediately comes back again, and tells me my Brother was exceeding ill: As soon as I came, I found him almost dying, his Eyes set, and he extremely ill, but we recovered him in a little time: whilst he complained of great pain, I examined what might be the cause, and where he had been last night (for I understood he came not home till morning) and in what company. And when I was told of my Lord of *Pembroke's* company, who had struck him down with a box of the Ear, both he and I quickly concluded how his Ill came: But to be satisfied, (he telling me he could not remember what he did) we sent for the Drawer, to know the truth of the matter: but in the mean time, to comfort him, I told him I hoped it was only a fainting Fit, which would be over again in a while. The Drawer came, and did assure me that my Lord did never strike him; which upon assurance I did believe, especially when he came again in the Afternoon, and told me the same story. All the while he was in the horridest pain that could be, and could not be touched, but was forced to lie upon his Back. The Doctor told us, for application to ease his pain, the best thing to wrap him in was a whole Weather's Skin; which we did at two of the Clock in the Afternoon, by the help of a Chirurgeon, raise him up, and put on him. On *Tuesday* Morning I sent to know how he did, being necessitated to go another way; he sent word back, he was pretty well at ease, and had rested pretty well. On *Wednesday* he rose, and sat

up; on *Thursday* he was so well, that he would have some Friends to Dine with him in his Chamber; on *Friday* he was a little ill again, but on *Saturday* he was so well, that he would have gone abroad, and truly we did never (I'm sure I did not) believe he would have died, till about two hours before he died. One day when Dr. *Conquest* came out of his Chamber, he seemed to be in a Huff, and said, he was only kept there to do the Drudgery; and when I asked him what he thought of my Brother? he answered me short, *I cannot tell whether it be a Pembroke-kick or no.* And when I, upon the report of my Lord's having abused him, (which yet upon the Drawer's answer I believed not) spoke to him about it, he would seem displeased any should mention it: He once indeed told me, he had something else to reveal to the Doctor, but what it was I cannot tell.

Att. Gen. Did you apprehend him to be so ill as he was?

Cony. No, I never believed it, till an hour before he died; and this is all that I can say, my Lord.

L. H. St. Will you, my Lord of *Pembroke*, ask Mr. *Cony* any question?

E. of P. I desire your Grace to ask him what Chirurgeons they were that did view the Body after dead.

L. H. St. Mr. *Cony*, come forward. My Lord of *Pembroke* desires to know what Chirurgeons viewed the Body.

Cony. Mr. *Snell* the Chirurgeon, I think, my Lord.

E. of P. I desire your Grace he may be examined.

L. H. St. If the King's Counsel have done, then your Lordship may examine whom you please: What would your Lordship examine into?

E. of P. To give your Grace an account what might be the cause of the Blood found in Mr. *Cony's* Body.

Att. Gen. Because we did omit to examine *Jackson* to that matter, we desire for the King we may call him to that point now.

L. H. St. You should have examined all your Witnesses fully at first.

Att. Gen. We acknowledge it, my Lord; but since we did forget it, we humbly crave leave to do it now.

L. H. St. Here is Mr. *Jackson*, what do you ask him?

Att. Gen. Mr. *Jackson*, were you present at the opening of Mr. *Cony's* Body?

Jackson. Yes, Sir.

Att. Gen. What did you see there?

Jackson. There was an extraordinary quantity of extravasated Blood in the lower part of his Belly.

L. H. St. Extravasated Blood?

Jackson. Yes, my Lord.

Att. Gen. How might that come? might it not proceed from a natural cause?

Jackson. I believe it came from some Bruises given him, and from some Violences that were done to him.

Att. Gen. In the Belly was it?

Jackson. Yes, in the Belly.

Att. Gen. You saw then: Did you see any Swelling there?

Jackson. Yes, and the *Diaphragma* bruised, &c.

Att.

Att. Gen. Now, my Lord, We have done with our Evidence for the King.

L. H. St. My Lord of *Pembroke*, if your Lordship have any Witness to call, or will say any thing for your self, now is the time.

E. of P. I desire your Grace that *Dr. Lower*, and *Dr. Conquest*, and one *Mr. Raven*, may be examined for me.

L. H. St. Call *Dr. Lower*, *Dr. Conquest*, and *Mr. Raven*.

Cl. of Cr. Here they are, make room for them.

L. H. St. My Lord of *Pembroke*, who will your Lordship begin with?

E. of P. *Dr. Conquest*, my Lord.

L. H. St. Doctor, you are not upon your Oath, but you must have a strict care what you say, for there will be a good account to be taken of it at another Place, and it being a Testimony before a Court of Judicature, the Obligation upon you to speak the Truth is as great, as if you did swear.

Dr. Conquest. The Account I now give, my Lord, is that Account which I gave upon my Oath before the Coroner.

L. H. St. You must give it again *viva voce*; we must not read your Examination before the Court.

Conquest. The first occasion I had to see *Mr. Cony* as a Physician, was about three Months before this unhappy Accident; he was then in a fainting Fit at the *Rose-Tavern*, &c. where I was sent for to him: He had for half an Hour lain quite dead, as they thought, but with their rubbing him, and giving him some mull'd Sack, he was come to himself just as I came, but he had no Pulse, and was relapsing into his Fit: I gave him some Drops and Cordials, and sent him home pretty well again. We went from thence, and the next Morning his Man came to call me, and told me his Master was dying, which was (as I take it) the 6th of *December* last: When I came thither, I found his Man sitting by the Fire; and asking for his Master, he told me he was asleep; I was something vext at the Fellow for troubling of me so, and while I was speaking to him, *Mr. Cony* at last heard my Voice, and calling me to him, desired me I would come again in the Afternoon, for he had a mind to rest this Morning: I came at One of the Clock again, where I found him very ill, and very melancholy; he wept, and sent his Man down stairs, and when the Man was gone, I asked him what was the occasion? He told me, he found so great an Oppression at his Heart, that he could hardly speak: I desired he would take some advice, and send for another Physician; but he would have none else, but would needs go abroad that Afternoon: I desired him all I could; but not prevailing with him, I gave him some Cordial Drops, and desired him to return home betimes; but he did not, but, as I heard, drank very hard, and returned not till very late. In short, in the space of two Months, I have been called out of my Bed above twenty times, to give him advice, and to recover him out of his Fits; but he would take no advice, do whatever I could. After this was his meeting with my Lord of *Pembroke*, which he thus gave me Relation of: He told me, he had been with *Mr. Goring* in the City that day drinking hard, and when he came to *Long's*, he was so extreamly drunk, that he could not remember any thing

that was done there, but finding himself much in pain the next day; he was so ignorant of the Transactions there, that he only thought he had had several Falls off the Chairs near the Fire; he said indeed, he afterwards sent to enquire what had passed in his Company that Night, and he heard my Lord of *Pembroke* should give him a Box on the Ear, but he remembered it not. Two or three days after he sent for me, and told me, now he would take advice of me, and enter into a course of Physick; but knowing his condition to be so bad, I would not venture upon it alone, and desired that he would join some one else with me in consultation: He asked me, what Physician he should send for? I desired him to name any one whom he had a mind to; he said, he knew none, and therefore would have me take whom I would, and then named *Dr. Lower*, and obtained his consent to have his advice, whom I brought with me to his Lodgings. And the *Saturday* before he died, as we were coming in the Coach, I told *Dr. Lower* what I had known of his Distemper before, and what might be the occasion of it, which (when we came thither) I repeated again in *Mr. Cony's* presence, who did confess the whole to be as I said, that he had been a very hard Drinker of Wine, and strong Waters upon it, which had (he believed) caused a Stagnation of Blood in his Body, which might be the occasion of his fainting Fits. We consulted the whole cause; he owned no Blow or Kick that he had received, neither did I believe his Intrails had received any such prejudice, because I saw him my self take two or three Glisters, as particularly that Evening: Yet he would not be regular, but that Night drank three whole Tankards of cold small Beer, which did put him into a very violent Fit of the Gripes. He sent for me, and having left him pretty well I wondered what alteration could cause so violent a Distemper in him so suddenly: He fell a vomiting, and vomited all Night; and when I came and found him in a dying Fit, I gave him some Drops I had about me, and fetcht him to Life again; but still he was very bad, and he had a Glisten for the Gripes; he would fain have had some more small Beer, which I dissuaded him from, and advised him rather to White-Wine-Posset-drink, but he swore a great Oath he would have small Beer. *Dr. Lower*, I suppose, saw him that Morning. An hour before he died I came again, and thought fit to bleed, and so he was; he bled about eight Ounces, and was a little better, so I left him: An hour after I came again, and found he was dead; but for his complaining of any Bruise or Hurt that way received, I remember not.

L. H. St. Did you see him after he was dead, and when he was opened?

Conquest. Yes, my Lord, I did see him opened.

L. H. St. What was your Judgment then?

Conquest. My Lord, There was clotted Blood among the Bowels, that was extravasated. My Lord, The breaking out of which, I did attribute to the great quantity of small Beer he had drank, and the Gripings that followed upon it; but the Bowels were none of them touched, and he himself attributed his Fits to that.

L. H. St. *Mr. Attorney*, Will you ask him any cross Question?

Att. Gen. No, my Lord.

L. H. St. Then Dr. *Lower* pray speak your Knowledge.

Lower. All the Account, my Lord, that I can give is, That the Day before Mr. *Cony* died, Dr. *Conquest* did come to me to desire me to go with him, and by the way (as he related) told me the manner of his Fits, and what he thought was the Occasion of them; and in that Discourse we continued till we came to his Lodgings, where we found him in his Bed; and when he was up Dr. *Conquest* repeated what he had told me before, and he acknowledged all that to be true: I my self asked him many Questions how he found himself; he said, those Fits came upon him suddenly by Sickneſs upon his Stomach; but there was not any Discourse in my Hearing, of any Bruise or Hurt that way, nor had I any reason to suspect any such thing should be the Cause of his Illneſs, for he had no Symptom of a Fever upon him, either in Tongue, Pulse, or Urine, which would have been, had he owed his Distemper to any thing of that kind. The next Day I was sent for to him early, but my necessary Attendance on other Patients would not let me come quickly to him: When I came I found him dying, and seeing no Hopes of his Recovery, left him; I was desired to be present at the Dissection, but because of the Rumour of this Business, I said it would be a troublesome Matter, and therefore would purposely avoid it.

L. H. St. So you did not see him dissected?

Lower. No, my Lord, I did fear being troubled, and would have avoided it, but could not, it seems, for I am come here to testify this.

L. H. St. Did he use any Words to you whilst he was sick, complaining of any Abuse or Wrong offered him by beating or kicking?

Lower. No, my Lord.

L. H. St. How long was it before he died that you saw him?

Lower. It was on *Saturday* at Four of the Clock in the Afternoon, and he died on *Sunday* at Noon.

L. H. St. And when you came to see him again, you found him dying?

Lower. Yes, my Lord.

L. H. St. But you say, all the time you were with him, you saw no Symptom of a Fever on him?

Lower. No, none at all, my Lord.

L. H. St. I then ask you this Question, Doctor, Can any Man be mortally hurt and bruised, whereof he may languish, and not have a Fever?

Lower. According to my Knowledge and Experience, my Lord, usually and most commonly upon a Mortal Bruise, an Inflammation follows, and that Inflammation causes a Fever, which will be evident in the Patient's Pulse, or Tongue, or Water; but none of these I found so affected with Mr. *Cony*.

L. H. St. Have you any thing to say to this Gentleman, Mr. Attorney?

Att. Gen. No, my Lord.

L. H. St. Where then are the rest of your Witnesses? My Lord of *Pembroke*, Will you call any more Evidence?

E. of P. Yes, my Lord, Mr. *Raven*.

L. H. St. Dr. *Conquest*, pray, before you go; you say you told Dr. *Lower* of Mr. *Cony*'s Fits

before, were they the same with those he had in his last Sickneſs?

Conquest. Yes, my Lord, the same Fainting Fits.

L. H. St. And you imputed them to the same Cause?

Conquest. Yes, my Lord, to his hard drinking Wine and Strong-waters, and then great Quantities of Small-Beer; I told his Landlady often it would kill him, but I could never get him to be regular, nor take any Advice.

L. H. St. Hath your Lordship any more Witnesses?

E. of P. Mr. *Raven*, my Lord.

L. H. St. Come forward, Mr. *Raven*, and speak out.

Raven. I viewed the Body (my Lord) before and when it was opened, and it was reported to me that there was a Bruise in each Side of the Belly, of which thereupon I took a stricter View, and could find no Blackneſs nor Blueness, nor Marks of Bruises; upon which the Body was opened, and there issued thence clotted Blood; then I looked upon the Cawl, which was withered and consumed, and the Heart was as loose as a Rag, and his Lungs stuck to each side of his Ribs; and as to the Matter of the Blood, that was not an extraordinary thing, for it is known to Physicians, that in all Natural Deaths there must be extravasated Blood in the lower Belly.

L. H. St. How did you think there came to be that Quantity of Blood there?

Raven. This Blood, I think (my Lord) must be extravasated by the Violence of his Gripes, for it is proved he drank a great Quantity of Claret, and afterwards of Small Beer, which set the Blood upon a Fermentation, that set him a Vomiting, by the Violence thereby used to Nature this Blood was thrown down into the Belly; but in all Natural Deaths, if there be not so great a Consumption of the Blood that there is none left, there must be some extravasated; it is a clear Case.

L. H. St. My Lord of *Pembroke*, hath your Lordship any more Witnesses?

E. of P. Yes, my Lord, two more, *Benjamin Long* and *William Viner*.

L. H. St. Who does your Lordship begin with?

E. of P. *Long*.

L. H. St. Do you hear, *Long*, you must have as great a Care what you say, as if you were upon your Oath.

Long. A little before this Business happen'd, Mr. *Cony* comes into my House at *Covent-Garden*, and said he was very ill; he was just going to sit down, and mis'd the Chair, and had like to have fallen down, being almost in a Swoon; whereupon he said, send for Dr. *Conquest* presently, or else I shall die: so I sent my Servant to call him, who found him at the Coffee-house: When he came in, said he, Sir, how do you? I am glad you are come, said Mr. *Cony*, for I am very ill; and there were two Gentlemen came in with the Doctor, that were then going to the Play-house: said Mr. *Cony*, I am taken with the Fainting Fits, and fear they will kill me; upon that Dr. *Conquest* bid him have a care of Drinking, for it would ruin him.

L. H. St. When was this?

Long. A little before *Christmas*, my Lord.

L. H. St. How long before he died?

Long,

Long. It was before he was hurt.

L. H. St. How long?

Long. Five or six Weeks, my Lord, as I remember; I cannot tell exactly.

L. H. St. Well, and what followed?

Long. Dr. *Conquest* would have him go home to Bed, which I know not whether he did or no, but he went away from our House, and the Doctor said he would send him a Glisten, and some other things the next Morning: And this is all I can say.

L. H. St. Is that all you can say?

Long. Yes, my Lord.

L. H. St. Why, was not this Accident done at your House?

Long. No, my Lord, it was at my Brother's in the *Hay-Market*.

L. H. St. Then call next *Viner*; what say you?

Viner. May it please your Grace, I am Drawer at Mr. *Long's* in the *Hay-Market*, I did see my Lord strike him with his Hand, and that is all; I came in just as he struck the Blow, and Captain *Savage* bid me keep out Mr. *Goring*; which while I was doing I knew not what was done more; but after they had laid him upon the Chairs, they charged me to make a Fire, and look after him, and left him: He fell down divers times off the Chairs; and when he came to himself a little, I asked him how he did? he told me he was very sick, and I got him still up again upon the Chairs: And then he had several Fainting Fits in the Room; and about Seven of the Clock in the Morning, we sent him Home in a Chair to his Lodging. The same Day at One of the Clock he sent for me, to know what had happen'd, for his own Memory would not serve him to tell: I did not think fit then to tell him my Lord had struck him, but told him he had had many Falls in the Room: 'Tis Fits, said he, that I have had not long since, and it comes with my hard drinking, and not looking to my self.

L. H. St. He supposed it to be so?

Viner. Yes, my Lord, he himself did.

L. H. St. Did you see my Lord of *Pembroke* tread upon him?

Viner. No, my Lord, I only saw the Blow of his Hand, for I was getting Mr. *Goring* out of the Room.

L. H. St. Did he say my Lord of *Pembroke* did tread upon him?

Viner. No, he could not tell any thing that my Lord had done to him; he was drunk that Night, and therefore sent for me to know how it was.

L. H. St. My Lord of *Pembroke*, hath your Lordship any more Witnesses?

E. of P. No, my Lord.

L. H. St. Did not your Lordship speak of one *Snell*, my Lord, a Chirurgeon, at first?

E. of P. I did expect, my Lord, they should have brought the Person your Grace speaks of.

L. H. St. Why, my Lord?

E. of P. Because he was their Chirurgeon.

L. H. St. What say you now of the King's Counsel, to my Lord's Defence?

Sol. Gen. If my Lord hath done, we are ready to go on for the King.

L. H. St. Will your Lordship say any thing more for your self?

E. of P. I have nothing more to say, my Lord.

VOL. II.

*Mr. * Sol. Gen.* May it please your Grace my Lord High-Steward of *England*, and my Noble Lords, that are now Judges of this Cause of Blood; I shall with all Faithfulness endeavour to discharge my Duty in this great Court, and confine my self solely to the Evidence that hath been given, and I hope I shall not do this Noble Lord, the Prisoner at the Bar, any Injury by Misrepetition. The Evidence, my Lords, that hath been produced for the King, to make it out, that the Prisoner at the Bar is guilty of Murder, doth (may it please your Grace) consist of three Parts.

1. In the first are contained those Matters of Fact, which did arise at the time when the poor unfortunate Gentleman came into my Lord *Pembroke's* Company, and what happen'd before my Lord of *Pembroke* did depart from that Place.

2. The second Part of the Evidence consists of Matters that did arise by Confession of the Party, and his discoursing with Persons who came to visit him, or were with him during the time of his Sickness.

3. The third Part doth consist of Matters arising after his Death, upon the View of the Body. Under these three Heads are comprehended all the King's Evidence, and with humble Submission, I humbly conceive, that the Evidence doth reach the Indictment, which is for the Crime of wilful Murder. But when I have humbly stated the Fact, I must submit it to the Judgment of my Noble Lords and Peers.

But to take a due Method, I shall begin with a Word or two of what Mr. Attorney-General was pleased to hint, when he opened the Cause, that is, to shew what Murder is, and wherein we conceive the Evidence comes up to the Indictment. Murder in our Law is, when one Man kills another upon Malice fore-thought; now that Malice is comprehended under two Particulars: The one is express a former Grudge, Discontent, and Hatred to a Man, to lye in wait to slay him: The other is Malice imply'd, and that is when a Person will come and fall upon another, and kill him with Violence, without any Provocation; and that I take to be the Case now before your Grace, and these Noble Lords; whether this Noble Lord, the Prisoner at the Bar, be guilty of Murder, under the Head of Malice imply'd, having killed a Man, without any Provocation given; for if it should be made appear, as I humbly conceive it hath, with Submission, that Mr. *Cony* did receive his Wound, whereby his Death came, from the Earl of *Pembroke*, it is with our Law Murder.

That my Lord of *Pembroke* did invite him into his Company, is sworn by four Witnesses; for when they came into the House, they did not so much as enquire whether my Lord was there or no; and when my Lord asked him to come into the Room, Mr. *Cony* did excuse it, in a manner, by having his Friend with him; Pray bring your Friend in with you, said my Lord: After a little while it was said, there were several Discourses pass'd between my Lord and Mr. *Goring* concerning Play, and their Families; but the third Witness doth swear, that when they were speaking of playing for 500*l.* Mr. *Goring* declined; my Lord of *Pembroke* first called him idle Fellow, and that occasioned Mr. *Goring* to give that Language, which was not so fit for him to give to a Noble Lord of his Quality.

O o o o

lity. But, may it please your Grace, let the Discourse between Mr. *Goring* and my Lord of *Pembroke* be what it will, the Question will be, Whether or no the Party that was killed gave my Lord of *Pembroke* any Provocation, or cause of Discontent, which might make him give him that Blow? or whether or no the Striking or Kicking was the Cause of his Death? That comes in the last place, for I am now under that Head; there was no Provocation given by Mr. *Cony* to my Lord to strike him, and four Witnesses there were to that, the Persons by at the Time when it was given, who all, as to the Substance, swear the same thing, only one or two Circumstances come from some of them, that do not come from all. Mr. *Savage*, a Man of Quality, and an Honourable Family, swears, That at the time when Mr. *Goring* was put out of the Room, he saw the Earl of *Pembroke* (turning his Face) give *Cony* a Blow on the Head, and one Kick when he was down; the Question was asked him, Whether he kickt him upon the Belly; but that he could not answer to: He likewise doth particularly say, after the Blow was given by the Earl of *Pembroke*, that struck him down to the Ground, he saw his Knee lifted up to kick him, higher than the Motion of usual walking, so that some Violence was used as to that. Mr. *Fitz-Patrick*, though they all agree in Substance, yet he hath one Particular differing from the rest; he saith, That when my Lord of *Pembroke* was asked why he struck Mr. *Cony*, he answered, Because he said Mr. *Goring* should not go out of the Room, without his knowing some Reason for it; this he swears the Earl did say, but whether it was so or no is the Question. *Shelley* says, No such Word pass'd, nor doth *Savage* speak of it: But be that Circumstance true or not, (for all the Witnesses agree in Substance, and may not be able to agree in all Circumstances) yet under Submission, I must leave it to the Judgment of my Lords the Peers, whether that be Provocation sufficient to lay violent Hands on a Man. *Shelley*, indeed, says the Words were, I know not why my Friend is turn'd out of Doors; now whether these are a Provocation, such as in Judgment of Law can be deemed sufficient to lay violent Hands on a Man to kill him, is the Question; we suppose it is not, but such a Stroke is given without a Provocation, in which the Law implies Malice. This (may it please your Grace) is the Sum of that which I humbly take the Boldness to remember your Lordship of, as to the first Part of the Evidence.

2dly. The second Part is upon what ariseth after the Blow was given. My Lord of *Pembroke* at that time was certainly apprehensive he had done the Gentleman some Wrong, and that is evident by his Care of him after; for his own Witness, *Viner*, doth say, that my Lord bid him make a Fire and watch with him; surely if my Lord had not been conscious to himself, that he had done something extraordinary to the Person of that Gentleman, that Caution had not been given to the Man: But besides (my Lord) there are little Circumstances, which are always allowed for Evidence in such Cases, where Men receive any Wounds to ask them Questions while they are Ill, about it, who hurt them. Now as to this there are four Witnesses also, Dr. *Bruce*, Mr. *Hemes*, Mr. *Jackson*, and *Alice Avery*.

Dr. *Bruce* swears, That when he came on the Monday to enquire of Mr. *Cony* what his Illness was, he did complain of Soreness about his Shoulders, but did not make mention of the lower Part of his Belly, or any discolouring there.

But *Hemes* the Apothecary says, He not only complained of extream Pains in his Shoulders, but also of extream inward Soreness in the lower Part of his Belly, and this Person was frequently with him, and the same Complaints came from him, till he expired his last Breath.

Jackson, He did know him for a long time before; he said indeed, He had about two or three Months before a fainting Fit or two, but to this time he look'd upon him as a healthy Man, and he continued with him off and on till he died, and to him he did declare he had received Injury from the Earl of *Pembroke*, though he was very loth to say what: And he also tells your Lordships, that he saw the Blood in his Belly after the Dissection, which he imputed to some Hurt he had received. Indeed, there is a Chirurgeon that tells your Lordships, that it is an ordinary thing, and that it is so in all natural Deaths, and it might be occasioned by his drinking the Beer, which made him Vomit, and concluded with these Words, (I noted them) 'Tis a clear Case; but the Man not being upon his Oath, and giving it in as his single Opinion, I hope will not bear so much weight with your Lordships.

The Nurse that was continually with him to the last Moment, swears, He did continually complain after he came into the House, of Pains all over his Body, and (as she saith) continued in his Senses, and the right Use of his Understanding, till the last Breath, but principally complained of Soreness in his Shoulder, his Side, and his Belly, and did likewise often mention my Lord of *Pembroke*'s Unkindness to him, declaring about two Hours before he died, that he thought in his Conscience the Earl of *Pembroke* was the Cause of his Death.

These four Witnesses swear what I have truly repeated, for I would be very unwilling in a Cause of Blood, to misrepeat the Evidence, either to the prejudice of a just Cause for the Dead, or to press for unjust Vengeance upon the Living, it being my Duty only to recollect what is sworn, and leave it all to your Lordships Judgment.

3dly. We have that which is Evidence in Law, upon the View of the Body after his Death. It was viewed legally by a Jury of indifferent persons, summoned by the Coroner; three of them being produced do swear, that there were a great many visible Bruises upon the Body, and Swellings all about: And for the Discolouring of the Parts bruised, *Roberts* swears, the Patch was about the breadth of his Hand: *Brown* likewise swears, that he was black and blue up and down the Body in broad Patches: These are Jury-men, disinterested Persons. It is true, Mr. *Cony*'s Brother, the last Witness for the King, saith, He knew nothing of the Business, for his Brother would never acknowledge any thing to him; but something that he speaks is very material, That Dr. *Conquest*, my Lord's Witness, coming out of the Chamber one Day, seemed angry, and to have taken some Distaste, as if he were neglected, and used an Expression, which your Lordship may remember, upon Mr.

Mr. Cony's asking him what ailed his Brother, he could not tell, he said, it might be *A Pembroke-Kick*. And this is the Sum of the Evidence for the King.

For the Evidence on the other Side, I think the Substance of it is only, That this Gentleman was used to have fainting Fits, and those occasioned, as they think, by his hard Drinking, and that might bring his Death upon him; but they offer no Counter-proof to the Fact.

But the Question is now, Whether or no this Man came to his Death by other Means; for it is no Argument to say, because a Man is sick, it is lawful to kill him: But we are to enquire, whether he came to his Death by those Blows given him by the Prisoner at the Bar? If then it be admitted that the Blow was the Cause of his Death, and the Kicks withall, I humbly then submit to your Lordships Consideration, whether the King's Evidence hath not reach'd up to the Indictment: Here is Murder with Malice implied by the Law, for there is no Colour of pleading a Provocation of the Blow, to be the Cause of his Death. Now whether or no it be so, I humbly offer these Reasons for the Affirmation; this Man was not look'd upon to be a Man in that Condition as to be a dying Man, before the Blow.

Obj. But he was a great Drinker, that brought him to those Fits, and that hastned his End.

Ans. Though he was so, yet from the Instant that he did receive the Blow, he never had any Ease till he died, insomuch that Mr. Savage tells your Lordships, he took him up immediately after my Lord kicked him, and he was some Minutes before he could get him to Life again, and then he could not keep himself from fainting again: So that upon the Circumstances of what the Witnesses for the Prisoner have said, and the Evidence offered in behalf of the King, if this were the Cause of his Death, we leave it to your Lordships Consideration, whether it be not Murder in this Noble Lord the Prisoner at the Bar: To that Determination we submit the Cause, and whatever Opinion your Lordships shall be of in the Cause, I have no more to say, but that the King's Justice, in this Prosecution, was suitable to the Law given by the Almighty in the Infancy of the World, *That whosoever sheddeth Man's Blood, by Man shall his Blood be shed*.

L. H. St. Will your Lordships please to withdraw to consider of the Evidence?

Then the Lords went back in the same Order they came in, and went into the House of Lords; and from thence, after two Hours Debate, they returned into the Court, and Proclamation was made as followeth.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O Yes! my Lord High Steward of England his Grace straitly chargeth and commandeth all manner of Persons here present, to keep Silence, upon pain of Imprisonment.

Then his Grace spake to the Peers.

L. H. St. Your Lordships have heard the Evidence against the Prisoner, and for him, on both Sides; and the Solemnity in this Case is, that

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your Opinions are to be delivered severally, in the Absence of the Prisoner, who is to hear all that is by the Witness or Counsel said against him, but is to have his Judgment from the High Steward.

Upon the whole Matter the Question is this; Whether my Lord of *Pembroke* be guilty of the Felony whereof he stands indicted, for the Murder of Mr. Cony, or Not guilty?

The Order of your Opinions being delivered, is to begin with the Puisse Baron, and so upwards.

I desire Time to take your Lordships Judgments distinctly, and I desire each of your Lordships to speak out, that I may hear it.

L. H. St. My Lord *Butler*, what is your Opinion? Is *Philip* Earl of *Pembroke* and *Montgomery* Guilty of the Felony and Murther whereof he stands Indicted, or Not guilty?

L. Butler. Not Guilty of Murder, but Guilty of Manlaughter.

The same Question to the rest.

The Lord High Steward counted their Numbers:

L. H. St. Six of my Lords find him Guilty: Eighteen find him Not Guilty: Forty find him Guilty of Manlaughter. Call for the Prisoner to the Bar.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O yes! Constable of the Tower of London, bring forth the Body of thy Prisoner *Philip* Earl of *Pembroke* and *Montgomery*, on Pain and Peril shall fall thereon.

Then the Prisoner came in, with the Edge of the Ax still from him, and his Grace spake to him as followeth.

L. H. St. My Lord of *Pembroke*, You have been Indicted for the Murder of *Nathanael Cony*, and upon your Arraignment you have pleaded *Not Guilty*, and have put your self upon the Judgment of your Peers; and your Peers have considered what hath been said for you, and against you, and the Judgment of my Lords is this, That you are Guilty of Manlaughter for killing of *Nathanael Cony*: What can you say for your self, why Judgment should not pass upon you to die according to the Law?

E. of P. I claim the Privilege of the Statute made in that Case, my Lord.

L. H. St. You must have it, my Lord, it cannot be denied you; for by the Act of Parliament, where Clergy is allowed to a Common Person, by Reading, and Burning in the Hand, a Peer convicted of such Felony, is to be delivered without either, therefore we cannot deny it you: But your Lordship must give me leave to tell you, that no Man can have the Benefit of that Statute but once, and so I would have your Lordship take notice of it, as a Caution to you for the future.

Your Lordship is now to be discharged, paying your Fees.

Then the Prisoner went from the Bar, and his Grace by Proclamation thus dissolved his Commission.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Peace and the King's from this Place, for his Grace doth now dissolve his Commission.

God save the King.

Serj. O yes, O yes, O yes! My Lord High Steward of *England* willeth and commandeth all Persons here assembled, to depart in God's

Then his Grace concluded the Ceremony, by breaking his Staff.

LXXIII. *The Trial of WILLIAM STAYLEY*, Goldsmith, at the King's-Bench, for High-Treason, November 21, 1678. Mich. 30 Car. II.*



MR. *STAYLEY* being accused of High-Treason, was on the 20th Day of *November*, 1678, brought from *Newgate*, and arraigned at the *King's Bench Bar*, and the next Day was brought to the same Place to receive his Trial; where being come, and the Jury Impannelled, the Court told the Prisoner, that if he would Challenge any of the Jury, he must speak unto them as they came to the Book to be sworn, and before they were sworn; the Prisoner Challenging none, the Jury were sworn, viz.

J U R Y.

Sir Philip Matthews.	Simon Middleton, Esq;
Sir Reginald Foster.	Thomas Cross, Esq;
Sir John Kirke.	Henry Johnson, Esq;
Sir John Cutler.	Charles Umfrevil, Esq;
Sir Richard Blake.	Thomas Eggesfield, Esq;
John Bifield, Esq;	William Bohee, Esq;

The Indictment Read.

You stand Indicted by the Name of William Stayley, &c.

Cryer. If any can give Evidence on the behalf of our Sovereign Lord the King, against *William Stayley*, let him come forth and he shall be heard.

Sir *Creswell Lewins*. The Prisoner stands Indicted as not having the Fear of God before his Eyes, being led by the Instigation of the Devil, not minding his Allegiance, but Traiterously endeavouring the Death and Destruction of our Sovereign Lord the King, he did on *November* the 14th, in the Thirtieth Year of the King, falsely, wickedly, and traiterously Compass, Imagine, Devise, and Invent the Killing the King; that he did maliciously contrive (I say) the Death of our Lord, the King of *England*.

To this he hath pleaded *Not Guilty*. You are to Try whether he be Guilty or not.

King's Serjeant, Maynard. The Offence is as great as can be, and will be proved as clear as can be. Call the Witnesses to prove the Offence.

Sir *William Jones*, Att. Gen. It would be fit-

ting, before we enter upon the Evidence, to give some Account, why (among so many Offenders, some of them of greater Quality than *William Stayley*) we chose first to bring this Man to Trial. It is not unknown to any Man that lives in *England*, what Discoveries there have been of horrid and damnable Designs against the King's Person, and the Protestant Religion. There are a sort of Men in the World, that endeavour what they can to cry down this Discovery, as that it was altogether Supposititious, and a Fable. It is true, some are so charitable as to think the *Roman Catholicks* in *England* do promote the *Roman Catholick* Religion, but the Design against the King's Person is a Fiction. But they shall do well to take warning by the Trial of this Man, and Imprisonment of so many Offenders, as that even since this Discovery made, some have had this Treasonable Mind, and Traiterous Attempt against the King, and said those Words for which in the Indictment he is charged with. This Prisoner, by Religion, is a *Roman Catholick*, he calls himself so; in plain *English* he is a *Papist*; and finding that since this Plot was discovered, his Trading decay'd, (being one that dealt in Monies) he was one of their Party, he grew enraged their Money was called so fast for, being in the Company of one *Fromante*, a Foreigner, at a Cook's Shop, and were considering of Matters of Trade, this Man was complaining his Money was so fast called in for. Taking notice of the Discovery of the Plot, (being a very great Well-wisher to it) entred into a great Passion, and spake these Words of the King: *That he was the greatest Heretick in the World, that he was a great Rogue*; for his Part, holding up his Hand, clapt it then upon his Heart, and said, *I will with this Hand kill him*. These Words were heard by the Gentlemen that were present, spoken in *French*.

William Castars, a Witness.

Att. Gen. Acquaint the Court and Jury what you know of any Words spoken by the Prisoner about killing the King

Witness. So far as I know, or can give an Account, it was about Eleven of the Clock in the Day, on the Fourteenth Day of this Month; he

he call'd for a Pot of Ale, and a Slice of Roast Beef, which when it was called for, his Landlord said it should be brought him; there was another *Frenchman* with *Stayley*, a Stranger to me: they discoursed together in *French*, and *Stayley* then said twice over, *The King was a grand Heretick*, making this Demonstration, with his Hand upon his Breast, and stamp'd five or six times with his Foot in great Fury. The old Man *Fromante*, his Friend, said, *That the King of England was a Tormenter of the People of God*, and he answered again in a great Fury, *He is a great Heretick, and the greatest Rogue in the World; there's the Heart, and here's the Hand that would kill him; and the King and Parliament think all is over, but the Rogues are mistaken.*

Sir William Scroggs, L. C. J. Did you know *Stayley*?

Witness. No, my Lord, I had never seen him before.

L. C. J. What did you do upon this?

Witness. I did not know what to do, being ignorant of the Laws of the Country, I thought it was a great Matter, and being sensible that *Stayley* was gone out, I caused one to attend him, and came to his Father's Shop, and looked up and down, and the next Day I apprehended him.

L. C. J. Are you sure (looking upon the Prisoner) that was the Man?

Witness. Yes.

L. C. J. Did you see him when he spake the Words?

Witness. Yes, I saw him; there was no more Distance betwixt the two Doors, but just as far as that Gentleman and me; his Face was strait towards us.

L. C. J. Were you in the same Room?

Witness. No, but just over-against it; the Doors were open.

L. C. J. How near were you to him?

Witness. Seven or Eight Foot from the Place where I was and where he was. He was standing at one Door, and I at the other. In *French* the Words were spoken, he making a Demonstration, stamping with his Foot, *I would kill him my self*, (which the Prisoner would have evaded by saying, the Words signifie *I would kill my self*.) The Prisoner farther said, that the King and Parliament thought all was over, but the Rogues were beguiled and deceived.

Alexander Southerland, Witness.

Mr. *Southerland*, tell what you heard the Prisoner at the Bar say. Were you there?

Witness. Yes.

L. C. J. Which was nearest to him, he or you?

Witness. He was nearest to him, and I just by the Gentleman. He said afterwards when a Word or two past betwixt them, *the Rogues are deceived, they think the Business is done, but they are deceived.* The old Man said, *That the King of England was a Tormenter of the People of God*; the Prisoner answered, *the King of England is the greatest Heretick, and the greatest Rogue in the World, and the King and Parliament think their Business is done, but the Rogues are mistaken.*

Prisoner. I said (replyed the Prisoner) I would kill my self.

L. C. J. Would you kill your self because

you said the King was a Heretick? You acknowledge your self to be a *Roman Catholick*.

Pris. And in that Faith I intend to die.

Att. Gen. Here the Prisoner doth not deny but he said, *the King of England was a great Heretick*; and can we imagine him to be in such a Passion, that he would kill himself? Whether that be a natural Conclusion from the Premises, I must submit to ———.

L. C. J. Did you see Mr. *Stayley* perfectly? Was the Door open?

Witness. I saw him perfectly.

L. C. J. Did you know him before?

Wit. I never saw his Face before.

L. C. J. Did you write the Words presently?

Wit. I writ them down presently, as God shall be my Witness.

L. C. J. Look upon the Writing, is it your Hand?

Wit. It is; and it was written the 14th of November, 1678. About Eleven a Clock they came to the *Black-Lyon* in *Kings-Street*, and call'd for a Quart of Ale, and a Slice of Roast Beef, and it was answered, it should presently be had. *William Stayley* said, having struck on his Breast, and stamping with his Foot five or six times, *I my self would do it.*

L. C. J. Did you write all that is in the Paper at that time?

Wit. I writ the Words in *French*, as I heard them from him, then formed it as to the Person and Time, afterwards, when I was gone.

L. C. J. Who told you it was *Stayley* the Goldsmith?

Wit. We asked the Man of the House; and we found he went to his Father's House in *Convent-Garden*; we asked his Father's Name, and his Name; and that's the very Man.

L. C. J. He confesseth he was in this Place at that time with the old Man. He acknowledged that he spoke some Words, but denied he spake those: That he was the Man he doth not deny.

Att. Gen. The third Man is a Gentleman that doth not understand the *French* Tongue, he was in the Company of those two Men at that time; we do not call him to prove the Words, because he doth not understand the Language.

L. C. J. There is no Mistake of the Person, the Prisoner doth not deny he was there. Call the third Person to know what he hath to say.

Philip Garret, third Witness.

Wit. All that I can say is this; My Captain, *William Castars*, came to me in a great Passion, and said, I cannot suffer this, I will run upon him, I cannot be quiet.

L. C. J. What are those Words he charged upon him?

Wit. That he would kill the King himself: It is impossible to suffer it, I will run out for a Constable presently, this cannot be suffered. I went to enquire for his Name; the Answer was, he was a Goldsmith, and that his Name was *Stayley*. That's the very Man (looking upon him) I saw there, and heard him speak.

L. C. J. What were the first Words?

Wit. [The *French* Words were spoken twice, in *English* thus] *The King is a grand Heretick.* [French again] *Here's the Hand, here's the Heart, I would kill him my self.*

L. C. J.

L. C. J. What can you say to this?

Prisoner. My Lord, the matter of Fact happened thus: This Gentleman, Mr. *Southerland*, comes over to me in the Morning when I was in the Shop, and said, Sir, I would have a red Button like this, I said I had none of that nature, you had better go to the Exchange. I would have one of a true Stone; You must (I reply'd) go to the Jewellers, I have none of these. Upon that I dismiss'd him; he went over, and presently comes, in a quarter of an Hour after, and tells me, that an Honourable Person would speak with me: I went over; this Gentleman makes a great many Ceremonies to me, and reads me this Paper; he tells me, you see what the Gentleman reads, I would advise you to look to it, then taking me aside by the Window. I said, I do not understand you, I am innocent, you must not put any bubble upon me; with that the Captain runs out in a fury, and fetcheth a Constable, and carrieth me to the *Gate-house*. I was in my Shop the Day before, which very Day I did intend to go out with a Friend into the Country, and prepared my self accordingly; and Mr. *Fromante*, the old Man that was the Friend of mine, comes, saying to me, the Constable would have something, I know not what it is, come and assist me; I went to the place, the Constable told me, that I was to appear by Ten of the Clock; with that comes the old Man out. I owed him a little Money, I went and paid him the Money which I owed him. I came back, and sat down by the Window out of sight, the old Man sat at the right Hand, so we sat and discoursed as innocently, as I thought, and (before God) as ever I spake in my Life.

L. C. J. What Discourse had you?

Pris. Our chief Discourse was about the Materials of our business, and it was about the King of *France* his Usurpation over his Subjects, and the happiness of our little People, the Commonalty of *England*, that was indeed usually our Discourse when we met together.

L. C. J. Did you say you would kill the King of *France*? and that he was a great Heretick? Do you believe the King of *France* is an Heretick?

Prisoner. I know not what his Opinion is, that's to his own Conscience.

L. C. J. Did you name the word *Heretick*?

Prisoner. Not to my knowledge, upon my Soul, not of the King of *England*; we might have discoursed of the happiness and of the difference of their Governments. I have been thought a Person of some Intelligence, and of some Understanding in the World, and not to expose my self to speak in a publick large Room, the Door being open, with so high a Voice that these Gentlemen being in the next Room should hear me in *French*, and in a Street where almost all are *French-men*, to speak these blasphemous Words, Words that I abhor. I have been a great admirer of my Prince.

Court. Read the Statute of *Decimo tertio*, &c.

L. C. J. Speak the words in *English* about killing the King, speak them all.

Witness. That the Prisoner's Companion did say, *The King was a Tormentor and Persecutor of the People of God.* The Prisoner's words were again, *The King of England is the greatest Heretick, and the greatest Rogue in the world; here's*

the Heart, and here's the Hand that would kill him; I my self.

Pris. Here's the Hand, and here's the Heart which would kill my self: Not, would kill Him my self.

L. C. J. What Jesuit taught you this Trick? It is like one of them. It is the Art and Interest of a Jesuit so to do.

The Statute read.

L. C. J. Have you any thing more to say for your self than what you have already said?

Court. Sir *John Kirk*, do you understand *French*?

One of the Jury. I do, my Lord; the words have been interpreted all right.

L. C. J. Let me ask you one Question; When you said the King was a great Heretick and a Rogue, and here's the Heart, and here's the Arm that would kill him my self; was it not the King you would kill?

Prisoner. I have this to say in Justification of my self, and Allegiance to my Prince and King, that I never thought, nor imagined or contrived any way, but have been a true Subject to the King upon all occasions; I am sorry it proves so, God's will be done, my Soul depends upon it; I am a dying Man by the Statute, never with Intention, or any thought or Ill-will, spake any word about this matter.

L. C. J. Out of the abundance of the Heart the Mouth speaks; the Statute hath been read, which hath made it criminal.

Call a Witness for the Prisoner.

Witness for the Prisoner. One *Anselm* spake.

They came to my House, where I live at the *Cross-keys* in *Covent Garden*, about Eight a Clock in the Morning, these two Gentlemen, the Day they took him away, was the Day after these words were spoke, and he was kept Prisoner from Eight till Eleven of the Clock without any Constable, they had five Bottles of Wine, and bespake Meat, but they did not stay to eat the Meat.

L. C. J. How came you to stay so long?

Wit. I was two Hours in looking for a Constable, they would not come with me, without a Warrant from a Justice of Peace.

L. C. J. Who told you you had best take it up?

Pris. The middlemost Man, the first Witness.

Wit. We were about three long Hours, I sent out this Gentleman for a Constable, in the mean time the Prisoner's Father sent his Maid for him to come Home, I told him he should not go, if he desired to eat we would eat there. I sent to *White-Hall* and desired a Guard, the Officer of the Guard told the Messenger it was a Constable's part.

Court. Call another Witness for the Prisoner.

Witness for the Prisoner.

I have heard him often declare as much Loyalty to his Prince as any Person. One Day we fell into a discourse of these affairs, the business of the Jesuits, which are a People he did as much condemn as any; for in *Padua* he saw so many Cheats, that he forsook the Jesuitical Religion, and if he knew any of the Persons concerned in this

this Plot, he would be the Executioner himself, and whoever comes to Reign afterwards, they shall never enjoy so much Peace as now; and I heard him often say he would lose his Blood for the King, and heard him speak as Loyally as I ever heard any Man speak in my Life.

L. C. J. That is when he spoke to a Protestant.

Court. Have you any thing else to say for your self, or have you any more Witnesses, that you would have examined on your behalf?

Prisoner. No.

Lord Chief Justice's Speech.

THE Statute hath been read, which was made since the King came in, for the preservation of his Person, and during his Life: The Parliament thought it reasonable, even to make desperate words to be Treason, although there was no other thing but words, that is, such words, as if the thing had been done would be Treason, the speaking it is Treason. When we come to observe the manner of this speaking, methinks there is no great difficulty to satisfy the Jury that they were spoke advisedly and maliciously. They were in a Publick House, and by accident heard: They concealed them not a Moment, and not from the Man that did not understand *French*. To hear a Man say in a great Passion, that his King was a Heretick, and the greatest Rogue in the World, and that he would kill him, to write down the words presently, they slept not upon it, they found out who he was, the next Day they came to attach him; they kept him, for what? till they could get a Constable. So that here is nothing doubtful either in the Circumstance or Substance of his Case: So that you cannot have a plainer proof in the World than there is in this. For my own part, when it is in the Case of a Man's Life, I would not have any Compliance with the rumors or disorder of times that should be an Evidence against him, but would have a Verdict depend upon the Witnesses that swear the Fact downright upon him. You and we all are sensible of the great difficulties and hazards that is now both against the King's Person, and against all Protestants, and our Religion too, which will hardly maintain it self, when they have destroyed the Men; but let 'em know, that many Thousands will lose their Religion with their Lives, for we will not be Papists, let the Jesuits press what they will (who are the foundations of all this Mischief) in making Profelytes, by telling them, do what wickedness you will it's no sin, but we can save you, and if you omit what we Command, we can damn you. This they will not own when it comes to be an objection and penal upon them, but they will never get the Pope of *Rome* to declare he hath not a power to Excommunicate what he calls a heretick King, and if he does, that the Subject is not discharged from his Obedience, they would do great service to their Papist Friends, if they could obtain such an Edict. They Print, Preach, Dispute, and Maintain otherwise, and thereby lead People to their own destruction and the destruction of others. Excuse me if I am a little warm, when Perils are so many, their

Murthers so secret, that we cannot discover the Murther of that Gentleman, whom we all knew so well, when things are transacted so closely, and our King in so great danger, and Religion at stake. 'Tis better to be warm here than in *Smithfield*. But that the Man might have justice done him, he hath had his Witnesses, and might have had this old Man, if he had named him to Mr. *Richardson*: and to shew what fair play he has had, Mr. Attorney tells you the old Man hath been examined upon Oath, and offers him the Copy of his Examination to use, but he thinks not fit to use it for his defence, therefore nothing is smothered. The Offence you have heard in words plain enough, unless the sense is perverted by Jesuitical cunning and equivocation, the best part of their learning and honesty. They swear it expressly, *That the King was a Heretick, and the greatest Rogue in the World, and here's the Heart and Hand, that he would kill him himself;* and hath and can have no other signification. The Statute saith *Advisedly and Maliciously*. The manner of speaking, and the words spoke, prove both. When a Papist once hath made a Man a Heretick, there is no scruple to murder him. Whoever is not of their Persuasion are Hereticks, and whoever are Hereticks may be murdered, if the Pope commands it, for which they may become Saints in Heaven; this is that they have practised. If there had been nothing of this in this Kingdom, or other parts of the World, it would be a hard thing to impose it upon them, but they ought not to complain, when so many instances are against them. Therefore discharge your Consciences as you ought to do; if guilty let him take the Reward of his Crime, and you shall do well to begin with this Man, for perchance it may be a Terrour to the rest. Unless they think they can be saved by dying in the Roman Faith, tho' with such pernicious and traitorous words and designs as these are; let such go to Heaven by themselves. I hope, I shall never go to that Heaven, where Men are made Saints for killing Kings.

William Stayley, hold up your Hand.

Cl. of Cr. Is *William Stayley* guilty of the High Treason whereof he hath been Indicted?

Jury. Guilty.

Cl. of Cr. What Goods, Chattels, Lands or Tenements?

Pris. None.

L. C. J. Now you may die a Roman Catholic, and when you come to die, I doubt you will be found a Priest too.

K. Coun. I pray Judgment according to the Verdict.

Cl. of Cr. You have been Indicted of High-Treason, you have put your self upon your Country, which Country have found you guilty, what have you to say for your self, wherefore the Court should not proceed to Judgment against you?

Pris. I have nothing to say.

L. C. J. I pronounce Judgment upon you. You are here found guilty by the Jury of High-Treason, for saying you would kill the King, with other irreverent words; but the matter which makes you a Traitor is proved upon you by most apparent Evidence. The matter, manner, and all the circumstances of it make it plain; you

you may harden your Heart as much as you will, and lift up your Eyes, but you seem instead of being sorrowful, to be obstinate, between God and your Conscience be it, I have nothing to do with it, my duty is to pronounce Judgment upon you according to Law, which is this:

The S E N T E N C E.

You shall return to the Prison, from thence shall

be drawn to the place of Execution, where you shall be hanged by the Neck, cut down alive, your Quarters shall be severed and be disposed of as the King shall think fit, and your Bowels burnt, and so the Lord have mercy upon your Soul.

November the 26th, he was executed at Tyburn, according to the Sentence.



LXXIV. *The Trial of EDWARD COLEMAN, * at the Kings-Bench, for High-Treason, the 27th of November, 1678. Mich. 30 Car. II.*

ON *Wednesday the Twenty Seventh day of November, 1678, Mr. Coleman* (having been Arraigned the *Saturday* before for High-Treason) was brought to the *King's-Bench Bar*, to receive his Trial, and the Court proceeded thereupon, as followeth.

Cl. of Cr. Cryer, make Proclamation.

Proclamation for Silence.

Cryer. O yes! Our Sovereign Lord the King does strictly Charge and Command all manner of Persons to keep Silence, upon pain of Imprisonment.

If any one can inform our Sovereign Lord the King, the King's Serjeant, or the King's Attorney-General, or this Inquest now to be taken, of any Treason, Murder, Felony, or any other Misdemeanour committed or done by the Prisoner at the Bar, let them come forth, and they shall be heard, for the Prisoner stands at the Bar upon his Deliverance.

Cl. of Cr. Cryer, make an O yes.

Cryer. O yes! You Good Men that are impannelled to enquire between our Sovereign Lord the King, and Edward Coleman Prisoner at the Bar, answer to your Names.

Cl. of Cr. Edward Coleman, Hold up thy Hand.

These Good men that are now called, and here appear, are those which are to pass between you and our Sovereign Lord the King, upon your Life or Death; if you challenge any of them, you must speak as they come to the Book to be sworn, and before they are sworn.

The Prisoner Challenging none, the Court proceeded, and the Jury were sworn, viz.

J U R Y.

Sir Reginald Forster, Bart.	Simon Middleton, Esq;
Sir Charles Lee.	Henry Johnson, Esq;
Edward Wilford, Esq;	Charles Umfrevile, Esq;
John Bathurst, Esq;	Thomas Johnson, Esq;
Joshua Galliard, Esq;	Thomas Eaglesfield, Esq;
John Bisfield, Esq;	William Bohee, Esq;

Cl. of Cr. Cryer, make an O yes.

Cryer. O yes! Our Sovereign Lord the King does strictly charge and command all manner of Persons to keep Silence upon pain of Imprisonment.

Cl. of Cr. Edward Coleman, Hold up thy Hand.

You Gentlemen of the Jury that are now sworn, look upon the Prisoner, and hearken to his Charge.

You shall understand, that the Prisoner stands Indicted by the Name of *Edward Coleman* late of the Parish of *St. Margarets Westminster* in the County of *Middlesex*, Gent. for that he as a false Traitor against our most Illustrious, Serene, and most Excellent Prince *Charles*, by the Grace of God of *England, Scotland, France, and Ireland* King, Defender of the Faith, &c. and his Natural Lord; having not the Fear of God in his Heart, nor duely weighing his Allegiance, but being moved and seduced by the Instigation of the Devil, his cordial Love and true Duty, and natural Obedience, (which true and lawful Subjects of our said Lord the King ought to bear towards him, and by Law ought to have) altogether withdrawing, and deviling, and with all his strength intending, the Peace and common Tranquillity of this Kingdom of *England* to Disturb, and the true Worship of God within the Kingdom of *England* practised, and by Law Established, to overthrow, and Sedition and Rebellion within this Realm of *England* to move, stir up, and procure, and the cordial Love and true Duty and Allegiance, which true and lawful Subjects of our Sovereign Lord the King toward their Sovereign bear, and by Law ought to have, altogether to Withdraw, Forsake, and Extinguish; and our said Sovereign Lord the King to Death and final Destruction to bring and put, the Twenty Ninth Day of *September* in the Seven and Twentieth Year of the Reign of our said Sovereign Lord *Charles the Second*, of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. at the Parish of *St. Margarets Westminster* aforesaid, in the County aforesaid, Falsly, Maliciously, and Traiterously

* Burn. Hist. own times, Vol. I. p. 368. 394. 426. 436.

Proposed, Compasſed, Imagined and Intended, to ſtir up, and raiſe Sedition and Rebellion within the Kingdom of *England*, and to procure and cauſe a miſerable Deſtruction among the Subjects of our ſaid Lord the King, and wholly to Deprive, Depoſe, Deject, and Diſinherit our ſaid Sovereign Lord the King, of his Royal State, Title, Power, and Rule of his Kingdom of *England*, and to bring and put our ſaid Sovereign Lord the King to final Death and Deſtruction, and to overthrow and change the Government of the Kingdom of *England*, and to alter the ſincere and true Religion of God, in this Kingdom by Law eſtabliſhed; and wholly to ſubvert and deſtroy the ſtate of the whole Kingdom, being in the univerſal parts thereof well Eſtabliſhed and Ordained, and to levy War againſt our ſaid Sovereign Lord the King, within his Realm of *England*: And to accompliſh and fullſil theſe his moſt wicked Treasons, and Traiterous Deſigns and Imaginations aforeſaid, the ſaid *Edward Coleman* afterward, that is to ſay, the Nine and twentieth Day of *September* in the Twenty ſeventh Year of the Reign of our ſaid Lord the King, at the Pariſh of *St. Margarets Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, Falſly, Deceitfully, and Traiterouſly Compoſed, Contrived, and Writ two Letters, to be ſent to one *Monſieur le Chaiſe*, then Servant and Confessor of *Lewis* the *French* King, to Deſire, Procure, and Obtain, for the ſaid *Edward Coleman* and other Falſe Traitors againſt our ſaid Sovereign Lord the King, the Aid, Aſſiſtance, and Adherence of the ſaid *French* King, to alter the true Religion in this Kingdom Eſtabliſhed, to the Superſtition of the Church of *Rome*, and to ſubvert the Government of this Kingdom of *England*: And afterwards, (that is to ſay) the ſaid Nine and twentieth Day of *September* in the Year aforeſaid, at the Pariſh of *St. Margarets Weſtminſter* in the County of *Middleſex* aforeſaid, the ſaid *Edward Coleman* Falſly, Traiterouſly, and Maliciouſly Compoſed and Writ two other Letters, to be ſent to the ſaid *Monſieur le Chaiſe*, then Servant and Confessor to the ſaid *French* King, to the Intent that he the ſaid *Monſieur le Chaiſe* ſhould Intreat, Procure, and Obtain for the ſaid *Edward Coleman* and other Falſe Traitors againſt our Sovereign Lord the King, Aid, Aſſiſtance, and Adherence of the ſaid *French* King, to alter the true Religion in this Kingdom of *England* Eſtabliſhed, to the Superſtition of the Church of *Rome*, and to ſubvert the Government of this Kingdom of *England*: And that the ſaid *Edward Coleman*, in further Proſecution of his Treason and Traiterous Imaginations and Intentions, as aforeſaid, afterwards, viz. the Twenty Ninth Day of *September*, in the Seven and twentieth Year of the Reign of our ſaid Sovereign Lord King *Charles*, of *England*, &c. the ſaid ſeveral Letters, from the ſaid Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, Falſly, Maliciouſly and Traiterouſly, did ſend to the ſaid *Monſieur le Chaiſe*, into Parts beyond the Seas, there to be delivered to him: And that the ſaid *Edward Coleman*, afterward, viz. the Firſt Day of *December*, in the Seven and twentieth Year of our ſaid Sovereign Lord the King, at the ſaid Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, did receive from the ſaid *Monſieur le Chaiſe* one Letter, in Answer to

one of the ſaid Letters firſt mentioned, and written by him the ſaid *Edward Coleman*, to the ſaid *Monſieur le Chaiſe*, which ſaid Letter in Answer, as aforeſaid, Falſly, Maliciouſly, and Traiterouſly received, the Day and Year aforeſaid, at the Pariſh of *St. Margarets Weſtminſter* aforeſaid, the ſaid *Edward Coleman* did falſly, traiterouſly and maliciouſly read over and peruſe; And that the ſaid *Edward Coleman*, the Letter ſo as aforeſaid, by him in Answer to the ſaid Letter received into his Cuſtody and Poſſeſſion, the Day and Year laſt mentioned, at the Pariſh of *St. Margarets Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, did Falſly, Maliciouſly, and Traiterouſly Detain, Conceal, and Keep. By which Letter the ſaid *Monſieur le Chaiſe*, the Day and Year laſt mentioned, at the Pariſh of *St. Margarets Weſtminſter* in the County of *Middleſex* aforeſaid, did ſignifie and promiſe to the ſaid *Edward Coleman*, to obtain for the ſaid *Edward Coleman*, and other falſe Traitors againſt our Sovereign Lord the King, Aid, Aſſiſtance and Adherence from the ſaid *French* King: And that the ſaid *Edward Coleman* afterward, viz. the tenth day of *December* in the ſeven and twentieth year of the Reign of our ſaid Sovereign Lord the King, at the Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, his wicked Treasons and Traiterous Deſigns and Propoſals as aforeſaid did tell and declare to one *Monſieur Revigni*, Envoy-extraordinary from the *French* King to our moſt Serene and Sovereign Lord King *Charles*, &c. in the County aforeſaid reſiding, and did falſly, maliciouſly and traiterouſly move and excite the ſaid Envoy-extraordinary to partake in his Treason; and the ſooner to fullſil and compleat his Traiterous Deſigns, and wicked Imaginations and Intentions, the ſaid *Edward Coleman* afterward, viz. the tenth day of *December* in the ſeven and twentieth year of the Reign of our Sovereign Lord King *Charles* the Second of *England*, &c. aforeſaid, at the Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, did adviſedly, maliciouſly, deceitfully, and traiterouſly compoſe and write three other Letters to be ſent to one Sir *William Throckmorton* Kt. then a Subject of our ſaid Sovereign Lord the King of this Kingdom of *England*, and reſiding in *France*, in parts beyond the Seas, viz. at the Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, to ſolicite the ſaid *Monſieur le Chaiſe* to procure and obtain of the ſaid *French* King, Aid, Aſſiſtance, and Adherence, as aforeſaid, and the ſaid Letters laſt mentioned afterward, viz. the day and year laſt named as aforeſaid from the ſaid Pariſh of *St. Margarets Weſtminſter*, in the County of *Middleſex* aforeſaid, did falſly and traiterouſly ſend, and cauſe to be delivered to the ſaid Sir *William Throckmorton* in *France* aforeſaid, againſt his true Allegiance, and againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.

Cl. of Cr. Upon this Indictment he hath been arraigned, and hath pleaded thereunto Not guilty; and for his Trial he puts himſelf upon God and his Country: Which Country you are.

Your Charge is to enquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the time when the High-Treason was committed, or at any time since; If you find him not guilty, you are to say so, and no more, and hear your Evidence.

Cryer. If any one will give Evidence on the behalf of our Sovereign Lord the King, against *Edward Coleman* the Prisoner at the Bar, let him come forth, and he shall be heard; for the Prisoner now stands at the Bar upon his Deliverance.

Mr. Recorder, Sir George Jefferies. May it please you my Lord, and you Gentlemen of the Jury; *Mr. Edward Coleman*, now the Prisoner at the Bar, stands indicted for High-Treason, and the Indictment sets forth, that the said *Edward Coleman*, endeavouring to subvert the Protestant Religion, and to change and alter the same; And likewise to stir up Rebellion and Sedition amongst the King's Liege People, and also to kill the King; did on the 29th of *September* in the twenty seventh year of the Reign of our Sovereign Lord the King, at the Parish of *St. Margarets Westminster* in this County, compose and write two several Letters to one *Monfieur le Chaise*, that was then Servant and Confessor to the *French King*, and this was to procure the *French King's* aid and assistance to him and other Traitors, to alter the Religion practised, and by Law established here in *England*, to the Romish Superstition. The Indictment sets forth likewise, that on the same day he did write and compose two other Letters to the same Gentleman, that was Servant and Confessor to the said King, to prevail with him to procure the *French King's* assistance to alter the Religion in this Kingdom established to the Romish Religion. The Indictment sets further forth, that he caused these two Letters to be sent beyond the Seas. And it also sets forth that on the tenth of *December*, the same Month, he did receive a Letter from the Gentleman that was the Confessor, in answer to one of the former Letters, and in that Letter aid and assistance from the *French King* was promised; and that he did traiterously conceal that Letter. My Lord, the Indictment sets out further, that on the tenth day of the same Month, he did reveal his Treasons and Traiterous Conspiracies to one *Monsieur Ravigni*, who was Envoy from the *French King* to his Majesty of *Great Britain*. And his Indictment declares, he afterwards did write three Letters more to *Sir William Throckmorton*, then residing in *France*, to procure the *French King's* assistance to the alteration of the Religion practised here in *England*. Of these several Offences he stands here indicted.

To this he hath pleaded Not guilty. If we prove these, or either of them in the Indictment, you ought to find him guilty.

Serj. Maynard. May it please your Lordship, and you Gentlemen of the Jury; This is a Cause of great Concernment. Gentlemen, the Prisoner at the Bar stands indicted for no less than for an intention and endeavour to Murder the King; For an endeavour and attempt to change the Government of the Nation, so well settled and instituted, and to bring us all

to ruin and slaughter of one another, and for an endeavour to alter the Protestant Religion, and to introduce instead of it the Romish Superstition, and Popery.

This is the Charge (in general) of the Indictment. We will proceed unto Particulars, whereby it may appear, and whereupon he endeavoureth to accomplish his ends. One or two Letters written to *Monfieur le Chaise* (he is a Foreigner, and we have nothing to say to him, being Confessor to the *French King*) it was to excite and stir him up to procure Aid and Assistance (and you know what Aid and Assistance means) from a Foreign Prince, Arms, and other Levies. We charge him with it, that he did receive this Letter, ay, and received an answer with a promise, that he should have assistance. He writ other Letters to *Sir William Throckmorton*, who traiterously conspired with him, and had intelligence from time to time from him. This is the Charge in the Indictment; To which he hath pleaded, Not guilty. We will go on in our Evidence: I shall, but more generally, open our method, that we intend to take. For it may seem strange, and is not reasonably to be imagined, that a private Gentleman, as the Prisoner at the Bar is, should have such vast and great designs as this, to alter Religion, destroy the Government, ay, and destroy the Subjects too in a great measure. But 'tis not himself alone, but he employs himself for Foreign Assistance, great Confederacies and Combinations with the Subjects of that King, many of whom he did pervert.

In the course of the Evidence I shall not open the particulars, (Mr. Attorney, I think, will do that by and by) those that we have occasion to speak of, and shall in proof mention to you, will be these.

Le Chaise, the *French King's* present Confessor, we have mentioned: before him there was one *Father Ferryer*, with whom he held Correspondence. That *Ferryer* being removed by death, the Prisoner had an employment here amongst us, by which he gave to *Le Chaise* instructions how to proceed. This Gentleman is the great Contriver and Plotter, which gives him instructions how to proceed. He doth give him an account by way of Narrative, how all things had stood upon former Treaties and Negotiations, how businesses were contrived, and how far they were gone; this he diligently and accurately gives an account of. This (my Lord) doth discover and delineate what had been done before until 1674. My Lord, there was likewise *Sir William Throckmorton* and some others, that are *Englishmen* too, there are none of them but what were first Protestants, but when they once renounced their Religion, no wonder they should renounce their Nation, and their Prince too. He was gone beyond the Seas, several Letters past between them, and all to promote, and encourage, and accomplish this Design. My Lord, there is likewise a consult of Jesuits used too, where, in express words, they designed to murder the King, or contrived and advised upon it.

My Lord, there were four *Irish Men* (I open but the Heads of things) sent to *Windfor* to murder the King: This Gentleman received and disbursed Money about this business, and one *Ashby* a Jesuit here had Instructions from him

him to prosecute the Design, and to treat with a Physician to poyson the King. This the Prisoner approved of, and contributed to it. There were Commissions (as I take it) delivered from *Ferryer*, or by his Hand, that came from Foreign Powers. Sir *Henry Titchburne* was another that received and delivered Commissions. *Pom-pone* the French Gentleman, he maintains Intelligence with him about this business, the Titular Arch-Bishop of *Dublin*.

There's Cardinal *Norfolk*, by him he had accession to the Pope.

There was likewise the Pope's *Nuncio* (I do not open the Transactions of these Instructions) these particulars will be made out, not only by Witness *Viva Voce*, and not single only, but by Letters of this Mr. *Coleman*'s own writing. But I offer that to the consideration of the Jury.

Mr. *Oates* was the first Man, that we hear of, that discovered this Treason; he was the single Man that discovered so many active Agents in so great a Treason as this was, and it needed to be well seconded; but he being found to be but single, the Boldness and Courage of these Complotters in it grew great thereupon. We know what followed; the Damnable Murther of that Gentleman, in Execution of his Office, so Hellishly contrived, and the Endeavours that were used to hide it, every body knows: How many Stories were told to hide that abominable Murther, how many Lies there were about it, but it could not be suppress. The Nation is awaken'd out of sleep, and it concerns us now to look about us. But all this while, Mr. *Coleman* thought himself safe, walked in the Fields, goes abroad, Jealousie increasing, and he himself still secure.

The Letters that are produced go but to some part of the Year 75: from 75 unto 78 all lyes in the dark, we have no certain Proof of it; but we apprehend he had Intelligence until 78; That there were the same Persons continuing here, and his Company increasing here: But this I speak but as probable; (but very exceeding probable) that there was other passages of Intelligence between this Person and other Confederates.

It seems (my Lord) that this *Coleman* was aware that he was concerned: but God blinded and infatuated him, and took away his Reason. It's no question but he carried away some of those Papers; those that were left behind, and are produced, he forgot and neglected; and by that (my Lord) those which are produced, are Evidence against him at this time. Surely he thought we were in such a condition, that had Eyes and could not see, and Ears that could not hear, and Understandings without understanding: for he was bold, and walked Abroad, and that until this Prosecution was made upon him, he endeavoured to murther the King, change the Government, make an alteration of Religion, and destruction of Protestants, as well as the Protestant Religion; and it will be proved by some Letters, when they were rejected by the Duke, that he sent them in the Duke's Name. And by this no Man will doubt but he is a great Traitor.

Attorn. Gen. Sir *William Jones*. May it please your Lordship, and you Gentlemen of the Jury, The King's Serjeant hath opened the gene-

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ral parts of our Evidence; and we have reason to foresee that our Evidence will be very long, and will take up much of your time; and therefore I shall spend no more time in opening of it than is just necessary. And indeed (my Lord) Mr. *Coleman* himself hath saved me much of the labour, which otherwise I should have bestowed; for he hath left such Elegant and copious Narratives of the whole Design under his own Hand; that the reading of them will be better than any new one I can make.

But (my Lord) some short Account I shall give you, such as may shew you the course of our Evidence, and will make our Evidence, when it comes to be given, to be more intelligible.

My Lord, It will appear, that there hath been for many Years last past a more than ordinary Design and Industry to bring in the Popish, and extirpate the Protestant Religion.

I doubt not but this Design, in some measure, hath been contriving ever since the Reformation, by the Jesuits, or some of their Emissaries, but hath often received interruption; so that they have proceeded sometimes more coldly, sometimes more hotly: And I do think, at no time since the Reformation, that ever this Design was carried on with greater Industry, nor with fairer hopes of Success, than for these last Years.

My Lord, You will hear from our Witnesses, that the first Onset, which was to be made upon us, was by whole Troops of Jesuits and Priests, who were sent hither from the Seminaries Abroad, where they had been trained up in all the Subtily and Skill that was fit to work upon the People.

My Lord, you will hear how active they have been, and what Insinuations they used for the perverting of particular Persons. After some time spent in such Attempts, they quickly grew weary of that course; though they got some Proselytes, they were but few. Some Bodies, in whom there was a predisposition of humors, were infected, but their Numbers were not great. They at last resolve to take a more expeditious way; for in truth, (my Lord) they could not far prevail by the former. And I wish with all my heart, that the Bodies of Protestants may be as much out of danger of the Violence of their Hands, as their Understandings will be of the force of their Arguments. But (my Lord) when this way would not take, they began then to consider they must throw at all at once. No doubt but they would have been glad, that the People of *England* had had but one Neck; but they knew the People of *England* had but one Head, and therefore they were resolved to strike at that.

My Lord, you will find, that there was a Summons of the principal Jesuits, of the most able Head-pieces, who were to meet in *April* or *May* last, to consult of very great things, of a most Diabolical Nature, no less than how to take away the Life of the King our Sovereign.

My Lord, you will find (as is usually practised in such horrid Conspiracies) to make all secure, that there was an Oath of Secrecy taken, and that upon the Sacrament. You will find Agreements made, that this most Wicked and Horrible Design should be attempted. You will find two Villains were found among them, who

undertook

undertook to do this execrable work; and you will hear of the Rewards they were to have: Money in case they did succeed, and Masses good store in case they perished; so that their Bodies were provided for in case they survived, and their Souls if they died. My Lord, What was the reason they did not effect their Design, but either that these Villains wanted Opportunity, or their Hearts failed them, when they came to put in execution this Wicked Design? or, perhaps (which is most probable) it was the Providence of God, which over-rul'd them, that this Bloody Design did not take its effect.

But these Gentlemen were not content with one Essay, they quickly thought of another; and there were four *Irish-Men* prepared (Men of very mean Fortunes, and desperate Conditions) and they were to make the Attempt no longer since, than when the King was last at *Windsor*.

My Lord, I perceive by the Proofs, that these last Assassins went down thither; but it came to pass (for some of the Reasons aforesaid) that that Attempt failed likewise.

My Lord, These Gentlemen, those wise Heads, who had met here in Consultation, did then, and long before, consider with themselves, that so great a Cause as this was not to be put upon the hazard of some few Hands; they therefore proposed Forces, Aids, and Assistances, both at Home and Abroad, to second this Wicked Design, if it had succeeded as to the Person of the King; and if that fail'd, then by their Foreign and Domestick Aids and Assistances, to begin and accomplish the whole Work of subverting our Government and Religion. And here we must needs confess, as to the former part of this Plot, which we have mentioned, I mean the attempt upon the King's Person, Mr. *Coleman* was not the Contriver, nor to be the Executioner: But yet your Lordship knows, in all Treasons there is no Accessory, but every Man is a Principal. And thus much we have against him, even as to this part of the Design, which will involve him in the whole guilt of it, that Mr. *Coleman* consented to it, though his Hand were not to do it. Mr. *Coleman* encouraged a Messenger to carry Money down as a Reward of these Murtherers, that were at *Windsor*; of this we have proof against him, which is sufficient. My Lord, Mr. *Coleman*, as a Man of greater Abilities, is reserved for greater Employments, and such wherein, I confess, all his Abilities were little enough. There were Negotiations to be made with Men Abroad, Money to be procured, partly at home from Friends here, and partly abroad from those that wish'd them well: And in all these Negotiations Mr. *Coleman* had a mighty Hand; and you will perceive by and by what a great progress he made in them. This Conspiracy went so far, as you will hear it proved, That there were general Officers named and appointed, that should Command their new Catholick Army, and many were Engaged, if not Listed. There were not only in *England*, but in *Ireland* likewise, where Arms and all other Necessaries were provided, and whither great Sums of Money were returned to serve upon occasion. But one thing there is, my Lord, that comes nearest Mr. *Coleman*; As there were Military Officers named, so likewise the great Civil Places and Offices of the Kingdom were to be disposed of;

I will not name to whom at this time, more than what is pertinent to the present business.

This Gentleman, such were his great Abilities, the trust and reliance that his Party had upon him, that no less an Office would serve his turn than that of Principal Secretary of State; and he had a Commission, that came to him from the Superiors of the Jesuits, to enable him to execute that great Office. My Lord, it seems strange, that so great an Office should be conferred by no greater a Man than the Superior of the Jesuits. But if the Pope can depose Kings, and dispose of Kingdoms, no wonder if the Superior of the Jesuits can, by a Power delegated from him, make Secretaries. It is not certain what the Date of this Commission was, nor the very time when he received it: but I believe he was so earnest and forward in this Plot, that he began to execute his Office long before he had his Commission for it; for I find by his Letters, which are of a more early Date, that he had proceeded so far as to treat with Father *Ferrier*, who was the *French King's* Confessor, before he had actually received this Commission. You will understand by the Letters, which we shall produce, what he had to do with him, and what with the other Confessor that succeeded, Father *Le Gbaise*. There were two small matters they treated of, no less than the Dissolving the Parliament, and the Extirpation of the Protestant Religion. Nay, you will find, and you will hear enough, when the Letters come to be read, that Mr. *Coleman* made many strokes at the Parliament, he had no good opinion of them. And we cannot blame him; for without all peradventure they had made, and I hope ever will make, strong resistance against such Designs as these. But a great mind he had to be rid of them; and he had hopes of great Sums of Money from abroad, if it had been to be done that way. And it is very remarkable (and shews the Vanity of the Man) he had such an opinion of the success of these Negotiations, that he had penn'd a Declaration prepared by him, and writ with his own hand, to be published in Print, upon the Dissolution of the Parliament, to justify that Action with many specious and plausible Reasons. As he did this without any Direction, so he takes upon him to write a Declaration, as in the Name of the King, without the least shadow of any command to do it, so he prepares a Letter also in the Name of the Duke; and I would not affirm, unless I could prove it, and that from his own Confession, (being examined before the Lords upon Oath) that he had no manner of Authority from the Duke to prepare such a Letter; and when it was written, and brought to the Duke, it was rejected, and the Writer justly blamed for his presumption. By this you will perceive the forwardness of this Man. And you must of necessity take notice, that in his Letters he took upon himself to manage Affairs, as authorized by the greatest Persons in the Kingdom, yet without the least shadow of proof that he was by them impowered to do it.

My Lord, you shall find, Mr. *Coleman* thought himself above all; and such was his own overweening opinion of his Wit and Policy, that he thought himself the sole and supreme Director of all the Affairs of the Catholicks. You will

will likewise perceive that he held Intelligence with Cardinal *Norfolk*, with Father *Sheldon*, and the Pope's Internuntio at *Brussels*. And I cannot but observe out of the Proofs, that as we shall find Mr. *Coleman* very ambitious and forward in all great Affairs, so he had a little too much Eye to the Reward; he looked too much askint upon the matter of Money: His great endeavours were not so much out of Conscience, or out of Zeal to his Religion, as out of temporal Interest; to him Gain was instead of Godliness. And by his Letters to the French Confessor Monsieur *Le Chaise*, it will be proved, that he got much Money from the Catholics here, and some from abroad, but still he wanted Money. What to do? (I do not mean the greater sum of two hundred thousand Pounds to procure the Dissolution of the Parliament, but some twenty thousand Pounds only) To be expended by him in secret Service. I do not know what account he would have given of it, if he had been intrusted with it. But that he earnestly thirsted after Money, appeareth by most of his Letters.

My Lord, you will observe, besides his Intelligences, that he had with Father *Le Chaise*, and several others, one that deserves to be named, and that is his Negotiation with Sir *William Frogmorton*, who was sent over into France, and there resided a long time to promote these Designs. He is dead; therefore I will not say so much of him, as I would say against him, if he was here to be tried. But, my Lord, I find in his Letters such Treasonable, such Impious Expressions against the King, such undutiful Characters of him, that no good Subject would write, and no good Subject would receive and conceal, as Mr. *Coleman* hath done. My Lord, it may pass for a wonder, how we come to be Masters of all these Papers; it has in part been told you already.

There was an Information given of the general Design, nay of some of the particulars against the King's Life. And without all peradventure, Mr. *Coleman* knew of this Discovery; and he knew that he had Papers that could speak too much, and he had time and opportunity enough to have made them away, and I make no Question but he did make many away. We are not able to prove the continuance of his Correspondence, so as to make it clearly out; but we suppose that continued until the day he was seized. And there is this to be proved, that Letters came for him, though we cannot say any were delivered to him, after he was in Prison. But without all peradventure, the Man had too much to do, too many Papers to conceal: Then, you'll say, he might have burnt them all, (for many would burn as well as a few:) But then he had lost much of the Honour of a great States-man; many a fine Sentence, and many a deep Intrigue had been lost to all Posterity. I believe that we owe this Discovery to something of Mr. *Coleman*'s Vanity; he would not lose the Glory of managing these important Negotiations about so great a Design: He thought 'twas no small Reputation to be intrusted with the Secrets of Foreign Ministers. If this was not his reason, God (I believe) took away from him that clearness of Judgment,

and strength of Memory, which he had upon other Occasions.

My Lord, I shall no longer detain you from reading the Papers themselves. But I cannot but account this Kingdom happy, that these Papers are preserved. For (my Lord) We are to deal with a sort of Men, that have that prodigious confidence, that their words and deeds (though proved by never so unsuspected Testimony) they will still deny. But (my Lord) no denial of this Plot will prevail, for Mr. *Coleman* himself hath, with his own hand, recorded this Conspiracy; and we can prove his hand, not only by his own Servants, and Relations, but by his own Confession. So that (my Lord) I doubt not, that if there be any of their own Party that hear this Trial, they themselves will be satisfy'd with the truth of these things. And I believe we have an advantage in this case, which they will not allow us, in another matter; namely, that we shall be for this once permitted to believe our own Senses. Our Evidence consisteth of two parts; one is, Witnesses *Viva voce*, which we desire (with the favour of the Court) to begin with; and when that is done, we shall read several Letters, or Negotiations, in writing, and so submit the whole to your Lordship's direction.

Pris. I beg leave that a poor ignorant Man, that is so heavily charged, that it seems a little unequal to consider the reason, why a Prisoner, in such a case as this is, is not allowed Counsel; but your Lordship is supposed to be Counsel for him. But I think it very hard I cannot be admitted Counsel; and I humbly hope your Lordship will not suffer me to be lost by things that my self cannot answer. I deny the Conclusion, but the Premises are too strong and artificial.

Sir *William Scroggs*, * *L. C. J.* You cannot deny the Premises, but that you have done these things; but you deny the Conclusion, that you are a Traitor.

Pris. I can safely and honestly.

L. C. J. You would make a better Secretary of State, than a Logician; for they never deny the Conclusion.

Pris. I grant it your Lordship: You see the advantage great Men have of me, that do not pretend to Logick.

L. C. J. The labour lyes upon their Hands; the Proof belongs to them to make out these Intrigues of yours; therefore you need not have Counsel, because the Proof must be plain upon you, and then it will be in vain to deny the Conclusion.

Pris. I hope (my Lord) if there be any Point of Law that I am not skill'd in, that your Lordship will be pleased not to take the advantage over me. Another thing seems most dreadful, that is, the violent Prejudice that seems to be against every Man in England, that is confess'd to be a Roman Catholick. It is possible that a Roman Catholick may be very innocent of these Crimes. If one of those Innocent Roman Catholics should come to this Bar, he lyes under such Disadvantages already, and his Prejudices so greatly byasseth human Nature, that unless your Lordship will lean extremely much on the other side, Justice will hardly stand upright, and lye upon a Level. But to satisfy your Lord-

* See the Character of this Chief Justice in Burn. Hist. own Times Vol. 1. p. 448. And what Opinion the House of Commons had of him by their Votes, Dec. 25, 1680.

ship,

ship, I do not think it any service to destroy any of the King's Subjects, unless it be in a very plain case.

L. C. J. You need not make any preparations for us in this matter, you shall have a fair, just, and legal Trial; if Condemned, it will be apparent you ought to be so; and without a fair Proof, there shall be no Condemnation. Therefore you shall find, we will not do to you, as you do to us, blow up at adventure, kill people because they are not of your persuasion; our Religion teacheth us another Doctrine, and you shall find it clearly to your advantage. We seek no Man's Blood, but our own Safety. But you are brought here from the necessity of things, which your selves have made; and from your own Actions you shall be condemned, or acquitted.

Pris. It is supposed upon Evidence, that the Examinations that have been of me in Prison, are like to be Evidence against me now; I have nothing to say against it: But give me leave to say at this time, that when I was in Prison, I was upon my Ingenuity charged; I promised I would confess all I knew. And I only say this, That what I said in Prison is true, and am ready at any time to Swear and Evidence, that that is all the Truth.

L. C. J. It is all true that you say; but did you tell all that was true?

Pris. I know no more, than what I declared to the Two Houses.

L. C. J. Mr. Coleman, I'll tell you when you will be apt to gain credit in this matter: You say, that you told all things that you knew, the Truth, and the whole Truth. Can Mankind be persuaded, that you, that had this Negotiation in 74 and 75, left off just then, at that time when your Letters were found according to their Dates? Do you believe, there was no Negotiation after 75, because we have not found them? Have you spoke one word to that? Have you confessed, or produced those Papers and Weekly Intelligence? When you answer that, you may have credit; without that, it is impossible: For I cannot give credit to one word you say, unless you give an account of the subsequent Negotiation.

Pris. After that time (as I said to the House of Commons) I did give over Corresponding. I did offer to take all Oaths and Tests in the World, that I never had one Letter for at least two years; yea, (that I may keep my self within compass) I think it was for three or four. Now I have acknowledged to the House of Commons, I have had a cursory Correspondence, which I never regarded or valued; but as the Letters came, I burnt them, or made use of them as common Paper. I say, that for the general Correspondence I have had for two or three years, they have had every one of them Letters, that I know of.

Att. Gen. Whether you had or no, you shall have the fairest Trial that can be. And we cannot blame the Gentleman, for he is more used to greater Affairs, than these Matters or Forms of Law. But (my Lord) I desire to go unto Evidence, and when that is done, he shall be heard, as long as he pleaseth, without any Interruption. If he desire it, before I give my Evidence, let him have Pen, Ink, and Paper (with your Lordship's leave.)

L. C. J. Help him to Pen, Ink, and Paper.

Record. Then we desire to go on in our Evidence. We desire that Mr. Oates may not be interrupted.

Court. He shall not be interrupted.

Att. Gen. The first thing we will inquire, what account he can give of the Prisoner at the Bar, whether he was any way privy to the Murther of the King?

L. C. J. Mr. Oates, we leave it to your self to take your own way, and your own method: Only this we say, here's a Gentleman stands at the Bar for his Life; and on the other side, the King is concerned for his Life: You are to speak the Truth and the whole Truth; for there is no reason in the World that you should add any one thing that is false, I would not have a tittle added for any advantage, or consequences that may fall, when a Man's Blood and Life lieth at stake: Let him be Condemned by truth: You have taken an Oath, and you being a Minister, know the great regard you ought to have of the Sacredness of an Oath; and that to take a Man's Life away by a false Oath is Murther, I need not teach you that. But that Mr. Coleman may be satisfied in the Trial, and all People else be satisfied, there is nothing required or expected, but downright plain truth, and without any arts either to conceal, or expatiate, to make things larger than in truth they are; he must be condemned by plain Evidence of Fact.

Mr. Oates. My Lord, Mr. Coleman, in the Month of November last, did entertain in his own House John Keins, which John Keins was a Father-Confessor to certain Persons that were Converted, amongst which I was one. My Lord, I went and visited this John Keins at Mr. Coleman's House then in Stable-yard. Mr. Coleman inquiring of John Keins who I was? He said, I was one that designed to go over upon business to St. Omers. My Lord, Mr. Coleman told me then he should trouble me with a Letter or two to St. Omers, but he told me he would leave them with one Fenwick that was Procurator for the Society of Jesuits in London. I went on Monday Morning and took Coach, went to Dover, and had his Pacquet with me, which Pacquet when I came to St. Omers I opened. The outside Sheet of this Paper was a Letter of News which was called Mr. Coleman's Letter, and at the bottom of this Letter there was this Recommendation, Pray recommend me to my Kinsman Playford. In this Letter of News there were expressions of the King, calling him Tyrant, and that the Marriage between the Prince of Orange and the Lady Mary the Duke of York's Eldest Daughter would prove the Traitor's and Tyrant's ruin.

L. C. J. In what Language was it written?

Mr. Oates. In plain English words at length.

L. C. J. Directed to whom?

Mr. Oates. It was directed to the Rector of St. Omers, to give him Intelligence how affairs went in England.

L. C. J. Did you break it open?

Mr. Oates. I was at the opening of it, and saw it and read it. There was a Letter to Father Lechees, which was superscribed by the same hand that the treasonable Letter of News was written, and the same hand that the recommendation to Playford was written in. When this Letter was open there was a Seal fixt, a flying Seal, and no Man's Name to it.

L. C. J.

L. C. J. What was the Contents of that Letter to *Le Chaise*?

Mr. Oates. My Lord, to give you an account of the import of this Letter, it was writ in *Latin*, and in it there were thanks given to Father *Lechees* for the Ten Thousand Pounds which was given for the propagation of the Catholick Religion, and that it should be imployed for no other intent and purpose but that for which it was sent, now that was to cut off the King of *England*; those words were not in that Letter, but *Lechees* Letter, to which this was an Answer, I saw and read. It was dated the Month of *August*, and as near as I remember there was this Instruction in it, That the Ten Thousand Pound should be imployed for no other intent and purpose but to cut off the King of *England*. I do not swear the words, but that's the sense and substance; I believe I may swear the words.

L. C. J. To whom was that directed?

Mr. Oates. To one *Strange*, that was then Provincial of the Society in *London*, which Mr. *Coleman* answered.

L. C. J. How came Mr. *Coleman* to answer it?

Mr. Oates. *Strange* having run a Reed into his Finger, had wounded his Hand, and Secretary *Mico* was ill, so he got Mr. *Coleman* to write an Answer unto it.

L. C. J. Did he write it as from himself?

Mr. Oates. Yes, by order of the Provincial.

L. C. J. What was the substance of that Answer?

Mr. Oates. That thanks was given to him in the Name of the whole Society for the Ten Thousand Pound which was paid and received here, and that it should be employed to the intent for which it was received. It was subscribed from Mr. *Coleman*.

L. C. J. Was it subscribed *Coleman*?

Mr. Oates. It was not subscribed; I did not see him write it, but I really believe it was by the same hand. I went and delivered this Letter.

L. C. J. I understood you because of the accident of his Hand he had employed Mr. *Coleman* to write this for him.

Mr. Oates. He did write this Letter then, the Body of the Letter was written by Mr. *Coleman*. I did not see him write it, but I shall give an account how I can prove he wrote it. I delivered this Letter to *Le Chaise* his own Hand. When I opened the Letter he asked me how a Gentleman (naming a French name) did do.

L. C. J. When you carried this Letter, you carried it to *Lechees*, and delivered it to him; then he asked you of the Gentleman of the French name, whom meant he by that name?

Mr. Oates. I understood it to be Mr. *Coleman*.

L. C. J. Did he know him by some French name? What said you?

Mr. Oates. I could say little to this.

L. C. J. Could you guess whom he meant?

Mr. Oates. He told me he was sometime Secretary to the Dutchess of *York*, which I understood to be Mr. *Coleman*. I stuck at it, and when he said he was sometime Secretary to the Dutchess of *York*, I spoke in *Latin* to him, and asked whether he meant Mr. *Coleman*, and his Answer I cannot remember. He sends an Answer to this Letter. I brought it to *St. Omers*, and there it was inclosed in the Letter from the Society to *Coleman*; wherein the Society expressly told him this Letter was delivered and ac-

knowledged. I saw the Letter at *St. Omers*, and the Letter was sent to him. Mr. *Coleman* did acknowledge the Receipt of this Letter from *Lechees* in the same hand with that of the News Letter, and so it was understood by all. I saw it.

L. C. J. How came you to see it?

Mr. Oates. I by a Patent from them was of the Consult.

L. C. J. You saw the Letter of the same hand which the News Letter was of with Mr. *Coleman*'s Name subscribed?

Mr. Oates. The Contents of the Letter did own the Letter from *Lechees* was received; this Letter was presumed to be the Hand-writing of Mr. *Coleman*, and it was understood to be Mr. *Coleman*'s Letter.

L. C. J. You say the Letter was thanks for the Ten Thousand Pound; what was the other Contents?

Mr. Oates. That all Endeavours should be used to cut off the Protestant Religion Root and Branch.

L. C. J. You say you delivered this Letter, from whom had you it?

Mr. Oates. From *Fenwick*, it was left in his Hand, and he accompanied me from *Groves* to the Coach, and gave it to me.

L. C. J. Did you hear him speak to Mr. *Coleman* to write for him?

Mr. Oates. *Strange* told me he had spoke to him.

L. C. J. He doth suppose it was Mr. *Coleman*'s hand because it was just the same hand that the News Letter was. Are you sure the Letter was of his hand?

Mr. Oates. It was taken for his hand.

Just. Wild. Had he such a Kinsman there?

Mr. Oates. Yes, he hath confessed it.

Att. Gen. We desire your Lordship he may give an account of the Consult here in *May* last, and how far Mr. *Coleman* was privy to the murdering of the King.

Mr. Oates. In the Month of *April* Old-Style, in the Month of *May* New-Style, there was a Consult held, it was begun at the *White Horse Tavern*, it did not continue there. After that there they had consulted to send one Father *Cary* to be Agent and Procurator to *Rome*, they did adjourn themselves to several Clubs in Companies; some met at *Wild-House*, and some at *Harcourt's* Lodging in *Duke-Street*; some met at *Ireland's* Lodging in *Russel-Street*; and some in *Fenwick's* Lodging in *Drury-Lane*. They were ordered to meet by vertue of a Brief from *Rome*, sent by the Father General of the Society: They went on to these Resolves, That *Pickering* and *Groves* should go on and continue in attempting to Assassinate the King's Person by Shooting, or other means. *Groves* was to have Fifteen Hundred Pounds. *Pickering* being a Religious Man was to have Thirty Thousand Masses, which at Twelve Pence a Mass amounted much what to that Money. This Resolve of the Jesuits was communicated to Mr. *Coleman* in my hearing at *Wild-House*. My Lord, this was not only so, but in several Letters he did mention it; and in one Letter (I think I was gone a few Miles out of *London*) he sent to me by a Messenger, and did desire the Duke might be trapan'd into this Plot to Murder the King.

L. C. J. How did he desire it?

Mr. Oates. In a Letter, that all means should be used for the drawing in the Duke. This Letter

Letter was written to one *Ireland*. I saw the Letter and read it.

L. C. J. How do you know it was his Letter?

Mr. Oates. Because of the Instructions, which I saw *Mr. Coleman* take a Copy of and write, which was the same Hand with the News Letter, and what else I have mentioned, the Subscription was, *Recommend me to Father Lechees*, and it was the same Hand whereof I now speak.

L. C. J. What was the substance of the Letter?

Mr. Oates. Nothing but Complement, and Recommendation, and that all means might be used for the trappanning the Duke of *York* (as near as I can remember that was the word.)

Just. Wild. You did say positively that *Mr. Coleman* did consent and agree to what was consulted by the Jesuits, which was to kill the King, and *Pickering* and *Groves* were the two Persons designed to do it. Did you hear him consent to it?

Mr. Oates. I heard him say at *Wild-House*, he thought it was well contrived.

Recor. Do the Gentlemen of the Jury hear what he saith?

L. C. J. Gentlemen of the Jury, do you hear what he saith?

Jury. Yes.

Att. Gen. What do you know of any Rebellion to have been raised in *Ireland*? and what was to be done with the Duke of *Ormond*?

Mr. Oates. In the Month of *August* there was a Consult with the Jesuits, and with the Benedictine Monks at the *Savoy*. In this Month of *August* there was a Letter writ from Arch-Bishop *Talbot*, the Titular Arch-Bishop of *Dublin*; wherein he gave an account of a Legate from the Pope, an *Italian* Bishop, (the Bishop of *Cassay* I think) who asserted the Pope's Right to the Kingdom of *Ireland*. In this Letter (to mention in special) there were Four Jesuits had contrived to dispatch the Duke of *Ormond* (these were his words) To find the most expedient way for his Death, and *Fogarty* was to be sent to do it by Poyson, if these Four good Fathers did not hit of their Design. My Lord, *Fogarty* was present. And when the Consult was almost at a period, *Mr. Coleman* came to the *Savoy* to the Consult, and was mighty forward to have Father *Fogarty* sent to *Ireland* to dispatch the Duke by Poyson. This Letter did specify they were there ready to rise in Rebellion against the King for the Pope.

Att. Gen. Do you know any thing of Arms?

Mr. Oates. There were 40000 Black Bills, I am not so skilful in Arms to know what they meant (Military Men know what they are) that were provided to be sent into *Ireland*; but they were ready for the use of the Catholick Party.

L. C. J. Who were they provided by?

Mr. Oates. I do not know.

L. C. J. How do you know they were provided?

Mr. Oates. That Letter doth not mention who they were provided by, but another Letter mentioned they were provided by those that were Commission Officers for the aid and help of the Pope; the Popish Commissioners they were provided by, and they had them ready in *Ireland*.

L. C. J. Who wrote this Letter?

Mr. Oates. It came from *Talbot*, I might forget the day of the Month because my Information is so large, but it was the former part of the Year, I think either *January* or *February*, (77) (78) last *January* or *February*.

L. C. J. Was this Consult but in *August* last?

Mr. Oates. I am forced to run back from that Consult to this; *Mr. Coleman* was privy, and was the main Agent, and did in the Month of *August* last past say to *Fenwick*, he had found a way to transmit the 200000*l.* for the carrying on of this Rebellion in *Ireland*.

L. C. J. Did you hear him say so?

Mr. Oates. I did, a Week before.

L. C. J. You say he was very forward to send *Fogarty* into *Ireland* to kill the Duke of *Ormond*.

Mr. Oates. Yes that I say; and that he had found a way to transmit 200000*l.* to carry on the Rebellion in *Ireland*.

Court. Who was by besides *Fenwick*?

Mr. Oates. My self and no Body else.

Court. Where was it said?

Mr. Oates. In *Fenwick's* Chamber in *Drury-lane*.

Att. Gen. Do you know any thing of transmitting the Money to *Windsor*, or persuading any to be sent thither, and the time when?

Mr. Oates. In the Month of *August* there were four Ruffians procured by Dr. *Fogarty*. These Four were not nominated in the Consult with the Benedictine Convent, but (my Lord) these four Ruffians without Names were accepted of by them.

Court. Who proposed them?

Mr. Oates. *Fogarty*. These four *Irish-Men* were sent that Night to *Windsor*. How they went I know not, but the next Day there was a provision of 80*l.* ordered to them by the Rector of *London*, which is a Jesuit, one *Will. Harcourt* in the Name of the Provincial, because he acted in his Name and Authority, the Provincial being then beyond the Seas, visiting his Colleges in *Flanders*.

L. C. J. Did he order the 80*l.*

Mr. Oates. *Mr. Coleman* came to this *Harcourt's* House, then lying in *Duke-Street*, and *Harcourt* was not within; but he was directed to come to *Wild-House*, and at *Wild-House* he found *Harcourt*.

L. C. J. How do you know that?

Mr. Oates. He said he had been at his House, and was not within; finding him at *Wild-House*, he asked what care was taken for those four Gentlemen that went last Night to *Windsor*? He said there was 80*l.* ordered.

L. C. J. Who said so?

Mr. Oates. *Harcourt*. And there was the Messenger that was to carry it. I think the most part of this 80*l.* was in Guineas: *Mr. Coleman* gave the Messenger a Guinea to be nimble, and to expedite his Journey.

L. C. J. How know you they were Guineas?

Mr. Oates. I saw the Money upon the Table before *Harcourt*, not in his Hand.

L. C. J. Were the four *Irish-Men* there?

Mr. Oates. No, they were gone before I came.

L. C. J. Who was to carry it after them, what was his Name?

Mr. Oates. I never saw him before or since. The Money was upon the Table: When *Mr. Coleman* came in, he gave the Messenger a Guinea to expedite the Business.

Recorder. You say *Mr. Coleman* inquired what Care was taken for those Ruffians that were to Assassinate the King; pray, *Mr. Oates*, tell my Lord, and the Jury, what you can say concerning *Mr. Coleman's* Discourse with one *Asbby*.

Mr. Oates. In the Month of *July*, one *Asbby*, who was sometime Rector of *St. Omers*, being ill

ill of the Gout was ordered to go to the *Bath*; this *Asbby* being in *London*, Mr. *Coleman* came to attend him; this *Asbby* brought with him Treasonable Instructions, in order to dispatch the King by Poison, provided *Pickering* and *Groves* did not do the Work: Ten thousand Pound should be proposed to Sir *George Wakeman* to Poison the King, in case Pistol and Stab did not take effect, and Opportunity was to be taken at the King's taking Physick. I could give other Evidence, but will not, because of other things which are not fit to be known yet.

L. C. J. Who wrote this Letter?

Mr. *Oates*. It was under the Hand of *White* the Provincial beyond the Seas, whom *Asbby* left; it was in the Name of Memorials to empower *Asbby* and the rest of the Consulters at *London* to propound ten thousand Pound to Sir *George Wakeman* to take the Opportunity to Poison the King. These Instructions were seen and read by Mr. *Coleman*, by him copied out, and transmitted to several Conspirators of the King's Death, in this Kingdom of *England*, that were privy to this Plot.

Recorder. Know you of any Commission? We have hitherto spoken altogether of the Work of others; now we come to his own Work a little nearer.

L. C. J. Who saw Mr. *Coleman* read these Instructions? What said he?

Mr. *Oates*. He said he thought it was too little, I heard him say so.

L. C. J. Did you see him take a Copy of these Instructions?

Mr. *Oates*. Yes, and he said he did believe Sir *George Wakeman* would scarce take it, and thought it necessary the other Five thousand Pound should be added to it, that they might be sure to have it done.

L. C. J. Where was it he said this?

Mr. *Oates*. It was in the Provincial's Chamber, which *Asbby* had taken for his Convenience at *London*, until he went down to the *Bath*; it was at *Wild-House*, at Mr. *Sanderson's* House.

L. C. J. *Asbby* was imployed by his Instructions to acquaint the Consult of the Jesuits, that there should be Ten thousand Pound advanced, if Dr. *Wakeman* would Poison the King, now *Asbby* comes and acquaints him with it. Why should *Coleman* take Copies?

Mr. *Oates*. Because he was to send Copies to several Conspirators in the Kingdom of *England*.

L. C. J. To what purpose should Mr. *Coleman* take a Copy of these Instructions?

Mr. *Oates*. The Reason is plain, they were then a gathering a Contribution about the Kingdom, and these Instructions were sent that they might be encouraged, because they saw there was Incouragement from beyond Seas to assist them. And another Reason was, because now they were assured by this, their Business would quickly be dispatched, and by this means some thousands of Pounds were gathered in the Kingdom of *England*.

L. C. J. To whom was Mr. *Coleman* to send them?

Mr. *Oates*. I know not any of the Persons, but Mr. *Coleman* did say he had sent his Suffrages (which was a Canting Word for Instructions) to the Principal Gentry of the Catholics of the Kingdom of *England*.

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L. C. J. How know you this, that Mr. *Coleman* did take a Copy of these Instructions for that purpose as you say?

Mr. *Oates*. Because he said so.

L. C. J. Did any Body ask him why he took them?

Mr. *Oates*. Saith *Asbby*, you had best make haste and communicate these things. Mr. *Coleman* answered, I will make haste with my Copies, that I may dispatch them away this Night.

Recorder. Was he not to be one of the Principal Secretaries of State?

Mr. *Oates*. In the Month of *May* last New Stile, *April* Old Stile, I think within a Day after our Consult, I was at Mr. *Langborn's* Chamber, he had several Commissions, which he called Patents: Among his Commissions I saw one from the General of the Society of *Jesus*, *Joannes Paulus D'Oliva*, by vertue of a Brief from the Pope, by whom he was enabled.

L. C. J. Did you know his Hand?

Mr. *Oates*. I believe I have seen it Forty times, I have seen Forty things under his Hand, and this agreed with them, but I never did see him write in my Life; we all took it to be his Hand, and we all knew the Hand and Seal.

L. C. J. What Inscription was upon the Seal?

Mr. *Oates*. I. H. S. with a Cross, in *English* it had the Characters of I. H. S. This Commission to Mr. *Coleman* in the Month of *July*, I saw in *Fenwick's* Presence, and at his Chamber in *Drury-Lane*, where then Mr. *Coleman* did acknowledge the Receipt of this Patent, opened it, and said, It was a very good Exchange.

L. C. J. What was the Commission for?

Mr. *Oates*. It was to be Secretary of State. I saw the Commission, and heard him own the Receipt of it.

Justice *Wild*. What other Commissions were there at Mr. *Langborn's* Chamber?

Mr. *Oates*. A great many, I cannot remember, there was a Commission for my Lord *Arundel* of *Warder*, the Lord *Powis*, and several other Persons. But this belongs not to the Prisoner at the Bar: I mention his Commission.

L. C. J. Were you acquainted with Mr. *Langborn*?

Mr. *Oates*. Yes, I'll tell your Lordship how I was acquainted. I was in *Spain*, he had there two Sons; to shew them special Favour and Kindness (being meer Strangers at the College) I did use to transmit some Letters for them to the Kingdom of *England* in my Pacquet. When I came out of *Spain*, I did receive Recommendations from them to their Father, and in great Civility he received me. This was in *November* that I came to his House. He lived in *Shear-Lane*, or thereabouts. I understood that his Wife was a zealous Protestant; therefore he desired me not to come any more to his House, but for the future to come to his Chamber in the *Temple*.

L. C. J. Had you ever seen Mr. *Langborn* in *London* before?

Mr. *Oates*. I never saw him 'till Nov. (77.) to my Knowledge. I was several times in his Company at his Chamber, and he brought me there to shew me some Kindness upon the Account of his Sons. It was at the *Temple*, for his Wife being a Protestant, was not willing any Jesuits should come to the House. I was to carry him a summary of all the Results and Particulars of the

Q q q q

Consult

Consult at the *White-Horse* and *Wild-House*. The Provincial ordered me to do it, he knowing me, being in that Affair often employed.

L. C. J. Was it the second time you saw him, that you saw the Commissions?

Mr. Oates. I saw him several times in the Month of *November*.

L. C. J. When did you see the Commissions?

Mr. Oates. In the Month of *April*, Old Stile; *May*, New Stile.

L. C. J. How came he to shew you the Commissions?

Mr. Oates. I hearing of their being come, had a Curiosity to see them, and he knew me to be privy to the Concerns.

L. C. J. How did you know he had the Commissions?

Mr. Oates. By Letters.

L. C. J. From whom?

Mr. Oates. From those of the Society at *Rome*, wherein one *Harcourt*, one of the Fathers, was certified, that the Commissions were come to *Langborn*, and were in his Hand I saw the Letters at *St. Omers*, before they came to *Harcourt*, we read the Letters there before they came to *England*. I had Power to open them.

L. C. J. Did you open the Letters?

Mr. Oates. Yes.

L. C. J. When saw you the Letters at *St. Omers*?

Mr. Oates. I saw the Letters at *St. Omers* in the Month of *January*; then they came from *Rome*, and after I received Summons to be at this Consult in the Month of *April*; and accordingly we came over.

L. C. J. What time did you come over?

Mr. Oates. In the Month of *April*.

L. C. J. What time went you to *Langborn's* Chamber? I cannot reconcile the Months together.

Just. Dolben. Did you not say you came to *Langborn* in *November*?

Mr. Oates. Yes, before I went to *St. Omers*.

Just. Wild. How many came over with you?

Mr. Oates. I cannot tell how many came over together; there were Nine of us, all Jesuits.

L. C. J. Did not you say you went to *Langborn* in *November*?

Mr. Oates. That was before I went to *St. Omers*.

Att. Gen. Tell how many Priests or Jesuits were lately in *England*, that you know of, at one time?

Mr. Oates. There was, and have been to my Knowledge in the Kingdom of *England*, Secular Priests Eightscore, and Jesuits Fourscore, and by Name in the Catalogue, I think Three hundred and odd.

L. C. J. How long had you been in *England* before you were at Mr. *Langborn's* Chamber?

Mr. Oates. Not long; because I had Letters in my Pacquet from his Sons, as soon as I had rested a little, I went to him.

L. C. J. What said Mr. *Langborn* to you about the Commissions in his Chamber?

Mr. Oates. Not a Word; but seem'd glad.

L. C. J. Did you see them open upon his Table? or did you ask to see them?

Mr. Oates. They did not lye open upon the Table, but the Commissions were before him; I asked to see them. Mr. *Langborn* (said I) I hear

you have received the Commissions from *Rome*; he said, he had. Shall I have the Honour to see some of them? He said I might; he thought he might trust me; and so he might, because that very Day I gave him an Account of the Consult.

L. C. J. When was it you gave him an Account of the Consult?

Mr. Oates. In the Morning.

L. C. J. You say you were twice there that Day.

Mr. Oates. I was there the whole Forenoon.

L. C. J. That Day you saw the Commissions?

Mr. Oates. I had been there several times the same Day, and meeting him at last, he asked me how often I was there before, I said twice or thrice; but that Day was the last time I ever saw him; I have not seen him since, to my Knowledge.

L. C. J. Was that the first time that you saw him after you came from *Spain*?

Mr. Oates. I saw him thrice in *November*, then I went to *St. Omers*, the first time I saw him after I came from thence, I saw the Commissions.

Att. Gen. What were the Names of those Men that came over from *St. Omers* besides yourself?

Mr. Oates. As near as I can remember, the Rector of *Liege* was one; Father *Warren*; Sir *Thomas Preston*; the Rector of *Watton*; one *Francis Williams*; Sir *John Warner* Baronet; one Father *Charges*; one *Pool*, a Monk; I think I made the Ninth.

Att. Gen. If the Prisoner at the Bar be minded, he may ask him any Question.

Pris. I am mighty glad to see that Gentleman Sir *Thomas Dolman* in the Court, for I think he was upon my Examination before the Council, and this Man that gives now in Evidence against me, there told the King, he never saw me before; and he is extremely well acquainted with me now, and hath a World of Intimacy. Mr. Oates at that time gave such an Account of my Concern in this Matter, that I had Orders to go to *Newgate*, I never saw Mr. Oates since I was born, but at that time.

L. C. J. You shall have as fair a Search and Examination in this Matter for your Life as can be, therefore Mr. Oates answer to what Mr. Coleman saith.

Mr. Oates. My Lord, when Mr. Coleman was upon his Examination before the Council-board, he saith, I said there that I never saw him before in my Life: I then said I would not swear that I had seen him before in my Life, because my Sight was bad by Candle-light, and Candle-light alters the Sight much, but when I heard him speak I could have sworn it was he, but it was not then my Business. I cannot see a great way by Candle-light.

L. C. J. The Stress of the Objection lyeth not upon seeing so much, but how come you that you laid no more to Mr. Coleman's Charge at that time?

Mr. Oates. I did design to lay no more to his Charge then, than was Matter for Information. For Prisoners may supplant Evidence when they know it, and bring Persons to such Circumstances, as Time and Place. My Lord, I was not bound to give in more than a general Information against Mr. Coleman; Mr. Coleman did deny he had Correspondence with Father *Le Cbaife*

Chaise at any time, I did then say he had given him an Account of several Transactions. And (my Lord) then was I so weak, being up two Nights, and having been taking Prisoners, upon my Salvation, I could scarce stand upon my Legs.

L. C. J. What was the Information you gave at that time to the Council against Mr. Coleman?

Mr. Oates. The Information I gave at that time (as near as I can remember, but I would not trust to my Memory) was for writing of News-Letters, in which I did then excuse the Treasonable Reflections, and called them Base Reflections at the Council-board; the King was sensible, and so was the Council. I was so wearied and tyred (being all that Afternoon before the Council, and Sunday Night, and sitting up Night after Night) that the King was willing to discharge me. But if I had been urged I should have made a larger Information.

L. C. J. The thing you accused him of was his own Letter.

Pris. He doth not believe it was my Letter.

L. C. J. You here charge Mr. Coleman to be the Man that gave a Guinea to expedite the Business at *Windsor*, &c. at the time when you were Examined at the Council-Table, you gave a particular Account of attempting to take away the King's Life at *Windsor*, and raising Twenty thousand Pounds, and all those great Transactions; why did you not charge Mr. Coleman to be the Man that gave the Guinea to the Messenger to expedite the Business, when the 80 Pounds was sent? That he found out a way of Transmitting 200000 Pounds, to carry on the Design? He consulted the killing the King, and approved of it very well. And of the Instructions for 10000 Pounds, and said it was too little for to Poyson the King. When you were to give an Account to the Council of the particular Contrivance of the Murder of the King at *Windsor*, with a Reward, you did mention one Reward, of 10000 Pounds to Dr. Wakeman, and would you omit the Guinea to expedite the Messenger, and that he said that 10000 Pounds was too little; would you omit all this?

Mr. Oates. I being so tyred and weak that I was not able to stand upon my Legs, and I remember the Council apprehended me to be so weak that one of the Lords of the Council said, that if there were any Occasion further to examine Mr. Coleman, that Mr. Oates should be ready again, and bid me retire.

L. C. J. You was by when the Council were ready to let Mr. Coleman go almost at large?

Mr. Oates. No; I never apprehended that, for if I did, I should have given a further Account.

L. C. J. What was done to Mr. Coleman at that time? Was he sent away Prisoner?

Mr. Oates. Yes, at that time to the Messenger's House, and within two Days after he was sent to *Newgate*, and his Papers were seized.

L. C. J. Why did you not name Coleman at that time?

Mr. Oates. Because I had spent a great deal of time in accusing other Jesuits.

Just. Wild. What time was there betwixt the first time you were at the Council, before you told of this Matter concerning the King?

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Mr. Oates. When I was first at the Board (which was on *Saturday Night*) I made Information, which began between Six and Seven, and lasted almost to Ten. I did then give a general Account of the Affairs to the Council without the King. Then I went and took Prisoners, and before *Sunday Night*, I said, I thought if Mr. Coleman's Papers were searched into, they would find Matter enough against him in those Papers to hang him: I spake those Words, or Words to the like Purpose. After that Mr. Coleman's Papers were searched, Mr. Coleman was not to be found; but he surrendered himself the next Day. So that on *Sunday* I was commanded to give his Majesty a general Information, as I had given to the Council on *Saturday*; and the next Day again, I took Prisoners that Night five, and next Night four.

Just. Wild. How long was it betwixt the time that you were examined, and spoke only as to the Letters, to that time you told to the King and Council, or both of them, concerning this Matter you swear now?

Mr. Oates. My Lord, I never told it to the King and Council, but I told it to the Houses of Parliament.

L. C. J. How long was it between the one and the other?

Mr. Oates. I cannot tell exactly the time; it was when the Parliament first sate.

L. C. J. How came you (Mr. Coleman being so desperate a Man as he was, endeavouring the killing of the King) to omit your Information of it to the Council and to the King at both times?

Mr. Oates. I spoke little of the Persons till the Persons came Face to Face.

L. C. J. Why did you not accuse all those Jesuits by Name?

Mr. Oates. We took a Catalogue of their Names, but those I did accuse positively and expressly we took up.

L. C. J. Did you not accuse Sir George Wakeman by Name, and that he accepted his Reward?

Mr. Oates. Yes, then I did accuse him by Name.

L. C. J. Why did you not accuse Mr. Coleman by Name?

Mr. Oates. For want of Memory; being disturbed and wearied in sitting up two Nights, I could not give that good Account of Mr. Coleman, which I did afterwards, when I consulted my Papers; and when I saw Mr. Coleman was secured, I had no need to give a farther Account.

L. C. J. How long was it between the first charging Mr. Coleman, and your acquainting the Parliament with it?

Mr. Oates. From *Monday* the 30th of *September*, until the Parliament sate.

L. C. J. Mr. Coleman, will you ask him any thing?

Pris. Pray ask Mr. Oates, whether he was not as near to me as this Gentleman is, because he speaks of his Eyes being bad?

Mr. Oates. I had the Disadvantage of a Candle upon my Eyes; Mr. Coleman stood more in the Dark.

Pris. He names several times that he met with me in this Place and that Place, a third and fourth Place about Business.

Mr. Oates. He was altered much by his Perriwig in several Meetings, and had several Perriwigs,

riwigs, and a Perriwig doth disguise a Man very much; but when I heard him speak, then I knew him to be Mr. Coleman.

L. C. J. Did you hear him speak? How were the Questions asked? Were they thus? Was that the Person? Or, how often had you seen Mr. Coleman?

Mr. Oates. When the Question was asked by my Lord Chancellour, Mr. Coleman, when were you last in France? He said at such a time. Did you see Father *le Chaise*? He said he gave him an accidental Visit. My Lord Chancellor asked him whether or no he had a Pass? He said, No. Then he told him, that was a Fault for going out of the Kingdom without a Pass. Have you a Kinsman whose Name is *Playford*, at St. Omers? He said he had one Ten Years old, (who is in truth Sixteen) That Question I desired might be asked. Then the King bade me go on.

L. C. J. Did the King, or Council, or Lord Chancellor ask you whether you knew Mr. Coleman, or no?

Mr. Oates. They did not ask me.

L. C. J. Mr. Oates, answer the Question in short, and without confounding it with length. Were you demanded if you knew Mr. Coleman?

Mr. Oates. Not to my Knowledge.

L. C. J. Did you ever see him? or how often?

Pris. He said, he did not know me.

L. C. J. You seemed, when I asked you before, to admit, as if you had been asked this Question, how often you had seen him, and gave me no Answer, because you were doubtful whether it was the Man, by reason of the Inconveniency of the Light, and your bad Sight.

Mr. Oates. I must leave it to the King what Answer I made Mr. Coleman; he wonders I should give an Account of so many Intimacies, when I said I did not know him at the Council-Table.

Pris. It is very strange Mr. Oates should swear now, that he was so well acquainted with me, and had been so often in my Company, when upon his Accusation at the Council-Table, he said nothing of me more than the sending of one Letter, which he thought was my Hand.

Mr. Oates. I did not say that.

Pris. And he did seem to say there, he never saw me before in his Life.

L. C. J. Was he asked whether he was acquainted with you? (for those Words are to the same purpose.)

Pris. I cannot answer directly, I do not say he was asked if he was acquainted with me, but I say this, that he did declare he did not know me.

L. C. J. Can you prove that?

Pris. I appeal to Sir Thomas Dolman, who is now in Court, and was then present at the Council-Table.

L. C. J. Sir Thomas, you are not upon your Oath, but are to speak on the Behalf of the Prisoner: What did he say?

Sir Tho. Dolman. That he did not well know him.

L. C. J. Did he add, that he did not well know him by the Candle-light? But Mr. Oates, when you heard his Voice, you said you knew him; why did you not come then, and say you did well know him?

Mr. Oates. Because I was not asked.

L. C. J. But, Sir Thomas, did he say he did not well know him after Mr. Coleman spake? Was Mr. Coleman examined before Mr. Oates spake?

Sir Tho. Dolman. Yes.

L. C. J. Mr. Oates, you say you were with him at the *Savoy* and *Wild-House*, pray, Sir Thomas, did he say he did not know him, or had seen Mr. Coleman there?

Sir Tho. Dolman. He did not know him as he stood there.

L. C. J. Knowing, or not knowing is not the present Question; but did he make an Answer to the knowing or not knowing him?

Just. Dolbin. Did he say he did not well know Mr. Coleman, or that he did not well know that Man?

Sir Thomas Dolman. He said he had no Acquaintance with that Man (to the best of my Remembrance.)

L. C. J. Sir Robert Southwell, you were present at Mr. Oates his Examination before the Council; in what manner did he accuse Mr. Coleman then?

Sir Robert Southwell. The Question is so particular, I cannot give the Court Satisfaction; but other material things then said are now omitted by Mr. Oates; for he did declare against Sir George Wakeman, that Five thousand Pounds was added, in all Fifteen thousand Pounds, and that Mr. Coleman paid Five of the Fifteen to Sir George in Hand.

L. C. J. This answers much of the Objection upon him. The Court has asked Mr. Oates how he should come now to charge you with all these Matters of Poysoning and Killing the King, and yet he mentioned you so slightly at the Council-Table; but it is said by Sir Robert Southwell he did charge you with Five thousand Pounds (for poisoning the King) to be added to the Ten thousand Pounds, and he charged you expressly with it at the Council-Table.

Pris. The Charge was so slight against me by Mr. Oates, that the Council were not of his Opinion: For the first Order was to go to *Newgate*, and Sir Robert Southwell came with Directions to the Messenger not to execute the Order. I humbly ask whether it was a reasonable thing to conceive that the Council should extenuate the Punishment, if Mr. Oates came with such an amazing Account to the Council.

Sir Rob. South. Mr. Oates gave so large and general an Information to the Council, that it could not easily be fixed. Mr. Coleman came voluntarily in upon Monday Morning. The Warrant was sent out on Sunday Night for Mr. Coleman and his Papers: His Papers were found and seized, but Mr. Coleman was not found at that time, nor all Night, but came on Monday Morning voluntarily, and offered himself at Sir Joseph Williamson's House, hearing there was a Warrant against him: By reason of so many Prisoners that were then under Examination, he was not heard till the Afternoon, and then he did with great Indignation and Contempt hear these vile things, as thinking himself innocent.

Pris. If I thought my self Guilty, I should have charged my self: I hope his Majesty upon what hath been said, will be so far satisfied as to discharge me.

Sir

Sir Rob. South. Mr. Coleman then made so good a discourse for himself, that though the Lords had filled up a blank Warrant to send him to *Newgate*, that was respited, and he was only committed to a Messenger. I did say to the Messenger, be very civil to Mr. Coleman, for things are under Examination, but you must keep him safely. Saith the Messenger, pray let me have a special Warrant, that doth dispence with the Warrant I had to carry him to *Newgate*, and such a Warrant he had. The King went away on *Tuesday* Morning to *New-market*, and appointed a particular Committee to examine the Papers brought of Mr. Coleman and others.

His Papers were found in a Deal Box, and several of these Papers and Declarations sounded so strange to the Lords, that they were amazed; and presently they signed a Warrant for Mr. Coleman's going to *Newgate*.

L. C. J. Did Mr. Oates give a round Charge against Mr. Coleman?

Sir Rob. South. He had a great deal to do, he was to repeat in the Afternoon on *Sunday* when the King was present, all he had said to the Lords on *Saturday*.

He did say of Mr. Coleman, that he had corresponded very wickedly and basely with the *French King's Confessor*, and did believe if Mr. Coleman's Papers were searched, there would be found in them that which would cost him his Neck. And did declare that the Fifteen thousand Pounds was accepted for the Murther of the King, and that Five thousand Pounds was actually paid by Mr. Coleman to Sir George Wakeman. But Mr. Oates at the same time did also declare that he did not see the Money paid, he did not see this particular action of Sir George Wakeman, because at that time he had the Stone and could not be present.

Mr. Oates. I was not present at that Consult, where the Fifteen thousand Pounds was accepted, but I had an account of it from those that were present.

L. C. J. It appears plainly by this Testimony, that he did charge you Mr. Coleman home, that Fifteen thousand Pounds was to be paid for poysoning the King; and that it was generally said among them (though he did not see it paid) that it came by your hands, viz. Five thousand Pounds of it, which answers your objection as if he had not charged you, when you see he did charge you home then for being one of the Conspirators, in having a Hand in paying of Money for poysoning the King: He charges you now no otherwise than in that manner: He doth not charge you now as if there were new things started, but with the very Conspiracy of having a hand in paying the Money for murdering the King.

What Consultation was that you had at the *Savoy*, in the Month of *August*?

Mr. Oates. It was about the business of the four *Irish Ruffians* proposed to the Consult.

The End of Mr. Oates's Examination.

Mr. Bedlow.

Sir Francis Winnington, Soll. Gen. We will call him to give an account what he knows of the

Prisoner's being privy to the Conspiracy of murdering the King, (particularly to that.) Mr. Bedlow, pray acquaint my Lord and the Jury what you know, I desire to know particularly as it concerns Mr. Coleman, and nothing but Mr. Coleman.

L. C. J. Mr. Attorney, pray keep to that Question close.

Att. Gen. I have two short Questions to ask him: The first is what he hath seen or heard touching any Commission to Mr. Coleman, what say you?

Mr. Bedlow. In particular I know not of any Commission directed to Mr. Coleman, I do not know any thing of it but what Sir Henry Tichbourn told me, that he had a Commission, and he brought a Commission for Mr. Coleman and the rest of the Lords, from the principal Jesuits at *Rome*, by Order of the Pope.

Att. Gen. A Commission for what?

Mr. Bedlow. To be Principal Secretary of State: The Title of it I do not know because I did not see it, but to be Principal Secretary of State, that was the Effect.

Att. Gen. I desire to know what Discourse you had with Mr. Coleman about that Design.

Mr. Bedlow. If your Lordship please, I shall be short in the Narrative.

L. C. J. Make use of your Notes to help your Memory, but let not your Testimony be merely to read them.

Mr. Bedlow. I carried over to Monsieur *Le Chaise* (the *French King's Confessor*) a large Pacquet of Letters, *April* (7th) from Mr. Coleman, which Letters I saw Mr. Coleman deliver to Father *Harcourt*, at his House in *Duke-Street*.

Council. And *Harcourt* gave them to you?

Mr. Bedlow. Yes; which Letters were directed to be delivered to Monsieur *le Chaise*, and I did carry them to *le Chaise*, and brought him an Answer from *le Chaise*, and other *English Monks* at *Paris*: I did not understand what was in it, because it was a Language I do not well understand; it was about carrying on the Plot; at a Consultation there were present two *French Abbots* and several *English Monks* at *Paris*; what I heard them say, was about carrying on the Plot to subvert the Government of *England*, to destroy the King and the Lords of the Council. The King was principally to be destroyed, and the Government subverted as well as the Protestant Religion.

Court. When was this? when you were to receive the Answer?

Mr. Bedlow. It was upon the Consultation: There was a Pacquet of Letters from Mr. Coleman, they did not know I understood *French*, or if they did, they had tryed me so long I believe they would have trusted me.

L. C. J. The Letter that *le Chaise* wrote, to whom was it directed?

Mr. Bedlow. It was directed to Mr. Coleman, the Pacquet was directed to *Harcourt*, and within that *le Chaise* wrote an Answer and directed it to Mr. Coleman, particularly to Mr. Coleman.

L. C. J. How do you know?

Mr. Bedlow. The Superscription was this [in *French*, *A Monsieur Coleman*] to Mr. Coleman; with other Letters directed to Father *Harcourt*.

L. C. J. He saith plainly the Letter was yours. You gave *Harcourt* a Pacquet of Letters to

to be delivered to *le Chaise*, *Harcourt* delivered them to him, and he did carry them to *le Chaise*, and heard them talk about this Plot: That *le Chaise* wrote a Letter to you (particularly by Name) inclosed in a Letter to *Harcourt*, that Answer he brought back.

Recorder. Do you know any thing concerning any Money *Mr. Coleman* said he had received? the Sums, and for what?

Mr. Bedlow. It was to carry on the Design to subvert the Government of *England*, to free *England* from Damnation and Ignorance, and free all Catholicks from hard Tyranny and Oppression of Hereticks.

Att. Gen. What words did you hear *Mr. Coleman* express, what he would do for the Catholick Cause?

Mr. Bedlow. May 24, or 25, (77) I was at *Mr. Coleman's* with *Mr. Harcourt*, and received another Pacquet from *Mr. Harcourt*, and he had it from *Mr. Coleman*.

L. C. J. You say *Mr. Coleman* did give this Pacquet to *Harcourt*?

Mr. Bedlow. Yes, and *Harcourt* delivered it to me to carry it to *Paris* to the *English* Monks. I was to go by *Doway* to see if they were not gone to *Paris* before me.

L. C. J. And what did they say when you delivered the Letters to the *English* Monks?

Mr. Bedlow. They told me how much Reward I deserved from the Pope and the Church, both here and in the World to come. I overtook three, and that Night I went to *Paris* with them; and upon the Consultation (1677) I believe they sent the Bishop of *Tornes* the substance of those Letters, and not having a final Answer what assistance the Catholick Party in *England* might expect from them, they were resolved to neglect their Design no longer than that Summer, having all things ready to begin in *England*.

Recorder. What did you hear *Mr. Coleman* say?

Mr. Bedlow. That he would adventure any thing to bring in the Popish Religion: After the Consultation, I delivered the Letters to *le Faire*, and he brought them to *Harcourt*, he delivered the Pacquet of Letters to *Harcourt*, who was not well, but yet went and delivered them to *Mr. Coleman*, and I went as far as *Mr. Coleman's* House, but did not go in, but stayed over the way; but *Harcourt* went in, and after he had spoke with *Mr. Coleman*, he gave me a beck to come to him; and I heard *Mr. Coleman* say, if he had a hundred Lives, and a Sea of Blood to carry on the Cause, he would spend it all to further the Cause of the Church of *Rome*, and to establish the Church of *Rome* in *England*: And if there was an hundred Heretical Kings to be deposed, he would see them all destroyed.

L. C. J. Where was this?

Mr. Bedlow. At his own House.

L. C. J. Where?

Mr. Bedlow. Behind *Westminster* Abby.

L. C. J. In what Room?

Mr. Bedlow. At the Foot of the Stair-case.

L. C. J. Where were you then?

Mr. Bedlow. There, I was called in by *Harcourt*, and was as near to him, as to my Lord *Duras*. [My Lord being hard by *Mr. Bedlow*, in Court.]

Pris. Did I ever see you in my Life?

Mr. Bedlow. You may ask that Question; but in the Stone-Gallery in *Somerset-House*, when you came from a Consult, where were great Persons, which I am not to Name here; that would make the bottom of your Plot tremble: You saw me then.

Att. Gen. We did before acquaint you with something of the Substance of the Letters; we shall now acquaint you with something of the manner of finding them. Your Lordship hath heard *Mr. Oates* hath been examined before the Council, and there it was said, *Mr. Coleman's* Papers would make such a discovery (if they were looked into) as would be enough to hang him. I remember he said the Lords of the Council were pleased to order the Papers to be seized; the execution of their Warrant they committed to one *Bradly*, who was a Messenger that attended the King and Council; and I desire he may be called: He did find and seize as many Papers as *Mr. Coleman* was pleased to leave, and they are those Papers which we now bring before you. The Papers seized he had put in a Deal Box, and four or five several Bags, and brings them to the Council; the Clerks of the Council are here attending the Court: They will tell you these Papers now produced were Papers found in those Bags: *Mr. Bradly* will tell you the Papers seized in the Bags and Box were brought to them, and they will swear they were the Papers and Bags that were brought.

Record. *Mr. Bradly*, give my Lord and the Jury an Account whether you went to *Mr. Coleman*, whether you seized his Papers, and what Papers you saw, and how you disposed of them after they were seized.

Mr. Bradly. The 29th of *September* being Sunday Evening at Six of the Clock, I received a Warrant from the Council-Board to apprehend *Mr. Coleman*, and to seize his Papers, and to bring them to the Council-Board: He being not at home, I spoke with his Wife, and told her I came to search her House, I had a Warrant so to do. She told me I was welcome; I desired her to send for her Husband: I found in several parts of the House a great many Papers; I put them up in several Bags: I found some in a private corner in a Deal Box.

L. C. J. What kind of Corner?

Mr. Bradly. In *Mr. Coleman's* Chamber, not in his own Study, but in another place behind the Chimney; the Box was tack'd together with a Nail: I lifted it up, and saw they were Letters, I put it down again as it was, and gave it into the custody of one that was with me, to look to it: Then I came to his own Study, where his 'Scrutore was, and put up all I could find in several Bags, and Sealed them, and brought them to the Council-Chamber.

Att. Gen. Did you put up any other Papers among them than what you found at *Mr. Coleman's* House?

Mr. Bradly. I did not, (upon my Oath) I had them all at *Mr. Coleman's* House.

Att. Gen. Did you bring them all to the Clerks of the Council?

Mr. Bradly. Yes. Before I came out I tyed them all up, and sealed them with my own Seal, and was constantly with them.

Att. Gen. Now we will give your Lordship an account how these things were received, that were there found. Sir *Robert Southwell*, look upon

on the large Letter, and tell my Lord and the Jury whether that were among the Papers brought by this Messenger.

Sir Robert Southwell. My Lord, I did not see this Letter in several days after the Papers brought me from *Bradly*; when he came in with Three great Bags, and a Box of Letters on Sunday Night; said I, which are Mr. Coleman's principal Papers? Said he, those that are in the large speckled Cloth Bag; for these we took first in the 'Scrutore: These I took, and medled not with the other. I presume other Clerks of the Council can give a particular Account where this Paper was found.

Att. Gen. Sir Thomas Dolman, look upon the Letter whether you can remember any thing of it.

Sir Thomas Dolman. I remember I found it in a Deal Box among Mr. Coleman's Papers, those that *Bradly* brought.

Court. That's plain enough.

Att. Gen. That we may not often prove what we shall often make use of, I would prove it fully once for all, that all these Papers were of his Hand-writing; this we can prove by two sorts of Evidences; his own Confession, and the Witness of Two Persons; one that was his Servant; and th'other a Sub-Secretary, that did write very many things for him. Mr. Boatman, look upon these Papers; Tell my Lord and the Jury whose Hand it is: Are you acquainted with Mr. Coleman's Hand? What relation had you to him?

Boatman. I was his Gentleman that waited on him in his Chamber Five Years: This is very like his Hand.

L. C. J. Do you believe it is his Hand?

Boatman. I believe it is.

L. C. J. Little proof will serve the turn, because they were taken in his possession.

Att. Gen. I desire to prove it fully; look upon all the Papers, turn all the Leaves, see if they be not all one Hand, and whether you believe all to be Mr. Coleman's Hand-writing or not?

Boatman. I believe it to be all his Hand.

L. C. J. Do you know when the last Packet of Letters came up, that were sent to Mr. Coleman, from beyond the Seas?

Boatman. Two or three days after he was taken Prisoner.

L. C. J. Do you know where they are bestowed? Did you receive Monsieur le Chaise's Letters for Mr. Coleman?

Boatman. Yes.

L. C. J. Did you ever write any for him to le Chaise?

Boatman. No.

Att. Gen. Inform the Court whether he kept any Book to make Entry of Letters he sent or received?

Boatman. Yes, there was a large Book my Master did enter his Letters in, and his News.

Att. Gen. What is become of that Book?

Boatman. I know not.

Att. Gen. When did you see that Book last, upon your Oath?

Boatman. On Saturday.

Att. Gen. How long before he was sent to Prison?

Boatman. Two Days, because the next Day was Sunday, when he did not make use of it: On Monday my Master was in Prison, and I did not mind the Book.

L. C. J. Were there any Entries of Letters in that Book within Two Years last past?

Boatman. I cannot be positive.

Att. Gen. Did he not usually write and receive Letters from beyond Sea? 'Till that time had he not Negotiation as usually?

Boatman. He had usually News every Post from beyond the Seas.

Pris. There's Letters from the *Hague*, *Brussels*, *France* and *Rome*; they are all with the Council, which were all the Letters I received.

Att. Gen. We have another Witness: *Cattaway*, are you acquainted with Mr. Coleman's Hand-writing? Do you believe it to be his Hand-writing?

Witness. I believe it is, they are his Hand-writing.

Att. Gen. It will appear, if there were no other Proof in this Cause, his own Papers are as good as an hundred Witnesses to condemn him; Therefore I desire to prove them fully by his own Confession.

Sir Phil. Lloyd a Witness. These are the Papers I received from Sir Thomas Dolman; I found them (as he saith) in a Deal Box: Among his Papers I found this Letter. Mr. Coleman hath owned this was his Hand-writing; it's all one Letter.

Att. Gen. 'Tis all the same Hand, and he acknowledged it to be his.

Mr. Recorder. I desire Mr. Astrey may read it so that the Jury may hear it.

Mr. Astrey Clerk of the Crown reads the Letter.

The 29th of September (1675.) It is subscribed thus; Your most humble and most obedient Servant, but no Name.

Mr. COLEMAN's Long Letter.

SINCE Father St. German has been so kind to me, as to recommend me to your Reverence so advantageously, as to encourage you to accept of my Correspondency; I will own to him, that he has done me a Favour without Consulting me, greater than I could have been capable of if he had advised with me; because I could not then have had the Confidence to have permitted him to ask it on my behalf. And I am so sensible of the Honour you are pleased to do me, that though I cannot deserve it; yet to shew at least the sense I have of it, I will deal as freely and openly with you this first time, as if I had had the honour of your Acquaintance all my Life; and shall make no Apology for so doing, but only tell you that I know your Character perfectly well, though I am not so happy as to know your Person; and that I have an Opportunity of putting this Letter into the hands of Father St. German's Nephew (for whose Integrity and Prudence he has undertaken) without any sort of hazard.

In order then, Sir, to the Plainness I profess, I will tell you what has formerly passed between your Reverence's Predecessor, Father Ferryer, and my self. About three Years ago, when the King my Master sent a Troop of Horse Guards into his most Christian Majesty's Service, under the Command of my Lord Duras, he sent with it an Officer called Sir William Throckmorton, with whom I had a particular Intimacy, and who had then very newly embrac'd the Catho-

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lick Religion: To him did I constantly write, and by him address my self to Father *Ferryer*. The first thing of great Importance I presumed to offer him (not to trouble you with lesser matters, or what passed here before, and immediately after the Fatal Revocation of the King's Declaration for Liberty of Conscience, to which we owe all our Miseries and Hazards,) was in *July, August, and September 1673.* when I constantly inculcated the great danger Catholick Religion, and his most Christian Majesty's Interest would be in at our next Sessions of Parliament, which was then to be in *October* following; at which I plainly foresaw that the King my Master would be forced to something in prejudice to his Alliance with *France*, which I saw so evidently and particularly that we should make Peace with *Holland*, that I urg'd all the Arguments I could, which to me were Demonstrations, to convince your Court of that mischief; and press'd all I could to persuade his most Christian Majesty to use his utmost endeavour to prevent that Session of our Parliament, and proposed Expedients how to do it: But I was answered so often and so positively, that his most Christian Majesty was so well assured by his Embassador here, our Embassador there, the Lord *Arlington*, and even the King himself; that he had no such apprehensions at all, but was fully satisfied of the contrary, and lookt upon what I offered as a very zealous Mistake, that I was forced to give over arguing, though not believing as I did; but confidently appealed to time and success to prove who took their measures rightest. When it happened what I foresaw came to pass, the good Father was a little surprized, to see all the great Men mistaken, and a little one in the right; and was pleased by Sir *William Throckmorton* to desire the continuance of my Correspondence, which I was mighty willing to comply with, knowing the Interest of our King, and in a more particular manner of my more immediate Master the Duke, and his most Christian Majesty, to be so inseparably united, that it was impossible to divide them, without destroying them all: Upon this I shewed that our Parliament in the circumstances it was managed, by the timorous Counsels of our Ministers, who then governed, would never be useful either to *England, France*, or Catholick Religion, but that we should as certainly be forced from our Neutrality at their next meeting, as we had been from our Active Alliance with *France* the last Year: That a Peace in the Circumstances we were in, was much more to be desired than the continuance of the War; and that the Dissolution of our Parliament would certainly procure a Peace; for that the Confederates did more depend upon the Power they had in our Parliament, than upon any thing else in the World; and were more encouraged from them to the continuing of the War; so that if they were Dissolved, their measures would be all broken, and they consequently in a manner necessitated to a Peace.

The good Father minding this Discourse somewhat more than the Court of *France* thought fit to do my former; urg'd it so Home to the King, that his Majesty was pleased to give him Orders to signify to his R. H. my Master, that his Majesty was fully satisfied of his R. H's good intention towards him, and

that he esteemed both their Interests but as one and the same; that my Lord *Arlington* and the Parliament were both to be lookt upon as very unuseful to their Interest: That if his R. H. would endeavour to dissolve this Parliament, his most Christian Majesty would assist him with his Power and Purse, to have a new one as should be for their Purpose. This, and a great many more expressions of kindness and confidence Father *Ferryer* was pleased to communicate to Sir *William Throckmorton*, and Commanded him to send them to his R. H. and withal to beg his R. H. to propose to his most Christian Majesty, what he thought necessary for his own concern, and the advantage of Religion, and his Majesty would certainly do all he could to advance both or either of them. This Sir *William Throckmorton* sent to me by an Express, who left *Paris* the 2d of *June 1674, Stilo novo*: I no sooner had it, but I communicated it to his R. H. To which his R. H. commanded me to answer, as I did on the 29th of the same Month: That his R. H. was very sensible of his most Christian Majesty's Friendship, and that he would labour to cultivate it with all the good Offices he was capable of doing for his Majesty; that he was fully convinced that their Interests were both one, that my Lord *Arlington* and the Parliament were not only unuseful, but very dangerous both to *England* and *France*; That therefore it was necessary that they should do all they could to Dissolve it. And that his R. H's opinion was, that if his most Christian Majesty would write his Thoughts freely to the King of *England* upon this Subject, and make the same Proffer to his Majesty of his Purse to Dissolve this Parliament, which he had made to his R. H. to call another, he did believe it very possible for him to succeed with the assistance we should be able to give him here; and that if this Parliament were Dissolved, there would be no great difficulty of getting a new one, which would be more useful: The Constitutions of our Parliaments being such, that a new one can never hurt the Crown, nor an old one do it good.

His R. H. being pleased to own these Propositions, which were but only general, I thought it reasonable to be more particular, and come closer to the point, that we might go the faster about the work, and come to some before the time was too far spent.

I laid this for my Maxim: The Dissolution of our Parliament will certainly procure a Peace; which Proposition was granted by every body I conversed withal, even by Monsieur *Rouvigny* himself, with whom I took liberty of discoursing so far, but durst not say any thing of the Intelligence I had with Father *Ferryer*. Next; that a sum of Money certain, would certainly procure a Dissolution; this some doubted, but I am sure I never did; for I knew perfectly well that the King had frequent Disputes with himself at that time, whether he should dissolve or continue them; and he several times declared that the Arguments were so strong on both sides, that he could not tell to which to incline, but was carried at last to the continuance of them by this one Argument: If I try them once more, they may possibly give me Money; if they do, I have gain'd my point: if they do not, I can dissolve them then, and be where I am now; so

that I have a possibility at least of getting Money for their Continuance, against nothing on the other side: But if we could have turn'd this Argument, and said; Sir, their Dissolution will certainly procure you Money, when you have only a bare possibility of getting any by their Continuance, and have shewn how far that bare possibility was from being a foundation to build any reasonable hope upon, which I am sure his Majesty was sensible of; and how much 300000*l. Sterl.* certain (which was the Sum we propos'd) was better than a bare possibility, (without any reason to hope that that could ever be compassed) of having half so much more (which was the most he designed to ask) upon some vile dishonourable terms, and a thousand other hazards, which he had great reason to be afraid of: If, I say, we had power to have argued this, I am most confidently assured we could have compassed it, for Logick in our Court built upon Money, has more powerful Charms than any other sort of reasoning. But to secure his most Christian Majesty from any hazard, as to that point, I propos'd his Majesty should offer that sum upon that condition, and if the condition were not performed, the Money should never be due; if it were, and that a Peace would certainly follow thereupon, (which no body doubted) his Majesty would gain his Ends, and save all the vast Expences of the next Campaign, by which he could not hope to better his Condition, or put himself into more advantageous Circumstances of Treaty than he was then in; but might very probably be in a much worse, considering the mighty opposition he was like to meet with, and the uncertain Chances of War. But admitting that his Majesty could by his great Strength and Conduct maintain himself in as good a Condition to Treat the next year as he was then in; (which was as much as could then reasonably be hoped for) he should have saved by this Proposal as much as all the men he must needs lose, and all the charges he should be at in a year, would be valued to amount to more than 300000*l. Sterl.* and so much more in case his Condition should decay, as it should be worse than it was when this was made; and the Condition of his R. H. and of the Catholick Religion here (which depends very much upon the success of His most Christian Majesty,) delivered from a great many frights and real hazards. F. Ferryer seem'd to be very sensible of the Benefit all parties would gain by this Proposal; But yet it was unfortunately delay'd by an unhappy and tedious fit of sickness, which kept him so long from the King in the *Franche Comte*, and made him so unable to wait on His Majesty after he did return to *Paris*: But so soon as he could compass it, he was pleased to acquaint his Majesty with it, and wrote to the Duke himself; and did me the Honour to write unto me also on the 15th of *September 1674*, and sent his Letter by Sir *William Throckmorton*, who came express upon that Errand; In these Letters he gave his R. H. fresh assurance of his most Christian Majesty's friendship, and of his Zeal and Readiness to comply with every thing His R. H. had, or should think fit to propose in favour of Religion, or the business of Money; And that he had commanded *Monsieur Rouvigny* as to the latter, to Treat and deal with his R. H. and to receive and observe his Orders and Directions,

but desired that he might not at all be concerned as to the former, but that his R. H. would cause what Proposition he should think fit to be made about Religion, to be offered either to Father *Ferryer*, or *Monsieur Pomponne*.

These Letters came to us about the middle of *September*, and his R. H. expected daily when *Monsieur Rouvigny* should speak to him about the Subject of that Letter; but he took no notice at all of any thing till the 29th of *September*, the evening before the King and Duke went to *Newmarket* for a fortnight, and then only said, that he had Commands from his Master to give his R. H. the most firm assurance of his Friendship imaginable, or something to that purpose, making his R. H. a general Complement, but made no mention of any particular Orders relating to Father *Ferryer's* Letter. The Duke wondering at this proceeding, and being obliged to stay a good part of *October* at *Newmarket*; and soon after his coming back, hearing of the Death of Father *Ferryer*, he gave over all further prosecuting of the former Project. But I believe I saw *Monsieur Rouvigny's* policy all along, who was willing to save his Master's Money, upon assurance that we would do all we could to stave off the Parliament for our own sakes, that we would struggle as hard without money as with it; and we having by that time, upon our own Interest, prevailed to get the Parliament prorogued to the 13th of *April*, he thought that Prorogation being to a Day so high in the Spring, would put the Confederates so far beyond their Measures, as that it might procure a Peace, and be as useful to *France*, as a Dissolution: upon these Reasons I suppose he went. I had several discourses with him; and did open my self so far to him as to say, I could wish his Master would give us leave to offer to our Master 300000*l.* for the Dissolution of the Parliament; and shewed him that a Peace would most certainly follow a Dissolution (which he agreed with me in) and that we desir'd not the Money from his Master to excite our wills, or to make us more industrious to use our utmost powers to procure a Dissolution, but to strengthen our Power and Credit with the King, and to render us more capable to succeed with his Majesty, as most certainly we should have done, had we been fortified with such an Argument.

To this Purpose I pret's'd *Monsieur Pomponne* frequently by Sir *William Throckmorton*, who returned hence again into *France* on the 10th of *November*, the day our Parliament should have met, but was Prorogued. *Monsieur Pomponne* (as I was informed by Sir *William*) did seem to approve the thing; but yet had Two Objections against it: First, That the Sum we propos'd, was Great; and could be very ill spared in the circumstances his Most Christian Majesty was in. To which we Answered, That if by his Expending that Sum, he could procure a Dissolution of our Parliament, and thereby a Peace, which every Body agreed would necessarily follow; his Most Christian Majesty would gain his Ends, and save Five or Ten Times a greater Sum, and so be a good Husband by his Expence; and if we did not procure a Dissolution, he should not be at that Expence at all; for that we desired him only to promise upon that Condition, which we were content to be Obligated to perform first. The Second Objection

was, The Duke did not move, nor appear in it himself. To that we Answered, That he did not indeed to Monsieur *Pompone*, because he had found so ill an effect of the Negotiation with Father *Ferryer*, when it came into Mounseur *Rouvigny's* hands; but that he had concerned himself in it, to Father *Ferryer*.

Yet I continued to prosecute and press the Dissolution of the Parliament, detesting all Prorogations as only so much loss of time, and a means of strengthening all those who depend upon it in Opposition to the *Crown*, the Interest of *France* and *Catholick Religion*, in the Opinion they had taken. That our King durst not part with his Parliament; apprehending that another would be much Worse. Secondly, That he could not live long without a Parliament, therefore they must suddenly meet; and the longer he kept them off, the greater his Necessity would grow; and consequently their Power to make him do what they listed, would increase accordingly: And therefore, if they could but maintain themselves a while, the day would certainly come in a short time, in which they should be able to work their Wills. Such Discourses as these kept the *Confederates* and our *Male-Contents* in Heart, and made them weather on the War in spight of all our Prorogations: Therefore I press'd (as I have said) a Dissolution until *February* last, when our *Circumstances* were so totally *Changed*, that we were forced to change our *Counsels* too, and be as much for the Parliament's Sitting, as we were before against it.

Our *Change* was thus; Before that time, the Lord *Arlington* was the only Minister in Credit, who thought himself out of all danger of the Parliament; he having been Accused before them and Justified, and therefore was Zealous for their sitting; and to increase his Reputation with them, and to become a perfect Favourite, he sets himself all he could to persecute the *Catholick Religion*, and to oppose the *French*: To shew his Zeal against the first, he revived some old dormant Orders for prohibiting *Roman Catholics* to appear before the King, and put them in Execution at his first coming into his Office of Lord *Chamberlain*: And to make sure work with the second, as he thought; prevailed with the King to give him and the Earl of *Ossory*, (who married two Sisters of *Myne Heere Odyke's*) leave to go over into *Holland* with the said *Heere*, to make a Visit, as they pretended, to their Relations; But indeed, and in truth, to propose the Lady *Mary* (Eldest Daughter of his *R. H.*) as a Match for the Prince of *Orange*; not only without the consent, but against the good liking of his *R. H.*: Insomuch, that the Lord *Arlington's* Creatures were forced to excuse him, with a Distinction, that the said Lady was not to be looked upon as the Duke's Daughter, but as the King's, and a Child of the State was, and so the Duke's Consent not much to be considered in the disposal of her, but only the Interest of State. By this he intended to render himself the Darling of Parliament and Protestants, who look'd upon themselves as secured in their Religion by such an Alliance, and designed further to draw us into a close Conjunction with *Holland*, and the Enemies of *France*. The Lord *Arlington* set forth upon this Errand the 10th of *November* 1674, and returned not till the 6th of *January* following; During his absence, the *L. Treasu-*

rer, *L. Keeper*, and the Duke of *Lauderdale*, who were the only *Ministers* of any considerable Credit with the King, and who all pretended to be entirely United to the Duke, declaimed Loudly, and with great Violence, against the said Lord, and his Actions in *Holland*; and did hope, in his absence, to have totally supplanted him, and to have routed him out of the King's Favour; and after that, thought they might easily enough have dealt with the Parliament. But none of them had Courage enough to speak against the Parliament, till they could get rid of him; for fear they should not succeed, and that the Parliament would Sit in spight of them, and come to hear that they had used their endeavours against it; which would have been so Unpardonable a Crime with our Omnipotent Parliament, that no Power could have been able to have saved them from Punishment: But they finding at his Return, that they could not prevail against him, by such Means and Arts as they had then tried, resolved upon *New Counsels*; which were to out-run him in his own Course; which accordingly they undertook, and became as fierce Apostles, and as zealous for *Protestant Religion*, and against *Popery*, as ever my *L. Arlington* had been before them; and in pursuance thereof, persuaded the King to issue out those severe Orders and Proclamations against *Catholicks*, which came out in *February* last; by which, they did as much as in them lay, to extirpate all *Catholicks*, and *Catholick Religion*, out of the Kingdom; which Counsels were in my poor opinion so Detestable, being levelled (as they must needs be) so directly against the Duke, by People which he had Advanced, and who had professed so much Duty and Service to him, that we were put upon new Thoughts how to save his *R. H.* now from the Deceits and Snares of those Men, upon whom we formerly depended. We saw well enough, that their design was to make themselves as grateful as they could to the Parliament, if it must Sit; they thinking nothing so acceptable to them, as the persecution of *Popery*; and yet they were so obnoxious to the Parliament's displeasure in general, that they would have been glad of any Expedient to have kept it off; though they durst not engage against it openly themselves, but thought this Device of theirs might serve for their purposes, hoping the Duke would be so alarm'd at their proceedings, and by his being left by every Body, that he would be much more afraid of the Parliament than ever, and would use his utmost Power to prevent its Sitting: which they doubted not but he would endeavour; and they were ready enough to work underhand too for him (for their own sakes, not his) in order thereunto, but durst not appear openly; and to encourage the Duke the more to endeavour the Dissolution of the Parliament, their Creatures used to say up and down, That this Rigour against the *Catholicks* was in favour of the Duke, and to make a Dissolution of the Parliament more easy, (which they knew he coveted) by obviating one great Objection which was commonly made against it, which was, That if the Parliament should be Dissolved, it would be said, That it was done in favour of *Popery*; which Clamour they had prevented beforehand by the Severity they had used against it.

As soon as we saw these Tricks put upon us, we

we plainly saw what Men we had to deal withal, and what we had to trust to, if we were wholly at their Mercy: But yet durst not seem so dissatisfied as we really were, but rather magnified the Contrivance, as a Device of great Cunning and Skill: All this we did purely to hold them in a belief, that we would endeavour to Dissolve the Parliament, and that they might rely upon his *R. H.* for that which we knew they long'd for, and were afraid they might do some other way, if they discovered that we were resolved we would not: At length, when we saw the Sessions secured, we declared, that we were for the Parliament's meeting; as indeed we were, from the moment we saw our selves handled by all the King's Ministers at such a rate that we had Reason to believe they would sacrifice *France*, *Religion*, and his *R. H.* too, to their own Interest, if occasion served; and that they were lead to believe, that that was the only way they had to save themselves at that time: For we saw no Expedient fit to stop them in their Career of persecution, and those other destructive Counsels, but the Parliament; which had set it self a long time to dislike every thing the Ministers had done, and had appeared violently against *Popery*, whilst the Court seemed to favour it; and therefore we were confident, that the Ministers having turn'd their Faces, the Parliament would do so too, and still be against them; and be as little for Persecution then, as they had been for *Popery* before. This I undertook to manage for the Duke and the King of *France's* Interest; and assured Mounſieur *Rouvigny* (which I am sure he will testify, if occasion serves) that that Sessions should do neither of them any hurt; for that I was sure I had Power enough to prevent mischief, though I durst not engage for any good they would do; because I had but very few Assistances to carry on the work, and wanted those helps, which others had, of making Friends: The *Dutch* and *Spaniard* spared no pains or expence of Money to animate as many as they could against *France*; Our Lord *Treasurer*, Lord *Keeper*, all the *Bishops*, and such as call'd themselves *Old Cavaliers*, (who were all then as one Man) were not less industrious against *Popery*, and had the Purse at their Girdle too; which is an Excellent Instrument to gain Friends with; and all United against the Duke, as Patron both of *France* and *Catholick* Religion. To deal with all this Force, we had no Money, but what came from a few private Hands; and those so mean ones too, that I dare venture to say, that I spent more my particular self out of my own Fortune, and upon my single Credit, than all the whole Body of *Catholicks* in *England* besides; which was so inconsiderable, in comparison of what our Adversaries commanded, and we verily believe did bestow in making their Party, that it is not worth mentioning: Yet notwithstanding all this, we saw that by the help of the Non-conformists, as *Presbyterians*, *Independents*, and other *Sects*, (who were as much afraid of Persecution as our selves) and of the Enemies of the Ministers, and particularly of the *Treasurer*, who by that time had supplanted the Earl of *Arlington*, and was grown sole Manager of all Affairs himself, we should be very able to prevent what they designed against us, and so render the Sessions ineffectual to their Ends, though we might not be able to compass our own; which

were, to make some brisk step in Favour of his *R. H.* to shew the King, that his Majesty's Affairs in Parliament were not Obstructed, by reason of any Aversion they had to his *R. H.'s* Person, or Apprehensions they had of him, or his Religion; but from Faction and Ambition in some, and from a real Dissatisfaction in others, that we have not had such fruits and good Effects of those great sums of Money which have been formerly given as was expected. If we could then have made but one such step, the King would certainly have restored his *R. H.* to all his Commissions; upon which he would have been much greater than ever yet he was in his whole Life, or could probably ever have been by any other Course in the World, than what he had taken of becoming *Catholick*, &c. And we were so very near gaining this Point, that I did humbly beg his *R. H.* to give me leave to put the Parliament upon making an Address to the King, that his Majesty would be pleased to put the Fleet into the hands of his *R. H.* as the only Person likely to have a good Account of so important a Charge as that was to the Kingdom; and shewed his *R. H.* such Reasons to perswade him that we could carry it, that he agreed with me in it, that he believed we could. Yet others telling him how great a Damage it would be to him, if he should miss in such an Undertaking (which for my part I could not then see, nor do I yet) he was prevailed upon not to venture, though he was perswaded he could carry it. I did communicate this Design of mine to Mounſieur *Rouvigny*, who agreed with me, that it would be the greatest advantage imaginable to his Master, to have the *Duke's* Power and Credit so far advanced as this would certainly do, if we could compass it: I shewed him all the Difficulty we were like to meet with, and what helps we should have; but that we should want one very material one, *Money*, to carry on the Work as we ought; and therefore I do confess, I did shamefully beg his Master's Help, and would willingly have been in everlasting Disgrace with all the World, if I had not with that Assistance of twenty Thousand Pound *Sterling*, (which perhaps is not the tenth part of what was spent on the other side) made it evident to the *Duke*, that he could not have missed it. Mounſieur *Rouvigny* used to tell me, That if he could be sure of succeeding in that Design, his Master would give a very much larger Sum; but that he was not in a Condition to throw away Money upon Uncertainties. I answered, That nothing of that nature could be so infallibly sure, as not to be subject to some Possibilities of failing; but that I durst venture to undertake to make it evident, that there was as great an assurance of succeeding in it, as any Husbandman can have of a Crop in Harvest, who sows his Ground in its due Season; and yet it would be counted a very imprudent piece of wariness in any body, to scruple the venturing so much Seed in its proper time, because it is possible it may be totally lost, and no benefit of it found in Harvest; he that minds the Winds and the Rains at that rate, shall neither Sow nor Reap. I take our Case to be much the same as it was the last Sessions: If we can advance the *Duke's* Interest one step forward, we shall put him out of the reach of Chance for ever; for he makes such a Figure already, that Cautious Men do

not care to act against him, nor always without him, because they do not see that he is much outpowered by his Enemies; yet is he not at such a Pitch, as to be quite out of danger, or free from Opposition: But if he could gain any considerable new addition of Power, all would come over to him as to the only steady Center of our Government, and no Body would contend with him further. Then would *Catholicks* be at Rest, and his *Most Christian Majesty's* Interest secured with us in *England*, beyond all apprehensions whatsoever.

In order to this, we have two great Designs to Attempt this next Sessions. First, that which we were about before, *viz.* To put the Parliament upon making it their humble Request to the King, that the Fleet may be put into his *R. H's* Care. Secondly, to get an Act for general Liberty of Conscience. If we carry these two, or either of them, we shall in effect do what we list afterwards; and truly, we think we do not undertake these great Points very unreasonably, but that we have good Cards for our Game; Not but that we expect great Opposition, and have great reason to beg all the Assistance we can possibly get; and therefore, if his *Most Christian Majesty* would stand by us a little in this *Conjuncture*, and help us with such a sum as 20000 Pound *sterling* (which is no very great matter to venture upon such an undertaking as this) I would be content to be Sacrificed to the utmost Malice of my Enemies, if I did not Succeed. I have proposed This several times to Moun-
sieur *Rouvigny*, who seemed always of my Opinion; and has often told me, that he has writ into *France* upon this Subject, and has desired me to do the like: But I know not whether he will be as Zealous in that point as a *Catholick* would be; because our prevailing in these things would give the greatest Blow to the *Protestant Religion* here, that ever it received since its Birth; which perhaps he would not be very glad to see; especially when he believes there is another way of doing his Master's Business well enough without it; which is by a *Dissolution* of the Parliament; upon which I know he mightily depends, and concludes, that if that comes to be *Dissolved*, it will be as much as he needs care for; proceeding perhaps upon the same manner of Discourse which we had this time twelve Months. But with submission to his better Judgment, I do think that our Case is extremely much altered to what it was, in Relation to a *Dissolution*; for then the Body of our Governing Ministers (all but the Earl of *Arlington*) were entirely United to the *Duke*; and would have Governed his Way, if they had been free from all Fear and Controul, as they had been, if the Parliament had been Removed. But they having since that time Engaged in quite different Counsels, and Embark'd themselves and Interests upon other Bottoms, having declared themselves against *Popery*, &c. To Dissolve the Parliament simply, and without any other step made, will be to leave them to Govern what way they list, which we have Reason to suspect will be to the prejudice of *France* and *Catholick Religion*. And their late *Declarations* and *Actions* have Demonstrated to us, that they take that for the most Popular way for themselves, and likeliest

to keep them in absolute Power; whereas, if the *Duke* should once get above them (after the Tricks they have plaid with him) they are not sure he will Totally forget the Usage he has had at their hands: Therefore it Imports us now to Advance our Interest a little further, by some such Project as I have named, before we Dissolve the Parliament; Or else perhaps, we shall but Change Masters (a *Parliament* for Ministers) and continue still in the same *Slavery* and *Bondage* as before. But one such step as I have proposed, being well made, we may safely see them *Dissolved*, and not fear the Ministers; but shall be Established, and stand Firm without any Opposition; for every Body will then come over to us, and worship the Rising Sun.

I have here given you the History of three Years, as short as I could, though I am afraid it will seem very long and troublesome to your Reverence, among the multitude of affairs you are concern'd in: I have also shewn you the present State of our Case, which may (by God's Providence, and good Conduct) be made of such advantage to God's Church; that for my part, I can scarce believe my self awake, or the thing real, when I think on a Prince in such an age as we live in, converted to such a Degree of Zeal and Piety, as not to regard any thing in the World in comparison of God Almighty's Glory, the Salvation of his own Soul, and the Conversion of our poor Kingdom; which has been a long time oppress'd, and miserably harra's'd with *Heresy* and *Schism*. I doubt not but your Reverence will consider our Case, and take it to heart, and afford us what help you can; both with the King of Heaven, by your holy Prayers, and with his *Most Christian Majesty*, by that great Credit which you most justly have with him. And if ever his Majesty's affairs (or your own) can want the Service of so inconsiderable a Creature as my self, you shall never find any Body readier to obey your Commands, or faithfuller in the Execution of them, to the best of his Power, than

Your most Humble and

Obedient Servant.

Att. Gen. That I may make things clear, as much as possible; you see, Here's a Letter prepared to be sent, writ with Mr. Coleman's own hand, to Moun-
sieur *Le Chaise*: This Letter bears date the twenty ninth of *September*. We have an Answer to it from *Paris*, *October* twenty third, whereby Moun-
sieur *Le Chaise* owns the receipt of this; And in this Answer is express Thanks to Mr. Coleman for his long Letter. Sir Robert, Pray tell how you came by this Letter.

Sir Rob. Southwell. I found this Letter in Mr. Coleman's Canvas Bag; after we had once looked over the Letters, we found it: Sir Philip *Llyod* Examined it; And we looked over those Papers very exactly: Because the House of Commons were very much concern'd, and thought those Papers were not thoroughly Examined, I reviewed them again. This Letter was found on *Sunday* following after the Papers were seized.

Att.

Att. Gen. Sir Rob. Southwell, I pray read the Letter in *French* first to the Court. Sir Rob. having read the Letter in *French*, Mr. Attorney desired him to read it in *English*. Sir Rob. read it in *English*; The Letter was dated *Paris*, twenty third *October* 1675. And subscribed, *Your most humble and obedient servant, D. L. C.* at the bottom.

The LETTER.

From *PARIS*, 23 *October* 1675.

S I R,

THE Letter which you gave yourself the trouble to write to me, came to my Hands but the last Night. I read it with great satisfaction; and I assure you, that its length did not make it seem tedious. I should be very glad on my part to assist in seconding your good Intentions; I will consider of the Means to effect it; and when I am better informed than I am as yet, I will give you an Account: To the end I may hold Intelligence with you, as you did with my Predecessor. I desire you to believe that I will never fail as to my good will, for the service of your Master, whom I honour as much as he deserves; and that it is with great truth that I am

Your most Humble and
most Obedient Servant

D. L. C.

Att. Gen. We made mention of a Declaration: By his long Narrative it plainly appears, that Mr. Coleman would have had another Parliament. And the reason why he was pleased to publish a Declaration, was, thereby to shew the Reasons for its Dissolution. Sir Philip Lloyd, did you find this Writing among Mr. Coleman's Papers?

Sir P. L. I did find it among his Papers.

Att. Gen. Pray read the Declaration.

Clerk of the Crown reads the Declaration.

The Declaration which Mr. Coleman prepared, thereby shewing his Reasons for the Dissolution of the Parliament.

WE having taken into our Serious Consideration the heats and animosities which have of late appeared among many of our very Loyal and Loving Subjects of this Kingdom, and the many fears and jealousies which some of them seem to lye under, of having their Liberties and Properties invaded, or their Religion altered; and withall, carefully reflecting upon our own Government since our happy Restoration, and the end and aim of it, which has always been the ease and security of our People in all their Rights, and Advancement of the Beauty and Splendour of the true Protestant Religion established in the Church of *England*; of both which we have given most signal Testimonies, even to the stripping our Self of many Royal Prerogatives which our Predecessors

enjoyed, and were our undoubted due; as the Court of Wards, Purveyances, and other things of great value; and denying to our self many advantages, which we might reasonably and legally have taken by the Forfeitures made in the times of Rebellion, and the great Revenues due to the Church at our Return, which no particular Person had any right to: Instead of which, we consented to an Act of Oblivion of all those Barbarous Usages which our Royal Father and our Self had met withal, much more full and gracious than almost any of our Subjects, who were generally become in some measure or other obnoxious to the Laws, had confidence to ask; and freely renounced all our Title to the Profit which we might have made by the Church-Lands, in favour of our Bishops and other Ecclesiastical Ministers, out of our Zeal to the Glory of our Protestant Church; which Clemency towards all, and some even high Offenders, and Zeal for Religion, we have to this day constantly continued to exercise. Considering all this, we cannot but be sensibly afflicted to see, that the forwardness of some few Tumultuous heads should be able to infect our Loyal and Good People with apprehensions destructive of their own, and the general quiet of our Kingdom; and more especially, their perverseness should be powerful enough to distract our very Parliament, and such a Parliament, as has given us such Testimonies of its Loyalty, Wisdom, and Bounty, and to which we have given as many Marks of our Affection and Esteem, so as to make them mis-construe all our endeavours for to preserve our People in ease and prosperity, and against all reason and evidence to represent them to our Subjects as Arguments of fear and disquiet; and under these specious pretences of securing Property and Religion, to demand unreasonable things, manifestly destructive of what they would be thought to aim at; and from our frequent Condescensions, out of our meer Grace, to grant them what we conceived might give them satisfaction, though to the actual prejudice of our Royal Prerogative, to make them presume to propose to advance such extravagancies into Laws, as they themselves have formerly declared detestable; of which we cannot forbear to give our truly Loyal Subjects some instances, to undeceive our innocent and well-minded People, who have many of them of late been too easily mis-led, by the factious endeavours of some turbulent Spirits. For example, we having judged it necessary to declare War against the States of *Holland*, during a recess of Parliament, which we could not defer longer, without losing an advantage which then presented it self, nor have done sooner, without exposing our Honour to a potent Enemy without due preparation, we thought it prudent to unite all our Subjects at home, and did believe a general Indulgence of tender Consciences the most proper expedient to effect it; and therefore did by our Authority in Ecclesiasticks, which we thought sufficient to warrant what we did, suspend penal Laws against Dissenters in Religion, upon Conditions expressed in our Declaration, out of Reason of State, as well as to gratify our own nature, which always we confess abhorr'd rigour, especially in Religion, when tenderness might be as useful. After we had

had engaged in the War, we Prorogued our Parliament from *April* to *October*, being confident we should be able by that time to shew our People such Success of our Arms, as should make them cheerfully contribute to our Charge. At *October* we could have shewn them Success even beyond our own Hopes, or what they could possibly expect; our Enemies having lost by that time, near 100 strong Towns and Forts, taken in effect by us, we holding them busy at Sea, whilst our Allies possessed themselves of their Lands, with little or no Resistance; and of which, the great Advantage would most visibly have been ours, had not the Fewds we now complain of, which have been since unhappily started, and factiously improved by some few, dis-united our People, distracted our Councils, and render'd our late Endeavours vain and fruitless; so that we had no reason to doubt of our People's ready and liberal Concurrence to our Assistance in that Conjunction. Yet our Enemies proposing to us at that time a Treaty for Peace, which we were always ready to accept upon Honourable Terms; and considering with our self, that in case that Treaty succeeded, a far less Sum of Money would serve our Occasions, than otherwise would be necessary: We, out of our tender Regard to the Ease of our People, prorogued our Parliament again to *February*, to attend the Success of our Treaty, rather than to demand so much Money in *October*, as would be fit to carry on the War. But we soon finding that our Enemies did not intend us any just Satisfaction, saw a Necessity of prosecuting the War, which we designed to do most vigorously; and in order to it, resolv'd to press our Parliament to supply us as speedily as may be, to enable us to put our Fleet to Sea early in the Spring, which would after their meeting grow on apace. And being informed that many Members were dead during the long Recess, we Issued out our Writs for new Elections, that our House of Commons might be full at the first Opening of the Sessions, to prevent any Delay in our Publick Affairs, or Dislike in our People, as might possibly have risen from the want of so great a Number of their Representatives, if any thing of Moment should be concluded before it had been supplied. Having govern'd our Actions all along with such careful Respect to the Ease of our Subjects, we at the Meeting of our Parliament in *February*, 1672, expected from them some suitable Expressions of their Sense of our Favours; but quite contrary, found our Self alarm'd with clamorous Complaints from several Cabals against all our Proceedings, frightening many of our good Subjects into strange Conceits of what they must look for, by their seditious and false Constructions of what we had so candidly and sincerely done for their Good; and surpris'd with a Vote of our House of Commons, against our Writs of Elections, which we intended for their Satisfaction, against many Precedents of ours, or without any colour of Law of their Side, denying our Power to Issue out such Writs, Addressing to us to Issue out others: Which we consented to do at their Request, choosing rather to yield to our Subjects in that Point, than to be forced to submit to our Enemies in others; hoping that our Parliament being sensibly touched with that our extraordinary Condescension, would go on to consider the Publick Concern of the King-

dom, without any further to do: But we found another Use made of our so easie Compliance, which serv'd to encourage them to ask more; so that soon after we found our Declaration for Indulging tender Consciences Arraigned, Voted Illegal; though we cannot to this Day understand the Consistencies of that Vote, with our undoubted Supremacy in all Ecclesiasticks, recognized by so many Acts of Parliament, and required to be Sworn to by all our Subjects, and Addresses made to us one after another to recal it, which we condescended to also; from hence they proceeded to Us to weaken our Self in an Actual War, and to render many of our Subjects, of whose Loyalty and Ability we were well satisfied, incapable to serve Us, when we wanted Officers and Soldiers, and had reason to invite as many experienced Men as we could to engage in our Arms, rather than to incapacitate or discourage any; yet this also we gratified them in, to gain their Assistance against our Enemies, who grew high by these our Differences, rather than expose our Country to their Power and Fury; hoping that in time our People would be confounded to see our Concessions, and be ashamed of their Errors in making such Demands. But finding the unfortunate Effects of our Divisions the following Summer, We found our Parliament more extravagant at the next Meeting than ever, addressing to us to hinder the Consummation of our Dear Brother's Marriage, contrary to the Law of God, which forbiddeth any to separate any whom he hath joyned, against our Faith and Honour engag'd in the Solemn Treaty, obstinately persisting in that Address, after we had acquainted them, That the Marriage was then actually ratified, and that we had acted in it by our Ambassador; so that we were forced to separate them for a while, hoping they would be-think themselves better at their meeting in *January*. Instead of being more moderate, or ready to consider our Wants towards the War; they Voted, as they had done before, not to assist us still, till their Religion were effectually secur'd against Popery, Aggrievances redressed, and all obnoxious Men removed from us; which we had reason to take for an absolute Denial of all Aid; considering the Indefiniteness of what was to proceed, and the moral Impossibility of effecting it in their Senses: For when will they say their Religion is effectually secured from Popery, if it were in danger then, by reason of the Insolency of Papists. When our House of Commons, which is made up of Members from every Corner of our Kingdom, with Invitations publicly Posted up to all Men to accuse them, has not yet in so many Years as they have complained of them, been able to charge one single Member of that Communion, with so much as a Misdemeanour. Or what Security could they possibly expect against that Body of Men, or their Religion, more than we had given them? or how can we hope to live so perfectly, that Study and Pains may not make a Collection of Grievances, as considerable as that which was lately presented to us, than which, we could not have wish'd for a better Vindication of our Government? or when shall we be sure that all obnoxious Men are removed from us, when Common Fame thinks fit to call them so; which is to every Body, without any Proof, sufficient to render any Man obnoxious, who is Popishly affected,

ed, or any thing else that is ill, though they have never so often or lately complied with their own Tests, and Marks of Distinction and Discriminations. Finding our People thus unhappily disordered, we saw it impossible to prosecute the War any longer; and therefore did by their Advice make a Peace upon such Conditions as we could get; hoping that being gratified in that Darling Point, they would at least have paid our Debts, and enabled us to have built some Ships for the future Security of our Honour, and their own Properties; but they being transported with their Success in Asking, were resolved to go on still that way, and would needs have us put upon the removing of our Judges from those Charges, which they have always hitherto held at the Will and Pleasure of the Crown, out of our Power to alter the ancient Laws of trying of Peers, and to make it a Premunire in our Subjects (in a Case supposed) not to fight against our Self; nay, some had the Heart to ask, that the Hereditary Succession of our Crown (which is the Foundation of all our Laws) should be changed into a sort of Election, they requiring the Heir to be qualified with certain Conditions, to make him capable of Succeeding; and out-doing that Popish Doctrine, which we have so long and so loudly with good reason decried, That Heresy incapacitates Kings to Reign. They would have had, That the Heir of the Crown, marrying a Papist, though he continued never so Orthodox himself, should forfeit his Right of Inheritance; not understanding this Paradoxical way of securing Religion by destroying it, as this would have done that of the Church of *England*, which always taught Obedience to their Natural Kings, as an indispensable Duty in all good Christians, let the Religion or Deportment of their Prince be what it will; and not knowing how soon that Impediment, which was supposed as sufficient to keep out an Heir, might be thought as fit to remove a Possessor: And comparing that Bill which would have it a Premunire in a Sheriff not to raise the *Posse Comitatus*, against our Commission in a Case there supposed, though we our Self should assist that our Commission in our Person: For not being excepted, is implied with the other made by this very Parliament in the 14th Year of our Reign, which all our Subjects, or at least many of them, were obliged to Swear (*viz.* That the Doctrine of taking up Arms by the King's Authority, against his Person, was detestable;) and we soon found that the Design was levelled against the good Protestant Religion of our good Church, which its Enemies had a mind to blemish, by sliding in slyly those damnable Doctrines, by such an Authority as that of our Parliament, into the Profession of our Faith or Practices, and so expose our whole Religion to the Scorn and Reproach of themselves, and all the World: We therefore thought it our Duty to be so watchful as to prevent the Enemies sowing such mischievous Tares as these, in the wholesome Field of our Church of *England*, and to guard the unspotted Spouse of our blessed Lord, from that foul Accusation, with which she justly charges other Churches, of teaching their Children Loyalty, with so many Reserves and Conditions, that they shall never want a Distinction to justify Rebellion; nor a Text of Scripture, as good as Curse ye *Meroz*, to encourage them to be Trai-

tors: whereas our truly Reformed Church knows no such Subtilties; but teaches according to the Simplicity of Christianity, To submit to every Ordinance of Man for God's sake, according to the natural Signification of the Words, without Equivocation or artificial Turns. In order to which, having thought to dissolve that Body, which we have these many Years so tenderly cherished, and which we are sure consists generally of most dutiful and loyal Members, we were forc'd to Prorogue our Parliament till *November* next, hoping thereby to cure those Disorders, which have been sown among the best and Loyallist Subjects, by a few malicious Incendiaries. But understanding since, that such who have sowed that Seditious Seed, are as industriously careful to water it by their Cabals, and Emissaries, instructed on purpose to poison our People with Discourses in publick Places, in hopes of a great Crop of Confusion, their beloved Fruit, the next Sessions; we have found it absolutely necessary to Dissolve our Parliament, though with great Reluctancy and Violence to our Inclination: But remembring the Days of our Royal Father, and the Progress of Affairs then, how from a Cry against Popery, the People went on to complain of Grievances, and against Evil Counsellors, and his Majesty's Prerogative; until they advanc'd into a formal Rebellion, which brought forth the most dire and fatal Effects, that ever were yet heard of amongst any Men, Christians or others; and withal, finding so great a Resemblance between the Proceedings then and now, that they seem both Broth of the same Brains: And being confirm'd in that Conceit, by observing the Actions of many now, who had a great Share in the Management of the former Rebellion, and their Zeal for Religion, who by their Lives give us too much reason to suspect they have none at all; we thought it not safe to dally too long, as our Royal Father did, with Submissions and Condescensions, endeavouring to cure Men infected, without removing them from the Air where they got the Disease, and in which it still rages and increases daily. For fear of meeting with no better Success than he found, in suffering his Parliament to challenge Power they had nothing to do with, till they had bewitch'd the People into fond Desires of such things as quickly destroyed both King and Country, which in us would be an intolerable Error, having been warn'd so lately by the most Execrable Murther of our Royal Father, and the inhumane Usage which we our Self in our Royal Person and Family have suffered, and our Loyal Subjects have endured, by such Practices; And lest this our great Care of this our Kingdom's Quiet, and our own Honour and Safety should, as our best Actions have hitherto been, be wrested to some sinister Sense, and Arguments be made from it to scare our good People into any Apprehensions of an Arbitrary Government, either in Church or State; We do hereby solemnly declare and faithfully engage our Royal Word, That we will in no Case, either Ecclesiastical or Civil, violate or alter the known Laws of our Kingdom, or invade any Man's Property or Liberty, without due course of Law. But that we will with our utmost Endeavours preserve the true Protestant Religion, and redress all such things as shall indifferently, and without Passion, be judg'd Grievances by our

next

next Parliament; which we do by God's Blessing intend to Call before the End of *February* next. In the mean time, we do strictly charge and command all manner of Persons whatsoever, to forbear to talk seditiously, slightly or irreverently of our Dissolving of the Parliament, of this our Declaration, or of our Person or Government, as they will answer it at their Perils; we being resolv'd to prosecute all Offenders in that kind with the utmost Rigour and Severity of the Law. And to the end that such licentious Persons, if any shall be so impudent and obstinate as to disobey this our Royal Command, may be detected, and brought to due Punishment, we have ordered our Lord Treasurer to make speedy Payment of Twenty Pounds to any Person or Persons who shall discover or bring any such seditious, slight or irreverent Talker before any of our Principal Secretaries of State.

Record. I would have the Jury should know the Declaration ends, *To one of his Majesty's Principal Secretaries of State*; whereof he hoped to be one.

Att. Gen. This is written in the Name of the King; for Mr. *Coleman* thought himself now Secretary of State, and he pens the Declaration, for the King to give an Account why the Parliament was Dissolved.

Serj. Maynard. The long *Letter*, it appears, was to Dissolve the Parliament; and to make it cock-sure, he provides a *Declaration* to shew the Reason of it: It was done in order to bring in Popery; that may appear by the subsequent Proof.

Att. Gen. I have other Evidence to offer to your Lordship, which is, That Mr. *Coleman* was not only so bold as to prepare a *Declaration* for the King, but also out of his own further Ingenuity, prepares a *Letter* (contrary to the Duke's Knowledge) for the Duke, which before several Lords he confessed; and Sir *Philip Floyd* is here ready to justify it.

Sir Phil. Floyd. I did attend a Committee of the House of Lords to *Newgate*, who examined Mr. *Coleman*, and told him of the *Letter* Mr. Attorney mentioneth; he then confessed, That it was prepared without the Order and Privy of the Duke; and when he was so bold as to shew it the Duke, the Duke was very Angry, and rejected it.

L. C. J. He hath been a very forward Undertaker on the behalf of the Duke.

Mr. Att. Gen. I desire the *Letter* may be read.

The Copy of the Letter written to Mounseur Le Chaife, the French King's Confessor, which Mr. Coleman confessed he himself wrote and counterfeited in the Duke's Name.

Clerk of the Crown reads the Letter.

THE 2d of *June* last past, his most Christian Majesty offered me most generously his Friendship, and the Use of his Purse, to the Assistance against the Designs of my Enemies and his; and protested unto me, That his Interest and mine were so clearly link'd together, that those that opposed the one, should be look'd upon as Enemies to the other; and told me moreover his Opinion of my Lord *Arlington*, and the Parliament; which is, That he is of opinion that neither the one nor the other is

in his Interest or mine: And thereupon he desired me to make such Propositions as I should think fit in this Conjunction.

All was Transacted by the Means of Father *Ferrier*, who made use of Sir *William Throckmorton*, who is an honest Man, and of Truth, who was then at *Paris*, and had held Correspondence with *Coleman*, one of my Family, in whom I have great Confidence.

I was much satisfied to see his most Christian Majesty altogether of my Opinion, so I made him Answer the 29th of *June*, by the same Means he made use of to write to me, that is, by *Coleman*, who addrest himself to Father *Ferrier*, (by the forementioned Knight) and entirely agreed to his most Christian Majesty, as well to what had respect to the Union of our Interests, as the Unusefulness of my Lord *Arlington*, and the Parliament, in order to the Service of the King my Brother, and his most Christian Majesty; and that it was necessary to make use of our joint and utmost Credits, to prevent the Success of those evil Designs, resolved on by the Lord *Arlington* and the Parliament, against his most Christian Majesty and my Self; which, of my Side, I promise really to perform; of which, since that time, I have given reasonable good Proof.

Moreover I made some Proposals, which I thought necessary to bring to pass what we were obliged to undertake, assuring him, That nothing could so firmly establish our Interest with the King my Brother, as that very same Offer of the Help of his Purse, by which means I had much reason to hope I should be enabled to persuade to the Dissolving of the Parliament, and to make void the Designs of my Lord *Arlington*, who works incessantly to advance the Interest of the Prince of *Orange* and the *Hollanders*, and to lessen that of the King your Master, notwithstanding all the Protestations he hath made to this Hour, to render him Service.

But as that, which was proposed, was at a Stand by reason of the Sicknes of Father *Ferrier*, so our Affairs succeeded not according to our Designs, only Father *Ferrier* wrote to me, the 15th of the last Month, That he had communicated those Propositions to his most Christian Majesty, and that they had been very well lik'd of; but as they contained things that had regard to the Catholick Religion, and to the Offer and Use of his Purse, he gave me to understand he did not desire I should treat with M. *Revigny* upon the First, but as to the Last, and had the same time acquainted me, that M. *Revigny* had order to grant me whatsoever the Conjunction of our Affairs did require, and have expected the Effects of it to this very Hour: But nothing being done in it, and seeing on the other Hand that my Lord *Arlington* and several others endeavoured by a thousand Deceits to break the good Intelligence, which is between the King my Brother, his most Christian Majesty, and my Self, to the end they might deceive us all Three, I have thought fit to advertise you of all that is past, and desire of you your Assistance and Friendship to prevent the Rogueries of those, who have no other Design than to betray the Concerns of *France*, and *England* also, and who by their pretended Service, are the occasion they succeed not.

As

' As to any thing more, I refer you to Sir
' William Throckmorton, and Coleman, whom I
' have commanded to give an Account of the
' whole State of our Affair, and of the true
' Condition of *England*, with many others,
' and principally my Lord *Arlington's* Endeavours,
' to represent to you quit otherwise than
' it is.

' The Two First I mentioned to you are firm
' to my Interest, so that you may treat with them
' without any Apprehension.

Serj. Maynard. Gentlemen of the Jury, pray observe that he takes upon him to prepare a Letter, and that in the Duke's Name, but contrary to the Duke's Knowledge or Privacy; for when he had so much Boldness as to tell him of it, the Duke was angry, and rejected it. But in it we may see what kind of Passages there are, he takes very much upon him in this Matter. And Mr. *Coleman* must keep the Secret too.

Att. Gen. My Lord, I have but one Paper more to read, and I have kept it till the last; because if we had proved nothing by Witness, or not read any thing but this, this one Letter is sufficient to maintain the Charge against him: It plainly appears to whom it was directed, and at what time. It begins thus, (*I sent your Reverence a tedious long Letter on our 29th of September.*) I only mention this, to shew about what time it was sent. There are some Clauses in it will speak better than I can. Sir *Tho. Doleman* and Sir *Philip Floyd* swear he hath confessed and owned it to be his Hand-writing. I desire the Letter may be read.

Clerk of the Crown reads the Letter.

S I R,

I Sent your Reverence a tedious long Letter on our 29th of *September*, to inform you of the Progress of Affairs for these two or three last Years; I having now again the Opportunity of a very sure Hand to convey this by, I have sent you a Cypher, because our Parliament now drawing on, I may possibly have occasion to send you something which you may be willing enough to know, and may be necessary for us that you should, when we may want the Conveniency of a Messenger. When any thing occurs of more Concern other than which may not be fit to be trusted even to a Cypher alone, I will, to make such a thing more secure, write in Lemmon between the Lines of a Letter, which shall have nothing in it visible, but what I care not who sees, but dried by a warm Fire, shall discover what is written; so that if the Letter comes to your Hands, and upon drying it, any thing appears more than did before, you may be sure no Body has seen it by the way. I will not trouble you with that way of Writing, but upon special Occasions, and then I will give you a Hint to direct you to look for it, by concluding my visible Letter with something of Fire, or Burning, by which Mark you may please to know, that there is something underneath, and how my Letter is to be used to find it out.

We have here a mighty Work upon our Hands, no less than the Conversion of three Kingdoms, and by that perhaps the utter subduing of a Pestilent Heresy, which has domineered over great Part of

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this Northern World a long time; there were never such Hopes of Success since the Death of our Queen Mary, as now in our Days. When God has given us a Prince, who is become (may I say a Miracle) zealous of being the Author and Instrument of so glorious a Work; but the Opposition we are sure to meet with, is also like to be great: So that it imports us to get all the Aid and Assistance we can, for *the Harvest is great, and the Labourers but few.* That which we rely upon most, next to God Almighty's Providence, and the Favour of my Master the Duke, is the mighty Mind of his most Christian Majesty, whose generous Soul inclines him to great Undertakings, which being managed by your Reverence's exemplary Piety and Prudence, will certainly make him look upon this as most suitable to himself, and best becoming his Power and Thoughts; so that I hope you will pardon me, if I be very troublesome to you upon this Occasion, from whom I expect the greatest Help we can hope for. I must confess I think His Christian Majesty's Temporal Interest is so much attracted to that of his R. H. (which can never be considerable, but upon the Growth and Advancement of the Catholick Religion) that his Ministers cannot give him better Advice, even in a Politick Sense, abstracting from the Considerations of the next World, that of our Blessed Lord, *to seek first the Kingdom of Heaven, and the Righteousness thereof, that all other Things may be added unto him.* That I know his most Christian Majesty has more powerful Motives suggested to him by his own Devotion, and your Reverence's Zeal for God's Glory, to engage him to afford us the best Help he can in our present Circumstances. But we are a little unhappy in this, that we cannot press his Majesty by his present Minister here upon these latter Arguments (which are most strong) but only upon the First, Mr. *Rouvigny's* Sense and ours differing very much upon them, though we agree perfectly upon the rest: And, indeed, though he be a very able Man, as to his Master's Service, in things where Religion is not concerned; yet I believe it were much more happy, (considering the Posture he is now in) that his Temper were of such a sort, that we might deal clearly with him throughout, and not be forc'd to stop short in a Discourse of Consequence, and leave the most material Part out, because we know it will shock his particular Opinion, and so perhaps meet with Dis-like and Opposition, though never so necessary to the main Concern. I am afraid we shall find too much Reason for this Complaint in this next Session of Parliament: For had we had one here from his most Christian Majesty, who had taken the whole Business to Heart, and who would have represented the State of our Case truly, as it is, to his Master, I do not doubt but his most Christian Majesty would have engaged himself further in the Affair than at present I fear he has done, and by his Approbation have given such Counsels as have been offered to his R. H. by those few Catholicks who have Access to him, and who are bent to serve him and advance the Catholick Religion with all their Might, and might have more Credit with his R. H. than I fear they have found, and have assisted them also with his Purse as far as 10000 Crowns, or some such Sum (which to him is very inconsiderable, but would

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have

have been to them of greater Use than can be imagined) towards gaining others to help them, or at least not to oppose them. If we had been so happy as to have had his most Christian Majesty with us to this degree, I would have answered with my Life for such Success this Sessions, as would have put the Interest of the Catholick Religion, his R. H. and his most Christian Majesty, out of all Danger for the time to come. But wanting those Helps of recommending those necessary Counsels, which have been given his R. H. in such manner as to make him think them worth his accepting, and fit to govern himself by, and of those Advantages, which a little Money, well managed, would have gained us; I am afraid we shall not be much better at the end of this Sessions than we are now. I pray God we do not lose Ground. By my next, which will be ere-long, I shall be able to tell your Reverence more particularly, what we are like to expect. In the mean time I most humbly beg your Holy Prayers for all our Undertakings, and that you will be pleased to honour me so far as to esteem me what I am entirely, and without any Reserve,

Mon tres Reverend Pere, le votre R.

Le plus humble plus obeissant Serviteur.

[Several other Letters were read, but because of Prolixity they are omitted, these being most material.]

Att. Gen. I have done with my Evidence; we need no more Proof against him.

Pris. My Lord, I would, if your Lordship please, very fain ask of Mr. Oates (because he was pleased to say he was present with me in May or April) whether he knows the particular Days of the Months.

[Here Mr. Oates (who being tired, withdrew to rest himself) was called, and the Prisoner was asked, whether he would speak with Bedloe, but he desired not to speak with him.]

Mr. Oates. The Consult that was held in May New-stile, is April Old-stile, it was within a Day, or two, or three of the Consult.

Pris. Where was the Consult?

Mr. Oates. It was begun at the *White-Horse Tavern*, then they did adjourn it to several Clubs and Companies, and you came two or three Days after the Consult to the Provincial's Chamber, we then desiring to go out of Town.

Pris. Was you there, and who else?

Mr. Oates. There was the Provincial, and *Micho*, and *Strange* the old Provincial, and *Keins* your Companion.

Pris. What Day of *August* was that at the *Savoy*?

Mr. Oates. I cannot swear the particular Day of the Month, I cannot so far charge my Memory.

The Result at the Consult in May was, that *Pickering* and *Groves* should go on in their Attempt to Assassinate the Person of His Majesty by Shooting, or otherwise. *Mr. Coleman* knew of this, and said, it was a good Design.

L. C. J. Who was there? Was *Mr. Coleman* with them at the Consultation?

Mr. Oates. No, my Lord, but two or three Days after the Consultation he was at *Wild-House*, and there he expressed that he approved of it.

L. C. J. Did he consent to it?

Mr. Oates. He did consent to it.

Just. Wild. Did he use no Words about it?

Mr. Oates. He did shew his Approbation of it. But in those Instructions that were brought to *Asbby*, he did say it was a very good Proposition, but he thought the Reward was too little.

L. C. J. Did he use any Words to declare his Assent?

Mr. Oates. Two Things lie couched in the Question, whether your Lordship means the Consult, or the Instructions, he did approve of.

L. C. J. How long after the Consultation was it that he approved of it?

Mr. Oates. It was two or three Days before he did give his Approbation.

Just. Wild. What Words did he say?

Mr. Oates. He did express his Consent, but to say the very Words, I cannot tell.

L. C. J. Will you ask him any more?

Pris. I would know the Day in *August*?

L. C. J. He saith he doth not remember the Day.

Mr. Oates. I believe, I will not be positive in it, it was about the 21st Day of *August*.

Just. Wild. and *Just. Jones.* Was it in *August* Old-stile?

Oates. Yes.

Pris. I can prove I was in *Warwickshire* at that time. That Day he guesseth, the 21st of *August*, I can make it appear I was Fourscore Miles off.

L. C. J. You will do well to prove you was there when the Guinea was given. Will you ask him any more?

Pris. No.

L. C. J. You may say as you will, but *Mr. Oates* doth charge, that expressly in *August* (according to the *English* Stile) you were at this *Wild-House*, and that he saw Fourscore Pounds prepared. You, *Mr. Coleman*, asked the Question, what Preparations were made for the Men going to *Windso*? It was answered, Fourscore Pounds are prepared: And your self gave a Guinea for Expedition. It is a hard Matter to press a Man to tell the precise Day of the Month, but positively he doth say it was in *August*.

Pris. I was Two and Twenty or Three and Twenty Days in *August*, in *Warwickshire*.

L. C. J. What have you now more to say?

Pris. My Lord, I never saw *Mr. Oates* but in the Council-Chamber, I never saw him in *Rome*, in other Parts I never saw the Face of him, or knew him in my whole Life; nor did I see the other till now in Court, as I hope to be saved. And then, my Lord, as to their Testimony, neither of them swear the self-same Fact.

L. C. J. No Man shall be guilty, if Denial shall make him innocent; They swear to the Fact of killing the King both of them, and that's enough. If one saith you have a Plot to Poyson, that is killing the King; and the other swears a Plot to shoot, or stab him, that is to the killing of the King also: Then there's your own Undertaking, in your Letter, under your Hand.

Pris. For Treason (with Submission to your Lordship) I hope there's none in that, though there

there are very extravagant Expressions in it. I hope some Expressions explain it, that it was not my Design to kill the King.

L. C. J. No, your Design was for the Conversion of three Kingdoms, and subduing of that Heresie that had reigned so long in this Northern part of the World: And for effecting whereof, *there were never more hopes since our Queen Mary's time till now*, and therefore pressing the King of France to use his Power, Aid, and Assistance; and does this signifie nothing?

Pris. Doth Aid and Assistance signifie more than Money? The word *Aid* in French is Power; they are promiscuous words.

L. C. J. You are Charged to have had a Correspondency and Agency with Foreign Power to subvert our Religion, and bring in Foreign Authority and Power upon us, which must be the necessary Consequence: How can this be proved plainer than by your Letters, to press the French King that he would use his Power?

Pris. Consider the Contexture and Connection of things, whether the whole series be not to make the King and the Duke (as far as I thought in my power) as great as could be.

L. C. J. How well or ill you excuse the fault, that's not the Question; they relate to the Duke most of them, little to the King. You were carrying on such a Design, that you intended to put the Duke in the Head of, in such method and ways as the Duke himself would not approve, but rejected.

Pris. Do not think I would throw any thing upon the Duke. Though I might (in the beginning of it) possibly make use of the Duke's Name, it is possible (they say I did) but can any imagine the People will lay down Money 200000*l.* or 20000*l.* with me upon the Duke's Name, and not know whether the Duke be in it; and consequently no Body will imagine the Duke would ever employ any sum to this King's prejudice or disservice while he lived. I take it for granted (which sure none in the World will deny) that the Law was ever made immediately subject to the King or Duke, and consequently to the Duke, I cannot think this will ever be expounded by the Law of England, or the Jury, to be Treason.

L. C. J. What a kind of way and talking is this? You have such a swimming way of melting words, that it is a troublesome thing for a Man to collect matter out of them. You give your self up to be a great Negotiator in the altering of Kingdoms, you would be great with mighty Men for that purpose; and your long Discourses and great Abilities might have been spared. The thing these Letters do seem to import, is this, That your Design was to bring in Popery into England, and to promote the interest of the French King in this place, for which you hoped to have a Pension (that's plain.) The Duke's Name is often mentioned, that's true; sometimes it appears it is against his will, and sometimes he might know of it, and be told that the consequence was not great. Now say you these Sums of Money and all that was done, it did relate to the King or Duke, and it was to advance their Interest, and you thought it was the way to do it. How can this advance them, unless it were done to do them service?

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and if they do not consent to it, and how can this be Treason, what kind of stuff is this? You do seem to be a mighty Agent, might not you for a colour use the Duke of York's Name to drive on the Catholick Cause, which you was driven to by the Priests mightily, and think to get 200000*l.* advance Money, and a Pension for your self, and make your self somebody for the present, and Secretary of State for the future? If you will make any defence for your self, or call in Witnesses, we will hear them: say what you can; for these vain inconsequential discourses signifie nothing.

Pris. I have Witnesses to prove I was in Warwickshire.

L. C. J. (to Boatman a Witness.) Where was Mr. Coleman in August last?

Boatm. In Warwickshire.

L. C. J. How long?

Boatm. All August, to my best remembrance.

L. C. J. Can you say that he was in Warwickshire all August? that he was not at London?

Boatm. I am not certain what time of the Month he was in London.

L. C. J. That he was there in August, may be very true; I do not ask how long he was in Warwickshire, but was he no where else? (To which the Witness could make no positive answer.)

Pris. I was at the Lord Denby's, and at Mr. Francis Fisher's; I was there at least twenty days.

L. C. J. Have you any more Witnesses?

Pris. Ans. None.

L. C. J. If you have a Mind to say any thing more, say what you can.

Pris. I can say nothing more than what I have said. Positively I say (and upon my Salvation) I never saw these Witnesses, Oates but once, and Bedlow never before.

Mr. *Soll. Gen.

* Sir Francis Winnington.

May it please Your Lordship, and you Gentlemen of the Jury,

THE Cause before you (I dare adventure to say) is a Cause of as great a Nature, and includes as great Crimes, as ever came to this Bar.

It is not a Cause of a particular Treason, but 'tis a Treason that runs to the whole; the King, the Government, and the Protestant Religion, all are comprehended in it.

The Defence the Prisoner has made is so very short, and of so slight a Nature, that I shall contract my self very much in what I had to say, and only state to the Court, and Jury, the principal things I rely upon.

The first Crime laid in the Indictment, is the design of killing and destroying the Royal Person of his Majesty. The second, the subverting of the Government, and in doing that, the destruction of the Protestant Religion.

And these Treasons have been punctually proved, as well by two Witnesses, as by Letters under Mr. Coleman's own Hand, whereby he corresponded with Monsieur le Chaise, the French King's Confessor, as also by the Answers which were sent by Monsieur le Chaise to Mr. Coleman.

As to the Proofs made by the Witnesses, the Substance of them is this. Mr. Oates swears, that

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that

that in *April* last *Old Style*, and *May New Style*, there was a General Consult or Meeting of the *Jesuits*, at the *White-Horse-Tavern* in the *Strand*; and afterwards they divided themselves into several Companies, or Clubs; and in those Consults they conspired the Death of the King; and contrived how to effect it. The manner of it was thus, (as Mr. Oates positively swears) That *Grove* and *Pickering* were employed to Murther the King; and their Design was to Pistol him in *St. James's Park*. *Grove* was to have Fifteen Hundred Pounds in Money, and *Pickering* (being a Priest) was to have Thirty Thousand Masses, which was computed to be of equal value to Fifteen Hundred Hounds, according to the usual price in the Church of *Rome*. And this Conspiracy and Contrivance Mr. Coleman was privy to, and did well approve of the same, as Mr. Oates affirmeth upon his Oath. So that here is a plain Treason proved upon the Prisoner, by his assenting to the Fact to be done, the Law not allowing any Accessaries in Treason. And this in Law makes the Prisoner as guilty as any of the Assassins, who designed to kill the King with their own Hands.

If this Design should fail, Mr. Oates swears, that the Conspirators intended a further attempt upon the Royal Person of the King, when he should be at *Windsor*; and four *Irish Assassins* were provided by Doctor *Fogarty*, whose Names he would not tell, and fourscore Guineas were provided by Father *Harcourt* (a *Jesuit*) to maintain the Assassins at *Windsor*, till they should have effected their wicked design.

While the Conspiracy was thus in agitation, Mr. Coleman, the Prisoner, went to visit *Harcourt* the *Jesuit* at his House in Town; but finding him not at home, and being informed that he was at *Wild-House*, Mr. Coleman went thither and found him there; and Mr. Coleman asking what Provision *Harcourt* had made for the Gentlemen at *Windsor*; *Harcourt* replied, that there were fourscore Guineas, which then lay upon the Table, which were to be sent to them; and said, that the Person who was in the Room was to carry them. To which Mr. Coleman replied, he liked it very well; and gave a Guinea out of his own Pocket to the Messenger who was to carry the Money to *Windsor*, to encourage him to expedite the Business. But in case the design of killing his Majesty at *Windsor* should be any ways prevented, then there was a further Conspiracy, to destroy the King by Poison. Mr. Oates swears, that in *July* last, *Ashby* (a *Jesuit*) brought instructions to London from *Flanders*, that in case *Pickering* and *Grove* could not kill the King at London, nor the four *Irish Assassins* at *Windsor*, then Ten Thousand Pounds was to be proposed to Sir *George Wakeman* to Poison the King. But it did appear by the Letters that passed between *White* the Provincial (here in London) and *Ashby*, that Mr. Coleman said, he thought Ten Thousand Pounds was too little; and therefore thought it necessary to offer five Thousand Pounds more, which afterwards was assented to by the *Jesuits* abroad. And Mr. Oates swears, he saw Letters from the Provincial at London, to the *Jesuits* at *St. Omer*, signifying, that Sir *George Wakeman* had accepted of the Proposition, and received five Thousand Pounds of the Money. By which

Testimony of Mr. Oates, it plainly appears, that Mr. Coleman, the Prisoner at the Bar, was privy to the Conspiracy, and aiding and abetting to the wicked and damnable design of murdering the King.

The second Witness is Mr. *Bedlow*, who swears that he was employed by *Harcourt*, the *Jesuit*, to carry Pacquets of Letters to *Monfieur le Chaise*, the *French King's Confessor*; and further says, he was at a Consult in *France*, where the Plot was discoursed on for killing the King; and did bring back an answer from *le Chaise* to *Harcourt* in London, and swears particularly, that on the 24th or 25th of *May*, 1677, he was at *Coleman's House* with Father *Harcourt*, and some other Persons, where Mr. Coleman, discoursing of the great design in Hand, said these Words following, *That if he had a Sea of Blood, and an hundred Lives, he would lose them all to carry on the design; and if to effect this, it were necessary to destroy an hundred Heretick Kings, he would do it.* So that here is another positive Oath to an Act of Treason committed by Mr. Coleman, in relation to the murdering the King.

The other part of the Evidence consists of Papers and Letters, which generally relate to prove the latter part of the Indictment; to wit, The Extirpation of the Protestant Religion, and introducing of Popery, and the subverting of the Government. And this appears by a Letter written by Mr. Coleman, dated 29 *Septem.* 75. and sent to *Monfieur le Chaise*, the *French King's Confessor*; wherein he gives him an account of the Transactions of several Years before, and of the Correspondence between Mr. Coleman and *Monfieur Ferrier*, Predecessor to *le Chaise*; wherein he does also assert, that the true way to carry on the Interest of *France*, and the promoting of the *Popish Religion* here in *England*, was to get this Parliament dissolved; which (says he) had been long since effected, if three Hundred Thousand Pounds could have been obtained from the *French King*; and that things yet were in such a posture, that if he had but Twenty Thousand Pounds sent him from *France*, he would be content to be a Sacrifice to the utmost malice of his Enemies, if the Protestant Religion did not receive such a Blow as it could not subsist. And the receipt of this Letter was acknowledged by *Monfieur le Chaise*, in an answer which he wrote to Mr. Coleman, dated from *Paris* *October* 23. 75. in which he gives him thanks for his good Service, in order to the promoting the *Popish Religion*.

Several other Letters have been produced and read, which were written by Mr. Coleman to *Monfieur Ferryer* and others, and more particularly one Letter dated *August* 21. 74. written by Coleman to the Pope's Internuncio at *Brussels*, wherein he says the Design prospered so well, that he doubted not but in a little time the Business would be managed, to the utter ruin of the Protestant Party.

And by other Letters he writes to the *French King's Confessor* that the assistance of his most Christian Majesty is necessary, and desires Money from the *French King* to carry on the Design.

But there is one Letter, without Date, more Bloody than all the rest, which was written to *Monfieur le Chaise* in some short time after the long

long Letter of September 29, 1675, wherein, amongst many other things, Coleman expresses himself thus: *We have a mighty Work upon our Hands, no less than the Conversion of three Kingdoms, and the utter subduing of a Pestilent Heresie, which hath for some time domineer'd over this Northern part of the World; and we never had so great hopes of it since our Queen Mary's days.* And in the Conclusion of the Letter he implores Monsieur le Chaise to get all the Aid and Assistance he can from France, and that next to God Almighty, they did rely upon the mighty mind of his most Christian Majesty, and therefore did hope le Chaise would procure Money and Assistance from him.

Now any Man that considers the Contents of these Letters, must needs agree that the latter part of the Indictment, to wit, the Treason of endeavouring the Subverting the Government and the Protestant Religion, is fully proved upon Mr. Coleman, the Prisoner at the Bar; and that these Letters were written by him, and the Answers received, he does not deny. But all he has to say for himself, is, that it was to make the King of England great; whereas the contrary is most manifest, because the Jesuits, who love Force and Tyranny, always adhere to those Princes that are greatest in Strength and Power. For it appears in History, that when the House of Austria were in their Greatness, and like to arrive to the Universal Monarchy in these parts of the World, the Jesuits all adhered to that House: But since the French King hath grown more mighty in Power and Greatness, they declined the Interest of the Austrian Family, and do now promote the Counsels of France, thinking that now that King will become the Universal Monarch.

I shall therefore now conclude the Evidence, only observing to the Jury, that the several Treasons in the Indictment are fully proved. The first, as to the Destruction of the Royal Person of the King, by two Witnesses, Mr. Oates, and Mr. Bedlow; the other part of it, viz. the Subversion of the Government, and Extirpation of the Protestant Religion, by the several Letters which have been before remembred, which have not been denied by the Prisoner to be his. Therefore I hope, Gentlemen, when you meet with Offenders that are guilty of such stupendous Crimes, you will do Justice upon them, which will be great Comfort and Satisfaction to the King and all his good Protestant Subjects.

Serj. Pembert. Gentlemen, you hear the Crime is of the highest Nature, it's the Subversion of three Kingdoms, and the subduing of that Religion which he defames by the Name of *Pestilent Heresie*. It concerns us all to look about us, and all the Kingdom, when there shall be a Design managed in this manner, to destroy our King, and to take away our Religion, and to enslave us all to the Pope, and make us all truckle to the Priests.

It is wonderful it is capable (at this day) of so great Evidence, there is *Digitus Dei* in it, or else it would be impossible such a thing should be made so manifest: All the rest that is said in the Indictment are but Circumstances that declare it: There is a strong Evidence of many matters of Fact in this Design, which declare the Intention hatched in his Breast for many

Years together: Here hath been a Design to kill the King, and he doth not only consent to it, but commend it; what can be said to his giving the Money to him that was to pay the fourscore pieces of Gold to those *Ruffians* sent to Windsor? and adding 5000*l.* to the 10000*l.* for the Doctor that was to poyson the King? He denies all.

No question but a Man that hath had a Heart to design such Contrivances, will have the Face to deny it publicly: It's a thing to be acted in the dark: But there's both Mr. Oates and Mr. Bedlow, plainly prove it upon him that he consented to the acting the King's Death. What's the Sense of his Letters, but to shew his design, and to beg the Assistance of France to them in their necessities? the whole Current is to destroy our Religion. I think you Gentlemen of the Jury have had such Evidence as will satisfy any Man.

Pris. I deny all Mr. Oates his Testimony, for his saying to the Council he did not know me because he could not see me, when I was as near as the next Gentleman but one, but knew me when I spake, and I spoke to almost all the matters asked. He accuseth me of a thing in August, but names not the day: Now if there be one Error in his Testimony it weakens all the rest. I went out of Town the 10th of August, it was the latter end I came home, about the middle of Bartholomew Fair, the last day of August.

L. C. J. Have you any Witness to prove that?

Pris. I cannot say I have a Witness.

L. C. J. Then you say nothing.

Pris. People cannot speak to a day, to a thing they neither imagined or thought of.

L. C. J. I ask your Servant, do you know when Mr. Coleman went out of Town?

Coleman's Serv. In August, I cannot say particularly the day.

L. C. J. Do you know when he came home?

Serv. I cannot remember.

Just. Wild. Where was you the last Bartholomew-day?

Serv. I was in Town.

Just. Wild. Where was your Master?

Serv. I do not remember.

L. C. J. You say you went out of Town the 10th, and came home the last of August; you say it is impossible that he should say right, but yet you do not prove it.

Pris. I have no more to say, but I entered down all my Expences every day in a Book, which Book will shew where I was.

L. C. J. Where is your Book?

Pris. At my Lodgings in Vere-Street by Covent-Garden; in a Trunk that came by the Carrier, that will shew when they were sent.

L. C. J. If the Cause did turn upon that matter, I would be well content to sit until the Book was brought, but I doubt the Cause will not stand upon that Foot, but if that were the Case it would do you little good.

Observe what I say to the Jury.

My Lord Chief Justice his Speech to the Jury upon his summing up of the Evidence.

Gentlemen of the Jury; My Care at this time shall be to contract this very long Evidence, and to bring it within a short compass, that you may have nothing before you to consider

der of, as near as I can, but what is really material to the Acquitting or Condemning of Mr. Coleman.

The things he is Accused of are of two sorts; the one is, to subvert the Protestant Religion and to introduce Popery: the other was to destroy and kill the King. The Evidence likewise was of two sorts; The one by Letters of his own hand-writing, and the other by Witnesses *Viva voce*. The former he seems to confess, the other totally to deny.

For that he confesseth, he does not seem to insist upon it, that the Letters were not his, he seems to admit they were; And he rather makes his Defence by expounding what the meaning of these Letters were, than by denying himself to be the Author.

I would have you take me right, when I say he doth admit; he doth not admit the Construction, that the King's Council here makes upon them; but he admits that these Letters were his. He admits it so far, that he does not deny them. So that you are to Examine what these Letters import in themselves, and what Consequences are naturally to be deduced from them.

That which is plainly intended, is to bring in the *Roman Catholick*, and to subvert the *Protestant Religion*. That which is by Consequence intended, was the Killing the King, as being the most likely means to introduce *That*, which, as 'tis apparent by his Letters, was designed to be brought in.

For the First part of the Evidence. All his Great long Letter that he wrote, was to give the present Confessor of the *French King* an Account of what had passed between him and his Predecessor; By which Agency, you may see that Mr. Coleman was In with the former Confessor.

And when he comes to give an Account of the three Years Transactions to this present Confessor, and to begin a Correspondence with him, About what is it? Why, the substance of the Heads of the long Letter comes to this. It was to bring in the *Catholick* as he call'd it, (that is) the *Romish Catholick Religion*, and to establish that here; and to advance an Interest for the *French King*, be that Interest what it will.

It's true his Letters do not express what sort of Interest, neither will I determine: but they say it was to promote the *French King's* Interest, which Mr. Coleman would expound in some such sort, as may consist with the King of *England's*, and the Duke of *York's* Interest. But this is certain, it was to subvert our Religion, as it is now by Law established. This was the great end thereof, it cannot be denied: To promote the Interest (I say) of the *French King*, and to gain to himself a Pension as a reward of his Service, is the Contents of his First long Letter, and one or two more concerning that Pension.

His last Letters expound more plainly what was meant by the *French King's* Interest. *We are* (saith he) *about a great work, no less than the Conversion of three Kingdoms, and the total and utter subversion and subduing of that pestilent Heresie* (that is the Protestant Religion) *which hath reigned so long in this Northern part of the World; and for the doing of which, there never was such great hopes since our Queen Mary's Days, as at this time.*

Now this plainly shews, that our Religion

was to be subverted, Popery established, and the three Kingdoms to be converted; that is indeed, to be brought to confusion.

For I say, that when our Religion is to be subverted, the Nation is to be subverted and destroyed, that is most apparent: For there could be no hope of subverting or destroying the Protestant Religion, but by a *Subversion* not *Conversion* of the three Kingdoms.

How was it to be done otherwise? Why, I would have brought this Religion in (says he) by dissolving of the Parliament. I would have brought it in by an Edict and Proclamation of Liberty of Conscience. In these ways I would have brought it in.

Mr. Coleman knows it is not fit for him to own the introducing of his Religion by the Murder of the King, or by a Foreign Force. The one was too *black* and the other too *bloody*, to be owned. And few People (especially the *English*) will be brought to save their Lives (as he may do his) by confession of so bloody and barbarous a thing, as an intention to Kill the King, or of Levying a War; which though it be not a *Particular*, is a *General Murder*. I say, it was not convenient for Mr. Coleman, when he seems to speak something for himself, to give such an Account, how he would have done it; Therefore he tells us, he would have done it by the dissolving of the Parliament and by Toleration of Religion. Now I would very fain know of any Man in the World, whether this was not a very fine and artificial covering of his design for the Subversion of our Religion?

Pray how can any Man think, that the Dissolving of the Parliament could have such a mighty influence to that purpose? It is true, he might imagine it might in some sort contribute towards it: Yet it is so doubtful, that he himself mistrusts it. For he is sometimes for the Dissolving of the Parliament, and other times not, as appears by his own Papers: For which we are not beholden to him, so much as for any one, more than what were found by accident, and produced to the King and Council. But in truth, why should Mr. Coleman believe that another Parliament (if this Parliament were Dissolved) should comply with Popery? That is to say, That there should be great hopes of bringing in of Popery by a new Parliament? Unless he can give me a good reason for this, I shall hold it as insignificant and as unlikely to have that effect, as his other way by a General Toleration.

And therefore next, Upon what ground does he presume this? I do assure you, that Man does not understand the Inclinations of the *English* People, or knows their Tempers, that thinks, if they were left to themselves and had their Liberty, they would turn Papists.

It's true, there are some amongst us that have so little Wit as to turn Fanaticks, but there is hardly any, but have much more Wit than to turn Papists. These are therefore the Counterfeit pretensions of Mr. Coleman.

Now if not by these means, In what way truly did he intend to bring in Popery? Why his own Letters plainly convict him of one step towards it, in endeavouring with Foreign Powers to bring in that Religion, and to Subvert ours. And for the other way of doing it, by killing the King; I leave it to you whether there

there were any more probable way than that indeed to do it.

And could he think, that the *French King* would not have thought himself cozened of his Money, if he had not given him hopes that he would use the most probable Methods that he could, to effect his Design?

Therefore there must be more in it; for he that was so earnest for that Religion, would not have stuck at any Violence to bring it in; he would not have stuck at Blood. For we know their Doctrines and their Practices, and we know well, with what Zeal the Priests push them forward to venture their own Lives, and to take away other Mens, that differ from them, to bring in their Religion, and to set up themselves. For indeed in the Kingdoms and Countries where Popery reigns, the Priests have Dominion over Mens Consciences, and Power over their Purfes. And they use all Arts imaginable of making Profelytes, and take special Care, that those in their Communion shall know no more than the Priests shall give them leave to understand. And for this Reason they prohibit the use of all Books without their Licence. This blind Obedience begets blind Ignorance, and this is a great subtilty of theirs to keep them in it, that they may perfectly submit to them.

What cannot they Command, when they have made others slaves in their Understandings, and that they must know no more, than what they give them leave to know? But in *England* it is not so, Mr. *Coleman*; and therein you would have found a great disappointment. For if Liberty of Conscience had been tollerated here, that the Consequence of it would have been Popery, I deny.

Nothing is more unlikely; for though in the short Reign of *Queen Mary*, Popery came in for some time, which was but for a little time, and then the People were not so well grounded in the Protestant Religion, nor in the Principles of it: But now they are, Insomuch, that scarce a Cöbler but is able to baffle any *Roman Priest* that ever I saw or met with.

And Thanks be to God we have a Preaching Ministry, and the free use of the Scriptures allowed amongst us, which they are not permitted to have.

And after this I wonder, that a Man, who hath been bred up in the Protestant Religion (as I have Reason to believe that you Mr. *Coleman* have been) for (if I am not misinformed) your Father was a Minister in *Suffolk*; For such an one to depart from it, is an Evidence against you, to prove the Indictment. I must make a Difference between Us, and Those who have been always educated that way, and so are under the prepossession of their Education, which is a difficult thing to be overcome.

And I do assure you, there are but two things, that I know of, can make one do it, Interest, or gross Ignorance.

No Man of Understanding, but for By-ends, would have left his Religion to be a Papist. And for you, Mr. *Coleman*, who are a Man of Reason and Subtilty, I must tell you (to bring this to your self) upon this account, that it could not be Conscience, I cannot think it to be Conscience. Your Pension was your Conscience, and your Secretary's place your Bait.

For such Men (I say) as have been bred up in the Protestant Religion, and left it, I can hardly presume that they do it out of Conscience, unless they do it upon a mighty search, not leaning upon their own understanding and abilities, not hearing of one side alone.

Conscience is a tender thing, Conscience will tremble when it leaves the Religion it has been bred in, and its sincerity is shown by being fearful, lest it should be in the wrong. No Man may pretend to Conscience truly, that takes not all Courses imaginable to know the *Right*, before he lets his Religion slip from him.

Have we so soon forgot our Reverence to the late King, and the pious Advice he left us? A King that was truly A DEFENDER of the FAITH, not only by his Title, but by his Abilities and Writings. A King, who understood the Protestant Religion so well, that he was able to defend it against any of the Cardinals of *Rome*. And when he knew it so thoroughly, and died so eminently for it, I will leave this Characteristical Note, That whosoever after that departs from *His Judgment*, had need have a very good one of his own, to bear him out.

I do acknowledge, Many of the Popish Priests formerly, were learned Men, and may be so still, beyond the Seas: but I could never yet meet with any here, that had other Learning or Ability but Artificial only, to delude weak Women, and weaker Men.

They have, indeed, ways of Conversion, and Conviction, by Enlightning our Understandings with a Faggot, and by the powerful and irresistible Arguments of a Dagger: But these are such wicked Solcecisms in their Religion, that they seem to have left them neither *Natural Sense*, nor *Natural Conscience*. Not *Natural Sense* by their Absurdity, in so an unreasonable a belief, as of the Wine turned into Blood: Not *Natural Conscience*, by their Cruelty, who make the Protestants Blood as Wine, and these Priests thirst after it.

Tantum Religio potuit suadere malorum?

Mr. *Coleman*, in one of his Letters, speaks of routing out *our Religion, and our Party*; And he is in the Right, for they can never root out the Protestant Religion, but they must kill the Protestants. But let him and them know, if ever they shall endeavour to bring Popery in, by destroying of the King, they shall find, that the Papists will thereby bring destruction upon themselves, so that not a Man of them would escape.

Ne Catulus quidem relinendus.

Our Execution shall be as quick as their Gunpowder, but more effectual. And so, Gentlemen, I shall leave it to you, to consider, what his Letters prove him guilty of directly, and what by Consequence; What he plainly would have done, and then, how he would have done it; And whether you think his *Fiery Zeal* had so much *Cold Blood* in it, as to spare any others?

For the other part of the Evidence, which is by the Testimony of the present Witnesses, You have

have heard them. — I will not detain you longer now, the Day is going out.

Mr. J. Jones. You must find the Prisoner Guilty, or bring in two Persons Perjured.

L. C. J. Gentlemen, If your Consultation shall be long, then you must lye by it all Night, and We'll take your Verdict to-morrow Morning. If it will not be long, I am content to stay a while.

Jury. My Lord, we shall be short.

J. Wyld. We do not speak to you to make more haste, or less, but to take a full Consultation, and your own time; There is the Death of a Man at the Stake, and make not too much haste. We do not speak it on that Account.

The Jury went from the Bar, and returned.

Court. Are you all agreed of your Verdict?

Jury. Yes.

Court. Who shall speak for you?

Jury. The Fore-man.

Court. Edward Coleman, hold up thy Hand.

Court. Is Edward Coleman Guilty of the High Treason, whereof he stands Indicted, or Not Guilty?

Jury. Guilty, my Lord.

Court. What Goods, Chattels, &c.

Prisoner. You were pleased to say to the Jury, that they must either bring me in Guilty, or two Persons Perjured: I am a Dying Man, and upon my Death, and expectation of Salvation, declare, That I never saw these two Gentlemen, excepting Mr. Oates, but once in all my Life, and that was at the Council Table.

L. C. J. Mr. Coleman, Your own Papers are enough to condemn you.

Court. Capt. Richardson, You must bring Mr. Coleman hither again to-morrow Morning to receive his Sentence.

The Day following, being November the 28th, Mr. Coleman was brought to the Bar, to receive his Sentence, and the Court proceeded thereupon, as followeth.

L. C. J. **A**SK him what he can say for himself; Make Silence, Cryer.

Cl. of Cr. Edward Coleman, Hold up thy Hand. Thou hast been Indicted of High Treason, thou hast thereunto Plead Not Guilty; thou hast put thy Self upon God and thy Country, which Country hath found thee Guilty; What canst thou say for thy Self, wherefore Judgment of Death should not be given against thee, and an Execution Awarded according to Law?

Mr. Coleman. May it please you, my Lord, I have this to say for my self; As for my Papers, I humbly hope, (setting aside Oral Testimony) that I should not have been found Guilty of any Crime in them, but what the Act of Grace would have pardoned, and I hope I shall have the Benefit of that: The Evidence against me, namely Oral, I do humbly beg that you would be pleased to give me a little time to shew you, how impossible it is that those Testimonies should be true; For that Testimony of Mr. Oates in August, my Man, that is now either in the Court or Hall, hath gotten a Book that is able to make it appear, that I was out of Town from the 15th of August to the 31st of August late at Night.

L. C. J. That will not do, Mr. Coleman.

Coleman. I do humbly offer this, for this Reason; because Mr. Oates, in all his other Evidences, was so punctual, as to distinguish between Old Stile and New, he never mist the Month, hardly the Week, and oftentimes put the very Day; for his Testimony that he gave against me, was, that it was the 21st of August.

L. C. J. He thought so, but he was not positive, but only as to the Month.

Coleman. He was certain it was the latter end of August, and that about Bartholomew-tide.

L. C. J. He conceived so, he thought so.

Coleman. Now if I was always out of Town from the 15th Day of August, to the 31st late at Night, it is then impossible, My Lord, That should be a true Testimony. Your Lordship was pleased to observe, that it would much enervate any Man's Testimony, if to the whole he could be proved false in any one thing. I have further in this matter to say, besides my Man's Testimony, the King hath, since I have been seized on, seized on my Papers and my Book of Accounts, where I used punctually to set down where I spent my Money; and if it doth not appear by that Book that I was all those Days and Times, and several other Days in August, to be out of Town, I desire no favour. You cannot suppose, my Lord, nor the World believe, that I prepared that Book for this purpose in this matter; and I can make it appear by others, if I had time; but I only offer this to your Lordship, that seeing Mr. Oates did name so many Particulars and Circumstances, it's very strange, that he should fail in a particular of such Importance as about killing the King; and no Man living of common Sense would think or believe that I should speak about such a thing in Company that I did not well know, and this to be done frequently and oftentimes, as he asserts it; when Oates seem'd to the King and Council (and I believe the King himself remembers it) when I was examined, that he did not know me, that he knew nothing of me, so that here is two things against this Witness that can hardly happen again.

My Circumstances are extraordinary, and it is a great Providence, and I think your Lordship and the whole World will look upon it as such, if for any Crimes that are in my Papers, if there be any Mercy to be showed me by the King's Gracious Act of Pardon, I humbly beg that I may have it.

L. C. J. None.

Coleman. If none, I do humbly submit; but I do humbly hope with submission, that those Papers would not have been found Treasonable Papers.

L. C. J. Those Letters of yours, Mr. Coleman, were since the Act of Pardon; your Papers bear date 1674, 1675, and there hath been no Act since. But as for what you say concerning Mr. Oates, you say it in vain now, Mr. Coleman, for the Jury hath given in their Verdict, and it is not now to be said, for after that Rate we shall have no End of any Man's Trial; but for your satisfaction, Mr. Coleman, to the best of my remembrance, Mr. Oates was positive only as to the Month of August, he thought it might be about the 21st Day, or about Bartholomew-Fair time; but he was absolute in nothing but the Month.

Coleman.

Coleman. He was punctual in all his other Evidences, but in this he was not; and when I was examined at the Council Table, he said he knew little of me.

L. C. J. He charged you positively for having held Conspiracy to poyson the King; and that there was Ten Thousand Pound to be paid for it, and afterwards there was Five Thousand Pound more to be added; and he positively charges you to be the Person that amongst all the Conspirators was reputed to pay the Five Thousand Pound.

Col. He said it after such a fashion.

L. C. J. He said it after such a fashion that Sir Robert Southwell and Sir Thomas Doleman satisfied us that he did the thing, and that plainly to his understanding; and what say you he said?

Col. That he did not know me.

L. C. J. Neither of them say so, that he said he did not know you, they deny it.

Col. He said so, upon my Death.

L. C. J. 'Tis in vain to dispute it further, there must be an End.

Cryer, make O yes, Our Sovereign Lord the King doth straightly Charge and Command all Persons to keep Silence while Judgment is given upon the Prisoner Convict, upon pain of Imprisonment.

L. C. J. You are found Guilty, Mr. *Coleman*, of High-Treason, and the Crimes are several that you are found Guilty of. You are found Guilty of Conspiring the Death of the King; you are likewise found Guilty of endeavouring to subvert the Protestant Religion as it is by Law Established, and to bring in Popery, and this by the aid and assistance of Foreign Powers. And I would not have you, Mr. *Coleman*, in your last apprehension of things, to go out of the World with a Mistake, if I could help it; That is, I would not have you think, that though you only seem to disavow the matter of the Death of the King, that therefore you should think your self an Innocent Man. You are not Innocent, I am sure; for it is apparent by that which cannot deceive, that you are guilty of Contriving and Conspiring the Destruction of the Protestant Religion, and to bring in Popery, and that by the aid and assistance of Foreign Powers, and this no Man can free you in the least from. And know, that if it should be true, that you would disavow, that you had not an actual hand in the Contrivance of the King's Death (which two Witnesses have sworn positively against you:) Yet he that will subvert the Protestant Religion here, and bring in consequently a Foreign Authority, does an Act in derogation of the Crown, and in Diminution of the King's Title and Sovereign Power, and endeavours to bring a Foreign Dominion both over our Consciences and Estates. And if any Man shall endeavour to subvert our Religion to bring in that, though he did not actually contrive to do it by the Death of the King, or it may be not by the Death of any one Man, yet whatsoever follows upon that Contrivance, he is Guilty of; Infomuch, it is greatly to be fear'd, that though you meant only to bring it in by the way of Dissolving of Parliaments, or by Liberty of Conscience, and such kind of innocent ways as you thought, yet if so be those Means should not have proved Effectual, and worse should have been taken (though by others of your Con-

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federates) for to go through with the work, as we have great reason to believe there would, you are Guilty of all that Blood that would have followed. But still you say you did not design that thing; but to tell you, he that doth a sinful and unlawful Act, must answer, and is liable both to God and Man, for all the Consequences that attend it, therefore I say you ought not to think your self innocent. 'Tis possible you may be penitent, and nothing remains but that. And as I think in your Church you allow of a thing called Attrition, if you cannot with our Church have Contrition, which is a Sorrow proceeding from Love, Pray make use of Attrition, which is a Sorrow arising from Fear. For you may assure your self, there are but a few Moments betwixt you and a vast Eternity, where will be no dallying, no arts to be used, therefore think on all the good you can do in this little space of time that is left you; all is little enough to wipe off (besides your private and secret offences) even your publick ones. I do know that Confession is very much owned in your Church, and you do well in it; but as your Offence is publick, so should your Confession be; and it will do you more service then all your Auricular Confessions. Were I in your case, there should be nothing at the bottom of my Heart that I would not disclose. Perchance you may be deluded with the fond hopes of having your Sentence respited. Trust not to it, Mr. *Coleman*. You may be flatter'd to stop your Mouth, till they have stopt your Breath, and I doubt you will find that to be the event. I think it becomes you as a Man, and as a Christian, to do all that is now in your Power, since you cannot be white, to make your self as clean as you can, and to fit your self for another World, where you will see how vain all resolutions of obstinacy of concealment, and all that sort of bravery which perhaps may be instill'd by some Men, will prove. They will not then serve to lessen, but they will add to your fault. It concerns Us no farther than for your own good, and do as God shall direct you, for the truth is, there are perswasions and inducements in your Church to such kind of Resolutions and such kind of Actions, which you are led into by false Principles and false Doctrines (and so you will find when you come once to experiment it, as shortly you will) that hardly the Religion of a *Turk* would own. But when Christians by any violent bloody Act attempt to propagate Religion, they abuse both their Disciples and Religion too, and change that way that Christ Himself taught us to follow him by. 'Twas not by Blood or Violence; by no single Man's undertaking to disturb and to alter Governments; To make hurly-burles, and all the mischiefs that attend such things as these are.

For a Church to perswade Men even to the Committing of the highest Violences, under a pretence of doing God good service, looks not (in my Opinion) like Religion, but Design; like an Engine, not a Holy Institution; Artificial as a Clock, which follows not the Sun but the Setter; goes not according to the Bible but the Priest, whose Interpretations serve their particular ends, and those private advantages which True Religion would scorn, and Natural Religion it self would not endure. I have, Mr. *Coleman*, said thus much to you as you are a Christian,

T t t t

flian, and as I am one, and I do it out of great Charity and Compassion, and with great sense and sorrow that you should be mis-led to these great offences under pretence of Religion. But seeing you have but a little time, I would have you make use of it to your best advantage; for I tell you, that though Death may be talkt of at a distance in a brave Heroick way, yet when a Man once comes to the Minute, Death is a very serious thing; then you will consider how trifling all Plots and Contrivances are, and to how little purpose is all your Concealments. I only offer these things to your thoughts, and perhaps they may better go down at such a time as this is than at another; and if they have no effect upon you, I hope they will have some as to my own particular, in that I have done my good-will. I do remember you once more, that in this matter you be not deluded with any fantastick hopes and expectations of a Pardon, for the Truth is, Mr. Coleman, you will be deceived; therefore set your Heart at Rest, for we are at this time in such Disorders, and the People so continually alarm'd either with secret Murthers, or some Outrages and Violences that are this day on foot, that though the King, who is full of Mercy almost to a fault, yet if he should be inclined that way, I verily believe both Houses would interpose between that and you. I speak this to shake off all vain hopes from you; for I tell you I verily believe they would not you should have any Twigg to hold by to deceive you; so that now you may look upon it, there is nothing will save you, for you will assuredly dye as now you live, and that very suddenly. In which I having discharged my Conscience to you as a Christian, I will now proceed to pronounce Sentence against you, and do my Duty as a Judge.

You shall return to Prison, from thence to be drawn to the place of Execution, where you shall be hanged by the Neck, and be cut down alive, your Bowels burnt before your Face, and your Quarters sever'd, and your Body disposed of as the King thinks fit; and so the Lord have Mercy upon your Soul.

Coleman. My Lord, I humbly thank your Lordship, and I do admire your Charity, that you would be pleased to give me this admirable Counsel, and I will follow it as well as I can, and I beg your Lordship to hear me what I am going to say. Your Lordship, most Christian like, hath observed wisely, that Confession is extreamly necessary to a dying Man, and I do so too; but that Confession your Lordship I suppose means, is of a guilty evil Conscience in any of these points that I am condemn'd for, Of maliciously contriving, &c. If I thought I had any such Guilt, I should assuredly think my self damn'd now I am going out of the World by concealing them, in spite of all Pardons or Indulgencies, or any Act that the Pope or the Church of Rome could do for me, as I believe any one Article of Faith. Therefore pray hear the words of a dying Man, I have made a Resolution, I thank God, not to tell a Lie, no not a single Lie, not to save my Life. I hope God will not so far leave me as to let me do it; and I do renounce all manner of Mercy that God can shew me, if I have not told the House of Commons, or offer'd it to the House of Commons, all that

I know in my whole Heart toward this business; and I never in all my Life either made any Proposition, or received any Proposition, or knew or heard directly or indirectly of any Proposition towards the supplanting or invading the King's Life, Crown or Dignity, or to make any Invasion or Disturbance to introduce any New Government, or to bring in Popery by any Violence or Force in the World; if I have, my Lord, been mistaken in my method, as I will not say but I might have been; for if two Men differ, one must be mistaken; therefore possibly I might be of an Opinion, that Popery might come in if Liberty of Conscience had been granted; and perhaps all Christians are bound to wish all People of that Religion that they profess themselves, if they are in earnest: I will not dispute those Ills that your Lordship may imagine to be in the Church of Rome; if I thought there was any in them I would be sure to be none of it. I have no design, my Lord, at all in Religion but to be Saved; and I had no manner of Invitation to invite me to the Church of Rome, no not one, but to be Saved; if I am out of the way, I am out of the way, as to the next World as well as this; I have nothing but a sincere Conscience, and I desire to follow it as I ought. I do confess I am guilty of many Crimes, and I am afraid all of us are guilty in some measure, of some Failings and Infirmities; but in matters of this nature that I now stand condemn'd for, though I do not at all complain of the Court; for I do confess I have had all the fair play imaginable, and I have nothing at all to say against it; but I say as to any one Act of mine, so far as Acts require Intention to make them Acts, as all humane Acts do, I am as Innocent of any Crime that I now stand charg'd as guilty of, as when I was first born.

L. C. J. That is not possible.

Coleman. With submission, I do not say Innocent as to any Crime in going against any Act of Parliament, then it is a Crime to hear Mass, or to do any Act that they prohibit; but for Intending and Endeavouring to bring in that Religion by the Aid and Assistance of the King of France, I never intended nor meant by that Aid and Assistance, any Force in the World, but such Aids and Assistances as might procure us Liberty of Conscience. My Lord, if in what I have said no body believes me, I must be content; if any do believe me, then I have wip'd off those scandalous Thoughts and abominable Crimes, that, &c. and then I have paid a little Debt to Truth.

L. C. J. One word more and I have done. I am sorry, Mr. Coleman, that I have not Charity enough to believe the words of a dying Man; for I will tell you what sticks with me very much: I cannot be persuaded, and no body can, but that your Correspondence and Negotiations did continue longer than the Letters that we have found, that is after 1675. Now if you had come and shown us your Books and Letters, which would have spoke for themselves, I should have thought then that you had dealt plainly and sincerely, and it would have been a mighty Motive to have believed the rest; for certainly your Correspondence held even to the time of your Apprehension, and you have not discovered so much as one Paper, but what was found unknown to you, and against your will.

Coleman. Upon the words of a dying Man, and

and upon the expectation I have of Salvation, I tell your Lordship, that there is not a Book nor Paper in the World that I have laid aside voluntarily.

L. C. J. No, perhaps you have burnt them.

Coleman. Not, by the Living God.

L. C. J. I hope, Mr. Coleman, you will not say no manner of way.

Coleman. For my Correspondence these two last years past, I have given an account of every Letter; but those that were common Letters, and those Books that were in my House, what became of them I know not; they were common Letters that I used to write every Day, a Common Journal what past at Home and Abroad. My Men they writ 'em out of that Book.

L. C. J. What became of those Letters?

Coleman. I had no Letters about this business, but what I have declared to the House of Commons, that is, Letters from St. Germans, which I owned to the House of Commons; and I had no methodical Correspondence, and I never valued them nor regarded them, but as they came, I destroyed them.

L. C. J. I remember the last Letter that is given in Evidence against you, discovers what mighty Hopes there was, that the time was now come wherein that pestilent Heresie, that hath domineer'd in this Northern part of the World, should be Extirpated; and that there never was greater hopes of it since OUR Queen Mary's Reign. Pray, Mr. Coleman, was that the concluding Letter in this Affair?

Coleman. Give me leave to say it upon the word of a dying Man, I have not one Letter, &c.

L. C. J. What though you burnt your Letters, you may recollect the Contents.

Coleman. I had none since.

L. C. J. Between God and your Conscience be it, I have other Apprehensions; and you deserve your Sentence upon you for your Offences, that visibly appear out of your own Papers, that you do not, and cannot deny.

Coleman. I am satisfied. But seeing my Time is but short, may I not be permitted to have some immediate Friends, and my poor Wife to have her freedom to speak with me, and stay with me that little time that I have, that I might speak something to her in order to her living and my dying?

L. C. J. You say well, and it is a hard Case to deny it; but I tell you what hardens my Heart, the Insolencies of your Party, (the Roman Catholics I mean) that they every Day offer, which is indeed a proof of their Plot, that they are so bold and impudent, and such secret Murders Committed by them, as would harden any Man's Heart to do the common

favours of Justice and Charity, that to Mankind are usually done: They are so bold and insolent, that I think it is not to be endured in a Protestant Kingdom; but for my own particular, I think it is a very hard thing for to deny a Man the company of his Wife, and his Friends, so it be done with Caution and Prudence. Remember that the Plot is on foot, and I do not know what Arts the Priests have, and what Tricks they use; and therefore have a care that no Papers, nor any such thing, be sent from him.

Coleman. I do not design it, I am sure.

L. C. J. But for the Company of his Wife and his near Friends, or any thing in that kind, that may be for his Eternal Good, and as much for his present Satisfaction that he can receive now in the condition that he is in, let him have it; but do it with Care and Caution.

Capt. Richardson. What, for them to be private alone?

L. C. J. His Wife, only she, God forbid else. Nor shall you not be deny'd any Protestant Minister.

Coleman. But shall not my Cousin Coleman have Liberty to come to me?

L. C. J. Yes, with Mr. Richardson.

Coleman. Or his Servant; because it is a great Trouble for him to attend always.

L. C. J. If it be his Servant, or any he shall appoint, 'tis all one. Mr. Richardson, use him as Reasonably as may be, considering the Condition he is in.

Cler. Cr. Have a care of your Prisoner.

On Tuesday the 3d of December following, Edward Coleman was drawn on a Sledge from Newgate to Tyburn; and being come thither, he declared that he had been a Roman Catholick for many years, and that he thanked God he died in that Religion, and he did not think that Religion at all prejudicial to the King and Government.

The Sheriff told him, if he had any thing to say by way of Confession or Contrition, he might proceed, otherwise it was not seasonable for him to go on with such like Expressions. Being asked if he knew any thing of the Murder of Sir Edmund-bury Godfrey, he declared upon the Words of a dying Man, he knew not any thing of it, for that he was a Prisoner at that time. Then after some private Prayers and Ejaculations to himself, the Sentence was executed.

He had been made to believe, that he should have a Pardon, which he depended on with so much Assurance, that a little before he was turn'd off, finding himself deceived, he was heard to say, *There is no Faith in Man.*



LXXV. *The Trial of WILLIAM IRELAND, THOMAS PICKERING, and JOHN GROVE*, at the Old-Baily, for High-Treason, December 17, 1678. 30 Car. II.*



ON Tuesday the Seventeenth day of December, One Thousand Six Hundred Seventy and Eight, *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove* were brought from his Majesty's Goal of *Newgate*, to the Sessions-house at Justice-Hall in the *Old-Baily*, being there Indicted for High-Treason, for contriving and conspiring to Murder the King, to receive their Trial; and the Court proceeded thereupon as followeth.

The Court being Set, Proclamation was made for Attendance, Thus:

Clerk of Crown. Cryer make Proclamation.

Cryer. O yes, O yes, O yes! All manner of Persons that have any thing to do at this General Sessions of the Peace, Sessions of Oyer and Terminer holden for the City of *London*, and Goal Delivery of *Newgate*, holden for the City of *London* and County of *Middlesex*, draw near and give your Attendance, for now the Court will proceed to the Pleas of the Crown for the same City and County. God Save the King.

Clerk of Crown. Cryer make Proclamation.

Cryer. O yes! All manner of Persons are commanded to keep Silence upon pain of Imprisonment. Peace about the Court.

Clerk of Crown. Cryer make Proclamation.

Cryer. O yes! You Good Men of the County of *Middlesex* that are Summoned to appear here this Day, to Enquire between our Sovereign Lord the King, and the Prisoners that are and shall be at the Bar, Answer to your Names as you shall be called every one at the first Call, and save your Issues.

The Jurors being called and the Defaulters recorded, the Clerk of the Crown called for the Prisoners to the Bar, viz. *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and Arraigned them thus.

Clerk of Crown. Thomas White alias *Whitebread*, hold up thy hand: Which he did.

William Ireland, hold up thy hand. Which he did.

John Fenwick, hold up thy hand. Which he did.

Thomas Pickering, hold up thy hand. Which he did.

John Grove, hold up thy hand. Which he did.

You stand Indicted by the Names of *Thomas White* alias *Whitebread*, late of the Parish of *St. Giles* in the Fields in the County of *Middlesex*, Clerk: *William Ireland*, late of the same Parish and County, Clerk: *John Fenwick*, late of the

same Parish and County, Clerk: *Thomas Pickering*, late of the same Parish and County, Clerk: and *John Grove*, late of the same Parish and County, Gent. For that you Five, as false Traitors, &c. against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. How say'st thou *Thomas White* alias *Whitebread*, art thou Guilty of this High-Treason whereof thou standest Indicted or not Guilty?

Whitebread. Not Guilty.

Clerk of Crown. Culprit how wilt thou be Tried?

Whitebread. By God and my Country.

Clerk of Crown. God send thee a good deliverance. How say'st thou *William Ireland*, art thou Guilty of the same High-Treason or not Guilty?

Ireland. Not Guilty.

Clerk of Crown. Culprit how wilt thou be Tried?

Ireland. By God and my Country.

Clerk of Crown. God send thee a good Deliverance. How say'st thou *John Fenwick*, art thou Guilty of the same High-Treason or not Guilty?

Fenwick. Not Guilty.

Cl. of Cr. Culp. how wilt thou be Tried?

Fenwick. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. How say'st thou *Thomas Pickering*, art thou Guilty of the same High-Treason or not Guilty?

Pickering. Not Guilty.

Cl. of Cr. Culp. how wilt thou be Tried?

Pickering. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. How say'st thou *John Grove*, art thou Guilty of the same High-Treason or not Guilty?

Grove. Not Guilty.

Cl. of Cr. Culp. how wilt thou be Tried?

Grove. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. You the Prisoners at the Bar, those Men that you shall hear called and do Personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; if therefore you or any of you will Challenge them or any of them, your time is to speak unto them as they come to the Book to be Sworn, before they be Sworn. Sir Philip Matthews to the Book.

Sir Philip Matthews. I desire Sir William Roberts may be called first. Which was granted.

Cl. of Cr. Sir William Roberts to the Book. Look upon the Prisoners. You shall well and truly Try and true Deliverance make between our Sovereign Lord the King, and the Prisoners at the Bar, whom you shall have in your Charge, according to your Evidence. So help you God.

The same Oath was administred to the rest, the Prisoners challenging none, and their Names in order were thus,

J U R Y.

Sir *William Roberts*, Bart. *John Byfield*, Esquire.
 Sir *Philip Matthews*, Bart. *Thomas Eggesfield*, Esq;
 Sir *Charles Lee*, Knight. *Thomas Johnson*, Esq;
Edward Wilford, Esq; *John Pulford*, Esq;
John Foster, Esq; *Thomas Earnesby*, Esq;
Joshua Galliard, Esq; *Richard Wheeler*, Gent.

Cl. of Cr. Cryer count these. Sir *William Roberts*.
 Cryer. One, &c.

Cl. of Cr. *Richard Wheeler*.

Cryer. Twelve, Good Men and True, stand together and hear your Evidence.

Cl. of Cr. Cryer make Proclamation.

Cryer. O yes! If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney, or this Inquest now to be taken, between our Sovereign Lord the King and the Prisoners at the Bar, let them come forth and they shall be heard, for now the Prisoners stand at the Bar upon their Deliverance: and all others that are bound by Recognizance to give Evidence against any of the Prisoners at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance. And all Jury-men of *Middlesex* that have been Summoned and have appeared and are not Sworn, may depart the Court and take their Ease.

Cl. of Cr. Make Proclamation of Silence.

Cryer. O yes! All manner of Persons are commanded to keep Silence upon pain of Imprisonment.

Cl. of Cr. *Thomas White* alias *Whitebread*, hold up thy hand: Which he did, and so of the rest. You that are Sworn look upon the Prisoners, and hearken to their Cause:

You shall understand, that they stand Indicted by the Names of *Thomas White*, otherwise *Whitebread*, late of the Parish of *St. Giles in the Fields* in the County of *Middlesex*, Clerk; *William Ireland*, late of the same Parish in the County aforesaid, Clerk; *John Fenwick*, late of the same Parish in the County aforesaid, Clerk; *Thomas Pickering*, late of the same Parish in the County aforesaid, Clerk; and *John Grove*, late of the same Parish in the County aforesaid, Gentleman: For that they as false Traitors of the most Illustrious, Serene, and most Excellent Prince, our Sovereign Lord *Charles II.* by the Grace of God of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. their supreme and natural Lord, not having the Fear of God in their hearts, nor the duty of their Allegiance any ways weighing, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards our said Sovereign Lord the King, should and of right ought to bear, altogether withdrawing, and endeavouring, and with their whole strength intending, the peace and common tranquility of this Kingdom of *England* to disturb, and the true Worship of God within this Kingdom of *England* used, and by Law established, to overthrow, and to move, stir up, and procure Rebellion within this Kingdom of *England*, and the cordial Love, and true and due Obedience, which

true and faithful Subjects of our said Sovereign Lord the King, toward our said Sovereign Lord the King should and of right ought to bear, wholly to withdraw, vanquish, and extinguish, and our said Sovereign Lord the King to Death and final Destruction to bring and put, the four and twentieth Day of *April*, in the Year of the Reign of our said Sovereign Lord *Charles II.* by the Grace of God of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. the thirtieth, at the Parish of *St. Giles in the Fields* aforesaid, in the County of *Middlesex* aforesaid, falsely, maliciously, deceitfully, advisedly, and traitorously, they did propose, compass, imagine, and intend, to stir up, move, and procure Sedition and Rebellion within this Kingdom of *England*, and to procure and cause a miserable slaughter among the Subjects of our said Sovereign Lord the King, and wholly to deprive, depose, throw down, and disinheret our said Sovereign Lord the King from his Royal State, Title, Power and Government of this his Kingdom of *England*, and him our said Sovereign Lord the King to put to Death, and utterly to destroy, and the Government of this Kingdom of *England*, and the sincere Religion and Worship of God in the same Kingdom, rightly and by the Laws of the same Kingdom established, for their will and pleasure to change and alter, and wholly to subvert and destroy the state of the whole Kingdom, being in all parts thereof well instituted, and ordered, and to levy War against our said Sovereign Lord the King within this his Realm of *England*. And to fulfil and bring to pass these their most wicked Treasons and Traitorous designs and purposes aforesaid, they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors unknown, the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Lord the King, with force and arms, &c. at the Parish of *St. Giles in the Field* aforesaid, in the County of *Middlesex* aforesaid, falsely, maliciously, deceitfully, advisedly, devillishly, and traitorously did assemble, unite, and gather themselves together, and then and there falsely, maliciously, deceitfully, advisedly, devillishly, and traitorously they did consult and agree to put and bring our said Sovereign Lord the King to Death and final Destruction, and to alter and change the Religion rightly and by the Laws of the same Kingdom established, to the superstition of the *Church of Rome*; and the sooner to bring to pass and accomplish the same their most wicked Treasons and Traitorous imaginations and purposes aforesaid, they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other false Traitors of our said Sovereign Lord the King unknown, afterwards (to wit) the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Sovereign Lord the King, at the said Parish of *St. Giles in the Fields*, in the County of *Middlesex* aforesaid, falsely, deceitfully, advisedly, maliciously, devillishly, and traitorously they did consult and agree that they the said *Thomas Pickering* and *John Grove* should kill and murder our said Sovereign Lord the King: And that they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors unknown, should therefore say, celebrate,

brate, and perform a certain number of Masses, (then and there agreed on among them) for the good of the Soul of the said *Thomas Pickering*, and should therefore pay to the said *John Grove* a certain sum of Money, (then and there also agreed on among them:) And further, that the said *Thomas Pickering* and *John Grove* upon the Agreement aforesaid, then and there falsely, deceitfully, advisedly, maliciously, devilishly, and traitorously did undertake, and to the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors of our said Sovereign Lord the King unknown, then and there falsely, deceitfully, advisedly, maliciously, devilishly, and traitorously they did then and there promise, that they the said *Thomas Pickering* and *John Grove* our said Sovereign Lord the King would kill and murder: And further, that they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors of our said Sovereign Lord the King unknown, afterwards (to wit) the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Sovereign Lord the King, at the said Parish of *St. Giles in the Fields* in the County of *Middlesex* aforesaid, falsely, deceitfully, advisedly, maliciously, devilishly, and traitorously, did severally plight their Faith every one to other of them, and did then and there swear and promise upon the Sacrament, to conceal and not to divulge their said most wicked Treasons, and traitorous compassings, consultations, and purposes aforesaid, so among them had, traitorously to kill and murder our said Sovereign Lord the King, and to introduce the *Roman Religion*, to be used within this Kingdom of *England*, and to alter and change the true *Reformed Religion*, rightly and by the Laws of this Kingdom of *England*, in this same Kingdom of *England* established: And further, that they the said *Thomas Pickering* and *John Grove*, in execution of their said traitorous Agreement, afterwards (to wit) the same 24th Day of *April*, in the said 30th Year of the Reign of our said Sovereign Lord the King, and divers other Days and Times afterwards at the said Parish of *St. Giles in the Fields*, in the said County of *Middlesex*, falsely, deceitfully, advisedly, maliciously, devilishly, and traitorously they did prepare and obtain to themselves, and had and did keep Musquets, Pistols, Swords, Daggers, and other offensive and cruel weapons and instruments, to kill and murder our said Sovereign Lord the King: And that they the said *Thomas Pickering* and *John Grove* afterwards, to wit the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Sovereign Lord the King, and divers days and times afterwards with Force and Arms, &c. at the said Parish of *St. Giles in the Fields* in the County of *Middlesex* aforesaid, and in other places within the said County of *Middlesex*, falsely, deceitfully, advisedly, maliciously, and traitorously, did lie in wait, and endeavour to kill and murder our said Sovereign Lord the King; and further, that they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors unknown, afterwards (to wit) the said 24th day of *April* in the said thirtieth Year of the Reign of our said Sovereign Lord the King, at the said Parish of *St. Giles in the Fields*,

in the County of *Middlesex* aforesaid, falsely, deceitfully, advisedly, maliciously, devilishly, and traitorously, did prepare, persuade, excite, abet, comfort, and counsel four other Persons unknown, and Subjects of our said Sovereign Lord the King, traitorously to kill and murder our said Sovereign Lord the King, against the duty of their Allegiance, against the peace of our said Sovereign Lord the King, his Crown and Dignity, and against the form of the Statute in that behalf made and provided.

Upon this Indictment they have been arraigned, and thereunto have severally pleaded, *Not Guilty*, and for their Trial have put themselves upon God and their Country, which Country you are.

Your Charge therefore is to inquire, whether they or any of them be guilty of the High-Treason, whereof they stand indicted, or not guilty. If you find them or any of them guilty, you are to enquire what Goods or Chattels, Lands or Tenements, those you find guilty had at the time of the High-Treason committed, or at any time since. If you find them, or any of them not guilty, you are to inquire whether they did flee for it, if you find that they or any of them fled for it, you are to enquire of their Goods and Chattels, as if you had found them guilty. If you find them or any of them not guilty, nor that they, nor any of them fled for it, say so, and no more, and hear your Evidence.

Make Proclamation of Silence, on both sides.
Which was done.

Then Sir *Creswell Levinz*, one of the King's Learned Counsel in the Law, opened the Indictment, thus:

Sir *Cres. Levinz*. May it please your Lordship, and you Gentlemen of the Jury: These Prisoners at the Bar, *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, do all stand indicted of High-Treason; for that whereas they, as false Traitors, meaning and designing to disturb the Peace of the Kingdom, to levy War within the Kingdom, to make miserable slaughter amongst the King's Subjects, to subvert the Religion established by the Law of the Land, to introduce the Superstition of the Church of *Rome*, and to bring to death and final destruction, and to murder and assassinate our Sovereign Lord the King, they did, to effect these things, the four and twentieth of *April* last assemble themselves together, with many other false Traitors yet unknown, in the Parish of *St. Giles in the Fields* in the County of *Middlesex*, and there, being so assembled, the better to effect these designs did make agreements and conspire together; first, that *Pickering* and *Grove* should kill the King, and that *White* and the rest of the Persons that stand indicted, with many other Traitors, should say a great number of Masses for the Soul of the said *Pickering*, I think thirty thousand, and they did further agree there that *Grove* should have a great sum of Money, and upon this Agreement *Grove* and *Pickering* did undertake and promise they would do this Fact, and did then and there take the Sacrament and an Oath to one another upon the Sacrament, that they would conceal these

these their Treasons, that they might the better effect them; and that in pursuance of this, *Grove* and *Pickering* did divers times lie in wait to murder the King, and did provide arms to do it; and the Indictment further sets forth, that *White*, and *Ireland*, and *Fenwick*, and many other Traitors yet unknown, did procure four other Persons yet also unknown, for to kill the King, against the peace of our Sovereign Lord the King, his Crown and Dignity, and against the form of the Statute. These are the heads of those Facts for which they stand indicted: They have all pleaded Not guilty, if we prove them or any of them guilty of these or any of these Facts according to the Evidence you shall have, we hope you will find it.

Sir *Samuel Baldwin*, one of his Majesty's Serjeants at Law, opened the Charge as followeth.

Sir *Samuel Baldwin*. May it please your Lordship, and you Gentlemen of the Jury, the Persons here before you stand indicted of High-Treason, they are five in number, three of them are *Jesuits*, one is a *Priest*, the fifth is a Layman, Persons fitly prepared for the work in hand.

Gentlemen, it is not unknown to most Persons, nay to every one amongst us, that hath the least observed the former times, how that ever since the Reformation there hath been a Design carried on to subvert the Government, and destroy the Protestant Religion established here in *England*; for during all the Reign of Queen *Elizabeth* several attempts were made by several *Priests* and *Jesuits*, that came from beyond the Seas, (though the Laws were then severe against them) to destroy the Queen, and alter the Religion established here in *England*, and so introduce Popery and the Superstition of the Church of *Rome*.

But the Conspirators from time to time, during all the Queen's Reign, were disappointed, as *Edmond Campion* and several other *Jesuits*, who came over in that time, and were executed, and did suffer for their Treasons according to Law; At length, about the latter end of the Queen's time, a Seminary for the *English Jesuits* was founded at *Valledolid* in *Spain*, and you know the Employment such Persons have.

And soon after the Queen's death, in the beginning of the Reign of King *James* several Persons came over into *England* from this very Seminary, who together with one *Henry Garnet*, Superior of the *Jesuits* then in *England*, and divers other *English Papists*, hatched that hellish Gunpowder-Plot; whereby what was designed you all know; but as it fell out, these Persons, as well as those in Queen *Elizabeth*'s time, were likewise disappointed, and for their execrable Treasons, in the third Year of King *James*, were executed at *Tyburn* and other places.

This is evident by the very Act of Parliament in 3^d *Jacobi*, in the preamble whereof mention is made that *Creswell* and *Tesmond* *Jesuits*, came from *Valledolid* in *Spain* to execute this Gunpowder-Treason with the Popish party here in *England*.

And, Gentlemen, after this Treason, so miraculously discovered, was punished, one would not have thought that any future Age would have been guilty of the like Conspiracy; but it so falls out that the Mystery of Iniquity and

Jesuitism still worketh, for there hath of late been a sort of cruel and bloody-minded Persons, who, in hopes to have better success, than they had in former times, during the Reigns of Queen *Elizabeth* and King *James*, have set on foot as horrid a Design as that of the Gunpowder Treason; I can resemble it to no other Plot, or Design, or Treason in any other time, and truly it does resemble that in many particulars: I may say, it doth at the least equal it, if not exceed it.

I shall mention two or three particulars in which this Plot doth resemble that.

First, That horrid Design was to take away the Life of the then King, to subvert the Government, to introduce the Popish Religion, and to destroy the established Protestant Religion in *England*, and so, Gentlemen, we think our Proofs will make it out, that in each of these particulars this Design is the same that that was.

Secondly, The great Actors in that Design were *Priests* and *Jesuits* that came from *Valledolid* in *Spain* and other places beyond the Seas. And the great Actors in this Plot are *Priests* and *Jesuits*, that are come from *St. Omers*, and other places beyond the Seas nearer home than *Spain*.

Thirdly, That Plot was chiefly guided and managed by *Henry Garnet*, Superior and Provincial of the *Jesuits* then in *England*; and the great Actor in this Design is Mr. *Whitebread*, Superior and Provincial of the *Jesuits* now in *England*; so that I say in these several Particulars it does resemble the GUNPOWDER PLOT.

Gentlemen, In this Plot, of which the Prisoners now stand indicted, several Persons have several Parts: Some of these Persons are Employed to keep Correspondence beyond the Seas, (of which more hath been said in another place, and so I shall not speak of it here:) Others were to procure and prepare Aid and Assistance here in *England*, who were to be ready when there should be occasion to use it. But the great part that These Persons (the Prisoners at the Bar) were to Act in this Conspiracy, was, To take away the Life of our Sovereign Lord the KING, on whose Preservation the safety and welfare of Three Nations (and Millions of Men) doth depend. Now the Facts for which the Five Prisoners stand indicted, I shall open thus:

First, They are here Indicted for *Conspiring the Death of his Sacred Majesty*: They did Agree to take Away the KING's Life; and entering into such an Agreement, They Hired some Persons amongst them to do it; and this Agreement was made the 24th of *April* last, 1678.

Secondly, There is another Fact they likewise stand Indicted for: That they did Endeavour and Contrive to Change and Alter the Religion Established in the Nation, and introduce Popery in the Room of it. The Manner how to effect this, was thus, if my Information be right; you shall hear that from the Evidence. Mr. *Whitebread* being Resident here in *England*, and Superior of the *Jesuits*, did in *February* last think fit, (being empowered by Authority from *Rome*) to give Summons to the *Jesuits* abroad, at *St. Omers*, and other places beyond the Seas, that they should come over here into *England*, to be ready at *London*, on the Four and Twentieth of *April*, the

the day laid in the Indictment, and which is the day after St. George's day; and their design was (as will appear by the Proof) to Contrive how they may *Take away the Life of the KING*: For if that were once done, they thought, in all other Things, their Design would easily be accomplished. After the Summons were out, they were so officious for the accomplishing of this Great End, that between Forty and Fifty Jesuits did appear here at *London* at the time, (for thither they were Summoned) and there the Meeting was appointed to be. At the *White-Horse Tavern* in the *Strand* they were to meet first; but being so great a Number, that they were likely to be taken Notice of, if they came all together, it was so Ordered, they should come but a few at a time, and go off in small Numbers; and others should succeed them, till the whole Number had been there: And there were Directions given, and a Course taken, that there should be some Person to tell them whether they should go from thence. After they had met there at several times in the same day, they were appointed, and adjourned to be at several other Places; some of them were appointed to be at Mr. *Whitebread's* Lodging, and that was in *Wildstreet*, at one Mr. *Sanders's* House: Others were appointed to go to Mr. *Ireland's* Lodging, which was in *Russel-Street*, (and this Mr. *Ireland* was Treasurer of the Society:) And others were to meet at Mr. *Fenwick's* Chamber in *Drury-Lane*; and he was at that time Procurator and Agent for that Society. Others were appointed to meet at *Harcourt's* Lodging; and others at other Places.

When they came there, they all agreed to the general Design of the first meeting, which was, *To kill the King*. Then there was a Paper, or some Instrument to be Subscribed. This was done, and the Sacrament was taken for the Concealment of it. After that, *Whitebread*, *Ireland*, *Fenwick*, and others, did agree, that Mr. *Grove* and Mr. *Pickering* should be employed to *Assassinate the King*. One of them (Mr. *Grove*) being a Lay-Brother, was to have Fifteen Hundred Pound, a great Sum; the other, as a more suitable Reward for his Pains, was to have Thirty Thousand Masses said for his Soul. Mr. *Whitebread*, Mr. *Ireland*, and Mr. *Fenwick*, were all privy to this Design; and this was the Twenty fourth of *April*. In *August* after (they being appointed to *Kill the King*, but it not taking Effect, either their Hearts misgave them, or they wanted Opportunity) there was another Meeting at the *Savoy*, where the Witnesses will tell you, four *Irish* Persons were hired for to *Kill the King*. And this was ordered, in case the other Design took not Effect. There was fourscore Pounds sent down to them to *Windfor*, where they were to have done the Fact. After this, other Persons were appointed to do the Execution, and they were to take the *King* at his Morning Walk at *New-market*.

These Persons were all disappointed in their Design. But you shall hear what was the Agreement, how it was carried on, and what Rewards were given to carry it on. We shall acquaint you likewise, that for the bottom of this Design (when so many Jesuits should come over, when they should have so many Consultations, and when they should resolve to *Kill the King*) there could be no less than the Altering of Reli-

gion, and Introduction of Popery here in *England*. And that time, at the first Meeting, they had Ordered, That Mr. *Cary* a Jesuit, as their Procurator and Agent, should go to *Rome*, to act their Concerns there. All which things, and more, will be made out to you by Witnesses produced. There are likewise some other Circumstances that will be material to confirm those Witnesses. We shall produce to you a Letter written in *February* last, about that time that Mr. *Whitebread* sent over his Summons for the Jesuits, to appear here. This Letter was written by one Mr. *Peters*, a Jesuit now in Custody; and 'tis written to one *Tunstal* a Jesuit, to give him notice, That he should be in *London* about the twenty first of *April*, and be ready on the twenty fourth of *April*; That he knew what the Business was; but he did advise him, that he should conceal himself, lest the Plot (by Observation) should be discover'd. We shall likewise produce several other Evidences, to Strengthen and Confirm the Witnesses: We shall first call our Witnesses, and enter upon the Proof.

Mr. *Finch* open'd the Evidence thus:

Mr. *Finch*. May it please your Lordship, and you Gentlemen of the Jury,

Before we call our Witnesses, I would beg Leave once more to Remind you, of what hath already been open'd unto you; The Quality of the Offenders themselves, and the Nature of the Offence they stand Indicted of.

For the Offenders, they are most of them Priests and Jesuits; three of them at the least are so; the other Two, are the Accursed Instruments of this Design: For the Offence it self, 'tis High-Treason.

And though it be High-Treason by the Statute of Twenty Seven *Eliz.* for Men of that Profession to come into *England*; yet these Men are not Indicted upon that Law, nor for that Treason: This I take Notice of to you, for the Prisoners sake, that they should not fancy to themselves they suffered *Martyrdom* for their Religion, as some of them have vainly Imagin'd in their case; and for your sakes too, that as at first, it was Treason, repeated Acts of Treason, in these Men; and those proceeding from a Principle of Religion too, that justly occasioned the making that Law: So here you might observe a pregnant Instance of it in the Prisoners at the Bar, That whenever they had an Opportunity, as now they thought they had, they have never failed to put those Principles into Practice.

So now, Gentlemen, As they are not Indicted for being Priests, I must desire you to lay that quite out of the Case, and only consider, that they stand here Accused for Treason; such Treason, as were they Lay-men only, they ought to Die for it; though I cannot but observe, they were the sooner Traitors for being Priests.

The Treason therefore they stand Indicted of, is of the highest Nature: It is a Conspiracy to *Kill the King*, and that too with Circumstances so Aggravating (if any thing can aggravate that Offence which is the Highest) that nothing less than the Total Subversion of the Government, and utter Destruction of the Protestant Religion, would serve their Turns. And really, when you consider the Root from whence this Treason

son springs, you will cease wondring that all this should be Attempted, and rather wonder that it was not done.

Mischiefs have often miscarried for want of Wickedness enough; the Horror of Conscience, or else the Malice of the Aggressor not being equal to the Attempt, has sometimes prevented the Execution of it. Here is no Room for any thing of this kind: This Treason proceeds from a Principle of Religion, from a Sense that it is Lawful; Nay, that they ought to do these things; and every Neglect here, is lookt on as a piece of Irreligion, a want of Zeal; for which one of the Prisoners did Penance, as in the Course of our Evidence we shall prove unto you.

And when we consider too, that this is carried on, not by the fury of two or three busie Men over-zealous in the Cause, but by the deliberate and steddied Counsels of the whole Order, and that too under the Obligations of Secrecy as high as Christian Religion can lay on them; You have great reason to wonder that it did not succeed. And yet after all this they have not been able to prevail. Not that we can brag of any human Policy that did prevent it; No; all that the Wit of Man could do, these Men had done: But 'twas the Providence of God, 'twas his Revelation; That Providence that first enlighten'd his Church, and has preserv'd it against all Opposition heretofore, has once more disappointed their Counsels, and preserved the King and this Nation in the Profession of that True Religion these Men have vainly attempted to destroy.

Gentlemen, I will not open to you the Particulars of our Evidence, that I had rather should come from the Witnesses themselves: I shall only in general tell you what will be the course of it. We shall prove unto you, That there was a Summons for a Consultation to be held by these Men the 24th of April last, from the Provincial Mr. Whitebread; That they had a Caution given them, Not to come too soon, nor appear much about Town, till the Consultation were over, lest occasion should be given to suspect the Design: That accordingly a Consultation was held, as they say, to send Cary, their Procurator, to Rome; Though we shall prove to you, it was for other purposes: That they adjourned from their General Assembly into lesser Companies; where several Persons did attend them to carry Intelligence of their several Resolutions: That at these several Consults, they did resolve, The King was to be Killed. That Pickering and Grove should do it; for which the one was to have 30000 Maffes said for his Soul: The other was to have 1500*l*. That in Prosecution of this Design, they made several Attempts to execute it; That they lay in Wait for the King several times in St. James's Park and other places; And that once in particular, it had been done by Pickering, if it had not pleased God to have prevented it by an Accident unforeseen; The Flint of his Pistol being loose, he durst not then attempt it, though he had an opportunity: For which neglect, we shall prove to you, he underwent the Penance of 20 or 30 strokes. That when these Men had failed, we shall prove to you they hired four Ruffians to Murder the King at Windsor, and after that at New-Market. Thus they Way-laid him in all

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his Privacies and Retirements, wherever they could think it most convenient to execute their Design.

And this we shall prove by two Witnesses; who though they should not speak to the same Consultations, nor the same Times; yet they are still two Witnesses in Law. For several Witnesses of several Overt-Acts, are so many Witnesses to the Treason. Because the Treason consists in the Intention of the Man, in the Compassing and Imagining the Death of the King. The several Overt-Acts which declare that Intention, are but as so many Evidences of the Treason. We will call our Witnesses, and make out what has been open'd to you.

Cl. of Cr. Mr. Oates, Lay your Hand upon the Book. The Evidence you shall give for our Sovereign Lord the King against Thomas White alias Whitebread, William Ireland, John Fenwick, Thomas Pickering, and John Grove, the Prisoners at the Bar, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Mr. Serj. Baldwyn. Pray, Mr. Oates, will you declare to the Court and the Jury, what Design there was for the Killing of His Majesty, and by whom.

Mr. Oates. My Lord, In the Month of December last, Mr. Thomas Whitebread did receive a Patent from the General of the Jesuits at Rome to be Provincial of the Order; after he had received this Patent, he sent Order to one George Conyers a Jesuit at St. Omers to Preach upon St. Thomas of Canterbury's Day; and by vertue of this Order, George Conyers did Preach against Oaths of Allegiance and Supremacy, and did in his Doctrine call them Anti-Christian and Devilish. My Lord, in the Month of January, this Mr. Whitebread did send several Letters to St. Omers; in which Letters there was contained intimation of his intent to proceed against the King's Person to Assassinate him, which Letters were written to Richard Ashby. My Lord, in the Month of February, there comes an Order from him as Provincial, for several of the Jesuits to make their appearance at London, to be there at a Consult to be held the 24th of April old Stile.

Sir William Scroggs L. C. J. Where was Whitebread then?

Mr. Oates. He was then in London, my Lord, as I suppose by the dating of his Letters. My Lord, from Mr. Whitebread after this Summons, we received a second Summons, which came the 5th of April, New Stile, and upon the Summons there were Nine did appear at London, the Rector of Liege, Sir Thomas Preston, the Rector of Ghent, whose name is Marsh, the Rector of Wotton, whose name is Williams, and one Sir John Warner, and two or three more from St. Omers; and there was a special Order given us, my Lord, to keep our selves close, lest we should be suspected, and so our Design disclosed. My Lord, upon the four and twentieth of April, Old Stile, we did appear in the Consult. The Consult was begun at the White-Horse Tavern in the Strand, and there they met in several Rooms, they came in by degrees, and as the new ones came on, the old ones, those that had been there before them, fell off. And there was one John Cary appointed to go Procurator for Rome, and he was so appointed by the Suffrages of the three

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three Prisoners at the Bar, *Whitebread, Ireland, and Fenwick*. It was afterwards adjourned into several Colloquies, or little Meetings; one Meeting was at Mrs. *Sanders's* House, that butts upon *Wild-House*; a Second was at Mr. *Ireland's*; a third was at Mr. *Harcourt's*; a Fourth was at Mr. *Grove's*; and other Meeting or Meetings there were, but I cannot give a good Account of them. My Lord, after they had thus met, and debated the State of Religion, and the Life of the King, they drew up this Resolve; it was drawn up by one *Mico*, who was Secretary to the Society, and *Socius*, or Companion to the Provincial.

L. C. J. When was that done?

Mr. Oates. That Day, my Lord. The Resolve, my Lord, was this, as near as I can remember the Words. It is resolved, That *Thomas Pickering*, and *John Grove*, shall go on in their Attempt to Assassinate the King (whether they used the Word Assassinate, I can't remember, but the Meaning was, they should make an Attempt upon his Person) and that the Reward of the one, that is *Grove's*, should be Fifteen Hundred Pounds, and that *Pickering's* Reward should be Thirty Thousand Masses. My Lord, after this Resolution was Signed by *Whitebread*, it was Signed by *Fenwick* and *Ireland*, and by all the four Clubs: I saw them Sign it, for I carried the Instrument from one to another.

L. C. J. What was it they Signed?

Mr. Oates. The Resolve of the Consult.

L. C. J. What, that which was drawn up by *Mico*?

Mr. Oates. Yes, my Lord, that which was drawn up by *Mico*.

Whitebread. Doth he say that he saw them Sign it?

Mr. Oates. Yes, I did see them Sign it.

Jury. We desire he may be asked, where he saw them Sign it.

Mr. Oates. Mr. *Whitebread* Signed it at that Part of the Consult that was at his Chamber, *Ireland* did Sign it at that Part of the Consult that was at his Chamber, *Fenwick* Signed it at that Part of the Consult that was at his Chamber.

Whitebread. Were you at all these Places?

Mr. Oates. I went with it from Place to Place; but I mention no more now, but only these.

Whitebread. You were not at all these Places, and saw them Sign it there, were you?

Mr. Oates. Yes, I did see them Sign it at all those Places. My Lord, in the Month of May, Mr. *Whitebread* came over as Provincial from *England* to *St. Omers*, to begin his Provincial Visitation, and with him came *Cary* and his Companion *Mico*. *Cary* left *St. Omers* to begin his Journey to *Rome*; *Whitebread*, after he had given an Accompt of what Proceedings the Catholics of *England* had made in order to disturb the Peace of the Kingdom, what Moneys had been gathered, what Suffrages dispers'd, what Means had been used, what Noblemen had joyned in this execrable Plot; he did then (my Lord) order me to come for *England*.

L. C. J. *Whitebread* did?

Mr. Oates. Yes, my Lord, *Whitebread* did. And, my Lord, the Business I was to come into *England* for, was to murder one Dr. *Tongue*, a Doctor in Divinity, who had written a Book

called *The Jesuits Morals*; that is to say, Translated them out of *French* into *English*. My Lord, I came over into *England* on the 23d of June, New Stile; I came out of *St. Omers*, that is, the 13th in the Stile of *England*; on the 24th New Stile, I took the Packet-Boat at *Calais*; the 25th New Stile, I met with Mr. *Fenwick* at *Dover*, he was come down with certain Youths, to send them to *St. Omers*, and had ordered their Passage.

My Lord, with Mr. *Fenwick* and some other Persons, we came to *London* in a Coach, and six Miles (as near as I remember it) on this side *Canterbury*, at a Place called *Bolton*, our Coach was stopt by the Searchers, and there they did examine a Box that was in the Coach directed for the Honourable *Richard Blundell Esq*; This Box, when they open'd it, they found full of Beads, Crucifixes, Images, and other sorts of Trumpery, that I cannot give a good Account of; it's he can give the best: Mr. *Fenwick* went by the Name of one *Thompson*, and did Personate one *Thompson*, as living near the *Fountain-Tavern* at *Charing-Cross*; and did order the Searchers to write to him there, as by the Name of *Thompson*. When the Box was seiz'd, they being Prohibited Goods, Mr. *Fenwick* did say, that if they had search'd his Pockets, they had found such Letters about him, as might have cost him his Life; but his Letters did escape Searching. We came that Night to *Sittenburgh*, and lay there on Sunday the 26th New Stile, as near as I remember; and I think we stayed there till the Afternoon: We took Coach in the Afternoon, and came as far as *Dartford*. On Monday Morning we came into *London*; and (my Lord) when we came into *London*, and had continued there some Days. (I now return to Mr. *Whitebread*.) There came one *Ashby* to Town, he had been some time Rector of *St. Omers*, and was come to *England* sick of the Gout, and was to go to the Bath to be Cured. And he brought Instructions with him from *Whitebread*; and the Instructions contained in them these Particulars: Instructions or Memorials, or what else they called them. First, That Ten Thousand Pounds should be proposed to Sir *George Wakeman* for the Killing of the King. Secondly, That Care should be taken for the Murder of the Bishop of *Hereford*. Thirdly, That Care should be taken for the Murder of Dr. *Stillingfleet*. Fourthly, That though this Proposal was made to Sir *George Wakeman* of 10000*l.* yet *Pickering* and *Grove* should go on still in their Attempts. My Lord, afterwards these were taken and copied out, and dispers'd to the several Conspirators in the Kingdom, whose Names I cannot call to mind. But *Coleman* made several Copies and dispers'd them about: Then the 10000*l.* was proposed to Sir *George Wakeman*, but it was refused.

L. C. J. What, it was too little?

Mr. Oates. Yes, (my Lord) it was too little. Then *Whitebread* he writ from *St. Omers*, that in case 10000*l.* would not do, Fifteen should be proposed, and after that he had that proposed, he accepted of that.

L. C. J. Were you by when he accepted it?

Mr. Oates. No (my Lord) I was not: But it appeared upon their Entry-Books, and it appeared by a Letter from this Gentleman Mr. *Whitebread*, wherein he did shew a great deal of Joy for

for Sir George Wakeman's accepting of the Fifteen Thousand Pounds. (My Lord) After this was agreed upon, that Sir George Wakeman should have Fifteen Thousand Pounds, and Five Thousand of it was payed by Coleman or his Order. Thus the State of Affairs stood till August. Then one Fogarthy, who is dead, came to a Consult of the Jesuits with the Benedictines: Now at this Consult the Prisoner at the Bar Fenwick was, he was one and Harcourt was another. And in this Consult there were Four Ruffians recommended to them.

L. C. J. By whom?

Mr. Oates. By Fogarthy, they were recommended, but accepted of by these Consultors, and consented to by Fenwick. They were sent away, and the next Day after Fourscore Pounds was sent them, the most Part of it was Gold, and Coleman was there and gave the Messenger a Guinea to expedite his Errand. (My Lord) In the Month of August there came other Letters from Whitebread, wherein he did give an Account of what care he had taken of the Scotch Business; and he ordered one Moor and one Sanders, alias Brown, to go down to Scotland, and he did order the Rector of London, then William Harcourt, to send them; and he did so send them the 6th of August, in the Name of the Provincial.

Whitebread. From whence, I pray?

Mr. Oates. From London, and they went to prosecute and carry on the Design which Fenwick and Ireland had plotted, of a Rebellion amongst the disaffected Scots against the Governours appointed them by the King, and they sent down Ministers to preach under the Notion of Presbyterian Ministers, in order to get the disaffected Scots to rise, by insinuating the sad Condition they were likely to be in, by reason of Episcopal Tyranny (as they termed it.) And that they were resolved to dispose of the King, and they did intend to dispose of the Duke too, in case he did not appear vigorous in promoting the Catholick Religion; (I speak their own Words.)

L. C. J. Have you done with your Evidence? What do you know of the Prisoners at the Bar? Name them all.

Mr. Oates. There is Whitebread, Ireland, Fenwick, Pickering, and Grove.

L. C. J. Are you sure Pickering and Grove accepted of the Terms?

Mr. Oates. Yes, (my Lord) I was there.

L. C. J. Where was it?

Mr. Oates. At Mr. Whitebread's Lodgings, at Mrs. Sanders's House. As for Grove, indeed, he did attend at that time upon Fenwick at his Chamber; but after the Consult was over, he came to Whitebread's Lodgings, and did take the Sacrament and the Oaths of Secrecy upon it, and did accept it, and agree to it.

L. C. J. Were you there when he took the Sacrament?

Mr. Oates. Yes (my Lord) I was.

L. C. J. Who gave you the Sacrament?

Mr. Oates. It was a Jesuite, that goes by the Name of one Barton.

Whitebread. My Lord, before I forget it, I desire to say this. He says that at such and such Consults in April and May he was present, and carried the Resolutions from one to another. There are above a hundred and a hundred, that

can testify he was all that while at St. Omers. Pray tell me when I received the Sacrament?

Mr. Oates. At the same time.

Whitebread. What Day was that?

Mr. Oates. The 24th of April.

Whitebread. Was I there?

Mr. Oates. You were there.

Whitebread. I take God to witness I was not.

L. C. J. Mr. Whitebread, you shall have time to make your Answer. But Mr. Oates, pray Mr. Oates, when was Mr. Cary dispatch'd away to Rome, and what was his Errand?

Mr. Oates. My Lord, I'll tell you; he was approved of to go to Rome the 24th of April; in the Month of May or June, Whitebread brings Cary over to St. Omers, and one Mico his Secretary or Companion with him.

L. C. J. When was it?

Mr. Oates. In the Month of May or June, he was brought over by the Provincial; then he went away on his Journey, and at Paris received 20 l. to bear his Charges.

Mr. Finch. What do you know of any Attempts to kill the King at St. James's Park?

Mr. Oates. I saw Pickering and Grove several times walking in the Park together with their screw'd Pistols, which were longer than ordinary Pistols, and shorter than some Carbines. They had Silver Bullets to shoot with, and Grove would have had the Bullets to be champt, for fear that if he should shoot, if the Bullets were round, the Wound that might be given might be cured.

L. C. J. Did Grove intend to champ them?

Mr. Oates. He did say so.

L. C. J. Did he shew you the Bullets?

Mr. Oates. I did see them.

Grove. When was this?

Mr. Oates. I saw the Bullets in the Month of May, and in the Month of June.

Whitebread. Pray, where did you see them?

Mr. Oates. In Grove's Possession.

Whitebread. At what time?

Mr. Oates. In the Month of May.

Whitebread. Then was he actually himself at St. Omers. Was it in May, or June?

Mr. Oates. The latter end of May and June. I saw them then twice, if not thrice. But Pickering's I saw in August.

Sir Cr. Levinz. Do you know any thing of Pickering's doing Penance, and for what?

Mr. Oates. Yes (my Lord.) In the Month of March last, (for these Persons have followed the King several Years) but he at that time had not look'd to the Flint of his Pistol, but it was loose, and he durst not venture to give Fire. He had a fair Opportunity, as Whitebread said; and because he mist it through his own Negligence, he underwent Penance, and had 20 or 30 Strokes of Discipline, and Grove was Chidden for his Carelessness.

L. C. J. That was in March last?

Mr. Oates. Yes, my Lord.

L. C. J. How do you know that?

Mr. Oates. By Letters that I have seen from Mr. Whitebread, these I saw, and read, and I know Whitebread's Hand.

Mr. Serj. Baldwyn. What do you know of the Ruffians that went down to Windsor? What Success had they?

Mr. Oates. I can give no Account of that, because in the beginning of September this Gentle-

man that had been in *England* some time before, was come to *London*, and the Business had taken Air, and one *Beddingfield* had written to him, that the thing was discovered, and that none but such a one could do it, naming me by a Name that he knew I went by.

Whitebread. When was that, Sir?

Mr. Oates. In the Month of *September* last. I came to the Provincial's Chamber the third of *September*, when I came I could not speak with him, for he was at Supper; but when he had sup'd I was admitted in, and there he shewed me the Letter that he had received from *Beddingfield*.

Whitebread. Where did you see it?

Mr. Oates. You read it to me when you chid me, and beat me, and abused me.

L. C. J. What did he chide you for?

Mr. Oates. He did charge me with very high Language of being with the King, and with a Minister, and discovering the Matter. I was so unfortunate that the Gentleman who was with the King, did wear the same colour'd Cloaths that I did then wear: And he having given an Account that the Party wore such Cloaths, the Suspicion was laid upon me: Now, my Lord, I had not then been with the King, but another Gentleman had been with him from me with the Draughts of some Papers concerning this Business, which I had drawn up, and I was ready to appear when I should be called to justify them, only I did not think fit to appear immediately; And, my Lord, this *Beddingfield*, he had gotten into it that it was discovered, and writ the Provincial word he thought it was by me; for, said he, *he hath been drawn in by some of his old Acquaintance*: When he had received this Letter, he asked me with what Face I could look upon him, since I had betrayed them: So, my Lord, I did profess a great deal of Innocency, because I had not then been with the King; but he gave me very ill Language, and abused me, and I was afraid of a worse Mischief from them; for I could not but conclude, that if they dealt so cruelly with those that only writ against them, I could scarce escape, of whom they had that Jealousy, that I had betrayed them: And, my Lord, though they could not prove that I had discovered it, yet upon the bare Suspicion, I was beaten, and affronted, and reviled, and commanded to go beyond Sea again; nay, my Lord, I had my Lodging assaulted to have murdered me if they could.

Whitebread. By whom?

Mr. Oates. By Mr. *Whitebread*, and some of them.

Whitebread. Who beat you?

Mr. Oates. Mr. *Whitebread* did.

Mr. Serj. Baldwyn. Was it *Pickering* or *Grove* that had the Flint of his Pistol loose?

Mr. Oates. *Pickering*.

Pickering. My Lord, I never shot off a Pistol in all my Life.

L. C. J. What say you as to the Fourscore Pounds?

Mr. Oates. My Lord, I will speak to that, that was given to the four Ruffians that were to kill the King at *Windsor*: Now, my Lord, that Money I saw —

L. C. J. Where did you see it?

Mr. Oates. At *Harcourt's* Chamber.

L. C. J. Where is that?

Mr. Oates. In *Duke-Street*, near the Arch.

L. C. J. Who was it given by?

Mr. Oates. *William Harcourt*.

L. C. J. Did you see the four Fellows?

Mr. Oates. No, my Lord, I never did, nor never knew their Names.

L. C. J. Who was the Money given to?

Mr. Oates. A Messenger that was to carry it down to them.

L. C. J. Who was that Messenger?

Mr. Oates. One of theirs that I do not know, and I durst not be too inquisitive, my Lord, for fear of being suspected.

L. C. J. Who was by when the Money was paid?

Mr. Oates. *Coleman*, that is executed; and, my Lord, there was this Mr. *Fenwick* by, that is the Prisoner at the Bar.

Fenwick. When was this?

Mr. Oates. In the Month of *August*.

Fenwick. Where?

Mr. Oates. At *Harcourt's* Chamber.

Fenwick. I never saw you there in all my Life: Are you sure I was by when the Money was there?

Mr. Oates. Yes, you were.

L. C. J. Mr. *Fenwick*, you shall have your time by and by to ask him any Question: *Mr. Oates*, let me ask you once again; when there was the Appointment made for *Grove* and *Pickering* to kill the King, who Signed it?

Mr. Oates. At least Forty Signed it.

L. C. J. Did the other Three Sign it?

Mr. Oates. Yes, my Lord, all of them.

L. C. J. Name them.

Mr. Oates. There was *Whitebread*, *Fenwick*, and *Ireland*.

L. C. J. And you say you went from Place to Place and saw it Signed?

Mr. Oates. Yes, my Lord, I did.

L. C. J. Were you Attendant upon them?

Mr. Oates. My Lord, I ever was since the Year 1666.

L. C. J. At whose Lodgings did you use to attend upon the Consultation?

Mr. Oates. At the Provincial's Chamber, Mr. *Whitebread*.

L. C. J. Where was it first Signed?

Mr. Oates. At the Provincial's Chamber.

Sir Cr. Levinz. Who carried it from Lodging to Lodging?

Mr. Oates. I did.

L. C. J. When was it?

Mr. Oates. The 24th of *April*.

Mr. Just. Bertue. You say you carried the Result from Place to Place, pray tell us what that Result was?

Mr. Oates. They knew what it was, for they read it before they Signed it.

Mr. Just. Atkins. But tell us the Contents of it.

Mr. Oates. The Contents of that Resolve was this, (I'll tell you the Substance, though I cannot tell you exactly the Words) that *Pickering* and *Grove* should go on in their Attempts to Assassinate the Person of the King, as near as I can remember it was so, that the former should have 30000 Maces and the latter 1500 Pounds, and the whole Consult did consent to it and Signed the Agreement that was made with them, and did resolve upon the King's Death all in one Resolve.

L. C. J.

L. C. J. Where was this agreed upon? at the *White-Horse* Tavern?

Mr. Oates. No, my Lord. After they had agreed at the *White-Horse*, that *Mr. Cary* should go Procurator to *Rome*, and some other small Particulars, which I cannot now remember, they did adjourn from the *White-Horse* Tavern, and met at several Chambers, some at one Place, and some at another.

L. C. J. But you say *Mico* did draw up the Resolution, where was that?

Mr. Oates. At *Mr. Whitebread's* Chamber, for he was *Socius* and Secretary to the Provincial.

L. C. J. Were *Ireland* and *Fenwick* present when *Mico* drew it up?

Mr. Oates. No, my Lord, but they were at their own Chambers; after it was drawn up there, and signed by *Mr. Whitebread*, and those of the Consult in his Chamber, it was carried to the several Consults.

L. C. J. What, all the same Day?

Mr. Oates. Yes, my Lord.

L. C. J. And you went along with it?

Mr. Oates. Yes, my Lord, I did.

Mr. Just. Bertue. I only ask you, were all the five Prisoners privy to it? or do you distinguish any of them, and which?

Mr. Oates. They were all privy to it.

Whitebread. My Lord, we can prove —

L. C. J. You shall have time sufficient to make what Defence you can, you shall be sure to have a fair Trial, and be stopt of nothing that you will think fit to say for your selves. *Mr. Oates*, were *Pickering* and *Grove* present?

Mr. Oates. Yes, my Lord, *Grove* at *Fenwick's* Chamber, and *Pickering* at the Provincial's Chamber.

L. C. J. But they were not required to sign this, were they?

Mr. Oates. After that the whole Consult had signed it, and *Mafs* was preparing to be said for it, before *Mafs*, they did sign and accept of it.

L. C. J. Where did they two do it?

Mr. Oates. At the Provincial's Chamber.

L. C. J. What Day was it?

Mr. Oates. That Day, for they met all together at the Provincial's Chamber to receive the Sacrament, and when *Mafs* was going to be said, one said it was too late, for it was after twelve a-clock; but *Mr. Whitebread* said it was not Afternoon till we had din'd; and you know, *Mr. Whitebread*, that *Masses* have been said at one or two of the Clock in the Afternoon.

Mr. Just. Atkins. How many Persons did meet at that Consult?

Mr. Oates. My Lord, there were about Forty or Fifty, and after they had adjourn'd into several lesser Companies, they met all together at *Mr. Whitebread's* Chamber.

L. C. J. Where was that, and when?

Mr. Oates. That Day, at *Wild-House*.

L. C. J. Where was it that they gave the Sacrament?

Mr. Oates. At a little Chappel at *Wild-house*, *Mrs. Sanders's*.

L. C. J. Did they accept it before they took the Sacrament?

Mr. Oates. Yes, *Pickering* and *Grove* did sign it before they took the Sacrament.

Mr. Just. Atkins. You tell us of an Oath of Secrefie that was taken, what was that Oath?

Mr. Oates. I cannot give an account of the Form of the Oath, but it was an Obligation of Secrefie.

Mr. Just. Atkins. Did you see the Oath administered?

Mr. Oates. Yes, my Lord, I did.

L. C. J. Who administered it?

Mr. Oates. *Mr. Whitebread*, he did give it unto me, and to all the rest that were there, and *Mico* held the Book, it was a *Mafs-Book*, but they were Words of his own Invention, I believe, they were not written down.

L. C. J. Cannot you tell what they were?

Mr. Oates. No, my Lord, I cannot tell, because I did not see them written down.

L. C. J. If you will ask this Gentleman any thing more, you may.

Whitebread. My Lord, I am in a very weak and doubtful Condition as to my Health, and therefore I should be very loth to speak any thing but what is true: We are to prove a Negative, and I know 'tis much harder to prove a Negative, than to assert an Affirmative; 'tis not a very hard thing for a Man to swear any thing, if he will venture his Soul for it; but truly, I may boldly say, in the Sight of Almighty God before whom I am to appear, there have not been three true Words spoken by this Witness.

L. C. J. Do you hear, if you could but satisfy us, that you have no Dispensation to call God to witness a Lye —

Whitebread. My Lord, I do affirm it with all the Protestations imaginable.

L. C. J. But if you have a Religion that can give a Dispensation for Oaths, Sacraments, Protestations, and Falshoods that are in the World, how can you expect we should believe you?

Whitebread. I know no such thing.

L. C. J. We shall see that presently, before we have done.

Mr. Oates. I have one thing more to say, my Lord, that comes into my Mind. This *Whitebread* received Power from the See of *Rome* to grant out Commissions to Officers Military. And, my Lord, here are the Seals of the Office in Court, which he hath sealed some Hundreds of Commissions with, which they call Patents.

L. C. J. What were those Commissions for? For an Army?

Mr. Oates. Yes, my Lord, for an Army.

Whitebread. When were those Commissions Signed?

Mr. Oates. My Lord, several of them were Signed in the former Provincial's time.

L. C. J. What, I warrant you, you are not Provincial of the Jesuits, are you?

Whitebread. I cannot deny that, my Lord.

L. C. J. Then there are more than three Words he hath spoken are true.

Mr. Just. Atkins. I believe, *Mr. Oates*, that that Army was intended for something, pray what was it for?

Mr. Oates. My Lord, they were to rise upon the Death of the King, and let the *French* King in upon us, and they had made it their Business to prepare *Ireland* and *Scotland* for the receiving of a foreign Invasion.

L. C. J. Who were those Commissions Sealed by?

Mr. Oates. My Lord, the Commissions of the Great Officers were sealed with the General's Seal.

L. C. J.

L. C. J. Who was that?

Mr. Oates. His Name is *Johannes Paulus de Oliva*: His Seal sealed the Commissions for the Generals, Major-Generals, and great Persons; but those Seals that sealed the several Commissions to several inferior Officers, were in the Custody of the Provincial.

L. C. J. Can you name any one Person that he hath Sealed a Commission to?

Mr. Oates. I can name one: To Sir *John Gage*, which Commission I delivered my self.

L. C. J. What, of *Suffex*?

Mr. Oates. Yes, of *Suffex*.

Mr. Just. Atkins. Who did you receive the Commission from?

Mr. Oates. My Lord, when he went over, he left a great many blank Patents to be filled up, and he left one ready Sealed for a Commission to Sir *John Gage*. This was delivered into my Hands when he was absent, but it was Signed by him, and delivered to me while he was in his Visitation beyond the Seas, but I dare swear it was his Hand, as I shall answer it before God and the King.

Mr. Just. Atkins. Who had it you from?

Mr. Oates. From Mr. *Ashby*, but by *Whitebread's* Appointment in his Instructions, which I saw and read.

L. C. J. What was the Commission for?

Mr. Oates. To be an Officer in the Army.

L. C. J. Did you see the Instructions left for *Ashby*?

Mr. Oates. I did see them, and read them, and I did then, as I always did, give it as my Judgment, that it was more safe to Poyson the King, than to Pistol or Stab him.

Mr. Just. Bertue. Was the Commission which you delivered to Sir *John Gage*, from *Ashby*, or from *Whitebread*?

Mr. Oates. I had it from *Ashby*; but *Whitebread*, who was then beyond Sea, had Signed this Commission before he went. My Lord, I have something more yet to say, and that is as to Mr. *Grove*, That he did go about with one *Smith* to gather *Peter-pence*, which was either to carry on the Design, or to send them to *Rome*. I saw the Book wherein it was entred, and I heard him say that he had been gathering of it.

Grove. Where was this?

Mr. Oates. In *Cock-pit Alley*, where you know I lodged.

Grove. Did I ever see you at your Lodging?

Mr. Oates. You saw me at my own Door.

L. C. J. Why, don't you know Mr. Oates?

Grove. My Lord, I have seen him before.

L. C. J. Why, this 'tis, ask a Papist a Question, and you shall have a Jesuitical Answer.

Mr. Oates. I will convince the Court that he does know me by some Circumstances. My Lord, in the Month of *December* last, by the Provincial's Order —

L. C. J. I would ask him first whether he does know you or no. Do you know Mr. Oates?

Grove. I have seen him before.

L. C. J. Have you been often in his Company?

Grove. No, my Lord.

L. C. J. What do you call often? Have you been in his Company seven or eight times? (for we must deal subtilly with such as you are,) have you been in his Company ten times?

Grove. No.

L. C. J. What say you to three times?

Grove. Yes, I believe I have seen him twice or thrice.

L. C. J. Where? Did you never see him at *Whitebread's*?

Grove. As I hope to be saved, and before the Eternal God, I did never.

Mr. Oates. I will convince him and the Court, that he does know me, and is well acquainted with me: In the Month of *December* last I went to St. *Omers*, I went first to the then Provincial's House, to take my leave of him, and there I met with Mr. *Grove*, and he appointed to come to my Lodging the next Morning, near the *Red Lyon* in *Drury-Lane*, at one *Grigson's* House, and he was so well acquainted with me then, that he had lent me eight Shillings to hire the Coach.

L. C. J. Did you lend him eight Shillings?

Grove. I did, my Lord, I do not deny it.

L. C. J. How came you to do it, when it seems, if you say true, he was a Stranger to you?

Grove. I thought I should have it again.

L. C. J. What, of him?

Grove. Yes.

L. C. J. Did he desire you to lend him the eight Shillings?

Grove. Yes, he did, my Lord.

Mr. Oates. Then there is one time that he confesses he saw me.

L. C. J. Did you not know him before?

Grove. I had no Acquaintance with him, I had seen him.

L. C. J. How came you then to lend Money to one you had no more Acquaintance with?

Grove. I knew I should go along with him to the Coach, and then I thought I should have it again.

L. C. J. Mr. Oates, were you going beyond Sea then?

Mr. Oates. Yes, my Lord, I was.

L. C. J. Mr. Oates, did you pay him that Money?

Mr. Oates. No, my Lord, I did not.

L. C. J. Did you ask him for the Money, and had you it?

Grove. He did not pay it me.

L. C. J. How then were you sure you should have it?

Grove. He did order me to go to such a one for it.

L. C. J. Who was that?

Grove. Mr. *Fenwick*, I think.

L. C. J. Then Mr. Oates was known to you all, he was no such Stranger to you as you would make us believe.

Mr. Oates. Thus he confesses three times he had seen me, once before he lent me the Money, another time when he lent it, and the third time the next Day. And I will put him in mind of another time, when he and I were in Company, where one brought us a Note of what was done in the House of Commons, turned into Burlesque, for they used to turn all that was done at the Council, or at the Parliament, or at the Courts in *Westminster-Hall*, into Burlesque, and then translated it into *French*, and sent it to the *French King*, for him to laugh at too. But that by the way. Twice more he drank in my Company, at the *Red Posts* in *Wild-Street*, and once more

more when he owned to me, that he fired *Southwark*.

L. C. J. Now by the Oath that you have taken, did he own to you that he had fired *Southwark*?

Mr. Oates. My Lord, he did tell me that he with three *Irishmen* did fire *Southwark*, and that they had a thousand Pounds given them for it, whereof he had four Hundred Pounds, and the other two Hundred Pounds a-piece.

L. C. J. Now for Mr. Fenwick. Do you know Mr. Oates?

Fenwick. Yes, my Lord, I do.

L. C. J. Were you well acquainted with him? speak plain.

Mr. Oates. He was my Father-Confessor, my Lord.

L. C. J. Was he so? Were you his Confessor?

Fenwick. I believe he never made any Confession in his Life.

L. C. J. Yes, he hath made a very good one now. Were you of his Acquaintance, Mr. Fenwick? Speak home, and don't mince the Matter.

Fenwick. My Lord, I have seen him.

L. C. J. I wonder what you are made of: Ask a Protestant, an *English* one, a plain Question, and he will scorn to come dallying with an evasive Answer.

Fenwick. My Lord, I have been several times in his Company.

L. C. J. Did you pay eight Shillings for him?

Fenwick. Yes, I believe I did.

L. C. J. How came you to do it?

Fenwick. He was going to St. Omers.

L. C. J. Why, were you Treasurer for the Society?

Fenwick. No, my Lord, I was not.

L. C. J. You never had your eight Shillings again, had you?

Fenwick. It is upon my Book, my Lord, if I ever had it.

L. C. J. Did Mr. Oates ever pay it again?

Fenwick. No sure, he was never so honest.

L. C. J. Who had you it of then?

Fenwick. I am certain I had it not from him; he did not pay it.

L. C. J. How can you tell you had it then?

Fenwick. I do suppose I had it again, but not of Mr. Oates.

L. C. J. Had you it of Ireland?

Fenwick. I do not know who I had it of, my Lord, nor certainly whether I had it.

L. C. J. Why did you not ask Mr. Oates for it?

Fenwick. He was not able to pay it.

L. C. J. Why did you then lay it down for him?

Fenwick. Because I was a Fool.

L. C. J. That must be the Conclusion always: when you can't evade being prov'd Knaves by answering directly, you will rather suffer your selves to be call'd Fools.

Fenwick. My Lord, I have done more for him than that comes to; for he came once to me in a miserable poor Condition, and said, I must turn again, and betake my self to the Ministry to get Bread, for I have eaten nothing these two Days: And I then gave him five Shillings to relieve his present Necessity.

Mr. Oates. My Lord, I will answer to that; I was never in any such Straights, I was ordered

by the Provincial to be taken care of by the Procurator.

Fenwick. You brought no such Order to me.

Mr. Oates. Yes, Mr. Fenwick, you know there was such an Order, and I never received so little in my Life as Five Shillings from you: I have received Twenty, and Thirty, and Forty Shillings at a time, but never so little as Five.

L. C. J. You are more charitable than you thought for.

Fenwick. He told me had not eaten a bit in two Days.

Mr. Oates. I have indeed gone a whole Day without eating, when I have been hurried about your Trash; but I assure you, my Lord, I never wanted for any thing among them.

L. C. J. Perhaps it was Fasting-Day.

L. C. Baron. My Lord, their Fasting-Days are none of the worst.

Mr. Oates. No, we commonly eat best of those Days.

L. C. J. Have you any thing to ask him, any of you?

Whitebread. My Lord, will you be pleased to give me leave to speak for my self?

Just. Atkins. It is not your time yet to make your full Defence, but if you will ask him any Questions, you may.

Whitebread. I crave your Mercy, my Lord.

L. C. J. Will you ask him any Questions?

Fenwick. Did not you say that you were at my Chamber the 24th of April, with the Resolve of the Consult?

Mr. Oates. That Resolve I did then carry to your Chamber.

Fenwick. Then was he himself at St. Omers.

L. C. J. The difference of *old Stile* and *new Stile* may perhaps make some Alteration in that Circumstance.

Whitebread. But, my Lord, he hath sworn he was present at several Consultations in April and May, but from November till June he was constantly at St. Omers.

L. C. J. If you can make it out that he was at St. Omers all April and May, then what he hath said cannot be true.

Ireland. He himself hath confessed it that he was at St. Omers.

L. C. J. If you mean by Confession, what stands upon the Evidence he hath given, I'll remember you what that was. He says he came to St. Omers —

Mr. Oates. Will your Lordship give me leave to satisfy the Court: In the Month of December or November, I went to St. Omers: I remained there all January, February, March, and some part of April: Then I came over with the Fathers to the Consult that was appointed the 24th of that Month.

Fenwick. Did you go back again?

Mr. Oates. Yes.

Fenwick. When was that?

Mr. Oates. In the Month of May, presently after the Consults were over.

Fenwick. And we can prove by abundance of Witnesses that he went not from St. Omers all that Month.

L. C. J. You shall have what time you will to prove what you can; and if you can prove what you say, you were best fix it upon him; for he saith he was here at the Consults in April and May; if you can prove otherwise, pray do.

Fenwick.

Fen. We can bring an Authentick Writing (if there be any such) from *St. Omers*, under the Seal of the College, and testified by all in the College, that he was there all the while.

L. C. J. Mr. *Fenwick*, that will not do; for first, if it were in any other Case besides this, it would be no Evidence, but I know not what you cannot get from *St. Omers*, or what you will not call Authentick.

Fen. Does your Lordship think there is no Justice out of *England*?

L. C. J. It is not, nor cannot be Evidence here.

Fen. It shall be Signed by the Magistrates of the Town.

L. C. J. What, there?

Fen. Yes, there.

L. C. J. You must be tryed by the Laws of *England*, which sends no Piece of Fact out of the Country to be Tryed.

Fen. But the Evidence of it may be brought hither.

L. C. J. Then you should have brought it. You shall have a fair Trial; but we must not depart from the Law or the way of Trial, to serve your purposes. You must be Tried according to the Law of the Land.

Just. Atkins. Such Evidences as you speak of we would not allow against you; and therefore we must not allow it for you.

Whitebread. May this Gentleman be put to this, to produce any two Witnesses that saw him in Town at that time.

Mr. Oates. I'll give some Circumstances and what Tokens I have to prove my being here: *Father Warner*, *Sir Tho. Preston*, *Father Williams*, and *Sir John Warner*, they came hither with me from *St. Omers*, there was one *Nevil*, &c. I cannot reckon them all.

L. C. J. You have named enough.

Mr. Oates. But to convince them, there was a Lad in the House that was got to the end of his Rhetorick; this Lad was Whipt and turned out of the House, and had lost all his Money: *Father Williams* did Re-imburse this Lad in order to his bringing home, I think the Lad's Name was *Hilsley*, or some such Name. And we came up to *London* together.

L. C. J. What say you to this Circumstance?

Whitebread. My Lord, he knew that two such came to Town, but he was not with them.

L. C. J. You are now very good at a Negative I see, how can you tell that?

Whitebread. My Lord, he could not come.

L. C. J. How can you tell he could not come?

Whitebread. I can tell it very well, for he had no Order to come, nor did come.

L. C. J. How can you undertake to say that he did not come?

Whitebread. Because he had no Order to come.

L. C. J. Is that all your reason? Where were you then?

Whitebread. I was here.

L. C. J. How do you know he was not here?

Whitebread. He had no Orders to come.

L. C. J. Have you any other Circumstance, *Mr. Oates*, to prove that you were here then?

Oates. My Lord, when I came to *London*, I was ordered to keep very close, and I lay at *Grove's* House; let him deny it if he can, I'll tell you who lay there then. —

Grove. Did you ever lye at my House?

Oates. There lay a Flaxen-Hair'd Gentleman, I forgot his Name: But I'll tell you who lay there besides; that is *Strange*, that was the late Provincial.

L. C. J. Did *Strange* ever lye at your House?

Grove. Yes, my Lord, he did.

L. C. J. Did he lye there in *April* or *May*?

Grove. No, he did not in either of them.

L. C. J. You will make that appear.

Grove. Yes, that I can by all the House.

L. C. J. Have you any more Questions to ask him? If you have, do: If you can prove this upon him, that he was absent, and not in *England* in *April* or *May*, you have made a great Defence for your selves, and it shall be remembred for your advantage when it comes to your turn: In the mean time, if you have no more to say to him, call another Witness. Let *Mr. Oates* sit down again, and have some Refreshment.

Mr. Serj. Baldwin. We will now call *Mr. Bedlow*, my Lord.

Then *Mr. Bedlow* was sworn.

Mr. Serj. Baldwin. *Mr. Bedlow*, Pray do you tell my Lord and the Jury, what you know of any design of killing the King, and by whom.

Mr. Bedlow. My Lord, I have been five Years almost employed by the Society of *Jesuits* and the *English Monks* in *Paris* to carry and bring Letters between them from *England* and to *England*, for the promoting of a Design tending to the Subversion of the Government, and the extirpating of the Protestant Religion, to that degree (which was always concluded on in all their Consults wherein I was) that they would not leave any Member of any Heretick in *England*, that should survive to tell in the Kingdom hereafter, that there ever was any such Religion in *England* as the Protestant Religion —

Here *Whitebread* would have interrupted him.

My Lord, I am so well satisfied in their Denials, that I cannot but believe they who can give a Dispensation, and have received the Sacrament to kill a King and destroy a whole Kingdom, do not scruple to give a Dispensation for a little Lye to promote such a Design, for so much as this expiates any Lye or greater Crime.

Sir Cr. Levinz. Pray, Sir, will you be pleased to tell your whole knowledge concerning the Prisoners at the Bar.

Mr. Bedlow. The first Letter I carried was from *Mr. Harcourt*, at his House next door to the Arch in *Duke-street*. He hath been Procurator for the *Jesuits* about six Years. He employed me first, and sent for me over, for I was then Lieutenant in *Flanders*, and coming home to receive my Pay that was due to me —

L. C. J. How long is it ago?

Mr. Bedlow. *Michaelmas* last was four Years; when I came to *Dunkirk* I went to visit the *English Nunnery* there, and the Lady Abbess finding me very plyable and inclinable, made very much of me, and I did adhere to her. She kept me six Weeks in the Convent, and afterwards when I went away, recommended me to *Sir John Warner*, as an Instrument fit to be employed in the carrying of Letters, or doing any thing that would promote the design against *England*. He kept me at *St. Omers* a Fortnight, and after

after sent me to Father *Harcourt* to be instructed in my employment: It was then Winter; the next Spring he sends me into *England* with divers Letters, where by Mr. *Harcourt* I was employed to carry several Letters to *Morton* and *Doway*, and other places: That Summer I was sent into *England* without an Answer: But afterwards in (76,) which was the next Summer, I was to carry another Pacquet of Letters to the Monks at *Paris*, who sent it to other English Monks in *France* —

L. C. J. Who sent that Pacquet of Letters in 76?

Bedlow. I had it from Mr. *Harcourt*, and it was written by *Harcourt*, *Pritchard* and *Cary*.

L. C. J. To whom?

Bedlow. To the English Monks in *France*, and in it there was a Letter to *Le Chaise*. Upon the receipt of these Letters at *Paris*, *Le Chaise* had a Consultation with the Monks and a French Bishop or two about them: I did not then speak French enough to understand what it was they said, but it was interpreted to me by Mr. *Stapleton* an English Monk, who told me, that it was a Letter from my Lord *Bellasis* and others of the Catholick Religion, English Gentlemen that were Contrivers of the Plot here, to satisfy them in what state things stood in *England* as to Popery. I was sent back again with a Pacquet of Letters directed to Mr. *Vaughan* of *Courtfield* in *Monmouth-shire*.

L. C. J. From whom was that?

Bedlow. From the English Monks at *Paris*. From that Consultation I went to *Ponthois*, I there receiv'd other Letters to carry into *England*. I had a course to open their Letters, and read what was in them; and in those Letters was contained, That the Prayers of that House were for the prosperity of that Design, and they would not fail to be at the Consultation at of *Warwick-shire* Gentlemen. I fell sick at *Monmouth*, and Mr. *Vaughan* sent to me a Jesuit to Confess me; but I was well before he came, and so was not Confess'd by him. I now come to the later times.

L. C. J. You must speak it over to the Jury, that they and the Prisoners may hear you.

Bedlow. The 25th of May, 77, which was last Year, I was sent over with another Pacquet of Letters. I had no Letters of consequence forward, and therefore did not call then at *Wotton*, but I called upon the Lady Abbess at *Dunkirk*, and I went thence to *Bruges* and to *Ghent*, where I had some Letters for the English Nuns, which I delivered to them. When I came to *Doway*, I found there that the Monks were gone, that was *Sheldon*, *Stapleton*, and *Latham*, but the Letters were directed to *Paris*, and therefore I made haste, and at *Cambray* I overtook them. And the Letters were to give an account of the Consultation held in the Gallery at *Somerfet-House*: All tending to the destruction of the Protestant Religion, and killing the King; but I do not think fit to declare here who were the Persons that were present at that Consultation. At *Cambray* they were very joyful that there was so good a Proceeding in *England*. At *Paris* when the Letters were shewed, there was a Letter written in a Language which I did not understand, but, as I was told, in that Letter they were charged in *Paris* by my Lord *Bellasis*, that they did not proceed according to their promise

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to them in *England*; but, said *Stapleton*, to me, My Lord *Bellasis* nor the Society in *England* need not to write thus to Us, for we are not so backward, but that we can lend Men, and Money, and Arms too, and will upon occasion. From thence they sent me to *Spain* with a Letter to an Irish Father: I did overtake him at *Sa Mora*. From thence I went with another Letter to the Rector of a College of Irish Jesuits in *Salamanca*. By their contrivance I was sent to *St. Iago* in *Spain*, where was another College of Irish Jesuits: there I stayed till I had an Answer to Sir *William Godolphin*; and when I had the Answer to that Letter, I went for the Letter from the Rector at *Salamanca*. The Jesuits there told me, they would take care to send their own Answer another way: And when they had made me that promise, I came away for *England*, and landed at *Milford Haven*: All this reaches to none of these Persons in particular: But what I now shall say shall be about them, only it was necessary I should speak of what I have said,

L. C. J. The meaning of all this is only to shew the Jury and satisfy them, that he was an Agent for these Men, and hath been employed by them for five Years together, and he names you the particular Places whither he hath been sent, to shew you the Reasons of his Knowledge in this Matter, and upon what account he comes to be informed of this Design.

Bedlow. Having receiv'd the News of that Country, I did there take Water, and landed again at *Pensans*, and when I came to *London* I gave the Letter to *Harcourt*: what was in that Pacquet I cannot particularly tell, for I was not so inquisitive as to look into the Contents of it, but I know it was tending (as all the rest did) to the carrying on of this Plot: Afterwards I was employed by *Harcourt* and *Coleman* to go to some parts of *England* to communicate the Letters to some of the Popish Party.

L. C. J. Now turn to the Jury.

Bedlow. The Summer was past in the doing of that: In the beginning of *August* last there was a Consultation and a close one at *Harcourt's* Chamber, so as that they did not permit me to know any thing of it. I went out of Town for a Fortnight, and when I returned, I understood there had been such a Meeting; I charged them with their Privacy in it, and asked what was the private design of that Consultation; they said it was something I should know in time: That it did not signify much at present, but in time I should know it: But then I understood by *Pritchard*, who was more my Confident than any of the rest, That it was a Design to kill the King: That *Pickering* and *Grove* had undertaken it a great while, and that they had been endeavouring a long while to bring it to pass.

Fenwick. Where was this Meeting, and when?

Bedlow. Last *August*, at *Harcourt's* Chamber.

Fenwick. Who were present there?

Bedlow. Be pleased to give me leave to go on, I'll tell you by and by: Then I understood, as I said, that it was to kill the King, but that *Pickering* and *Grove* failing of it, they had hired four Russians that were to go to *Windsor*, and do it there, and that if I would come the next day, I should hear from *Coleman* the effect: When I came there I found *Coleman* was gone, but *Pritchard* said there were some sent to *Windsor*, and that

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that *Coleman* was going after them, and that he had given a Messenger a Guinea that was to carry the Money to them. And he would presently be after them, for fear they should want Opportunity to effect their Design. Then I discours'd them, why they kept their Design so long hid from me? They said, It was a Resolve of the Society, and an Order of my Lord *Bellasis*, that none should know it but the Society, and those that were Actors in it. I seem'd satisfy'd with that Answer at present. About the latter End of *August*, or the Beginning of *September*, (but I believe, it was the latter End of *August*) I came to *Harcourt's* Chamber and there was *Ireland*, and *Pritchard*, and *Pickering*, and *Grove*.

L. C. J. What Part of *August* was it?

Bedlow. The latter End.

L. C. J. Do you say it Positively, That it was the latter End of *August*?

Bedlow. My Lord, It was in *August*; I do not swear Positively to a Day.

L. C. J. But you say, it was in *August*.

Ireland. And that we were there present?

Bedlow. You were there, and *Grove*, and *Pickering*.

Ireland. Did you ever see me before?

Bedlow. You were present there, and *Grove*, and *Pickering*, and *Pritchard*, and *Fogarthy*, and *Harcourt*, and I.

L. C. J. What did you Talk of there?

Bedlow. That the *Ruffians* missing of Killing the *KING* at *Windsor*, *Pickering* and *Grove* should go on, and that *Conyers* should be joyned with them; and that was to Assassinate the *KING* in his Morning-Walks at *New-Market*: And they had taken it so strongly upon them, that they were very eager upon it: And *Grove* was more forward than the Rest: And said, Since it could not be done Clandestinely, it should be attempted Openly. And that those that do Fall, had the Glory to dye in a Good Cause. But (said he) if it be discovered, the Discovery can never come to that Height, but their Party would be strong enough to bring it to pass.

L. C. J. And you swear, *Ireland* was there?

Bedlow. He was there, my Lord.

L. C. J. And heard all this?

Bedlow. Yes, my Lord; and so did *Grove*, and *Pickering*, and the Rest.

Ireland. My Lord, I never saw him before in my Life.

L. C. J. What was the Reward that you were to have for your pains in this Business?

Bedlow. My Lord, The Reward that I was to have (as it was told me by *Harcourt*) was very considerable: I belong'd to one particular Part of the Society. There are others; and I presume, they each kept their particular Messengers.

L. C. J. What was *Grove* to have?

Bedlow. *Grove* was to have Fifteen Hundred Pound, if he Escaped, and to be a continual Favorite, and Respected as a great Person, by all the Church.

L. C. J. What was *Pickering* to have?

Bedlow. He was to have so many *Masses*, I cannot presume to tell the Number; but they were to be as many, as at Twelve Pence a *Mass* should come to that Money: These *Masses* were to be Communicated to all the *Jesuits* beyond the Seas, that when he had done it, he might be sent away immediately.

L. C. J. What can you say of any of the Rest?

Bedlow. My Lord, I do not Charge any more but them Three.

L. C. J. What say you to *Whitebread*?

Bedlow. They have said, that he was very Active in the Plot; but I know it not.

L. C. J. That is not any Evidence against him. What can you say, as to *Fenwick*?

Bedlow. No more than I have said, as to Mr. *Whitebread*: I only know him by Sight.

L. C. J. Then he Charges only these Three upon Oath, *Ireland*, *Pickering*, and *Grove*.

Ireland. Do you know Sir *John Warner*?

Bedlow. I know Father *Warner* at St. *Omers*, and Sir *John Warner* at *Wotton* by St. *Omers*.

Ireland. He named Sir *John Warner* to be at *Paris*.

Bedlow. It was *Sheldon*, I spoke of (my Lord) at *Paris*.

Ireland. At least you are certain, that I was present at that Consultation?

Bedlow. Yes: I am certain, you were there.

Ireland. Can you produce any Witness, that you ever spoke to me before in your Life?

Mr. Serj. *Baldwyn.* Do you know any thing of Mr. *Whitebread's* being present at any of the Consults?

Bedlow. I do know, that *Whitebread*, and *Fenwick* both, have been several times at Consultations; but I do not know what the Particular Resolves of those Consultations were.

L. C. J. Did you ever hear them speak any thing in Particular?

Bedlow. No, I have never heard them speak any thing in Particular.

L. C. J. Where have you seen *Fenwick*?

Bedlow. I have seen *Fenwick* at *Harcourt's* Chamber, and I have often heard him talk'd of; and it hath been told me, That nothing was done, without *Fenwick*.

Whitebread. Are you sure you know us?

Bedlow. I do not say, You are the Man that employed me: You are the Man I was least acquainted with, of all the Society; but I have seen you there.

Ireland. Can you bring any one, that can Testify it?

L. C. J. He must then have brought one of your selves; and it may be, he cannot produce any such one.

Ireland. Nor no one else, except such a *Knight* of the *Post*, as Mr. *Oates*.

L. C. J. You must be Corrected for that, Mr. *Ireland*: You shall not come here to Abuse the *KING's* Evidence. Nothing appears to us, that Reflects upon Mr. *Oates's* Testimony; and we must not suffer any such sort of Language.

Mr. Just. *Atk.* Take off his Credit as much as you can by Proof, but you must not Abuse him by ill Language.

Mr. *Finch.* Can you tell the Court and the Jury, when it was, that by Agreement *Grove* should have the Fifteen Hundred Pound?

Bedlow. He was to have it put into a Friend's Hands.

L. C. J. Do you know that Friend's Name?

Bedlow. No, my Lord, I do not.

Mr. *Finch.* Do you know, when that was to be delivered out to him?

Bedlow. As to the particular Time of their Agreement, I do not know it.

Mr. Finch. But this he says, That when the Agreement was made, he was to have Fifteen Hundred Pound.

L. C. J. And he says this, That *Ireland* was in *August* last, with *Pickering* and *Grove*, and others, at a Consult; where he was also.

Ireland. But what if I prove I was not in *London* all *August* last, from the Beginning to the End?

L. C. J. You heard them talk of this Matter in *August*, at *Harcourt's* Chamber, you say: What, did they talk of it, as a Matter they had agreed?

Bedlow. My Lord, they brought it in, as being baulked in their Design of Killing the KING at *Windsor*; and because that had not taken the Effect they intended it, they should have Conyers joyned to them, to do it at *New-Market*.

Mr. Finch. Did they tell you when, and where the Agreement was made?

L. C. J. No, he speaks not of that; but they talk'd of the Failure at *Windsor*: And therefore they did conclude, that Conyers should be joyned to them, to do it at *New-Market*.

Bedlow. Yes, my Lord.

L. C. J. Have you any more to say?

Bedlow. My Lord, I would only say this; If I had any to prove what I say, they must be Parties as well as these Persons.

Ireland. My Lord, I will prove, That I was not in Town in *August* all the Month, by twenty Witnesses: I'll bring those that saw me in *Stafford-shire*, and spoke with me all *August*.

L. C. J. Have you any more to ask him?

Whitebread. No.

Serj. Baldwin. Swear Mr. *James Bedlow*. And he was sworn.

Ireland. He does say, That he was Familiar with me, and several other Persons here; and therefore, I desire he may specify the Place, and the Company.

William Bedlow. I do not say, there was a Familiarity; for I was a Stranger to that Part of the Society.

L. C. J. You must take him right, Mr. *Ireland*; he hath not said, that he was of your Familiar Acquaintance.

Bedlow. I have seen you often, Sir.

Ireland. Where?

Bedlow. At *Monsieur Le Faire's*.

Ireland. Where was that?

Bedlow. At *Somerset-House*.

Ireland. Was there any one present besides?

Bedlow. Yes, several other Priests and Jesuits of *Somerset-House*.

Ireland. Name one.

Bedlow. Signior *Perrare*.

Ireland. You say, you saw me and *Perrare* together at *Somerset-House*. I suppose, if Signior *Perrare* may be brought hither —

Bedlow. My Lord, *Perrare* is a Priest in Orders; and without doubt, is in this Business.

L. C. J. If he did see you, he must see you in such Company as you keep, they were Priests and Jesuits, and of your own Religion; and we know very well what Answers we are like to be put off with by Men of your own Persuasion at this time of day.

Ireland. My Lord, if no body's Oath can be taken that is of another Persuasion than the Church of *England*, it is hard.

L. C. J. Pray mind, you do not object ingenuously: for you say, This Witness swears he saw

me in such Company, why does he not produce them to testify it? Why? He does not come prepared to produce them; if he should, we know well how you are concerned one for another at this time; and we can hardly expect they should make true Answers. But notwithstanding, if you will produce this Father *Perrare*, (he cannot be Sworn because 'tis against the Law, but) his Testimony shall be heard, and let it go as far as it can.

Bedlow. If your Lordship pleases, my Lord, I would convince him that he does know me. Have you not been, Sir, at *Somerset-House*?

Ireland. Yes, I have.

Bedlow. Do you know *le Fair* and *Perrare*?

Ireland. Yes, but I never saw you in their Company in *Somerset-House* in my Life, above once or twice.

Bedlow. Yes, you have twice at *le Fair's*.

L. C. J. Where is that *le Fair*? you would do well to produce him?

Bedlow. My Lord, he is gone away, and is one against whom the King's Proclamation is out.

L. C. J. You keep such Company as run away, and then you require him to produce them, whom the King's Proclamation cannot bring in.

Ireland. I keep none but honest Company.

Bedlow. If your Lordship pleases, I have one thing more that is very material to speak; at the same time that there was a discourse about these Three Gentlemen's being to destroy the King at *New-Market*, at the same time there was a discourse of a design to kill several Noble Persons, and the particular Parts assigned to every one. *Knight* was to kill the Earl of *Shaftesbury*, *Pritchard* the Duke of *Buckingham*, *Oneile* the Earl of *Offory*, *Obrian* the Duke of *Ormond*.

L. C. J. Well, will you have any more of this?

Mr. Finch. You say, you saw Mr. *Ireland* say Mass, where did you see him?

Bedlow. Not Mr. *Ireland*, but Mr. *Fenwick*, I have seen him say Mass, and at *Wild-House*.

Oates. My Lord, I did omit a Consult wherein there was a design laid of taking away the Duke of *Ormond's* Life, and of a Rebellion that was to be raised in *Ireland*.

My Lord, in the Month of *January* last, there came Letters from Arch-Bishop *Talbot* to *London*, which Letters were perused by *Fenwick*, and *Ireland*, and *Whitebread*, and when they were perused, they were sent and communicated to the Fathers at *St. Omers*. The Contents of those Letters were thus, That the Catholics had a fair prospect of effecting their Designs in the Kingdom of *Ireland*. And this Letter was inclosed in a Letter signed by *Whitebread*, *Ireland*, *Fenwick*, and others (I name no Man's Name that is not here.)

L. C. J. You saw the Letter?

Oates. Yes, I did see it, and read it, wherein they did give thanks unto God, that he was pleased to prosper their designs so fairly in *Ireland*; and withal they did say, That they would not leave a stone unturned to root out that abominable Heresy out of that Kingdom. Now what that abominable Heresy was, I have nothing but a Conjecture.

L. C. J. We all know what that is well enough, there needs no Proof of that.

Oates. In the Month of *August*, *Fenwick*, a little before he went to *St. Omers*, on the One

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and

and Twentieth of *August*, (as I think it was) that Week that *Bartholomew-Fair* begun on (as I take it) he was then going to fetch home the Provincial, and to carry some Students with him, and he went unto *St. Omers* the *Monday* following; but then there was a Consult, and at that Consult *Fenwick* did consent to the contrivance of the Death of the Duke of *Ormond*, and for the Rebellion that was to be raised in *Ireland* after his Death. And he did approve of the Four *Jesuits* that were to kill my Lord of *Ormond*, and did consent to send *Fogarty* down to the Arch-Bishop of *Dublin*, in case the Four good Fathers did not hit the business. Mr. *Whitebread*, my Lord, did consent when he came over, as appears by their Entry-Books. For there came a Letter from him dated as from *St. Omers*, but I concluded it did not come from thence, because it paid but Two-pence.

Whitebread. Who was it that writ that Letter?

Oates. My Lord, this Letter was dated as the latter part of *August*, and dated as from *St. Omers*, but the Post mark upon it was but Two-pence, to be paid for it; so that I do conclude thence Mr. *Whitebread* was then at Esquire *Leigh's* House in

But in that Letter he did like the Proposal that was made about killing the Duke of *Ormond* in that Consult, and the Letter was signed with his own hand.

L. C. J. I would gladly see that Letter.

Oates. If I could see it, I could know it.

L. C. J. You have not that Letter?

Oates. No, but they kept a Book wherein they Registered all their Resolutions, and there it was entred.

L. C. J. You upon your Oath say, That he as Superior of them did keep a Book, wherein they Registered all their Consults.

Oates. Yes, my Lord.

L. C. J. You would do well to shew us your Book, Mr. *Whitebread*.

Whitebread. We never kept any.

Oates. The Consult did; for tho' the Superior have an absolute power over the Subject, yet they never do any thing of Consequence without the Consult. And this Book was kept by the Superior, and never opened but at the Consult, and therein all the Passages were Registered.

L. C. J. Produce your Book, and we shall see whether you cannot catch Mr. *Oates* in something or other.

Bedlow. My Lord, that Book I have seen, and therein all their Consults are Registered.

L. C. J. Was there Books kept by them?

Bedlow. Yes, my Lord, all the Consults did keep Books, and Mr. *Langborne* was the Person that Registered all into one.

L. C. J. If a Hundred Witnesses swear it, they will deny it. Well, will you have any more?

Mr. *S. Baldwin*. My Lord, we will now call Mr. *James Bedlow*, this Gentleman's Brother, to shew you, That these sort of Persons did resort to him frequently.

L. C. J. Are you sworn, Sir?

J. Bedlow. Yes, my Lord, I am.

L. C. J. Then let me ask you one short Question. Do you know Mr. *Ireland*?

J. Bedlow. No.

L. C. J. Do you know *Pickering* or *Grove*?

J. Bedlow. I have heard of them.

L. C. J. Did your Brother know any thing of them?

J. Bedlow. As for the Conspiracy of killing the King, I know nothing of it; but about his knowledge of Priests and *Jesuits*, and the Converse he had beyond Sea, that I can speak to. And I have very often heard these mens names named.

L. C. J. In what nature did he talk of them?

J. Bedlow. I know nothing of the Plot, and as for any Design I knew not what my Brother knew, but I have heard him talk of them.

L. C. J. How did he talk of them?

J. Bedlow. He mentioned them as his Acquaintance, the *Jesuits* there did ask him Questions about them.

L. C. J. And did it appear to you they were of his Acquaintance?

J. Bedlow. But I understood nothing of the Plot or Design, by the Oath I have taken.

L. C. J. But did he speak as if he knew any of them?

J. Bedlow. For any certain knowledge that my Brother had of them I cannot speak, but I have often heard him talk of them as people I thought he knew.

Mr. *Finch*. Do you know, that when he came over from beyond Sea, that his Lodging was frequented by any, and by whom?

J. Bedlow. Yes, there were many Priests and *Jesuits* came to him.

Mr. *Finch*. Did your Brother receive any Money from them?

J. Bedlow. Yes, my Lord, I have fetch'd many score of Pounds for my Brother from them.

L. C. J. The Use, Gentlemen, that the King's Council make of this Evidence, is only to shew, That his Brother Mr. *Bedlow* was conversant in their affairs, in that he hath received many a score of Pounds in the managing of their business.

Sir Cr. *Levinz*. Pray, from whom had your Brother that Money?

J. Bedlow. I have proved that from the Goldsmiths themselves that paid it, before the Duke of *Monmouth*, my Lord Chancellor, and Lord Treasurer.

Mr. *Finch*. Have you received any considerable sum at a time?

J. Bedlow. Yes, I have.

Mr. *Finch*. How much?

J. Bedlow. Fifty or Threescore Pounds at a time.

Finch. Of whom?

J. Bedlow. Of Priests and *Jesuits*.

Finch. For whom?

J. Bedlow. For my Brother.

L. C. J. Will you have any more Evidence?

Mr. Serj. *Baldwyn*. Yes my Lord, the next Evidence we produce, is concerning a Letter; there was a Letter written by one Mr. *Peter*, that is now a Prisoner, to one *Tonstall* a *Jesuit*; and this Letter does mention, That there was a meeting appointed by order of *Whitebread* to be at *London*.

L. C. J. What is that to them, and how come you by it?

Serj. *Baldwyn*. *Peters* is now in Prison for things of this nature; and you have heard of one *Harcourt*, and out of his Study this Letter was taken.

W. *Bedlow*. My Lord, may I not have liberty to withdraw? my Head akes so extreemly, I cannot endure it.

L. C. J.

L. C. J. Mr. *Bedlow*, you may sit down, but we can't part with you yet.

Ireland. I desire, my Lord, that his Brother may be asked, how long he had known me.

L. C. J. Can you recollect by the discourses you have heard, how long he might have known *Ireland*?

J. Bedlow. No my Lord, it was out of my way.

L. C. J. But he did talk of *Ireland*?

J. Bedlow. Yes, my Lord, he did.

Ireland. As being where, in what place?

J. Bedlow. I cannot tell.

Ireland. He named one place Three Years ago, it was at *Paris*.

L. C. J. But he does not say that you were there, but that you were familiarly talk'd of there; so that the meaning is, they were acquainted with you: And this is only brought to shew, that it is not a new-taken-up thing by *Bedlow*, though you seemed never to have known any such Man; yet he swears, saith he, I have heard such Persons talkt of as my Brother's acquaintance.

Ireland. If his Brother had talkt of me three years ago, why then he must have known me three years ago.

L. C. J. I'll ask him that question: How long is it since you knew him?

W. Bedlow. I have known him but since *August* this same last Summer; but, my Lord, I talkt five, and four years ago of several *English* Monks and Jesuits that were then at *Rome*, that I never knew in my Life.

L. C. J. His answer then is this, saith his Brother, I have heard him talk of them three years ago; I then asked *Bedlow*, how long he had known them? saith he, I did not know them three years ago, though I did talk of them three years ago; for we have talkt of many that we never saw in our Lives: So it seems he had occasion to make use of your names frequently, and join them with those of some he knew better: But he never knew you till *August* last; but he did discourse of you three years ago, as known for such sort of Persons.

Ireland. He must hear some body speak of us, as being in some place or another.

W. Bedlow. I will satisfy you in that. We talk of some now in *England*, that are to be sent a year hence.

L. C. J. If you can produce but *Harcourt* and *le Faire*, they will do you great service now.

W. Bedlow. My Lord, as for example, Father *Pritchard* is Confessor to such a Gentleman in *England* now this year; a year hence we must send such a one hither, and he must go back. And we may talk of that Person as in *England*, two Years before.

L. C. J. You need not trouble your selves about that. Mr. *Ireland*, you shall have a fair Trial, but you will not have cunning or art enough to deceive the Jury, nor will Mr. *Whitebread* have Learning enough to baffle the Court.

Then Mr. *W. Bedlow* and his Brother withdrew.

Serj. Baldwin, My Lord, The next Evidence that we shall give, as I said, is a Letter from one *Peters* to one *Tonstall*, and this we will bring home to Mr. *Whitebread*, for it is an invitation to be at the Consult held in *London* the 24th of *April*; and it was written about that very time, to wit, the

3d of *April*. It was written from *London*, and it mentions, that Mr. *Whitebread* did fix the meeting at that time. We'll tell you how we came by the Letter. Mr. *Harcourt*, who is one of the principal Persons here, and at whose House was the meeting you heard of, he himself is fled away, when they came to look after him upon the discovery that was made: And Mr. *Bradley*, who was the Messenger to seize upon him, did according to direction search his Study, and did there find this Letter, which we conceive, my Lord, to be very good Evidence; this *Harcourt* being a party, and one at whose House the last meeting was, and others was. We do conceive a Letter from one of that party, bearing date about the same time, concerning Mr. *Whitebread's* Summons, who was Master of the Company, is very good Evidence against them.

L. C. J. If you had found it in Mr. *Whitebread's* custody, you say something.

Just. Bertie. My Brother puts it so: We find a Letter directed to Mr. *Whitebread*, let the matter of it be what it will, it is found among *Harcourt's* Papers.

Serj. Baldwin. No my Lord, we find a Letter from one Mr. *Peters* now a Prisoner directed to Mr. *Tonstall* concerning the Consult summoned by *Whitebread*, and this we find in *Harcourt's* possession.

L. C. J. I can't understand how this may affect Mr. *Whitebread*.

Mr. Finch. Pray my Lord, if your Lordship please, this is the use we make of this Letter; we do not produce it as another Evidence of this design, but to fortify that part of the Evidence which hath already been given, That there was a Consult summoned at that time, and to be held with all the privacy that could be, to prevent discovery. And this is the paper, that we find in the Custody of *Harcourt*, one of the Conspirators, who is fled for it.

L. C. J. Look you, Mr. *Finch*, if you use it not against any particular Person, but as an Evidence in general that there was a Plot amongst them, you say right enough; but it cannot be Evidence against any one particular Person of the Prisoners at the Bar.

Mr. Finch. My Lord, it can affect no particular Person; but we only use it in the general, and we pray it may be read.

L. C. J. Gentlemen of the Jury, before you hear the Letter read, I would say this to you. Let them have fair play; whatsoever they mete unto others, we will shew them Justice. They shall have as fair play upon their Trials as any Persons whatsoever. The thing that is offered to be given in Evidence, is a Letter written by one *Peters* a Prisoner for this Plot, and directed to one *Tonstall* a Jesuit, and this is found in *Harcourt's* Chamber, a Priest that is fled, and one whom the King hath Commanded to render himself by His Proclamation; but he does not. Now in that Letter there is a discourse of a Design and Plot on foot. This cannot be Evidence to charge any one particular Person of these; but only to satisfy you and all the world, that those Letters and Papers that are found amongst their own Priests, do fortify the Testimony of Mr. *Oates*, that there is a general Plot: 'tis not applied to any particular Person.

Oates. The day before the Consult met, Mr. *Whitebread* did ask Mr. *Peters* whether he had summoned the Consult according to his direction.

on. Mr. Peters told him yes, he had writ into *Warwickshire* and *Worcestershire*.

Whitebread. When was this?

Oates. The day before the Consult met.

Whitebread. Did you hear me ask Mr. Peters?

Oates. Yes, I did hear you; and I did hear him say he had done it. Now, my Lord, this Letter that is found in *Harcourt's* Study shews, that Mr. *Whitebread* had directed Mr. *Peters* in this Consult.

Serj. *Baldwyn*. Pray swear Sir *Tho. Doleman* to shew how he came by it. Which was done.

Serj. *Baldwyn*. Sir *Tho. Doleman*, What do you know of this Letter?

Sir *Tho. Doleman*. This Letter in my hand was taken amongst *Harcourt's* Papers, in a great Bag of Papers; and searching them I did find this Letter amongst the rest.

Then the Letter was shewn to Mr. *Oates*.

L. C. J. Is that Mr. *Peters's* hand?

Oates. Yes, my Lord, it is.

L. C. J. Were you acquainted with his hand?

Oates. Yes, my Lord, I have often read it in Letters.

L. C. J. Do you know *Tonstall*?

Oates. My Lord, I do not know him by that name; If I did see him perhaps I might: I knew Men better by their Faces.

Sir *Cr. Levinz*. Pray read it.

Cl. of the Cr. This is Dated *February 23. (77.)* And superscribed thus (These for his Honoured Friend Mr. *William Tonstall* at *Burton*.)

Honoured dear Sir,

I Have but time to convey these following particulars to you. First, I am to give you notice, that it hath seem'd fitting to our Master Consult, Prov. &c. to fix the 21st day of April next *Stylo veteri*, for the meeting at London of our Congregation, on which day all those that have a suffrage are to be present there, that they may be ready to give a beginning to the same on the 24th, which is the next after *St. George's-day*. You are warned to have, *jus suffragii*, and therefore if your occasions should not permit you to be present, you are to signify as much, to the end others in their ranks be ordered to supply your absence: Every one is minded also, not to hasten to London long before the time appointed, nor to appear much about the Town till the meeting be over, lest occasion should be given to suspect the design. Finally, Secrecy, as to the time and place, is much recommended to all those that receive Summons, as it will appear of its own nature necessary.

L. C. J. So it was very necessary indeed.

Cl. of Cr. There is more of it, my Lord.

Tertio pro Domino solono disco.

Benefact. Prov. Lunensis.

I am straitned for time, that I can only assure you, I shall be much glad of obliging you any ways, Sir,
Your Servant

Edward Petre.

Pray, my Service where due, &c.

L. C. J. You know nothing of this Letter, Mr. *Whitebread*?

Whitebread. No, my Lord, nothing at all.

L. C. J. Nor you, Mr. *Ireland*?

Ireland. 'Tis none of my Letter, my Lord.

L. C. J. Did you never hear of it before?

Ireland. Not that I know of in particular.

L. C. J. Well, have you done with the Evidence for the King?

Serj. *Baldwyn*. Pray Sir *Tho. Doleman*, will you tell my Lord, Did Mr. *Oates* give in this Testimony of the Consult, to be the 24th of April, before this Letter was found?

Sir *Tho. Doleman*. Mr. *Oates* gave in his Information about this matter, to the King and Council, four or five days before we found this Letter.

Serj. *Baldwyn*. You were speaking of the Seals that were made use of to Sign Commissions, have you them in the Court?

Oates. Yes, my Lord, they are in the Court, and they were taken out of the Provincial's Chamber.

Whitebread. I confess they had the Seals out of my Chamber; but the taking of them was more than they had power to do.

Then the Seals were shewn to the Court and the Jury.

Mr. *Finch*. It hath been told you already, Gentlemen, what use these Seals were put unto; to Seal Commissions to raise an Army. And we have now done with our Evidence for the King, till we hear what the Prisoners say.

L. C. J. Before you come to make your Defence, I will do that which I think in Justice and Honesty, and according to the duty of my Place and my Oath I ought to do; That is, to say something to the Jury, before the Prisoners make their own Defence. Here are Five that stand indicted of High-Treason: I must tell you this, That as to three of them, that is to say, *Ireland, Pickering* and *Grove*, both Mr. *Oates* and Mr. *Bedlow* have sworn the thing flat upon them: Mr. *Oates* his Testimony is full against them all; but Mr. *Bedlow* does only agree with him to charge Three, and that in this particular: Saith he, I was present at *Harcourt's* Chamber when *Ireland* was there, and *Pickering* and *Grove*, where they discoursed of their defeat about their design against the King at *Windsor*; and there they came to a new agreement, to do it at *New-Market*. So that here is now, as the King's Council did open it to you at the first, as there ought to be, two Witnesses; so here are Two, which though they speak as to a different circumstance of time, yet they prove one Treasonable Fact at several times: For if killing the King be the Fact in question, and one proves they would do it by one thing, and another by another; and one in one place, and another in another; yet these are two Witnesses to prove one fact, that is the substance, which is, the killing of the King. So that there are two Witnesses against them three, expressly proving a Confederacy to kill the King: for *Ireland's* being by, and consenting, was the same thing, and as much, as if he had been to do it with *Grove* and *Pickering*; for there are no Accessaries in Treason. I do acknowledge, that Mr. *Oates* hath given a very full and ample Testimony, accompanied with all the circumstances of time and place, against them all, that may go far to weigh with you, all things considered, to believe there is a Plot; yet I do not think that they have proved it against *Whitebread* and *Fenwick* by two Witnesses: so that though the Testimony be so full, as to satisfy a private Conscience, yet we must go according to Law too. It will be convenient, from what is already proved, to have them stay till more proof may come in: 'Tis a great Evidence that is against them; but it not being sufficient in point of Law, we discharge

discharge you of them; 'tis not a legal proof to convict them by, whatsoever it may be to satisfy your Consciences. Therefore remove Mr. Fenwick and Mr. Whitebread from the Bar, and let the other three say what they will for themselves.

* William Montague, Esq;

* L. C. B. (Speaking to the Goaler) You must understand they are no way acquitted; the Evidence is so full against them by Mr. Oates's Testimony, that there is no reason to acquit them. It is as flat, as by one Witness can be; and the King hath sent forth a Proclamation for further discovery; before the time therein prefixt come out, no question there will come in more Evidence: Therefore keep them as strict as you can.

Then Whitebread and Fenwick were taken back to the Goal by the Keeper.

L. C. J. Now Gentlemen, you shall have liberty to make your full defence.

Ireland. First I shall endeavour to prove there are not two Witnesses against me: For that which he says, of my being at Harcourt's Chamber in August, is false; for I will prove I was all August long out of Town, for I was then in Staffordshire.

L. C. J. Call your Witnesses.

Ireland. If there be any of them here.

L. C. J. Whoever comes to give Evidence for you, shall go and come in safety; they shall not be Trapan'd for any thing of that, but they shall be heard.

Ireland. My Lord, We are kept so strict, that we are not permitted to send for any body.

L. C. J. As soon as your Sister came to me, I ordered she should have access to you, and that you should have Pen, Ink and Paper, in order to your defence; therefore call those Witnesses you have, to prove what you say.

Ireland. I can only say this, That last August upon the 3d day I went down to Staffordshire with my Lord Aston, and his Lady, and his Son, and Sir John Southcot and his Lady, and all these can testify that I went down with them. Here is Mr. John Aston in Town, if he may be found, who was in my Company all August in Staffordshire.

L. C. J. Will you call that Gentleman? Cryer, call him.

Cryer. Mr. John Aston.

Ireland. It is an hundred to one if he be here; for I have not been permitted so much as to send a scrap of Paper.

L. C. J. Your Sister had leave to go to whom you thought fit, in your behalf. You said you would prove it, Why don't you?

Ireland. I do as much as I can do.

L. C. J. What, by saying so?

Ireland. Why, I do name them that can testify.

L. C. J. If naming them should serve, you must have a Law made on purpose for you.

Ireland. Then there is no help for Innocence.

Recorder. To save him that labour, the King's Evidence will prove, that he was in Town at that time.

Serj. Baldwyn. Swear Sarah Paine. Which was done.

Serj. Baldwyn. My Lord, this Person was Mr. Grove's Maid.

L. C. J. I believe you know your Maid, Mr. Grove, don't you? look upon her, she was your Servant.

Grove. Yes, my Lord, she was so, she is not so now.

L. C. J. Do you know Mr. Ireland?

Sarah Paine. Yes, my Lord.

L. C. J. Do you know whether Mr. Ireland was in Town in August last, or no?

S. Paine. I saw him at his own House about a Week before I went with my Lord Arlington to Windsor.

L. C. J. When was that?

S. Paine. That was about a Week after the King was gone thither.

L. C. J. Sir Tho. Doleman, what day was it the King was gone thither?

Sir Tho. Doleman. About the thirteenth of August.

L. C. J. Thirteen and seven is twenty; then you went to Windsor about the twentieth it seems, and you say that eight days before you saw Mr. Ireland at his own House.

S. Paine. Yes, my Lord, about eight or nine days before that, I did see him at the door of his own House, which was a Scrivener's in Fetter Lane. He was going into his own Lodging.

L. C. J. How long had you known him before that time?

S. Paine. My Lord, I knew him, for he came often to our House, when I lived at Mr. Grove's; he was the Man that broke open the Pacquet of Letters that my Master carried about afterwards, and he Sealed all the Pacquets that went beyond the Seas. And he opened them still when the Answers returned back again.

Ireland. Now must all the people of my Lodging come and witness that I was out of my Lodging all August.

L. C. J. Call them.

Ireland. There is one Anne Ireland.

L. C. J. Cryer, call her.

Cryer. Anne Ireland: Here she is.

L. C. J. Come Mistress, what can you say concerning your Brother's being out of Town in August?

A. Ireland. My Lord, on Saturday the third of August, he set out to go into Staffordshire.

L. C. J. How long did he continue there?

A. Ireland. Till it was a fortnight before Michaelmas.

L. C. J. How can you remember that it was just the third of August?

A. Ireland. I remember it by a very good Circumstance, because on the Wednesday before, my Brother, and my Mother and I, were invited out to Dinner; we stay'd there all night, and all Thursday night, and Friday night my Brother came home, and on Saturday he set out for Staffordshire.

L. C. J. Where was it, Maid, that you saw him?

S. Paine. I saw him going in at the door of their own House.

L. C. J. When was that?

S. Paine. About a Week before I went with my Lord Chamberlain to Windsor, which was a Week after the King went thither.

L. C. J. That must be about the 12th or 13th. Are you sure you saw him?

S. Paine. Yes, my Lord, I am sure I saw him.

L. C. J. Do you know this Maid, Mr. Ireland?

Ireland. I do not know her, my Lord.

L. C. J. She knows you by a very good token. You used to break open the Letters at her Master's House, and to seal them.

S. Paine.

S. Paine. He knows me very well, for I have carried several Letters to him, that came from the Carrier, as well as those that came from beyond Sea.

L. C. J. They will deny any thing in the World.

Ireland. I profess, I do not know her. Twenty People may come to me, and yet I not know them; and she having been Mr. Grove's Servant, may have brought me Letters, and yet I not remember her. But, my Lord, here is my Mother *Eleanor Ireland*, that can testify the same.

L. C. J. Call her then.

Cryer. *Eleanor Ireland.*

E. Ireland. Here.

L. C. J. Can you tell when your Son went out of Town?

E. Ireland. He went out of Town the third of *August*, towards *Staffordshire*.

Ireland. My Lord, there is Mr. *Charles Gifford* will prove that I was a Week after the beginning of *September*, and the latter end of *August*, in *Staffordshire*.

L. C. J. That will not do: for she says that she saw you in *London* about the 10th or 12th of *August*; and she makes it out by a Circumstance, which is better Evidence than if she had come and sworn the precise day wherein she saw him: for I should not have been satisfy'd, unless she had given me a good account why she did know it to be such a day. She does it by Circumstances, by which we must calculate that she saw you about the 12th or 13th day. She went to my Lord *Arlington's* at such a day, a Week after the King went to *Windsor*, and that was about the 13th, and she saw you a Week before she went to my Lord *Arlington's*, which must be the 12th or 13th. You say you went out of Town the third of *August*; who can swear you did not come back again?

Ireland. All the house can testify I did not come to my Lodging.

E. Ireland. He went out of Town the third of *August*, and did not return till a fortnight before *Michaelmas*.

L. C. J. Did you lye at his house?

E. Ireland. I did then, my Lord.

L. C. J. What, all that while?

E. Ireland. Yes, my Lord.

L. C. J. So did your Daughter too, did she?

E. Ireland. Yes, she did.

Ireland. There are others that did see me the latter end of *August* in *Staffordshire*.

L. C. J. And you would feign have cramp't him up, between the 20th and 31st; and then, 'tis possible, you might be in *Staffordshire*.

Ireland. If I might have been permitted to send in for such Witness as I would have had, I could have brought them.

Recorder. Why, have you not a Note of what Witnesses you are to call? why don't you call them according to that Note?

Ireland. I had that but this Morning.

L. C. J. Why did you not send for them before, to have them ready?

Recorder. 'Tis his Sister that brings that Note of the Witnesses that he should call, and now they are not here.

A. Ireland. There was one *Engletrap*, and one *Harrison* had promised to be here, that went with him into *Staffordshire*.

Mr. Oates. My Lord, when ever we had a mind

to come to Town, we commonly writ our Letters, and let them come to Town two days after us. So that we might prove by the writing of such Letters, if any Question did arise, that we could not be at such a place at such a time. And when we pretended to go in the Country, we have gone and taken a Chamber in the City, and have had frequent Cabals at our Chambers there. Mr. *Ireland* writ a Letter as dated from *St. Omers*, when I took my leave of him at his own Chamber, which was betwixt the 12th and 24th in *London*. He was there; and afterwards when I went to *Fenwick's* Chamber he came thither; a fortnight or ten days at least I am sure it was in *August*.

L. C. J. Here are three Witnesses upon Oath about this one thing: here is Mr. *Bedlow* that Swears the fact, upon which the Question arises, to be in *August*; that you deny, and say you were out of Town then: he produces a Maid here, and she swears, that about that time, which by calculation must be about the 11th or 12th, she saw you going into your own House. And here is a third Witness, who swears he knows nothing of this matter of fact, but he knows you were in Town then, and that he took his leave of you as going to *St. Omers*.

Oates. Whereas he says, that the beginning of *September* he was in *Staffordshire*, he was in Town the first of *September*, or second, for then I had of him twenty Shillings.

Ireland. This is a most false lie; for I was then in *Staffordshire*. And the Witnesses contradict themselves; for the one saith, he took his leave of me, as going to *St. Omers* the 12th; the other saith, it was the latter end of *August* I was at *Harcourt's* Chamber.

L. C. J. He does not say you went, but you pretended to go.

A. Ireland. Here is one *Harrison*, that was a Coachman that went with them.

L. C. J. Well, what say you, Friend? Do you know Mr. *Ireland*?

Harrison. I never saw the Man before that time in my life, but I met with him at *St. Albans*.

L. C. J. When?

Harrison. The fifth of *August*. There I met with him, and was in a Journey with him to the sixteenth.

L. C. J. What day of the week was it?

Harrison. Of a *Monday*.

L. C. J. Did he come from *London* on that day?

Har. I cannot tell that. But there I met him.

L. C. J. What time?

Har. In the Evening.

L. C. J. Whereabouts in *Saint Albans*?

Har. At the *Bull-Inn*, where we lodged.

L. C. J. Mr. *Ireland*, you say you went on *Saturday* out of Town, did you stay at *Saint Albans* till *Monday*?

Ireland. No, I went to *Standon* that day, and lay there on *Saturday* and *Sunday* Night, on *Monday* I went to *Saint Albans*.

L. C. J. What, from thence?

Ireland. Yes, my Lord.

L. C. J. Why did you go thither? was that in your way?

Ireland. I went thither for the company of Sir *John Southcot* and his Lady.

L. C. J. How did you know that they went thither?

Ireland.

Ireland. I understood they were to meet my Lord *Aston*, and Lady, there.

L. C. J. What, on *Monday Night*?

Ireland. Yes, my Lord.

Har. From thence I went with him to *Tixwel*, to my Lord *Aston*'s House, there we were all with him.

L. C. J. Were you my Lord *Aston*'s Coachman?

Har. No, my Lord, I was Servant to Sir *John Southcot*.

L. C. J. How came you to go with them?

Har. Because my Lord *Aston* is my Lady *Southcot*'s Brother.

L. C. J. How long was you in his Company?

Har. From the Fifth of *August* to the sixteenth, and then I was with him at *West-chester*.

Mr. Just. Atkins. You have not yet talk'd of being at *West-chester* all this while.

Ireland. My Lord, I must talk of my Journey by degrees.

L. C. J. Before, you said you were all *August* in *Staffordshire*; come, you must find out some Evasion for that.

Ireland. In *Staffordshire*, and thereabouts.

L. C. J. You Witness, who do you live with?

Har. With Sir *John Southcot*.

L. C. J. Who brought you hither?

Har. I came only by a Messenger last Night.

L. C. J. Was not Sir *John Southcot* in that Journey himself?

Har. Yes, my Lord, he was.

L. C. J. Then you might as well have sent to Sir *John Southcot* himself to come.

A. Ireland. I did it of my self, I never did such a thing before, and did not understand the way of it.

Ireland. It was meer Chance she did send for those she did.

L. C. J. But why should she not send for Sir *John* himself?

Ireland. She did not know that Sir *John* was there.

L. C. J. You were not denied to send for any Witnesses, were you?

Ireland. I was expressly denied, they would not let me have one bit of Paper.

L. C. J. Fellow, what Town was that in *Staffordshire*? Tell me quickly.

Har. It was *Tixwel*, by my Lord *Aston*'s, there we made a Stay for three or four Days, then we went to *Nantwich*, and so to *West-chester*.

L. C. J. Were not you at *Wolverhampton* with him?

Har. No, my Lord, I was not there, I left him at *West-chester*.

Ireland. My Lord, I was at *Wolverhampton* with Mr. *Charles Gifford*, and here he is to attest it.

L. C. J. Well, Sir, what say you?

Gifford. My Lord, I saw him there a Day or two after St. *Bartholomew*'s Day, there he continued till the 9th of *September*; the 7th of *September* I saw him there, and I can bring twenty and twenty more, that saw him there. Then, as he said, he was to go towards *London*. I came again thither on the ninth, and there I found him. And this is all I have to say.

Oates. My Lord, I do know that Day in *September* I speak of by a particular Circumstance.

Ireland. My Lord, there is one *William Bowdrel*, that will testify the same, if I might send for him.

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L. C. J. Why han't you him here?

Ireland. She hath done what she can to bring as many as she could.

L. C. J. Have you any more Witnesses to call?

Ireland. I can't tell whether there be any more here or no.

L. C. J. Mr. *Grove*, what say you for your self?

Grove. Mr. *Oates* says he lay at my House; my Lord, I have not been able to send for any Witnesses, and therefore I know not whether there be any here. They could prove that he did not lie there. He says he saw me receive the Sacrament at *Wild-House*, but he never did; and if I had any Witnesses here, I could prove it.

L. C. J. He tells it you with such and such Circumstances, who lay there at that time.

Grove. He did never lie there.

L. C. J. Why, you make as if you never knew Mr. *Oates*.

Grove. My Lord, I have seen him, but he never lay at my House.

L. C. J. Mr. *Pickering*, what say you for your self? you rely upon your Masses.

Pickering. I never saw Mr. *Oates*, as I know of, in my Life.

L. C. J. What say you to *Bedlow*? he tells you he was with you in *Harcourt*'s Chamber such a Day.

Pickering. I will take my Oath I was never in Mr. *Bedlow*'s Company in all my Life.

L. C. J. I make no Question but you will; and have a Dispensation for it when you have done. Well, have you any Witnesses to call?

Pickering. I have not had time to send for any.

L. C. J. You might have moved the Court, when you came at first, and they would have given you an Order to send for any.

Ireland. Methinks there should be some Witnesses brought that know Mr. *Oates*, to attest his Reputation, for I am told, there are those that can prove very ill things against him, they say he broke Prison at *Dover*.

L. C. J. Why have you not your Witnesses here to prove it?

Ireland. We could have had them, if we had Time.

L. C. J. See what you ask now, you would have time, and the Jury are ready to go together about their Verdict.

Ireland. Why, we desire but a little Time to make out our Proof.

L. C. J. Only you must tie up the Jury, and they must neither eat nor drink till they give in a Verdict.

Ireland. Then we must confess, there is no Justice for Innocence.

L. C. J. Well, if you have any more to say, say it.

Ireland. My Lord, I have produced Witnesses, that prove what I have said.

L. C. J. I'll tell you what you have proved: you have produced your Sister and your Mother, and the Servant of *Southcot*, they say you went out the third of *August*, and he gives an account you came to St. *Albans* on the fifth; and then there is another Gentleman, Mr. *Gifford*, who says he saw you at *Wolverhampton* till about a Week in *September*. Mr. *Oates* hath gainsaid him in that, so you have one Witness against Mr. *Oates* for that Circumstance. It cannot be true what Mr. *Oates* says, if you were there all

Y y y y

that

that time, and it cannot be true what Mr. Gifford says, if you were in *London* then. And against your two Witnesses, and the Coachman, there are three Witnesses, that swear the contrary, Mr. Oates, Mr. Bedlow, and the Maid, so that if she and the other two be to be believed, here are three upon Oath, against your three upon bare Affirmation.

Ireland. I do desire time, that we may bring in more Witnesses.

L. C. J. Come, you are better prepared than you seem to be. Call whom you have to call. Can you prove that against Mr. Oates, which you speak of? If you can, call your Witnesses on God's Name. But only to asperse tho' it be the way of your Church, it shall not be the way of Trial amongst us. We know you can call Hereticks, and ill Names, fast enough.

Ireland. That *Hillsley* that he names can prove, if he were here, that Mr. Oates was all the while at *St. Omers*.

L. C. J. Will you have any more Witnesses call'd? If you will, do it, and don't let us spend the Time of the Court thus.

Grove. Here is Mrs. York, that is my Sister, will your Lordship please to ask her, whether she saw that Gentleman at my House?

L. C. J. What say you, Mistress?

York. No, my Lord, not I.

Mr. Just. Atk. Nor I neither; might not he be there for all that?

Oates. To satisfy the Court, my Lord, I was in another Habit, and went by another Name.

L. C. J. Look you, he did as you all do, disguise your selves.

Ireland. Though we have no more Witnesses, yet we have Witnesses that there are more Witnesses.

L. C. J. I know what your way of Arguing is, that is very pretty, you have Witnesses that can prove you have Witnesses, and those Witnesses can prove you have more Witnesses, and so in infinitum. And thus you argue in every thing you do.

Ireland. We can go no further than we can go, and can give no Answer to what we did not know would be proved against us.

L. C. J. Then look you, Gentlemen——

A. Ireland. My Lord, Sir Denny Ashburnham promised to be here to testify what he can say concerning Mr. Oates.

L. C. J. Call him.

Cryer. Sir Denny Ashburnham. Here he is, my Lord.

L. C. J. Sir Denny, what can you say concerning Mr. Oates?

Sir D. Ashburnham. My Lord, I received a Letter this Morning, which I transmitted to Mr. Attorney, and this Letter was only to send to me a Copy of an Indictment against Mr. Oates of Perjury: I did send it accordingly with my Letter to Mr. Attorney. He hath seen the Letter, and what the Town says to me in it.

* *Att. Gen.* I have seen it, there is nothing in it.

L. C. J. Do you know any thing of your own Knowledge?

Sir D. Ashburnham. I do know Mr. Oates, and have known him a great while, I have known him from his Cradle, and I do know that when he was a Child, he was not a Person of

that Credit that we could depend upon what he said.

L. C. J. What signifies that?

Sir D. Ashburnham. Will you please to hear me out, my Lord. I have been also solicited by some of the Prisoners who sent to me, hoping I could say something that would help them in this Matter: Particularly last Night one Mistress Ireland, Sister to the Prisoner at the Bar, a Gentlewoman I never saw before in my Life, she came to me, and was pressing me hard, that I would appear here voluntarily to give Evidence for the Prisoner. I told her no, I would not by any means in the World, nor could I say any thing, as I thought, that would advantage them; for I told her, though perhaps, upon my Knowledge of Mr. Oates in his Youth, had this Discovery come only upon Mr. Oates's Testimony, I might have had some little Doubt of it, but it was so corroborated with other Circumstances that had convinced me, and I would not speak any thing against the King's Witnesses, when I myself was satisfied with the Truth of the thing: And I do think truly that nothing can be said against Mr. Oates to take off his Credibility; but what I transmitted to Mr. Attorney, I had from the Town of *Hastings*, for which I serve.

L. C. J. What was in that Indictment?

Sir D. Ashburnham. It is set forth, that he did swear the Peace against a Man, and at his taking his Oath did say, there were some Witnesses that would evidence such a Point of Fact, which, when they came, would not testify so much, and so was forsworn.

L. C. J. What was done upon that Indictment?

Sir D. Ashburnham. They did not proceed upon it; but here is the Letter, and the Copy of the Indictment.

Mr. Serj. Baldwin. My Lord, we desire it may be read, and see what it is.

Mr. Att. Gen. It is only a Certificate, pray let it be read.

L. C. J. I do not think it Authentick Evidence.

Mr. Att. Gen. But if I consent to it, it may be read.

L. C. J. If you will read it for the Prisoners you may, you shan't read it against them. If there be any Strain, it shall be in favour of the Prisoners, and not against them.

Mr. Att. Gen. It is nothing against the Prisoners, nor for them; but however if your Lordship be not satisfied it should be read, let it alone.

L. C. J. Truly, I do not think it is sufficient Evidence, or fit to be read.

A. Ireland. I went to another, one Colonel Shakesby, who was sick, and could not come, but could have attested much as to this.

L. C. J. Have you any more Witnesses?

Ireland. I have none, nor I have not time to bring them in.

L. C. J. If you have none, what time could have brought them in? But you have called a Gentleman that does come in, and truly he hath done you very great Service; you would have had him testified against Mr. Oates, he saith he hath known him ever since he was a Child, and that then he had not so much Credit as now he

he hath: And had it been upon his single Testimony that the Discovery of the Plot had depended, he should have doubted of it; but Mr. Oates his Evidence, with the Testimony of the Fact it self, and all the concurring Evidences which he produces to back his Testimony, hath convinced him that he is true in his Narrative.

Sir D. Ashburnham. Your Lordship is right in what I have spoken.

L. C. J. Have you any more Witnesses, or any thing more to say for your selves?

Ireland. If I may produce on my own behalf Pledges of my own Loyalty, and that of my Family —

L. C. J. Produce whom you will.

Ireland. Here is my Sister and my Mother can tell how our Relations were plundered for siding with the King.

L. C. J. No, I will tell you why it was, it was for being Papists, and you went to the King for Shelter.

Ireland. I had an Uncle that was killed in the King's Service; besides, the *Pendrels* and the *Giffards* that were instrumental for saving the King, after the Fight at *Worcester*, are my near Relations.

L. C. J. Why all those are Papists.

Pickering. My Father, my Lord, was killed in the King's Party.

L. C. J. Why then do you fall off from your Father's Virtue?

Pickering. I have not time to produce Witnesses on my own behalf.

Ireland. I do desire time to bring more Witnesses.

Grove. As I have a Soul to save, I know nothing of this Matter charged upon me.

L. C. J. Well, have you any thing more to say?

Ireland. No, my Lord.

L. C. J. You of the King's Council, will you sum up the Evidence?

Mr. Serj. Baldwin. No, my Lord, we leave it to your Lordship.

Cl. of Cr. Cryer. Make Proclamation of Silence.

Cryer. O Yes! All manner of Persons are commanded to keep Silence upon pain of Imprisonment.

Then the Lord Chief Justice directed the Jury thus:

L. C. J. Gentlemen, you of the Jury! As to these three Persons, *Ireland*, *Pickering*, *Grove*, (the other two you are discharged of) One of them, *Ireland*, it seems is a Priest. I know not whether *Pickering* be or no, *Grove* is none, but these are the two Men that should kill the King, and *Ireland* is a Conspirator in that Plot. They are all indicted for conspiring the King's Death, and endeavouring to subvert the Government, and destroy the Protestant Religion, and bring in Popery. The main of the Evidence hath gone upon that foul and black Offence, *Endeavouring to kill the King*. The utmost end was, without all question, to bring in Popery, and subvert the Protestant Religion; and they thought this a good means to do it, by killing the King. That is the thing you have had the greatest Evidence of, I will sum up the Particulars, and leave them with you.

'Tis sworn by Mr. Oates expressly, That on the 24th of April last, there was a Consultation held,

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of Priests and Jesuits. They are the Men fit only for such a Mischief, for I know there are abundance of honest Gentlemen of that Persuasion, who could never be drawn to do any of these things, unless they were seduced by their Priests, that stick at nothing for their own end: He swears expressly that the Consult was begun at the *White-Horse Tavern* in the *Strand*; That they there agreed to murder the King; That *Pickering* and *Grove* were the Men that were to do it, who went afterwards and subscribed this Holy League of theirs, and signed it every one at his own Lodging, *Whitebread* at his, *Ireland* at his, and *Fenwick* at his, two of which are out of the Case, but they are repeated to you only to shew you the Order of the Conspiracy. That afterwards *Pickering* and *Grove* did agree to the same, and they received the Sacrament upon it as an Oath, to make all Sacred, and a Seal, to make all Secret.

Mr. *Bedlow* hath sworn as to that particular time of killing the King by *Pickering* and *Grove*, though they were not to give over the Design, but there were Four that were sent to kill the King at *Windsor*. Mr. Oates swears there was an Attempt by *Pickering* in *March* last, but, the Flint of the Pistol happening to be loose, he durst not proceed, for which he was rewarded with Penance. He swears there were Four hired to do it; that Fourscore Pounds was provided for them. He saw the Money; and swears he saw it delivered to the Messenger to carry it down.

Ireland. At what time was that?

L. C. J. In *August* there was an Attempt first by *Pickering* and *Grove*. They then not doing of it, four other Persons (*Irish Men*) were hired to do it, and ten thousand Pounds proffered to Sir *George Wakeman* to Poison the King. Thus still they go on in their Attempts, and, That being too little, five thousand Pounds more was added. This is to shew you the Gross of the Plot in general; and also the particular Transactions of these two Murtherers, *Grove* and *Pickering*, with the Conspiracy of *Ireland*. *Bedlow* swears directly, that in *August* last, these three and *Harcourt*, and *Pritchard*, and *Le-Faire*, being all together in a Room, did discourse of the Disappointment the Four had met with, in not killing the King at *Windsor*; and there the Resolution was, the old Stagers should go on still, but they had one *Conyers* joyned to them, and they were to kill the King then at *New-Market*. He swears they did agree to do it; that *Ireland* was at it; and that all three did consent to that Resolve. So that here are two Witnesses that speak positively, with all the Circumstances of this Attempt, of the Two to kill the King, and the Confederacy of *Ireland*, all along with them. Now, I must tell you, there are no Accessaries, but all Principals, in Treason. It may seem hard, perhaps, to convict Men upon the Testimony of their Fellow-Offenders, and if it had been possible to have brought other Witnesses, it had been well: but, in things of this Nature, you cannot expect that the Witnesses should be absolutely spotless. You must take such Evidence as the Nature of the thing will afford, or you may have the King destroyed, and our Religion too. For *Jesuits* are too subtle to subject themselves to too plain a Proof, such as they cannot evade by Equivocation, or a flat Denial.

There is also a Letter produced, which, speaking of the Consult that was to be the 24th of *April*, proves that there was a Conspiracy among them: And, although it is not Evidence to convict any one Man of them, yet it is Evidence upon Mr. *Oates's* Testimony to prove the general Design. It is from one *Petre* to one of the Confederates, and taken amongst *Harcourt's* Papers, after Mr. *Oates* had given in his Testimony; and therein it is mentioned, That the Superior had taken care, that there should be a Meeting the 24th of *April*, the Day after Saint *George's* Day, which is the very time *Oates* speaks of; and that they were not to come to Town too soon, that the Design might not be discovered. I would fain know what the Signification of that Clause may be. And then it goes farther, That it was to be kept secret, as the Nature of the thing doth require; which shews plainly there was such a Transaction on foot. But the Reason I urge it for is, to shew you that 'tis a concurrent Evidence with Mr. *Oates*, who had never seen this Paper till three or four Days after his Information was given in, wherein he swears the Time when this Agitation was to be, and when they came to look upon the Paper, it agrees with the Time precisely. Now they do not write in this Letter, that they intend to kill the King, but they write to caution them to keep the Design undiscovered, and by that you may guess what they mean.

What is said to all this by the Prisoners, but Denial? *Ireland* cannot deny but that he knew Mr. *Oates*, and had been in his Company some times; five times, by Circumstances, Mr. *Oates* hath proved, so that they were Acquaintance; and it appears plainly, there was a Familiarity between them. *Ireland* objects, that *Bedlow* charges him in *August*, when he was out of Town all that time, and that therefore the Testimony of one of the Witnesses cannot be true. And, to prove this, he calls his Mother, his Sister, and Sir *John Southcot's* Man, and Mr. *Gifford*. His Mother and Sister say expressly, that he went out of Town the third of *August*, and the Servant says, that he saw him at St. *Albans* the fifth of *August*, and continued in his Company to the sixteenth; (so that as to that, there is a Testimony both against Mr. *Bedlow* and against Mr. *Oates*;) and *Gifford* comes and says, he saw him at the latter end of *August* and beginning of *September* at *Wolverhampton*, whereas Mr. *Oates* hath sworn, he saw him the twelfth of *August*, and the first or second of *September*, and tells it by a particular Circumstance, wherein, I must tell you, it is impossible that both Sides should be true. But if it should be a Mistake only in point of Time, it destroys not the Evidence, unless you think it necessary to the Substance of the thing. If you charge one in the Month of *August* to have done such a Fact, if he deny that he was in that Place at that time, and proves it by Witnesses, it may go to invalidate the Credibility of a Man's Testimony, but it does not invalidate the Truth of the thing itself, which may be true in Substance, though the Circumstance of Time differ. And the Question is, whether the Thing be true?

Against this, the Counsel for the King have three that swear it positively and expressly, That *Ireland* was here. Here is a young Maid that knew him very well, and was acquainted with

him, and with his breaking up of Letters; and she is one that was *Grove's* Servant: She comes and tells you directly, That about that time, which, by Computation, was about the twelfth of *August*, she saw him go into his own House, which cannot be true, if that be true which is said on the other Side; and she does swear it upon better Circumstances than if she had barely pitch'd upon a Day; for she must have satisfied me well, for what Reason she could remember the Day so positively, e're I should have believed her: But she does it remembring her going to my Lord *Arlington's* Service, which was a Week after the King went to *Windsor*; which is sworn to be about the thirteenth of *August*, and a Week before her going it was, that she saw *Ireland* at his own Door. What Arts they have of evading this, I know not, for as they have turn'd their Learning into Subtlety, so they have their Integrity too. The Study of Politicks is their Business and Art, which they make use of upon all Occasions; and I find them Learned chiefly in Cunning, and very subtle in their Evasions. So that you see, without great Difficulty, a Man cannot have from them a plain Answer to a plain Question. But the Fact against them is here expressly sworn by two Witnesses; if you have any reason to disbelieve them, I must leave that to you. Sir *D. Asburnham*, who is produced to discredit Mr. *Oates*, says, that when he was a Child, there was little or no Credit to be given to him, and if the Matter had depended solely upon his Testimony, those Irregularities of his, when a Boy, would have staggered his Belief. But when the Matter is so accompanied with so many other Circumstances, which are material things, and cannot be evaded or deny'd, it is almost impossible for any Man, either to make such a Story, or not to believe it when it is told. I know not whether they can frame such a one; I am sure never a Protestant ever did, and, I believe, never would invent such a one to take away their Lives: Therefore it is left to your Consideration what is sworn. The Circumstances of swearing it by two Witnesses, and what Reasons you have to disbelieve them.

It is most plain the Plot is discovered, and that by these Men; and that it is a Plot, and a villanous one, nothing is plainer. No Man of common Understanding, but must see there was a Conspiracy to bring in *Popery*, and to destroy the *Protestant Religion*; and we know their Doctrines and Practices too well, to believe they will stick at any thing, that may effect those Ends. They must excuse me, if I be plain with them; I would not asperse a Profession of Men, as the Priests are, with hard Words, if they were not very true, and if at this time it were not very necessary. If they had not murdered Kings, I would not say they would have done ours. But when it hath been their Practice so to do; when they have debauched Men's Understandings, overturned all Morals, and destroy'd all Divinity, What shall I say of them? When their Humility is such, that they tread upon the Necks of Emperors; their Charity such, as to kill Princes; and their Vow of Poverty such, as to covet Kingdoms, What shall I judge of them? When they have Licences to lie, and Indulgences for Fallhoods; Nay, when they can make him a Saint that dies in one, and then pray to him; as the Carpenter first makes an Image, and after worships

ships it; and can then think to bring in that wooden Religion of theirs amongst us in this Nation, What shall I think of them? What shall I say to them? What shall I do with them?

If there can be a Dispensation for the taking of any Oath (and diverse Instances may be given of it, that their Church does License them to do so) it is a Cheat upon Men's Souls, it perverts and breaks off all Conversation amongst Mankind; for how can we deal or converse in the World, when there is no Sin, but can be indulged; no Offence so big, but they can pardon it, and some of the blackest be accounted meritorious? What is there left for Mankind to lean upon, if a Sacrament will not bind them (unless it be to conceal their Wickedness?) If they shall take Tests and Sacraments, and all this under colour of Religion, be avoided, and signifie nothing, what is become of all Converse? How can we think Obligations and Promises between Man and Man should hold, if a Covenant between God and Man will not?

We have no such Principles nor Doctrines in our Church, we thank God. To use any Prevarication in declaring of the Truth, is abominable to natural Reason, much more to true Religion; and 'tis a strange Church that will allow a Man to be a Knave. 'Tis possible some of that Communion may be saved, but they can never hope to be so in such a Course as this. I know they will say, That these are not their Principles, nor these their Practices, but they preach otherwise, they print otherwise, and their Councils do determine otherwise.

Some hold, that the Pope in Council is *Infalible*, and ask any *Popish Jesuit* of them all, and he will say the Pope is *Infalible* himself in *Cathedra*, or he is no right *Jesuit*. And if so, whatever they command, is to be justified by their Authority; so that if they give a Dispensation to kill a King, that King is well killed. This is a Religion that quite unhinges all Piety, all Morality, and all Conversation, and to be abominated by all Mankind.

They have some Parts of the Foundation, 'tis true; but they are adulterated, and mixt with horrid Principles, and impious Practices. They eat their God, they kill their King, and Saint the Murtherer. They indulge all sorts of Sins, and no human Bonds can hold them.

They must pardon me if I seem sharp, for a *Papist* in *England* is not to be treated as a *Protestant* ought to be in *Spain*: And if ye ask me why? I'll give you this Reason, We have no such Principles nor Practices as they have. If I were in *Spain*, I should think my self a very ill Christian, should I offer to disturb the Government of the Place where I lived, that I may bring in my Religion there. What have I to do to undermine the Tranquility and Peace of a Kingdom, because all that dwell in it are not of my particular Persuasion?

They do not do so here, there is nothing can quench the Thirst of a *Priest* and a *Jesuit*, not the Blood of Men, not of Any, if he can but propagate his Religion, which in truth is but his Interest.

They have not the Principles that we have, therefore they are not to have that common

Credence, which our Principles and Practices call for.

They are not to wonder if they keep no Faith, that they have none from others; and let them say what they will, that they do not own any such things as we charge upon them, and are like to go hard with them; For we can shew them out of their own Writings and Councils, that they do justify the Power of the Pope in Excommunicating Kings, in Deposing them for Heresie, and Absolving their Subjects from their Allegiance. And the Claim of Authority both in Pope and Council, is the surest Foundation they build upon.

I have said so much the more in this Matter, because their Actions are so very plain and open, and yet so pernicious; and 'tis a very great Providence, that we, and our Religion, are delivered from Blood and Oppression. I believe our Religion would have stood, notwithstanding their Attempts, and I would have them to know we are not afraid of them; nay, I think we should have maintained it, by destroying of them. We should have been all in Blood, 'tis true, but the greatest Effusion would have been on their Side; and without it, How did they hope it should have been done? There are honest Gentlemen, I believe Hundreds of that Communion, who could not be openly won upon to engage in such a Design. They will not tell them that the King shall be killed; but they will insinuate into them, that he is but one Man, and if he should die it were fit they were in readiness to promote the Catholick Religion, and when it comes to that, they know what to do. When they have got them to give Money to provide Arms, and be in Readiness on their specious Pretence, then the Jesuits will quickly find them Work. One Blow shall put 'em to exercise their Arms; and when they have killed the King, the Catholick Cause must be maintained.

But they have done themselves the Mischief, and have brought Misery upon their whole Party, whom they have ensnared into the Design, upon other Pretences than what was really at the bottom. A *Popish Priest* is a certain Seducer, and nothing satisfies him; not the Blood of Kings, if it stands in the way of his Ambition. And I hope they have not only undeceived some Protestants, whose Charity might encline them to think them not so bad as they are; but I believe they have shaken their Religion in their own Party here, who will be ashamed in time that such Actions should be put upon the Score of Religion.

I return now to the Fact, which is proved by two Witnesses, and by the concurrent Evidence of the Letter and the Maid; and the Matter is as plain and notorious as can be, That there was an Intention of bringing in Popery by a cruel and bloody Way; for I believe they could never have Prayed us into their Religion. I leave it therefore to you to consider, whether you have not as much Evidence from these two Men, as can be expected in a Case of this Nature; and whether Mr. Oates be not rather justified by the Testimony offered against him, than discredited. Let Prudence and Conscience direct your Verdict, and you will be too hard for their Art and Cunning.

Gentle-

Gentlemen, If you think you shall be long, we will Adjourn the Court till the Afternoon, and take your Verdict then.

Jury. No, my Lord, we shall not be long.

Then an Officer was Sworn to keep the Jury safe, according to Law, and they withdrew to consider of their Verdict.

After a very short Recess, the Jury returned, and the Clerk of the Crown spake to them thus:

Cl. of Cr. Gentlemen, Answer to your Names. Sir *William Roberts.*

Sir W. Roberts. Here. And so of the rest.

Cl. of Cr. Gentlemen, Are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. The Fore-man.

Cl. of the Cr. Set *William Ireland* to the Bar. *William Ireland*, hold up thy Hand. Look upon the Prisoner, How say you, is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Fore-man. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands or Tenements?

Fore-man. None to our knowledge.

Cl. of Cr. Set *Thomas Pickering* to the Bar. *Tho. Pickering*, hold up thy Hand. Look upon the Prisoner. How say you, is he Guilty of the same High-Treason, or Not Guilty?

Fore-man. Guilty.

Cl. of Cr. What Goods or Chattels, Lands or Tenements?

Fore-man. None to our knowledge.

Cl. of Cr. Set *John Grove* to the Bar. *John Grove*, hold up thy Hand. Look upon the Prisoner. How say you, is he Guilty of the same High-Treason, or Not Guilty?

Fore-man. Guilty.

Cl. of Cr. What Goods or Chattels, Lands or Tenements?

Fore-man. None to our knowledge.

Cl. of Cr. Harken to your Verdict as the Court hath recorded it. You say that *William Ireland* is Guilty of the High-Treason whereof he stands indicted. You say that *Thomas Pickering* is Guilty of the same High-Treason. You say that *John Grove* is Guilty of the same High-Treason. And for them you have found Guilty, you say, That they, nor any of them, had any Goods or Chattels, Lands or Tenements, at the time of the High-Treason committed, or at any time since, to your knowledge. And so you say all.

Omnes. Yes.

L. C. J. You have done, Gentlemen, like very good Subjects, and very good Christians, that is to say, like very good Protestants: And now much good may their Thirty Thousand Masses do them.

Then the Court adjourned by Proclamation till four in the Afternoon.

In the Afternoon the same Day.

About five of the Clock Mr. Recorder and a sufficient number of the Justices, returned into the Court, the Judges being departed home; and Proclamation was made for Attendance, as in the Morning.

Then the Clerk of the Crown called for the Prisoners Convicted of High-Treason, and spoke to each of them thus:

Cl. of the Cr. Set *William Ireland* to the Bar. *William Ireland*, hold up thy Hand, thou standest Convicted of High-Treason; what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

Ireland. My Lord, I represented all along from the beginning, that we had not time to call in our Witnesses to justify our Innocence.

Recorder. If you have any thing to say in stay of Judgment, you have all free liberty to say it.

Ireland. We had no time allowed us to bring in our Witnesses, so that we could have none, but only those that came in by chance; and those things they have declared, though true, were not believed.

Mr. Recorder. These things, *Mr. Ireland*, you did not object before the Jury gave their Verdict, now they have given their Verdict, and found you Guilty; if you have any thing to say to the Court why they should not proceed to Judgment according to that Verdict, you may speak it; but for these things it is too late.

Ireland. My Lord, I only have this to say, I desire more time to be heard again, and to call in my Witnesses.

Recorder. Call the Executioner to do his Office.

Ireland. There are Testimonies, my Lord, that I could produce of my Loyalty, and my Relations Fidelity to the King.

Mr. Recorder. I believe, *Mr. Ireland*, it will be a Shame to all your Relations that have been Loyal to the King, that you should be privy to the Murder of that good King whom your Relations so well served; and therefore if that be all that you have to say it will signify nothing.

The Executioner not appearing, the Sheriff of *Middlesex* was called to come into Court, and give his Attendance, upon Pain of 40*l.* But the Executioner coming in, was, with a Reproof from the Recorder for his Negligence, commanded to tie him up, which he did.

Cl. of Cr. Set *Thomas Pickering* to the Bar.

Thomas Pickering, hold up thy Hand, Thou art in the same case with the Prisoner last before thee, what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

Mr. Recorder. What does he say for himself?

Cap. Richardson. He has nothing to say.

Mr. Recorder. Then tie him up.

Cl. of Cr. Set *John Grove* to the Bar.

John Grove, hold up thy Hand, Thou art in the same case with the Prisoner last before thee, what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

Grove. I am as innocent as the Child unborn.

Cl. of Cr. Tie him up. Which was done.

Cl. of Cr. Cryers on both sides make Proclamations.

Cryers. O yes! All manner of Persons are commanded to keep silence whilst Judgment is giving upon Pain of Imprisonment; Peace about the Court.

Mr. Recorder. Where is the Keeper? shew me the Prisoners, *William Ireland*, *Thomas Pickering*, and *John Grove*.

Cap. Richardson. Those are the three.

Mr.

Mr. Recorder. You the Prisoners at the Bar. You have been Arraigned for a very great Offence, the greatest that can be committed against any Authority upon Earth, for High-Treason against your King, with all the Aggravations that possibly can attend so great a Crime as that is; for you did not only strike at the Life of the best of Kings, but you intended the Subversion of the best of Religions. Whatever you may apprehend, yet all Men that will lay their hopes of Salvation upon any thing that is fit for a Man to lay his hopes upon, which is upon the Merits of a crucified Saviour, and not upon your Masses, Tricks or Trumperies, do abhor the thoughts of promoting their Religion by massacring Kings, and murdering their Subjects. And though we whom you call Hereticks, abhor to own any such Religion; yet we are not afraid to tell you, and all others who are ensnared into your Principles, we will maintain the Religion and the Government as it is Established, with our Lives and Fortunes. And it is fit that it should be known, that we who live under the Government of so mild and pious a Prince, and in a Country where so good, so moderate a Religion is Established by Law, will not be affrighted by all your Murders, Conspiracies and Designs, from declaring, that they who dare kill Kings, and massacre their Subjects, are the highest Violaters, not only of the Laws of the Land, but of that great Law which all good Christians and Protestants think themselves obliged to pay great Reverence and Obedience to, I mean the Law of God Almighty himself.

Thus I speak to you, Gentlemen, not vauntingly, 'tis against my Nature to insult upon Persons in your sad condition; God forgive you for what you have done, and I do heartily beg it, though you don't desire I should; for, poor Men, you may believe that your interest in the World to come is secured to you by your Masses, but do not well consider that vast Eternity you must e're long enter into, and that great Tribunal you must appear before, where his Masses (speaking to *Pickering*) will not signify so many Groats to him, no not one Farthing. And I must say it for the sake of those silly People whom you have imposed upon with such fallacies, That the Masses can no more save thee from a future Damnation, then they do from a present Condemnation.

I do not speak this to you, as intending thereby to inveigh against all Persons that profess the *Romish* Religion; for there are many that are of that Perswasion, that do abhor those base Principles of murdering Kings and subverting Governments. There are many honest Gentlemen in *England*, I dare say, of that Communion, whom none of the most impudent Jesuits durst undertake to tempt into such designs; these are only to be imposed upon silly Men, not upon Men of Conscience and Understanding. And I pray God, as was said lately by a Learned Gentleman whom we all know, that all Protestants may be as safe from the force of your Daggers, as they are from those of your Arguments; for I dare say, that you could sooner Murder any Man that understands the Protestant Religion, than perswade him to such Villanies. And among those many things which prevailed with the honest Gentlemen of the Jury to convict you of this horrid Crime, they could not

but take notice, that you (speaking to *Ireland*) that do pretend to Learning, did send into Foreign Parts, that your Fellow-Jesuits should take care publicly to Preach, That the Oaths of Allegiance and Supremacy, by which the Common Justice of the Nation is preserved, signified nothing; which is a strong Evidence of your Design, not only to Murther the King, but subvert the Government; for surely the most probable way to do that, is to asperse those Oaths by which all Protestant Subjects, those whom you call Hereticks, lye under an Obligation of Obedience to their Prince. And I think it not unfit to tell you, that you had a great favour shewed to you to be tried only for the matters contained in this Indictment; for you that are Priests must know, that there is a Law in the Land, that would have hang'd you for your very Residence here; for if any Subject born in *England*, shall take Orders from the See of *Rome*, and afterwards come into *England*, and remain there 40 days, such, for that Offence alone, are made Traitors by Act of Parliament. But you are so far from being under any Awe of that Law, or Submission to it, that you dare not only come to live here in despite thereof, but endeavour what you can, to overthrow both it, and the Government it self. You dare conspire to Murther the King; nay, not only so, but you dare make your Consults thereof publick. You dare write your Names to those Consults. You dare solicit all your Party to do the like, and make all the ties of Religion and Conscience (that to Considering Christians are Obligations to Piety and Charity) as Engagements either to act your Villanies, or to conceal them. We think no Power can dispence with us whom you call Hereticks, to falsify our Oaths, much less to break our Covenant with God in the holy Sacrament. But you, instead of making that a Tye and Obligation to engage you to the Remembrance of our Saviour, make it a Snare and a Gin to oblige your Profelytes to the Assassinating Kings, and murdering their Subjects. I am sorry with all my Soul, that Men who have had their Education here, and the benefit of the good Examples of others, should not only be led into such mischievous Principles themselves, but to be of that confidence in their Perswasion, as to dare to debauch others also. I am sorry also to hear a Lay-man should with so much Malice declare, That a Bullet, if round and smooth, was not safe enough for him to execute his Villanies by. But he must be sure, not only to set his Poisonous Invention on work about it, but he must add thereto his Poisonous Teeth; for fear if the Bullet were smooth, it might light in some Part where the Wound might be cured. But such is the height of some Mens Malice, that they will put all the Venom and Malice they can into their Actions. I am sure this was so horrid a Design, that nothing but a Conclave of Devils in Hell, or a College of such Jesuits as yours on Earth, could have thought upon.

This I remember to you for the sake of them that are to live, and for the Charity I have for you who are to die: for the sake of them that are to live; for I hope when they hear, that Men of your Perswasion dare commit those outrageous Crimes, and justify them by a Principle of Religion, they will not easily be seduced into your Opinion:

Opinion: And out of Charity to you that are to die, to persuade you to hearty Repentance; for otherwise, I must tell you, thy 1500*l.* (speaking to *Grove*) nor thy 30000 Masses (speaking to *Pickering*) will avail but little. And I thought fit to say this also, that it may be known that you have had the full Benefit of the Laws Established in *England*, and those the Best of Laws; for such is not the Law of other Nations, for if any Protestant in any Place where the *Romish* Religion is profest, had been but thought Guilty of such Crimes, he had never come to the Formality and Justice of an Arraignment, and to be tried by his Peers, permitted to make his Defence, and hear what could be said against him; but he had been hang'd immediately, or perhaps suffer'd a worse Death. But you are not only beholden to the happy Constitution of our Laws, but to the more happy Constitution of our Religion. For such are the admirable Documents of that Religion we in *England* profess, That we dare not requite Massacre for Massacre, Blood for Blood. We disown and abhor all Stabbing; and we are so far from reckoning that he shall be a Saint in Heaven for Assassinating a Prince, and be pray'd to in another World, that the Protestant is required to believe, that such that begin with Murther, must end with Damnation, if our blessed Lord and Saviour do not interpose; nothing that Man can do, Papist or Protestant, can save any Man in such a case. We dare not say that our Religion will permit us to Murder Dissenters, much less to Assassinate our King.

And having thus said, let me once more as a Christian, in the name of the great God of Heaven, beg of you for your own Souls sake, be not satisfied or over-persuaded with any Doctrine that you have Preached to others, or imbibed from others; but believe, that no one can contrive the Death of the King, or the Overthrow of the Government, but the great God of Heaven and Earth will have an account of it. And all Pardons, Absolutions, and the Dispensations that you who are Priests can give to your Lay-Brother, or that any of your Superiors may give to you, will not serve the turn.

I know not, but as I said, you may think I speak this to insult, I take the great God of Heaven to Witness, that I speak it with Charity to your Souls, and with great Sorrow and Grief in my own Heart, to see Men that might have made themselves happy, draw upon themselves so great a Ruin. But since you have been so fairly heard, so fairly Tried and Convicted, there is but little more to be said; for I must tell you, because it may not be thought that you had not free Liberty to make your full Defence, though that Gentleman (speaking to *Ireland*) seemed to be surpriz'd, he had a kind Sister that took care for to bring his Witnesses; I am so far from blaming her for it, that I do commend her, it was the effect of her good Nature, and deserves Commendation; but speak to this Purpose, to shew that there was no Surprize upon him, nor his Life taken away by any such thing; for he had a greater favour shew'd to him than is usually shown to such Offenders.

And having thus said to you my self, we do also require him whose Duty it is to attend in such cases, nay, I do Command him in the Name of the Court, that he attend upon you to give you all the comfortable Assistance that he

can for the advantage of your future State: And not only so, but we will certainly take care, that if you will have any others come to you, they shall. I would not be mistaken, I do not mean any of your Priests and Jesuits; but if you will have the Assistance of any Protestant Divines, they shall not be deny'd you. And I hope God Almighty will please to give you Pardon in another World, though you have offended beyond hopes of any in this. I once more assure you, all I have said is in perfect Charity. I pray God forgive you for what you have done. And so there remains now only for me to pronounce that Sentence which by the Law of the Land the Court is required to do against Persons Convicted of that Offence which you are Convicted of.

This Court doth therefore Award, *That you the Prisoners at the Bar, be conveyed from hence to the Place from whence you came, and from thence that you be drawn to the Place of Execution upon Hurdles, that there you be severally hanged by the Neck, that you be cut down alive, that your Privy Members be cut off, and your Bowels taken out, and burnt in your view, that your Heads be severed from your Bodies, that your Bodies be divided into Quarters, and those Quarters be disposed at the King's pleasure: And the God of infinite Mercy be merciful to your Souls.*

Then the Prisoners were conveyed back to the Goal by the Keeper of the Goal, according to Custom; and the Commission was called over, and the Prisoners taken Order for according to Law. And then the Court Adjourned by Proclamation, thus:

Cl. of Cr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes! All manner of Persons that have any thing more to do at this general Sessions of the Peace holden for the City of London, may depart hence for this time, and give their Attendance at the Guildhall, London, on Friday the 10th day of January next, at Seven of the Clock in the Morning. And all manner of Persons at this Sessions of Oyer and Terminer, and Goal-delivery of Newgate, holden for the City of London and County of Middlesex, may depart hence for this time, and give their Attendance here again on Wednesday the 15th day of January, at Seven of the Clock in the Morning.

God Save the King.

And then the Court broke up.

On Friday the 24th of January following, *William Ireland* and *John Grove* were drawn from *Newgate* on an Hurdle to *Tyburn*, where they were Executed according to their Sentence; but the Execution of *Thomas Pickering* was respited for so long a time, that it occasion'd an Address of the House of Commons, April 27, 1679, "That his Majesty would be pleased to order the Execution of one *Pickering* a Prisoner in *Newgate*, and of divers Priests and Jesuits, who had been Condemn'd by the Judges at the *Old Baily* and in the several Circuits, but did remain as yet unexecuted, to the great emboldening of such Offenders, in case they should escape without due Punishment." To which the King returned this Answer. "Gentlemen, I have always been Tender in Matters of Blood, which my Subjects have no Reason to take Exceptions at: but this is a Matter

"Matter of great Weight, I shall therefore consider of it, and return you an Answer."

May 25, The King sent a Message to the House, by Lord *Ruffel*, to let them know, that he would comply with their Request concerning

Pickering, and that the Law should pass upon him.

He was accordingly Executed in pursuance of this Sentence.

LXXVI. *The Trial of the Lord CORNWALLIS, for the Murder of ROBERT CLERK, 1678. 30 Car. II.*



AFTER my Lord High Steward * was ascended to the High Chair of State, and sat down therein, the Commission was delivered by the Clerk of the Crown in the Chancery, to my Lord, on his Knees, who delivered it to Sir *Thomas Fanshawe*, Clerk of the Crown in the King's-Bench-Office, and he received it kneeling.

Then Proclamation was made by the Serjeant at Arms, who was Cryer for the Day.

Serjeant. O Yes, O Yes, O Yes! My Lord High Steward of *England* strictly chargeth and commandeth all manner of Persons here present, upon Pain of Imprisonment, to keep Silence, and give Ear to his Majesty's Commission, To my Lord High Steward of *England*, to his Grace directed.

The Clerk of the Crown with his Face to my Lord High Steward reads it thus:

Clerk of the Crown. *Charles Rex Carolus Secundus, &c.*

All which time my Lord and the Peers stood up bare.

Serjeant. God save the King.

Cl. Cr. Make Proclamation.

Serjeant. O Yes! The King at Arms, and the Usher of the Black Rod, on their Knees deliver the White Staff to my Lord, who re-delivered it to the Usher of the Black Rod, who held it up all the time before him.

Cl. Cr. Make Proclamation.

Serjeant. O Yes! My Lord High Steward of *England* strictly chargeth and commandeth all Justices and Commissioners, and all and every Person and Persons to whom any Writ or Precept have been directed for the certifying of any Indictment, or of any other Record before my Lord High Steward of *England*, to certify and bring the same immediately according to the Tenor of the said Writs and Precepts unto them, or any of them directed, on Pain and Peril as shall fall thereon.

The Lord Chief Justice of the King's-Bench return'd his *Certiorari*, and the Record of the Indictment by the Grand Jury of *Middlesex*, which was read by the Clerk of the Crown, *in hæc verba.*

Cl. Cr. Virtute, &c.

L. H. Stew. Call the Constable of the Tower to return his Precept and his Prisoner.

Cl. Cr. Make Proclamation.

Serjeant. O Yes! Constable of the Tower of London, return the Precept to thee directed, and

bring forth the Prisoner *Charles Lord Cornwallis*, on Pain and Peril as will fall thereon.

The Lord Lieutenant of the Tower brought in the Prisoner, on his left Hand, with the Ax before him, born by the Deputy Lieutenant, which he held with the Edge from him, and returned his Precept *in hæc verba.*

Cl. Cr. Virtute, &c.

L. H. Stew. Call the Serjeant at Arms to return his Precept.

Cl. Cr. Make Proclamation.

Serjeant. O Yes! *Roger Harfnet Esq;* Serjeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, with the Names of all the Lords and Noblemen of this Realm, Peers of *Charles Lord Cornwallis*, by thee summoned, to be heard this Day, on Pain and Peril as will fall thereon.

He delivered his Precept return'd with a Schedule annexed thus;

Cl. Cr. Virtute, &c. Make Proclamation.

Serjeant. O Yes! All Marquesses, Earls, Viscounts, and Barons of this Realm of *England*, Peers of *Charles Lord Cornwallis*, which by Commandment of the Lord High Steward of *England*, are summoned to appear this Day, and to be present in Court, and to answer to your Names, as you are called, every one upon Pain and Peril as will fall thereon.

Then the Pannel was called over, the number of Peers summoned were 35, in order as followeth.

Thomas Earl of Danby, Lord High Treasurer of *England*, &c.

All that appeared, answered to the Call, standing up bare.

Then my Lord High Steward made a Speech to the Prisoner at the Bar thus;

Lord High Steward. *My Lord Cornwallis, The Violation of the King's Peace, in the chief Sanctuary of it, his own Royal Palace, and in so high a manner, as by the Death of one of his Subjects, is a Matter that must be accounted for. And that it may be so, It hath pleased the King to command this High and Honourable Court to Assemble, in order to a strict and impartial Enquiry.*

The Wisdom of the Law hath therefore styled it the King's Peace, because it is his Authority that commands it, it is his Justice that secures it, it is he on whom Men do rely for the Safety of their Liberties, and their Lives; in him they trust that a severe Account shall be taken of all the Violences and Injuries

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that

*Earl of Nottingham.

that are offered to them, and they that trust in the King can never be deceived.

It is your Lordship's great Unhappiness at this time to stand Prisoner at the Bar, under the weight of no less a Charge than an Indictment of Murder; and it is not to be wondered at, if so great a Misfortune as this be attended with some kind of confusion of Face; when a Man sees himself become a Spectacle of Misery in so great a Presence, and before so Noble and so Illustrious an Assembly. But be not yet dismay'd, my Lord, for all this; let not the Fears and Terrors of Justice so amaze and surprize you, so as to betray those Succours that your Reason would afford you, or to disarm you of those Helps which good Discretion may administer, and which are now extremely necessary.

It is indeed a dreadful thing to fall into the hands of Justice, where the Law is the Rule, and a severe and inflexible measure both of Life and Death. But yet it ought to be some Comfort to your Lordship, that you are now to be tried by my Lords your Peers; and that now you see the Scales of Justice are held by such Noble hands, you may be confident they will put into them all the Grains of allowance, either Justice or Honour will bear.

Hearken therefore to your Indictment with Quietness and Attention, observe what the Witnesses say against you without Interruption; and reserve what you have to say for your self, till it shall come to your turn to make your Defence, of which I shall be sure to give you Notice; and when the time comes, assure your self you shall be heard, not only with Patience, but with Candor too.

And then what Judgment soever my Lords will give you, your self will (and all the World) be forc'd to acknowledge the Justice and Equity of their Judgment, and the Righteousness of all their Lordships Proceedings.

Read the Indictment.

Cl. Cr. Charles Lord Cornwallis, Thou standest Indicted in the County of Middlesex, by the Name of, &c. How sayest thou Charles Lord Cornwallis, Art thou Guilty of this Felony and Murder whereof thou standest Indicted, or Not Guilty?

Lord Corn. Not Guilty.

Cl. Cr. How wilt thou be try'd?

Ld Corn. By God and my Peers.

Then my Lord High Steward address'd himself to the Lords thus;

L. H. Stew. My Lords, Your Lordships have here a Member before you of your Noble Body, expos'd to the shame of a publick Arraignment, and (which to a Man of Honour is much less) to the hazard both of his Life and Estate. All that he hath and ever hopes to have, his Wealth, his Fame, his Posterity; All that is valuable to him in this World intirely depends on your Lordships Judicature, who are now his Peers, and on whom he doth freely put himself.

My Lords, The Privilege of this kind of Trial and Judicature is a Part of the true Greatness of the English Nobility: It is an eminent and an illustrious Privilege. It is a solid Point of Honour and Dignity. It is a Privilege that no Neighbour Nation ever had, and a Privilege this Nation never was without.

It is not a Privilege created by the Great Charter, but confest and acknowledged by it. They look but a little way that find this in the steps of the Norman Conquest, for it is to be found even in the footsteps of the Saxon Monarchy, when Godwin Earl of

Kent was Tried by Earls and Barons. And it is no improbable Conjecture of theirs, who do think the Wisdom of this Constitution was taken from that Law amongst the Romans, whereby it was made unlawful for any Man to sit upon a Senator, that was not himself of the same Order; a Privilege, that (as learned Civilians tell us) continued with them during the Reign of many of the Roman Emperors. But, my Lords, as this is a Privilege as Ancient as Monarchy, so we have found by many old Experiences, that it cannot be taken away without the Dissolution of that Government: Therefore this is one of those many Tyes by which the Interest of the Nobility, as well as their Duty, have oblig'd them to the Service of the King.

In the exercise of this Privilege at this time; I know your Lordships will weigh the Fact with all the Circumstances, whereby it is to receive its true and its proper Doom. Your Lordships are too just, to let Pity make any Abatement for the Crime, and too wise to let Rhetorick make any Improvement of it: This only will be necessary to be observed by all your Lordships, that the fouler the Crime is, the clearer and the plainer ought the Proof of it to be. There is no other good Reason can be given, why the Law refuseth to allow the Prisoner at the Bar Counsel in matter of Fact, when his Life is concerned, but only this, because the Evidence by which he is condemned, ought to be so very evident and so plain, that all the Council in the World should not be able to answer it: upon this ground it is, that the Law hath trusted your Lordships with the Trial of your Fellow Peers; no Trust can be more nobly lodged, nor no Judicature had ever more true Submission made to it: Therefore it would be in me some want of Respect to this August and Noble Assembly, should I go about to put your Lordships in mind of your Duty: no doubt you will observe the Evidence carefully, weigh it diligently, and when that is done, it is impossible but the Judgment you will give, must be Right and Honourable, and worthy of so wise and so great a Body. Therefore I will not detain your Lordships any longer, from hearing the Evidence that is ready to be offered unto you.

Cl. of Cr. Make Proclamation.

Serj. O Yes! if any will give Evidence for our Sovereign Lord the King, against Charles Lord Cornwallis, Prisoner at the Bar, let him come forth, and he shall be heard; for the Prisoner stands at the Bar upon his Deliverance.

The Indictment was again read to the Peers.

Serjeant Maynard. May it please your Grace, my Lord High Steward of England, and this Great and Noble Assembly; The Prisoner at the Bar, Charles Lord Cornwallis, standeth Indicted of a great Crime, that he together with Charles Gerrard and Edward Bourne, not having in his Heart the fear of God, but instigated by the Suggestions of the Devil, the 18th of May last, did Feloniously and of his Malice forethought, assault one Robert Clerk in Whitehall, and that Mr. Gerrard took him up in his Arms, flung him down, and broke his Neck, of which he instantly died. To this he hath pleaded Not guilty. It lies upon us who are Counsel for the King, in this case to prosecute it, and prove it to you.

* Mr. Attorney General.

May it please your Grace, my Lord High Steward of England, and my Lords summoned for the Trial of the Prisoner at the Bar:

* Sir William Jones.

Bar: This Noble Lord stands Indicted for Murder; an Offence, my Lord, which is the first and greatest that is forbidden by the second Table, and an Offence of that nature, that the Law of God hath by a most peremptory Sentence condemned and decreed, that whoso sheddeth Man's Blood, by Man shall his Blood be shed. Whether this Noble Lord be guilty of it, remains upon your Lordships to try, and I shall very shortly state the Matter of Fact, which we shall prove, and then let the Evidence be offered to you. We do not pretend, my Lords, neither doth the Indictment lay it, that this great Offence was committed by the Hand of my Lord *Cornwallis*.

For I know your Lordships have observed the Indictment, by which it is alledged, that the Hand of Mr. *Gerrard* did the Fact: But, my Lords, if we shall make it out that my Lord *Cornwallis* did concur to this Act, and had in himself at that time an Intent to be a Murderer; then it will be declared by his Grace, my Lord High Steward, and my Lords the Judges, that tho' his Hand did it not, yet he is equally guilty as if it had.

Now, to make out the Charge against him, our Evidence will be shortly thus:

On the 18th of *May* last, early in the Morning, between the Hours of One and Two, came down two Gentlemen with three Footmen behind them, out of the Gallery at *Whitehall*, by the Stairs that lead down to the Park: I call them two Gentlemen, because it was not then discovered who they were, or of what Quality; but your Lordships will perceive, by the course of the Evidence, they were my Lord *Cornwallis* and Mr. *Gerrard*, coming down at that unreasonable Hour; the first Question they ask'd the Centinel (who watch'd at the Foot of the Stairs,) was the Hour of the Night; and from him had account that it was so much.

The Prisoner and Mr. *Gerrard* were somewhat distemper'd with Drink, and made him a Reply, that he Lyed, with great Oaths accompanying it. At that time they did no more but go by him into the Park, where, after they had continued by the space of an Hour, back they return'd to the Stairs, and the Centinel demanding, according to his Duty, who came there? They answer'd him in very obscene and uncivil Language, and threatned they would kill the Centinel, who only did his Duty in enquiring who came by him at that time of Night. And we shall make it appear, they were in a kind of Contention among themselves who should kill him; for, as I am inform'd, (I know if it be not prov'd, your Lordships will observe it) one desired, *Pray let me kill him*; and the other desired, *Pray let me kill him*; and threatned no less than to run him through.

My Lords, the Centinel being of good Resolution, was not affrighted from his Place, but kept them off; and when they saw they could not win upon the Centinel that way, one of them delivered away his Sword, which he held in his hand not drawn, and then was pleased to come to the Centinel, and desired to kiss him, and swore he would do that: but that the Centinel did equally refuse; and then they did use the same Threatnings again, and seemed to be in a Contention who should run him through. My Lords, after some time, being now come to the top of the Stairs, and there staying, it hap-

pen'd there came to the Stair-foot two Youths, and these young Men, were, it seems, going to Bed to their Lodging, which was very near, and did make it their Request to the Centinel (one of them did) to call him up very early the next Morning, because he was to go of a Message out of the Town. My Lord *Cornwallis* and Mr. *Gerrard* remaining on the top of the Stair-Case, being (as we said) in disorder (which is the strength of the King's Evidence, if proved) both of them said, before they went thence they would kill some or other, which Evidence will go a great way to shew the Concern that Noble Lord the Prisoner at the Bar had in the Business.

It happen'd as these Boys were making their Request to the Centinel, my Lord and Mr. *Gerrard* took notice of it, and seem'd to be concern'd that they should command the King's Soldiers, and bid the Centinel shoot him, who told them he conceiv'd the Boy had done him no wrong in asking a civil Kindness from him; they again call'd to shoot him, and they would bear him out; which he still refused to do, finding no reason for it: then one of the two took occasion to swear a great Oath, *he would kick his Arse to Hell*; to which the Boy that ask'd the Centinel made some reply: wherein the word *Arse* was repeated: now (whether they understood it as an Interrogation, *Why kick my Arse to Hell?* as he intended it; or in a worse sense, *Kiss my Arse*) one of the Gentlemen in a Rage came running down the Stairs, and that Boy that in truth spoke the Word ran away, and the other poor Innocent Boy, trusting in his own Innocency, remained there, until the Person came to him, and did on his Knees (in a manner) desire not to be mistaken, he was not the Person that used any ill Words, and cry'd out, *O my Lord it was not I, indeed my Lord it was not I*; but such, at that time, was the Intemperance and Wrath of the Person, who in such a Fury descending the Stairs, that (whether with the Blow or the Fall) the Boy receiv'd his Death. We find by our Information of the Evidence, that he who did the Thing was, in Truth, Mr. *Gerrard*, who is not yet taken; but whether my Lord, the Prisoner at the Bar, did not concur in it, and had not an Intention to kill somebody, is the Question left for your Grace and these Noble Peers to decide? This is the nature of the Fact; only I desire to observe, that it is true here was some distance between the Place where my Lord *Cornwallis* stood, and the Place where the Boy was killed. Of what consequence that may be, I leave to your Grace's and these Noble Lords Consideration: It was the distance of the Stairs; but, I think, as every one knows, they are not so many, what but is done below may be easily seen at the top.

We shall now, without detaining your Lordships any longer, call the Witnesses, and prove what hath been opened.

The Soldier prov'd the Fact, as it was open'd by Mr. Attorney General, except that part about both swearing they would kill one or other, which Passage was heard but by one of them, and was spoken but by one of the Gentlemen.

They could not swear, who were the Persons, because of the darkness of the time.

The Boy who was the Companion of him that was slain, and that used the Words that caused the Person to come down, swore them to be a

Repetition only, by way of Interrogation, *Why kick my Arse to Hell?*

Then Mr. Attorney desired to call my Lord Cornwallis's own two Footmen, who had been Indicted and acquitted at the *King's-Bench Bar*.

Lord High Steward. My Lords the Judges, is there any Question, whether a Person acquitted of an Offence be a good Witness against another charged with the same Offence?

Judges. None at all: when he is acquitted he ought to be admitted.

Then the Copy of the Acquittal (proved by a Clerk in the Crown Office) was read, and then were Sworn; who fixed it upon the Person of Mr. Gerrard, and swore that my Lord Cornwallis was all the while upon the top of the Stairs, but after the Fact committed, hastened away for fear of being knock'd down by the Soldiers: And there ended the King's Evidence.

L. High. Stew. Now, my Lord, is the time come for your Defence. You hear what is charg'd on you. Pray speak what you have to say for your self.

Lord Cornwallis. Then the Prisoner at the Bar confessed himself to have been in the Company that Night, when this Accident happen'd, which he hop'd would be a warning to him to shun such Disorders hereafter; but that he had no evil Intention, and but one Witness swore that both of them would have kill'd the Centinel; that he was not conscious to himself to have had a hand in it, and therefore withdrew not himself, but yielded himself to the Coroner the next Day, (which he prov'd by the Coroner himself) and did therefore, in trust of his Innocency, submit himself to the Judgment of His Grace and his Peers.

Which being done, Sir Francis Winnington, the King's Solicitor-General, summ'd up the Evidence in this manner:

May it please your Grace, my Lord High Steward of *England*, and my Noble Lords the Peers of the Prisoner at the Bar; According to the Duty of my Place I am to repeat the King's Evidence, and state it to your Grace and these Noble Lords, and submit it to your great Judgments, how far it will go for the Proof of this Crime; wherein I shall observe the Duty of all honest Men, which is to do nothing either to wrest any thing in disadvantage of the Prisoner out of the King's Evidence, to go farther than it ought, nor shall omit any thing that shall require your Grace and the Noble Lords Justice; for we come to seek out the Truth, and we question not but by this Honourable Trial it will be brought to light. But I beseech your Favour, to take notice, in the first place, what Crime this Noble Lord stands accused of, and it is for Murder; wherein our Law takes notice, that Murder is where a Man unlawfully kills another under the King's Peace, with Malice forethought. Now that here is a Murder committed, I dare with all Humility averr. By whom? that is the Question: For this *Robert Clerk*, the Person killed, doth appear, by the course of the Evidence, to have been doing his Duty, attending the Place his Employment required; gave no Offence to any whatsoever; but when the Person came down and fell upon him, the poor Youth cried, *Indeed, my Lord, it was not I*; yet, my Lords, the Hands of Violence seiz'd him and kill'd him. Let us then see

how the Evidence brings it home to the Noble Lord the Prisoner at the Bar; wherein I must confess we have no express Evidence (nay, we have Evidence to the contrary) that it was not his Hand that did the Fact actually; for it is by two Witnesses, the Footmen, sworn that it was Mr. Gerrard who came down and gave the unfortunate Blow: But we have that which we think, with humble Submission, may reach this Noble Lord: For I know your Grace and my Lords remember, that after they had been an Hour in the Park, both returning, did with horrid Oaths swear they would kill the Centinel; there the Evidence fixeth it, not upon one only, but upon both: it was at that time so dark they could not be distinguished, but by the Voice: The Centinel hath given you an account how he perform'd his Duty, and in what Straight he was, he had much ado to save his own Life, or to prevent killing them: But when they came upon the Stairs, these two Boys came there in order to desire the Centinel to call one of them the next Morning. Then one on the Stairs (no Man can tell who it was) with horrid Execrations, ask'd, *Will you command the King's Soldiers? Shoot him, Centinel, we'll bear you out.* But all this while it was Dusk, no distinction of Persons could be made; whereupon it will fall out to come to this Case, If several Persons intend to kill one, and happen to kill another, whether this be not Murder in them? For the urging of this, as to the Matter in Law, I leave to him that comes after me. The Centinel swears one of them did swear he would kill one or other; who it was took up that cruel Resolution, is left to you to judge: But at that time they were both together upon the top of the Stairs; and my Lord doth not seem to give one tittle of Evidence, that shews any Endeavours of the Prisoner at the Bar to prevent the other, or disprove of his Actions: If he had given an account of that, he had silenced Justice; but when they were all together, he not endeavouring to stop his hand, it is as much in Law as if he had struck the Stroke.

The other Soldiers give you a particular Account to the same purpose.

The two last Witnesses do bring it to the Person of my Lord, the Prisoner at the Bar, and Mr. Gerrard, who, they swore, came down the Stairs, and his Man followed him to the bottom, and there staid at some distance, till the Fact was done, and they all fled.

This I take to be the matter of Fact faithfully proved, before your Grace, and the Lords the Peers; and I would not trouble your Grace longer, because I would not misreport any thing, whereby I might do wrong, either to the Prisoner or the King's Cause; and because I know your Grace and the Noble Lords will distinguish and find out where the Truth is. I must say it is a great Comfort to all the Subjects of *England*, that Crimes of this Nature are so carefully presented, that whatsoever Honours and Dignities our Gracious Sovereign doth confer on any Person, it doth not exempt him from the Justice of the Law: It is not only a Comfort to this Assembly, but to the whole Nation, to see the King tender of his Subjects Persons and Lives, in that he hath caused this strict Course to be taken, where the Enquiry hath gone from the Grand Jury of the County, till the Bill came to this great Tribunal; where I doubt not but your Grace, and these

Noble

Noble Lords, will give a righteous and just Judgment.

Serjeant *Maynard*. May it please your Grace, my Lord High Steward of *England*, and my Noble Lords the Peers :

I, according to the Duty of my Place, come now to conclude the Charge on the King's behalf; some Things are fit to be observed upon the Evidence, that may produce a Question for the decision of the Fact, of what nature it is. That a Murder is committed, is upon Evidence without all Question; and not only the Death of a Man, here is a Child slain, without any Provocation in the world given by him, to that Person that did it; and that did it too, notwithstanding the Deprecations of the Boy, affirming his own Innocency, and that with as full Circumstances as a Christian almost could a thing: these came from the King's Palace-walk in the Park; call the Centinel Rogue, and when he doth his Duty, swear to murder him; with Oaths that a Christian would blush at, and be afraid to hear: *God damme* oftentimes reiterated; and he that faith that Word, doth beg of God to hate him, and affirm that he doth hate God. The Obscenity that they used I shall not mention again; these are Circumstances of the Case; that all were guilty of much, is no doubt; but who of the Murder, is the Question. And I humbly conceive, it is manifest, that this Noble Lord was concern'd in it. For it is not requisite to make a Murder, that he who kills a Man hath conceiv'd a Malice against him; for if I have a Malice against any Man, and the Effect of that fall upon another, it is Murder.

I apply it thus; If it be a Murder in Mr. *Gerrard*, if this Noble Lord partake with him in the Design which made it so; to wit, the Malice against the Centinel; he is as guilty, as if his Hand had been as much upon him as was Mr. *Gerrard's*;

Sanders's Case
in *Plowden*,
fol. 473.

as in that known Case of the Man that poison'd an Apple, with an Intention to kill his Wife, and the not knowing of the Poison, gave some of it to her Child, of which it died; tho' he had no design to kill the Child, yet the Malice he conceiv'd against his Wife supply'd the Defect of an express Malice to make it Murder; and he was hang'd therefore. So if a Man assault a Master, in the presence of his Servant, who defends his Master, and is slain, tho' the other had no purpose to kill him, yet it is Felony in him, for which he shall die; the Law implying a Malice. Then here was clearly a Malice to the Centinel; how near it comes to the Boy will come in Question afterwards. I find the Objection made in my Lord's Case, That at the particular Time where the Fact was committed, my Lord was not with Mr. *Gerrard*: But that will be no Objection in the Case; for if he did partake in the Design of the other, I will answer it with the Case of my Lord *Dacres* of the

Anno 33 H. 8.
Coke, 3 *Inst.*
fol. 211.

South, who, with some others, went unlawfully to steal Deer, and the Keeper coming, some fled, among whom my Lord was one: the Keeper was kill'd, my Lord *Dacres* being at that time without the Pales, a Mile off from the Place, and yet was found guilty of the Murder, and left both his Lands and Life for it. But here, my Lord *Cornwallis* was present, for the Witness

swears the distance was not so great but it might be discern'd. Now whether he was aiding or assisting, is the next thing in question. What occasion had they of Malice, Revenge, or Injury to the Centinel? They both swore they would kill him: Had there been any Excuse for the other, if one of them had killed the Centinel? that could not be. Well, they did not kill the Centinel, but at the same time take up a causeless Offence against another, and kill him. I argue, That the Malice against the Soldier was diffusive to the Boy; and one of the Witnesses proves, that one of them swore he would kill some Body: now, no one speaks to any thing of my Lord's reproving Mr. *Gerrard*. Thus stands the Case before your Grace and my Lords: It is a Case of Blood, and it cries loud: How far this Noble Lord and Prisoner at the Bar is guilty thereof, you are to enquire, and without all doubt will give a clear Verdict, according to Justice and Honour.

Lord High Stew. My Lords, you have heard the Evidence; if your Lordships please to go and consider of it, you may.

Then the Prisoner withdrew into his own Apartment, with the Lieutenant of the Tower. The Lords went into a Room behind the Court of *Chancery*, and after a stay of two Hours return'd, and being all sat; the Earl of *Danby*, Lord High Treasurer of *England*, who was the first of the Jury, address'd himself to my Lord High Steward, and said;

Earl of *Danby*. My Lord High Steward, there is a Question in Law, of which some of my Lords desire to receive Satisfaction, before they can give in their full Verdict: and we desire to know of your Grace, whether it be proper here to ask the Question of your Grace, or to propose it to the Judges.

Lord H. Stew. If your Lordships doubt of any thing, whereon a Question in Law ariseth, the latter Opinion, and the better for the Prisoner is, that it must be stated in the presence of the Prisoner, that he may know whether the Question be truly put. It hath sometimes been practised otherwise; and the Peers have sent for the Judges, and have asked their Opinion in private, and have come back, and given their Verdict, according to that Opinion; and there is scarce a Precedent of its being otherwise done; but there is a latter Authority in Print, that doth settle the Point so as I tell you; and I do conceive it ought to be followed; and it being safer for the Prisoner, my humble Opinion to your Lordships is, that he ought to be present at the stating of the Question.

3 *Coke's Inst.*
fol. 429.
Pasch. 26 Hen.
3. Lord *Dacres's Case*.

Call the Prisoner to the Bar. Who being come, my Lord spake thus to him:

Lord High Steward. My Lord *Cornwallis*, My Lords the Peers, since they have withdrawn, have conceived a Doubt, in some Matter of Law arising upon the Matter of Fact in your Case; and they have that tender Regard of a Prisoner at the Bar, that they will not suffer a Case to be put up in his Absence, lest it should chance to prejudice him, by being wrong stated; therefore, your Lordship will do well to attend the Question that is raised; and, my Lords, will you please to propound your Doubts?

Earl

Earl of Danby. It was taken Notice of here, that by opening the Matter by Mr. Solicitor, the Matter of Murder was explained to be meant by having a prepenfed Malice, and in that Case it was opened to us, that any Persons then present, and that had in any Sort contributed to the Disorders, they were as equally guilty, as they whose Hand had shed the Blood of the Person killed.

Now the Doubt of some of my Lords is, whether if it be found but Man-slaughter, those are equally guilty, (that are present, and have proved to contribute to the Disturbance) of that Crime, as they are in Murder; because some of them have not the Satisfaction that they are the same.

Lord High Steward. My Lords the Judges, I take it, the Doubt proposed to you, is this; whether or no, those that are present, and have contributed to the Disorders, whereby such an Accident doth ensue, as proves to be Man-slaughter, be as culpable, as he that doth the immediate Fact, as it is in the Case of Murder?

After a little Pause and Conference, the Judges returned this Answer.

Judges. We have had Conference of this Case, and our humble Opinion is, If sundry Persons be together, aiding and assisting to an Action, wherein a Man-slaughter doth ensue, as in Case of a sudden Business without Malice prepenfed, they are equally guilty of the Man-slaughter, as they are in the Case of Murder prepenfed.

Earl of Danby. The Lords desire to withdraw once more. Which they did, and after a short Space returned; and being called over, answered to their Names, and all appearing, my *Lord High Steward* took their Verdict *seriatim*, beginning at the *Puisne Lord* in the following Orders, they answering, standing bare with their Hands on their Breasts.

Lord High Steward. My Lord *Duras*, Is *Charles Lord Cornwallis* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?

Lord Duras. Not guilty.

The same Question he demanded of each; who answered thus:

Lord { *Butler*, Not guilty.
Not guilty.
Maynard, Not guilty of Murder, but guilty of Man-slaughter.
Paget, Not guilty.
Berkly, Not guilty of Murder, but guilty of Man-slaughter.

Newport, Not guilty.
Hallifax, Not guilty.
Viscount Cambden, Not guilty.
Guilford, Not guilty.
Alisbury, Not guilty of Murder, but guilty of Man-slaughter.
Craven, Not guilty.
Bath, Not guilty.
Clarendon, Not guilty.
Sunderland, Not guilty.
Peterborough, Not guilty.
Devonshire, Not guilty.
Northampton, Not guilty.
Bridgwater, Not guilty.
Dorset, Not guilty.
Suffolk, Not guilty.
Bedford, Not guilty.
Derby, Not guilty.
Kent, Not guilty.
Oxford, Not guilty.
Arlington, Not guilty.
Brereton, Not guilty.
Lindsey, Not guilty of Murder, but of Man-slaughter.
Dorchester, Not guilty.
Anglesey, Not guilty of Murder, but of Man-slaughter.
Danby, Not guilty of Murder, but of Man-slaughter.

Lord High Steward. Call the Prisoner to the Bar.

Then the Prisoner came to the Bar, and the Deputy Lieutenant of the *Tower* held the Edge of the Ax towards him, while my *Lord High Steward* spake thus unto him;

Lord High Steward. My Lord *Cornwallis*, you have been indicted for Murder, pleaded Not guilty, put your self upon your Peers; and your Peers upon Consideration of the whole Matter have acquitted you, and found you Not guilty, so you are to be discharged.

Cl. Cr. Make Proclamation.

Serjeant. O Yes! my Lord High Steward of *England* willeth and commandeth all Persons to depart hence, in God's Peace and the King's; for my Lord High Steward of *England* His Grace doth dissolve this Commission.

God save the King.

At which Words my Lord High Steward holding the white Staff (which was delivered him by the Usher of the Black Rod on his Knees) in both Hands over his Head, snapt it in two, and the Assembly broke up.



LXXVII. *Proceedings in Parliament against THOMAS Earl of DANBY, * Lord High Treasurer of ENGLAND, upon an Impeachment for High-Treason, and other High-Crimes and Misdemeanors, December &c. 1678. 30 Car. II.*

TH E Papers of Mr. Mountague, the King's Ambassador in France, being seized by the King's Order, upon Suspicion of his intriguing with the French Court, Mr. Mountague (in his own Defence) acquainted the House of Commons, that he had in his Custody several Papers, which he conceived might tend very much to the Safety of his Majesty's Person, and the Preservation of his Kingdom; whereupon two Letters were produced and read in the House, subscribed Danby; which are as follow.

My Lord,

Jan. 17, 1677.

Yesterday Monsieur Rouigny came to me with Monsieur Barillon (having given me his Father's Letters the Day before) and discoursed much upon the Confidence his King hath of the Firmness of ours to him, of the good Opinion his Master hath of me, and of his King's Resolution to condescend to any thing that is not infamous to him, for the Satisfaction of our King, how certainly our King may depend upon all Sorts of Assurances and Supplies from his Master, in case the Friendship be preserved. — The main of their Drift was to engage me to prevail with the King to prevail with the Prince of Orange. — The King must come to some Declaration of his Mind to the Parliament when it meets: That which makes the Hopes of Peace yet less probable is, that the Duke grows every Day less inclin'd to it, and has created a greater Indifferency in the King than I could have imagined; which being added to the French King's Resolution not to part with Tournay, do, I confess, make me despair of any Accommodation: Nevertheless, I am assured, that one principal Cause of the Adjournment for thirteen Days, has been to see if any Expedient for the Peace could have been found in that Time; and the Effect of the Adjournment hath hitherto been, that no body will now believe other than that the Peace is already concluded between Us and France.

March 25, 1678.

IN Case the Conditions of the Peace shall be accepted, the King expects to have six Millions of Livres Yearly for three Years from the Time that this Agreement shall be signed betwixt his Majesty and the King of France, because it will be two or three Years before he can hope to find his Parliament in an Humour to give him Supplies after the having made any Peace with France; and the Ambassador here has agreed to that Sum, but not for so long a Time. If you find the Peace will not be accepted, you are not to mention the Money at all; and all possible Care must be taken to have this whole Negotiation as private as is possible, for fear of giving Offence at home, where for the most part we bear it

ten Days after any thing that is communicated to the French Ministers.

Upon reading of these Letters, it was immediately resolv'd that there was sufficient Matter of Impeachment against Thomas Earl of Danby, Lord High Treasurer of England; and on December 21, 1678, Articles of Impeachment were drawn up and agreed to, and on December 23 were carried up by Sir Henry Capel to the Lords, where they were read, as follow.

I.

That He hath traiterously encroach'd to himself Regal Power, by treating in Matters of Peace and War with Foreign Ministers and Ambassadors, and giving Instructions to his Majesty's Ambassadors Abroad, without communicating the same to the Secretaries of State, and the rest of his Majesty's Council, against the express Declaration of his Majesty and his Parliament; thereby intending to defeat and overthrow the Provision that has been deliberately made by his Majesty and his Parliament, for the Safety and Preservation of his Majesty's Kingdoms and Dominions.

II.

That He hath traiterously endeavour'd to subvert the ancient and well-establish'd Form of Government in this Kingdom, and instead thereof to introduce an arbitrary and tyrannical Way of Government; and the better to effect this his Purpose, he did design the raising of an Army, upon Pretence of a War against the French King, and to continue the same as a standing Army within this Kingdom: And an Army being so raised, and no War ensuing, an Act of Parliament having pass'd to pay and disband the same, and a great Sum of Money being granted for that End, he did continue the Army contrary to the said Act, and misemploy'd the said Money given for the disbanding, to the Continuance thereof; and issued out of his Majesty's Revenues divers great Sums of Money for the said Purpose, and wilfully neglected to take Security of the Paymasters of the Army, as the said Act requir'd; whereby the said Law is eluded, and the Army is yet continued, to the great Danger and unnecessary Charge of his Majesty and the whole Kingdom.

III.

That He traiterously intending and designing to alienate the Hearts and Affections of his Majesty's good Subjects from his Royal Person and Government, and to hinder the Meetings of Parliaments,

liaments, and to deprive his Sacred Majesty of their safe and wholesome Counsel, and thereby to alter the Constitution of the Government of this Kingdom, did propose and negotiate a Peace for the *French* King, upon Terms disadvantageous to the Interest of his Majesty and his Kingdoms; for the doing whereof, he did endeavour to procure a great Sum of Money from the *French* King, for enabling him to maintain and carry on his said traiterous Designs and Purposes, to the Hazard of his Majesty's Person and Government.

IV.

That He is Popishly affected, and hath traiterously concealed (after he had Notice) the late horrid and bloody Plot and Conspiracy, contrived by the Papists, against his Majesty's Person and Government; and hath suppressed the Evidence, and reproachfully discountenanced the King's Witnesses in the Discovery of it, in Favour of Popery, immediately tending to the Destruction of the King's Sacred Person, and the Subversion of the Protestant Religion.

V.

That He hath wasted the King's Treasure, by issuing out of his Majesty's *Exchequer* several Branches of his Revenue for unnecessary Pensions and secret Services, to the Value of 231602*l.* within two Years; and that he hath wholly diverted out of the known Method and Government of the *Exchequer* one whole Branch of his Majesty's Revenue to private Uses, without any Accompt to be made of it to his Majesty in his *Exchequer*; contrary to the express Act of Parliament, which granted the same; and he hath removed two of his Majesty's Commissioners of that Part of the Revenue, for refusing to consent to such his unwarrantable Actings therein, and to advance Money upon that Branch of the Revenue for private Uses.

VI.

That He hath by indirect Means procured from his Majesty to himself divers considerable Gifts and Grants of Inheritance, of the ancient Revenue of the Crown, even contrary to Acts of Parliament.

For which Matters and Things the Knights, Citizens and Burgesses of the Commons in Parliament, do, in the Name of themselves, and of all the Commons of *England*, impeach the said *Thomas* Earl of *Danby*, Lord High Treasurer of *England*, of High-Treason, and other High Crimes, Misdemeanors and Offences, in the said Articles contain'd: And the said Commons by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any other Accusation or Impeachment against the said Earl, and also of replying to the Answers which the said *Thomas* Earl of *Danby* shall make to the Premises, or any of them, or any Impeachment or Accusation that shall be by them exhibited, as the Cause (according to the Course and Proceedings of Parliament) shall require; do pray, That the said *Thomas* Earl of *Danby* may be put to answer all and every the Premises; that such Proceedings, Trial, Examinations and Judgments, may be upon them, and every one of them had and used, as shall be agreeable to Law and Justice; and that he may be sequestred from Parliament, and forthwith committed to safe Custody.

As soon as the Articles were read, the Earl of *Danby* spake as follows.

My Lords,

I Hope you will not enter upon any other Business, before you have given that Liberty to me, which is the Privilege of every Peer, to be heard upon any Accusation that is brought against him, tho' of far less Moment than what hath been newly read against my self.

I confess I should have heard this Charge with Horror, if the Matter of it had been true; but I thank God, I know my Innocency to be so great, that it protects me from all Sorts of Fear, but that of lying under so black a Character, as may be believed by those that cannot hear my Defence; tho' I have the Confidence to think, that it is not truly believed in the Hearts of the greatest Part of those that have been informed against me.

I must needs confess, that I thought my self the last Man in this Kingdom that should ever have been in Danger of being accused for Treason, because I know no Man that abhors it more, and that would pursue it more vigorously than my self, against any that should be guilty of it. Nay, to such a Degree is my Detestation of that Crime, that were I sure the dearest Child I have were guilty of it, I would willingly be his Executioner.

My Lords, I know this is not the Time for me to enter regularly upon my Defence, because I know your Lordships will first order me a Copy of my Charge, and appoint me a Time for my Vindication; when I doubt not but to do it to the full Satisfaction of your Lordships and all the World. In the mean Time I will only beg leave to observe to your Lordships, That those Articles in this Charge which can seem to have any thing of Treason in them, have their Answer so obvious, that there is very little in them which may not be answered by many others as well as my self, and some of them by every Man in the Kingdom.

The first, which is the assuming Regal Power, I confess I do not understand; having never in my Life done any thing of great Moment, either at Home, or relating to foreign Matters, for which I have not always had his Majesty's Command. And altho' I am far from having been the most cautious Man in taking Care of my own Security, (which perhaps my great Innocence hath been the Cause of) yet I have not been so wanting of common Prudence, as in the most material Things not to have had his Majesty's Orders and Directions under his own Hand, and particularly for the Letters now made use of against me.

The second, I think, doth scarce need my giving any Answer to it; it being obvious, that the Army was no more raised by me, than by every Lord in this House: And whoever is in that Station which I hold, must certainly be a Fool, to desire any thing which creates a want of Money, especially so great an one, as the Charge of an Army must necessarily and immediately produce. And for one Part of the Article concerning the Pay-master of the Army, it is in Fact otherwise; for Security from the Pay-master has been taken in the Sum of four hundred thousand Pounds.

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The third is of the same Nature with the first, and comes from the same Foundation, which is, what a Gentleman hath thought fit to produce to the House of Commons. I will not now censure his Action, I think it will do enough for it self; I will only say, That altho' I take it for one of the greatest Misfortunes which can befall a Man, to lie under such a Charge of the House of Commons, yet I would much sooner chuse to be under that Unhappiness, than under his Circumstances.

The fourth Article is not only false in every Part of it, but it is not possible to believe it true, without my being the greatest Fool on Earth, as well as the blackest Villain. For were I capable of such a Wickedness, yet the more wicked any Man is, the more he is carried to his own Interest; and is it possible any thing under Heaven can agree less with my Interest, than the Destruction of this King? Can I possibly hope to be better than I am? And is it not apparent, that there is not one Man living, whose Happiness depends so much as mine upon the Preservation of his Person?

My Lords, I know there is not a Man in the World, that can in his Heart think me guilty of that Part of the Article, if I should say nothing to it. But besides, I was so far from concealing this hellish Plot, that it is notoriously known, his Majesty sent me the first Notice of it, together with forty-three Heads of the Information, before I knew a Syllable of it from any Body else: And it hath been own'd at the Bar of the House of Commons by him (from whom only I had the Intelligence) that he had all the Encouragement and Dispatch from me that I could give him. Besides, when it was disclosed to the Council-board, he told some of the Clerks of the Council, (as he had done me divers Times before) that it would have been much better, and more would have been discovered, if it had been longer kept private. Besides this, I had the Fortune to be particularly instrumental in seizing Mr. Coleman's Papers, without which Care there had not one of them appear'd, and consequently, the best and most material Evidence which is yet of the Plot, had been wholly wanting. And certainly this is the first Time that any Man was accused to be the Concealer of that Plot, whereof he hath been a principal Means of procuring the Discovery.

For that Part of the Article that says, I am Popishly affected, I thank God, that the contrary is so known to all the World, that even some of those that voted against me, did own their Knowledge of the Falsity of that Allegation; and I hope I have through my whole Life given so good Testimony of my Religion, both in my own Family, and by my Services to the Church, (whenever it hath lain in my Power) that I shall not need much Vindication in that Particular: And I hope your Lordships will forgive me my Weakness, in telling you, that I have a younger Son in the House of Commons, whom I shall love the better as long as I live, for moving to have that Part of the Article to stand against me, that by that Pattern it might appear, with what sort of Zeal the whole hath been carried to my Prejudice.

The fifth Article will, upon Examination, appear to be as ill-grounded as any of the rest; and I am sorry I am able to give one Reason,

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which is, That I have known no Treasure in my Time to waste, having enter'd upon an empty Treasury, and never seen one Farthing given to his Majesty (in almost six Years) that hath not been appropriated to particular Uses, and strictly so applied by me, as the Acts have directed. And there hath not been one of those Aids, which, instead of giving the King Money, hath not cost him more out of his own Purse, to the same Uses, as doth appear by the larger Dimensions of the new Ships, and so in other Things: Insomuch that I take upon me the Vanity to say, That by the Payments I have made to the Navy and Seamen, beyond former Times; the paying off the greatest Part of the Debt which was stop'd in the *Exchequer* before my Time; by my own Punctuality in the Course of Payments, and by other Things, which I am able to shew, I doubt not but to appear meritorious, instead of being criminal, upon that Article.

As to the sixth Article, which mentions my great Gettings, I cannot deny, but that I serve a Master, whose Goodness and Bounty hath been a great deal more to me than I have deserved, and to whom I can never pay Gratitude enough by all the Services of my Life. But when the Particulars of those Gettings shall appear, it will be found very contrary to what is suggested abroad; and that in near six Years Time in this great Place, I have not got half that, which many others have got in lesser Places in half that Time. And from the Examination of this, which I desire may be seen, there will arise Matter to accuse my Prudence, in not having done for my Family what justly I might, but nothing to arraign either my Honour, my Conscience, or my faithful Service to the Crown.

My Lords, If my Obedience to the King shall not be my Crime, I think nothing else will stick upon me from these Articles: For my own Heart flatters me to believe, that I have done nothing but as a true Protestant, and a faithful Servant both to my King and Country. Nay, I am as confident, as that now I speak, that had I either been a Papist, or Friend to the *French*, I had not been now accused. For I have Reason to believe, that the principal Informer of the House of Commons hath been assisted by *French* Advice to this Accusation; and if the

* Mr. Mountague.

* Gentleman were as just to produce all he knows for me, as he hath been malicious to shew what may be liable to Misconstruction against me, or rather against the King, (as indeed it is) no Man could vindicate me more than himself: Under whose Hand I have it to shew, how great an Enemy to *France* I am thought, how much I might have had to have been otherwise, and what he himself might have had for getting me to take it. But I do not wonder this Gentleman will do me no Right, when he does not think fit to do it to his Majesty (upon whom chiefly this Matter must reflect.) Although he knows, as will appear under his Hand, that the greatest Invitations to his Majesty, for having Money from *France*, have been made by himself; that if his Majesty would have been tempted for Money, he might have sold Towns for as much as if they had been his own, and the Money have been convey'd as privately as he pleased: That his Majesty might have made Matches with *France*, if he would have consented to give them Towns; and yet,

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that

that the King hath always scorn'd to yield the meanest Village that was not agreed to by the *Spaniard* and *Hollander*. That Gentleman hath often pretended how much his own Interest in *France* was diminish'd, only by being thought my Friend. And besides divers other Instances, I have under his Hand, to shew the Malice of the *French* Court against me, I sent two of his Letters to the House of Commons, which shew how Monsieur *Ruvigny* was sent hither on purpose to ruin me; which I am well assured at this Time they would rather see, than of any one Man in *England*. Besides what that Gentleman could say of this kind (if he pleas'd) I hope his Majesty will give me leave (in my Defence) to say in his Presence, and in the hearing of divers Lords, with whom I have the Honour to sit in the Committee of Foreign Affairs, that, which were it not true, his Majesty must think me the impudest and worst of Men to affirm before him, That ever since I had the Honour to serve his Majesty to this Day, I have deliver'd it as my constant Opinion, That *France* was the worst Interest his Majesty could embrace, and that they were the Nation in the World from whom I did believe he ought to apprehend the greatest Danger; and who have both his Person and Government under the last Degree of Contempt: For which Reason alone (were there no other) I would never advise his Majesty to trust to their Friendship.

My Lords, 'tis my greatest Happiness, that your Lordships are my Judges; whose Wisdom and Justice are so great, that you will both discern the Truth of the Evidence when it shall come before you, and in the mean time distinguish truly what the Crimes are (if they could be proved) and not what they are call'd. For this Reason this House hath wisely provided to have the special Matter before them, to the End they may be satisfied whether the Charge have its right Denomination; for otherwise it were to no Purpose to desire special Matter, unless it were to see whether the special Matter alledg'd be what it is call'd. As for Example, if a Man were accused of having traiterously pass'd the River in a Pair of Oars, this is special Matter, and styl'd Treason, by inserting the Word traiterously; yet your Lordships would not therefore proceed as taking it for Treason. So in this Case, I beg for all your Lordships Sakes, as well as my own, that you will please to use that Caution which will be necessary for all your Lordships Safety and Seats in this House: For I beseech your Lordships to consider, whither such a Precedent may go hereafter? What the House of Commons may do in such a Case, there is no Question but his Majesty may do the same by his Attorney; and what either of them may do against one Lord, they may do against more; (and we have seen it done in our Days against all the Bishops at once.) Were it not very precariously then that your Lordships hold your Seats here, when by either of these Ways as many of your Lordships, as for a Time it might be convenient to remove, should be at the Mercy of having a Thing call'd Treason, whether it be to or no.

Truly, my Lords, I have Reason to believe, that in the House of Commons the Matter of my Charge (if proved) was not thought to amount to Treason, either by Statute or Common

Law; and I hope your Lordships have too sad an Example in your Memory, ever to assist the making of Treason by Accumulation.

I should therefore not only wrong my own Innocence, but the Right of the Peers, to submit to answer Matters of Misdemeanor, as a Criminal in Treason.

My Lords, I wonder not at the malicious Prosecution of those who would have me taken for what they truly are. For I am well assur'd, that neither the *French* take me to be of their Interest, nor the Papists to be of their Religion: But I am troubled to fall under so severe a Censure of the House of Commons, altho' I cannot blame them, but my Accusers, who have so wrongfully inform'd them.

My Lords, I will conclude with this Comfort, That I do not in the least apprehend the Matter of my Charge, under the Security of your Lordships Justice; and will therefore trouble your Lordships no longer at this Time, but only to pray your Directions whether I am to withdraw, which I shall readily obey.

Upon this there was a great Debate, whether he should be committed; but the Majority were against committing him.

All further Proceedings were prevented by the Prorogation of the Parliament, *December* 30. However, the King dismiss'd him from his Post of Lord Treasurer. This Parliament was afterwards dissolv'd *January* 24, and a new one met on *March* 15.

On *March* the 20th, the House of Commons resumed the Affair relating to the Earl of *Danby's* Impeachment, when, among others, Mr. *Powle* deliver'd himself as follows.

Mr. *Speaker*,

I Should have been pleased to have heard, what I was needful to have been spoken unto, from some other Member of this House, rather than my self; it is concerning the Earl of *Danby*, who stands impeached by the Commons of *England* of High-Treason.

The Person, to whom we owe the Dangers and Fears of the *French* King against us.

The Person, to whom we owe the Threats and severe Answers to those humble Addresses we made the last Sessions of Parliament.

The Person, to whom we owe the Ruins of this Nation, and exhausting the King's Revenue.

The Person, to whom we owe the Expence of 200000*l.* and upwards, within a Year, unaccounted for.

The Person, to whom we owe the many Prorogations that happen'd in the last Parliament, when many profitable Bills were ready for passing.

The Person, to whom we owe the Raising of a Standing Army, to be kept up by the Receipt of six Millions of Livres yearly, for three Years together, to enslave us and our Religion.

The Person, to whom we owe the late Bone that was thrown in the Sitting of the last Parliament, to hinder the good Issue that might have come by their Proceedings; who is now laying down his Staff, and making up his Accounts in the Treasury as he pleaseth, to enrich himself out of the Spoils of the People, and so depart.

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My humble Motion is, That a Message be sent immediately to the Lords from the Commons of England, to desire their Lordships, That *Thomas Earl of Danby* be immediately committed to safe Custody, he being impeach'd by the Commons of England of High-Treason.

Upon the Debate the House came to this Resolution.

Resolved, *Nemine Contradicente*, 'That a Message be sent to the Lords, to put them in mind of the Impeachment of High-Treason, exhibited against *Thomas Earl of Danby*, in the Names of the Commons of England; and to desire that he may be committed to safe Custody: Resolving again, That it be referred to the Committee of Secrecy to draw up further Articles against him.

On Saturday, March 22, the Commons being commanded to attend his Majesty in the House of Peers, the King spoke to them in Favour of the Earl of Danby: But returning to their House, they Resolved, 'That a Message be immediately sent to the Lords, to remind their Lordships of the last Message sent them from this House, relating to *Thomas Earl of Danby*, and to demand that he might be forthwith sequestred from Parliament, and committed to safe Custody.' Upon which the Lords desired a present Conference with the Commons, where the Duke of Monmouth spake thus; *I am commanded by the Lords to acquaint you, That their Lordships having taken into Consideration Matters relating to the Earl of Danby, together with what his Majesty was pleased to say upon that Subject; have ordered that a Bill be brought in, by which Thomas Earl of Danby may be made for ever incapable of coming to his Majesty's Presence, and of all Offices and Employments, and of receiving any Grants or Gifts from the Crown, and of sitting in the House of Peers.* In the mean time, the Commons hearing that the King had signed a Pardon for the Earl, they appointed a Committee to repair to the Lord Chancellor, to enquire into the Manner of suing forth that Pardon. The Lord Chancellor did inform the Committee, 'That the Pardon was passed with all Privacy, the King commanding him to bring the Seal to Whitehall; and being there, he laid it upon the Table; whereupon his Majesty commanded the Seal to be taken out of the Bag, which his Lordship was obliged to submit unto, it not being in his Power to hinder it; and the King writ his Name upon the Top of the Parchment, and then directed to have it sealed; whereupon the Person that usually carried the Purse affixed the Seal to it.' Upon this Report from his Lordship, the Commons Resolved, 'That an humble Address be made to his Majesty, to represent the Irregularity and Illegality of the Pardon mention'd by his Majesty to be granted to the Earl of Danby, and the dangerous Consequence of granting Pardons to any Persons that lie under an Impeachment of the Commons of England. The same Day the Earl thought fit to withdraw himself.

On Tuesday, March 25, the Lords sent a Message, by Baron Littleton and Baron Thurland, to acquaint the House of Commons, That they had sent to apprehend *Thomas Earl of Danby*, both to his House here in Town, and to his House at Wimbledon; and that the Gentleman-Usher of the Black-

Rod returned their Lordships Answer, That he could not be found. Whereupon the Commons ordered, 'That a Bill be brought in to summon *Thomas Earl of Danby* to render himself to Justice by a certain Day therein limited, or in default thereof, to attaint him. On Thursday, March 27, the Lords sent down a Bill, entitled, *An Act for banishing and disabling Thomas Earl of Danby, &c.* which the Commons immediately took into Consideration; upon which Occasion Sir Francis Winnington (who had been lately remov'd from being Solicitor-General) made the following Speech.

Mr. Speaker,

THE King cannot pardon Treason against the Government, for then the Government cannot be free from evil Counsellors. Could a King have done it, would not *Belknap*, *Trefilian**, and the two *Spensers* have been * Trial I. pardon'd? A King ought to be the Sanctuary of his People from the Oppression of evil Ministers, but not the Refuge of the Enemies of the Government, and the Protector of such Arch-Traitors as *Danby*. If *Danby* be pardon'd, then the Popish Lords in the Tower may be, and the Jesuits in *Newgate* likewise.

Is this the way to secure the Laws, and the Protestant Religion? The King hath a Limited Power, or else it is not Legal; his Limitation then is for the Good and Benefit of the People. But is *Shrouding* an open and notorious Traitor, the Minister of the present Mischief, and the common Centre, in which all the Lines of Confusion do meet; is that, I say, for the Good of the People? Prerogative is to abate rigorous Justice, not to evade and destroy it. If Ministers may be pardon'd at the Prince's Pleasure for all the Wrongs they do the People (tho' the Prince be sworn to protect the People from those Wrongs, and is therefore Trusted and Paid) there is no Security, and our pretended Freedom and Legal Government is a mere Cheat, and we are all errant Slaves. And I say, he that speaks one Word for *Danby*, speaks two for himself. Besides, this is *Treason Impeach'd in Parliament*, therefore not pardonable but in Parliament; this is a *National and Catholick Treason*; the Life, the Root of Government is invaded: A Pardon here is so unsufferable a thing, that it ought to be placed to his Account that dares plead it, and ranked amongst the rest of his evil Counsels. The Bill preparing in the House of Lords is not his Punishment, but his Pardon, a *Salvation* by Act of Parliament. Who will be deterred by that Act, that can plead such a Precedent to escape unpunished, and can carry away Honour and Wealth, the Reward of Treason, and the poor People's Spoils; and that at such a Time as this, circumstantiated with Plots and Conspiracies, and he tardy too? If this must be, it is good, yea, meritorious, to invade Property, to betray the Kingdom, sell the People, encourage Popery, suborn Witnesses, and strangle and murder the Discoverers of the Plot.

Remember how you us'd to proceed; make him an Example for the rest; if he must live, let him survive his Glory; at least degrade him and sequester him; that is, reduce him to as small a thing as Sir *Thomas Osborn*, and as lean and indigent; leave him nothing he has got by his monstrous Actions against the Kingdom. I

am bold to say, That those Lords and Commons that agree not in this, would do the same thing, to end in the same Security.

It is a Licence to cheat the King for Five Years; if this must be, pray let there be a Clause in this Bill to pardon all Villanies and Treason against the Government whatsoever, and for Poor as well as Rich. Let not the great Rogues only escape and go unpunish'd. Was *Green, Berry, and Hill*, hanged for killing Sir *Edmund-Bury Godfrey*? and must He escape, that so vehemently discourag'd and bitterly menaced him? What Reason was there that *Groves and Ireland* should dye for being in the Plot, while he is rewarded that concealed and would have stifled it, and afterwards have father'd it upon others?

To conclude, If after all this Discovery made and proceeded in by us, this Point shall be delivered up, they will not however escape unpunished, but God will bring Deliverance another way.

The Result was, that the House came to this Resolution;

Resolved, That the Bill be rejected.

On *April 1*, the Commons pass'd a Bill for the Attainder of *Thomas Earl of Danby* of *High-Treason*, unless he should surrender himself within a Time fixt, which was sent up to the Lords by Sir *Robert Peyton*.

On *April 4*, there was a Conference between the two Houses relating to the Bill of Attainder, where the Lord Privy-Seal managed the Conference for their Lordships, and deliver'd himself to this effect, 'That the Lords chose to deliver back by Conference, rather than Message, to preserve a good Understanding, and to prevent Debate or Controversy between them: The Lords observe, That the great Affairs of this Nation are at a stand, at a time of greatest Danger and Difficulty that this Kingdom ever laboured under: That the King hath always in his Reign inclined to Mercy and Clemency to all his Subjects: Therefore to a King so merciful and compassionate, the first Interruption of his Clemency they did desire should not proceed from the two Houses, pressing the King to an Act of the greatest Severity; therefore have passed the Bill, with some Amendments, which he deliver'd.' The Commons disagreed to the Amendments made by the Lords, and drew up Reasons to be offered in another Conference, implying, That their Lordships Amendments had wholly altered the Nature of their Bill, and from a Bill of Attainder had converted it into a Bill of Banishment: And at the same time *Resolved*, That an humble Address be made to his Majesty, to desire his Majesty to issue out his Royal Proclamation for the apprehending *Thomas Earl of Danby*; with the usual Penalties upon such as shall conceal him: And that his Majesty will be further pleased to give Order to the Officers of his Majesty's Household, That they take care that the said Earl of *Danby* be not permitted to reside within either of his Majesty's Palaces of *White-Hall, Somerset-House, and St. James*. And it is referred to Mr. *Powle, &c.* to prepare and draw up the same, and present it to the House to Morrow Morning, which was done accordingly the next Day, and presented to the King.

The same Day the Commons had another Conference with the Lords, upon the Earl of *Danby's* Case, where the Lord *Huntington* managed the Conference, and what he deliver'd was to this effect; 'The Lords have desired this Conference with the Commons, not so much to argue and dispute, as to mitigate and reconcile: They have already observed, that the Debate of this Bill hath given so long and so great an Obstruction to publick Business, and therefore they desire you to believe, that that is the Reason which hath chiefly prevailed with their Lordships in a Matter of this Nature; and upon this Ground it is, that if a Way may be found to satisfy and secure the publick Fears, by growing less than the Bill you have proposed, the Lords do not think it adviseable to insist upon the utmost and most rigorous Satisfaction, to prevent Justice, which might be denied. To induce you to this Compliance, the Lords do acknowledge, that Banishment is so far from being the legal Judgment in Case of High-Treason, that it is not the legal Judgment in any Case whatsoever, since it can never be inflicted but by the Legislative Authority: But they see no Reason why the Legislative Authority should always be found to act to the utmost Extent of its Power; for there may be a prudential Necessity sometimes of making Abatements, and it might be of fatal Consequence if it should not be so. And the Lords, to remove all Jealousies of the Precedents of this kind, do declare, That nothing which hath been done in the Earl of *Danby's* Case shall be ever drawn into Example for the time to come, and will so enter it upon their Journal. And thereupon their Lordships insist upon their Amendments so far, as to exclude all Attainders; and do promise themselves the Commons will in this Point comply with their Lordships, who do again assure them, That their Resolutions are grounded only upon their Tendernefs and Consideration of the Publick.' There was another Conference on this Subject-Matter, *April 12*; upon which the Commons again resolved to adhere to their Bill, and to disagree to the Amendments made by the Lords: Upon which the Bill of Attainder did at last pass both Houses. Upon this the Earl of *Danby* surrendered himself, and Sir *Edward Carteret*, Usher of the Black-Rod, on *April 16*, gave the House of Lords an Account, that the Earl of *Danby* had the last Night render'd himself to him, and was in his Custody. 'Their Lordships ordered him to be brought to their Bar, where kneeling, and then standing up, the Lord Chancellor let him know, that he stood impeached by the Commons; and that, upon his withdrawing himself, a Bill of Attainder had passed the two Houses; by which, however, he had Time given him to come in, and make his Defence. — The Earl of *Danby* excused his not appearing sooner, declared his Innocency, and made several Petitions to the House, and then was ordered to withdraw. And being called in, and brought to the Bar again, the Lord Chancellor acquainted him, that their Lordships would allow him Time to give in his Answer to the Articles of his Impeachment, till the first Day of the Sitting of the House after *Easter*; That if any further Charge be put in against him, he shall have further

‘ further Time to answer; That he shall have
‘ Counsel assigned him, and shall have Liberty
‘ to make use of Records, and that his Witnesses
‘ shall be summoned. — Upon which he with-
drew, and by Order of the House was commit-
ted to the Tower.

On April 25, the Earl was brought from the Tower to the Bar of the Lords House, where he delivered in Writing his Plea to the Articles of his Impeachment, which was as follows.

*The PLEA of the Earl of DANBY, late
Lord High Treasurer of England,
to the ARTICLES of IMPEACH-
MENT, and other High Crimes
and Misdemeanours, and Offences,
exhibited against him by the Name
of THOMAS Earl of DANBY,
Lord High Treasurer of England.*

THE said Earl for Plea, faith, and humbly offereth to your Lordships, as to all and every the Treasons, Crimes, Misdemeanours and Offences, contained or mentioned in the said Articles, That after the said Articles exhibited, namely, the first of March, now last past, the King's most Excellent Majesty, by his most Gracious Letters-Patents of Pardon, under his Great Seal of England, bearing Date at Westminster the said first Day of March, in the One and Thirtieth Year of his Majesty's Reign; and here, into this most High and Honourable Court, produced under the said Great-Seal:

Of His special Grace, certain Knowledge, and meer Motion, hath Pardoned, Remised and Released to him, the said Thomas Earl of Danby, all, and all manner of Treasons, Misprisions of Treasons, Insurrections, Rebellions, Felonies, Exactions, Oppressions, Publications of Words, Misprisions, Confederacies, Concealments, Negligences, Omissions, Offences, Crimes, Contempts, Misdemeanors and Trespasses whatsoever, by himself alone, or with any other Person or Persons, or by any other, by the Command, Advice, Assent, Consent, or Procurement of him the said Thomas Earl of Danby, advised, committed, attempted, made, perpetrated, concealed, committed, or omitted, before the 27th Day of February then and now last past, being also after the Time of the said Articles exhibited, altho' the said Premises, or any of them did, or should touch or concern the Person of his said Majesty, or any of his Publick Negotiations whatsoever; and also his Majesty's Affairs with Foreign Embassadors sent to his said Majesty, or by not rightly prosecuting his Majesty's Instructions and Commands to his Embassadors, residing on his Majesty's behalf in Foreign Parts.

And as to all and singular Accessaries to the said Premises, and every of them, altho he the said Thomas Earl of Danby were, or were not of the said Premises, or any of them, Indicted, Impeached, Appealed, Accused, Convicted, Adjudged, Out-law'd, Condemned, or Attainted; and all and singular Indictments, Impeachments, Inquisitions, Informations, Exigents,

Judgments, Attainders, Out-lawries, Convictions, Pains of Death, Corporal Punishments, Imprisonments, Forfeitures, Punishments, and all other Pains and Penalties whatsoever, for the same, or any of them; and all, and all manner of Suits, Complaints, Impeachments and Demands whatsoever, which his said Majesty, by reason of the Premises, or any of them, then had, or for the future should have, or his Heirs, or Successors, any ways could have afterwards against him the said Thomas Earl of Danby: And also Suit of his Majesty's Peace, and whatsoever to his Majesty, his Heirs, or Successors, against him the said Earl of Danby, did, or could belong, by Reason or Occasion of the Premises, or any of them. And his Majesty hath thereby given and granted his firm Peace to the said Thomas Earl of Danby. And further, his Majesty willed and granted, that the said Letters-Patents, and the said Pardon and Release therein contained, as to all the things therein pardoned and released, should be good and effectual in the Law, altho the Treasons, Misprisions of Treason, Insurrections, Rebellions, Felonies, Exactions, Oppressions, Publications of Words, Misprisions of Confederacies, Concealments, Negligences, Omissions, Offences, Crimes, Contempts, Misdemeanors and Trespasses were not certainly specified. And notwithstanding the Statute in the Parliament of the Lord Richard the Second, late King of England, in the 13th Year of his Reign, made and provided. And notwithstanding the Statute in the Parliament of the Lord Edward the Third, in the Fourteenth Year of his Reign, made and provided, or any other Statute, Act, or Ordinance to the contrary thereof made and provided. And moreover, his said now Majesty, by his said Letters-Patents, of his further Grace, did firmly command all and singular Judges, Justices, Officers, and others whomsoever, That the said free and general Pardon of his said Majesty, and the general Words, Clauses, and Sentences above-said, should be construed, expounded, and adjudged in all his said Majesty's Courts, and elsewhere, in the most beneficial, ample and benign Sense.

And for the better and more firm Discharge of the said Earl, of and from the Crimes and Offences aforesaid, according to the true Intents of his Majesty, and in such beneficial Manner and Form to all Intents and Purposes whatsoever, as if the said Treasons, Crimes, Offences, Concealments, Negligences, Omissions, Contempts and Trespasses aforesaid, and other the said Premises, by apt, expresse and special Words had been remitted, released and pardoned. And that the said Letters-Patents of Pardon, and the Release and Pardon therein contained, shall be pleaded and allowed in all and every his Majesty's Courts, and before all his Justices whatsoever, without any Writ of Allowance, any Matter, Cause, or Thing whatsoever in any ways notwithstanding, as by the said Letters-Patents themselves more at large appeareth; which said Letters-Patents follow in these Words,

CAROLUS Secundus, Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos presentes literæ nostræ pervenerint, Salutem, Sciatis, quod Nos pro diver-

sis bonis Causis & Considerationibus nos ad hoc specialiter movent. de Gratia nostra speciali, ac ex certa scientia & mero motu nostris, Pardonavimus & Relaxavimus, &c.

And the said Earl doth averr, That he the said Thomas Earl of Danby, in the said Articles named, is the said Thomas Earl of Danby in the said Letters-Patents of Pardon here produc'd, likewise named. Which Pardon the said Earl doth rely upon, and pleaded the same in Bar of the said Impeachment, and in Discharge of all the Treasons, Crimes, Misdemeanors and Offences contain'd, or mention'd in the said Articles of Impeachment, and every of them; and this the said Earl is ready to averr.

Whereupon he humbly prays the Judgments of your Lordships, and that his Majesty's most Gracious Pardon aforesaid may be allowed: And that he the said Earl, by vertue hereof, may be (from all the said Articles of Impeachment, and all and every of the Treasons and Crimes therein alledg'd against him) acquitted and discharged.

A Copy of the Pardon of THOMAS Earl of DANBY.

CAROLUS Secundus, Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos præsentis literæ nostræ, Pervenerint, Salutem. Sciatis, quod Nos pro diversis bonis Causis & Considerationibus Nos ad hoc specialiter moventibus, de Gratia Nostra speciali ac ex certa scientia & mero motu nostris, Pardonavimus, Remissimus & Relaxavimus, ac per præsentis pro Nobis, Heredibus & Successoribus nostris, Pardonamus, Remittimus & Relaxamus prædicto, & perquam fideli Consanguineo & Consiliario nostro Thomæ Comiti Danbii, omnes & omnimodas Proditiones, Crimina læsæ Majestatis, Misprisiones, Proditionum, Insurrectiones, Verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentias, Omissiones, Offensas, Crimina Contemptus, Malefacta & Transgressiones quæcunque, per se solum seu cum aliqua alia persona, vel aliquibus aliis personis, aut per aliquem alium, sive aliquos alios, ex præcepto, advisamento, assensu, consensu, seu procuratore ejusdem Thomæ Comitis Danbii, advisata, præcepta, attempta, facta, perpetrata, concealata, commissa, seu omissa, ante 27 diem Februarii jam ultim. præteritum, licet præmissa, vel eorum aliqua, vel aliquod, tangunt vel tangat personam vel negotiationes Nostras Publicas qualescunque, necnon transactiones nostras cum Forensicis Legatis ad nos missis, vel non rite prosequendo Instructiones & Mandata Nostra Legatis Nostris, in partibus extra marinis, ex parte Nostra resident. ac etiam omnia & singula accessaria præmissorum & cujuslibet eorum, licet idem Thomas Comes Danbii de præmissis vel aliqua præmissorum indictatus, impetitus, appellatus, restatus, convictus, adjudicatus, utlegatus, condemnatus vel attinctus, Existit vel non Existit, ac omnia & singula Indictamenta, Impetitiones, Inquisitiones, Informationes, exigenda judicia, attincta, utlegaria, Convictiones, Executiones, Pœnas mortis, Pœnas corporales, Imprisonamenta, foris factura, Punitioes, & omnes alias Pœna, & Pœnalitates quascun-

que, pro eisdem vel eorum aliquo, ac omnia & omnimoda, Sectas, Querelas, Impetitiones, & Demandas quæcunque, quæ Nos versus ipsum Thomam Comitem Danbii, ratione præmissorum vel eorum alicujus, habuimus, habemus, seu in futurum habere poterimus, aut Heredes, seu Successores Nostris, ullo modo habere poterint, in futuro, sectamque pacis Nostræ, ac quæ ad Nos Heredes & Successores Nostris versus ipsum Thomam Comitem Danbii pertinet, seu pertinere poterit, ratione seu occasione præmissorum, seu eorum aliquorum vel alicujus, ac firmam pacem Nostram. Et inde damus & concedimus per præsentis, & ulterius volumus, & concedimus, Quod hæc literæ nostræ, ac hæc nostra Pardonatio, Remissio, Relaxatio in eisdem contenta, quoad omnia & singula superius pardonata, remissa, & relaxata, bonæ & effectuales in lege sint, & erint, licet Proditiones, Crimina læsæ Majestatis, Misprisiones Proditionum, Insurrectiones, Rebelliones, Fellonia, Exactiones, Oppressiones, verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentia, Omissiones, Offensa, Crimina Contemptus, Malefacta & Transgressiones antedicta, Minus certe specifac. existunt. Et non obstante Statuto Parlamento Dom. Ricardi Secundi, nuper Regis Angliæ, Anno 13 Regni sui edito & proviso. Et non obstante Statuto in Parlamento Dom. Edwardi Tertii, nuper Regis Angliæ, Anno Regni sui 14 edito & proviso; Aut aliquo alio Statuto, Actu vel Ordinatione, in contrarium inde editis & provis. Et ulterius de uberiori Gratia Nostra firmiter Præcipimus omnibus & singulis Judicibus, Justiciariis, vel aliis quibuscunque, Quod hæc præsentis Litera & Generalis Pardonatio nostra & generalia Verba, Clausule & Sententiæ supradicta, construantur, exponentur & adjudicentur in omnibus curiis nostris & alibi, in beneficentissimo, amplissimo, & benignissimo sensu, & pro maxima & firmiori exoneratione prædicti Thomæ Comitis Danbii de & à criminibus & offensis prædictis secundum veram intentionem nostram, & in tam beneficali modo & forma & ad omnes intentionis & proposita, prout si prædictæ Proditiones, Crimina læsæ Majestates, Misprisiones, Proditionum, crimina Offensa, Misprisiones, Concelamenta, Negligentia, Omissiones, Contemptus, & Transgressiones prædictæ ac cetera præmissa per apta expressa, & specialia verba Pardonata, Remissa, & Relaxata fuissent. Et quod hæc Literæ Patentes, Remissio, Relaxatio, & Pardonatio, omnia in eisdem contenta, in quibuscunque curiis & coram quibuscunq; Justiciariis nostris, placitentur & allocenter, sine aliquo Breve de allocatione, aliqua re, causa vel materia quacunq; in aliquo non obstante. In cujus rei Testimonium has literas nostras fieri fecimus Patentes. Teste meipso apud Westmonasterium 1 die Martii, Anno Regni nostri 31.

CHARLES.

CHARLES the Second, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. To all to whom these our Letters-Patents shall come, sendeth Greeting. Know ye, that we for divers good Causes and Considerations, Us hereunto especially moving, have out of our special Favour, certain Knowledge and meer Motion of our own, pardoned, remitted and released, and by these Presents for Us, our Heirs and Successors, do pardon, remit and release to our Well-beloved and Right Trusty Cousin and Counsellor, Thomas Earl of Danby, all, and all manner

manner of Treasons, as well High-Treason, as Misprisions of Treason, Insurrections, Revealing of Councils, Misprisions, Confederations, Concealments, Neglects, Omissions, Offences, Crimes, Contempts, Misdeeds and Transgressions whatsoever, by himself alone, or with any other Person, or Persons, or by any other, or others, by the Command, Advice, Assent, Consent, or Procurement of the said *Thomas Earl of Danby*, advised, commanded, attempted, done, performed, concealed, committed, or omitted, before the 27th Day of *February*, now last past. Although the Premises, or any of them, touch, or may touch Our Person, or our publick Negotiations whatsoever, or our Transactions with Foreign Embassadors unto Us sent, or for not right following our Instructions and Mandates to our own Embassadors resident on Our Behalf in Foreign Parts beyond the Seas; And also all and singular Accessaries to the Premises, or any of them, altho' the said *Thomas Earl of Danby* be indicted, impeached, appealed, arrested, convict, adjudged, or as Embassador condemned, or be, or be not attainted of the Premises, or any of them; and all and every Indictments, Impeachments, Inquisitions, Informations, Judgments to be required, Attainders, Outlawries, Convictions, Penalties of Death, Corporal Punishments, Imprisonments, Forfeitures, Sufferings, together with all other Pains and Penalties whatsoever, for the same, or any of them, and all, and all manner of Suits, Complaints, Impeachments and Demands whatsoever, which We, against the said *Thomas Earl of Danby*, by reason of the Premises, or any of them, have had, now have, or hereafter may have, or which our Heirs or Successors, in any manner may have hereafter, together with any Suit for Breach of our Peace, which to Us, our Heirs, or Successors, against the said *Thomas Earl of Danby* doth, or may belong, by Reason or Occasion of the Premises, of some, or any of them; We do for ever indemnifie him. Moreover we give and grant by these Presents, and it is our further Will and Pleasure, that these our Letters, and this our Pardon, Remission and Release therein contained, as to all and singular the things above pardoned, remitted and released, be and shall be good and effectual in Law, altho' the Treasons, High-Treasons, Misprisions of Treasons, Insurrections, Rebellions, Felonies, Extortions, Oppressions, Betraying of Councils, Confederacies, Concealments, Negligencies, Omissions, Offences, Crimes, Contempts, Misdeemeanours and Transgressions aforesaid, be not fully specified. And notwithstanding the Statute of *Richard the Second*, late of *England* King, in the 13th Year of his Reign made and provided. And notwithstanding the Statute by the Parliament of *Edward the Third*, late King of *England*, in the 14th Year of his Reign made and provided, or any other Statute, Act, or Ordinance to the contrary heretofore publish'd and provided. And moreover of our abundant Grace, We do strictly command all Judges, Justices, or others whatsoever, that this present Letter, with our General Pardon, and General Words, Clauses, and Sentences aforesaid, shall be construed, expounded and adjudged in all our Courts, and elsewhere, in the most beneficial, most ample, and most favourable Sense, and for the greatest and firmest Discharge of the aforesaid *Thomas*

Earl of Danby, of and from the Crimes and Offences aforesaid, according to our true Intention, and in so beneficial a Manner and Form, and to all Intents and Purposes, so as if the said Treasons, High-Treasons, Misprisions of Treason, Crimes, Offences, Omissions, Contempts, Concealments, Negligence and Transgression aforesaid, and other the Premises, had been by apt, expresse and special Words, pardon'd, remitted and releas'd. And that these Letters-Patents, Remission, Release and Pardon, with all things therein contain'd, in whatsoever Courts, and before whatsoever Our Justices, shall be pleaded and allowed, without any Writ of Allowance, any Thing, Cause, or Matter whatsoever in any wise notwithstanding. In Witness whereof We have caused these Our Letters-Patents to be made. Witness My self at *Westminster*, the First Day of *March*, in the 31st Year of Our Reign.

When the Plea and Pardon were read, the Earl withdrew, and was carried back to the Tower.

On *April* the 25th a Message was brought from the Lords, 'That *Thomas Earl of Danby* had this Day appeared in Person at the Bar of the House of Lords, and had put in his Plea, which the Lords have sent down, desiring it may be return'd with all convenient Speed.' Hereupon the House of Commons appointed a Committee to examine and peruse the Plea of the Earl of *Danby*.

On *April* the 28th, the Committee made this Report, '1. We find no Precedent that ever any Pardon was granted to any Person Impeached by the Commons of High-Treason, or other High Crimes, the Impeachment depending. 2. As to the Manner of the passing the Earl of *Danby's* Pardon, it hath been formerly reported to the House, and the Committee refer themselves to that Report, 3. That by what Means it was obtained, the Time allowed the Committee hath been so short, that we cannot as yet discover the Advisers or Promoters thereof, any farther than what is mentioned in the said Report relating to the Lord Chancellor. Resolved, That a Message be sent to the Lords, to desire their Lordships to demand of the Earl of *Danby*, Whether he will rely upon, and abide by the Plea of his Pardon? Accordingly the next Day the Earl was again brought to the Bar of the Lords House, where kneeling, and then standing up, the Lord Chancellor acquainted him, That the Commons had returned to their Lordships the Plea delivered by him at the Bar of their House on the 25th Instant, with a Desire that their Lordships would ask him, Whether he will rely upon, and abide by his said Plea? The Earl praying Time to answer, their Lordships allow'd him till *Saturday* next, and then he withdrew, and was conducted back to the Tower. He afterwards returned Answer, That he relied on his Pardon. To which Plea the Commons put in a Replication; and on *May* the fifth Resolved, 'That it was the Opinion of that House, That the Pardon pleaded by the Earl of *Danby* was illegal and void, and ought not to be allow'd in Bar of an Impeachment. Whereupon the Speaker with the House went up to the Lords Bar, and demanded Judgment against the Earl.

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After this, the Commons understanding that the Lords would admit the Earl of *Danby* to have the Validity of his Pardon pleaded at their Bar, they *Resolved*, ' That no Commoner whatsoever should presume to maintain the Validity of the Pardon pleaded by the Earl of *Danby*, without the Leave of this House first had; and that the Persons so doing should be accounted Betrayers of the Liberties of the Commons of *England*.

Afterwards a Difference arising between the two Houses, about the Bishops Right of Voting in any Part (tho' preliminary) of a Trial for Treason, the Commons refus'd to proceed in the Affair; the Narrative and Reasons whereof they deliver'd to the Lords at a Conference on *Monday, May 26*, which were as follow.

The Commons have always desir'd, that a good Correspondence may be preserv'd between the two Houses.

There is now depending between your Lordships and the Commons a Matter of the greatest Weight; in the Transactions of which, your Lordships seem to apprehend some Difficulty, in the Matters proposed by the Commons.

To clear this, the Commons have desir'd this Conference; and do readily acknowledge, That any Change in Judicature in Parliament, made without Consent in full Parliament, to be of pernicious Consequence, both to his Majesty and his Subjects; and conceive themselves oblig'd to transmit to their Posterity, all the Rights which of this kind they have received from their Ancestors, by putting your Lordships in mind of the Progress that has already been between the two Houses, in relation to Propositions made by the Commons, and the Reasonableness of the Propositions themselves; they doubt not to make it appear, that their Aim has been no other, than to avoid such Consequences, and preserve that Right; and that there is no Delay of Justice on their Part. And to that End, do offer to your Lordships the ensuing Reasons and Narrative: That the Commons in bringing the Earl of *Danby* to Justice, and in Discovery of that execrable and traitorous Conspiracy, have labour'd under many great Difficulties, is not unknown to your Lordships.

Nor is it less known to your Lordships, that upon the Impeachment of the House of Commons against the Earl of *Danby* for High-Treason, and other high Crimes, Misdemeanours and Offences, even the common Justice of Sequestering him from Parliament, and forthwith committing him to safe Custody, was then requir'd by the Commons, and denied by the House of Peers, though he then sat in their House; of which your Lordships have been so sensible, that at a free Conference the 10th of *April* last, your Lordships declared, That it was the Right of the Commons, and well warranted by Precedents of former Ages, That upon an Impeachment of the Commons, a Peer so impeach'd ought of right to be order'd to withdraw, and then to be committed. And had not that Justice been denied to the Commons, a great Part of this Session of Parliament, which hath been spent in framing and adjusting a Bill, for causing the Earl of *Danby* to appear, and to answer that Justice from which he was fled, had been saved, and

had been employed for the Preservation of his Majesty's Person, and the Security of the Nation; neither had he had the Opportunity of procuring for himself that illegal Pardon, which bears Date the first of *March* last past, and which he hath now pleaded in Bar of his Impeachment: Nor of wasting so great a Proportion of the Treasure of the Kingdom, as he hath done since the Commons exhibited their Articles of Impeachment against him.

After which Time thus lost, by reason of the Denial of that Justice, which of Right belong'd to the Commons upon their Impeachment, the said Bill being ready for the Royal Assent, the said Earl then rendred himself; and by your Lordships Order of the Sixteenth of *April* last, was committed to the *Tower*. After which he pleads the said Pardon; and being press'd, did at length declare, He would rely upon, and abide by that Plea; which Pardon pleaded, being illegal and void, ought not to bar or preclude the Commons from having Justice upon the Impeachment; They did thereupon, with their *Speaker*, on the Fifth of *May* Instant, in the Name of themselves and all the Commons of *England*, demand Judgment against the said Earl, upon their Impeachment; not doubting, but that your Lordships did intend in all your Proceedings upon the Impeachment to follow the usual Course and Method of Parliament.

But the Commons were not a little surpriz'd by the Message from your Lordships, deliver'd them on the Seventh of *May*; thereby acquainting them, That as well the Lords Spiritual as Temporal had order'd, That the Tenth of *May* Instant should be the Day for hearing the Earl of *Danby*, to make good his Plea of Pardon. And that your Lordships had address'd to his Majesty for naming of a Lord High Steward in the Case of the Earl of *Danby*.

Upon Consideration of this Message, the Commons found, that the admitting of the Lords Spiritual to exercise Jurisdiction in these Cases, was an Alteration of the Judicature in Parliament; and that if a Lord High Steward should be necessary upon Trial on Impeachments of the Commons, the Power of Judicature in Parliament, upon Impeachments, might be defeated, by suspending or denying a Commission to constitute a Lord High Steward.

And that the said Day of Trial appointed by your Lordships, was so near to the Time of your said Message, that these Matters, and the Method of proceeding upon the Trial, could not be adjusted by Conference betwixt the two Houses, before the Day so nominated. And consequently, the Commons could not then proceed to Trial, unless the Zeal which they have for speedy Judgment against the Earl of *Danby* should induce them at this Juncture, both to admit the Enlargement of your Lordships Jurisdiction, and to sit down under these or any Hardships, though with the Hazard of all the Commons Power of Impeaching for time to come, rather than the Trial should be deferr'd for some short time, whilst these Matters might be agreed on and settled.

For reconciling Differences in this great and weighty Matter, and for saving that Time, which would necessarily have been spent in Debates and Conferences betwixt the two Houses, and

and for expediting the Trial, without giving up the Power of Impeachment, or rendring it ineffectual.

The Commons thought fit to propose to your Lordships, that a Committee of both Houses might be appointed for this Purpose. At which Committee (when agreed to by your Lordships) it was then agreed, that the Proposition as to the Time of the Trial, should be the last thing consider'd. And the Effect of this Agreement stands reported upon your Lordships Books.

After which, the Commons communicated to your Lordships, by your Committee, a Vote of theirs, (*viz.*) That the Committee of the Commons should insist upon their former Vote of their House, That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower, and that when that Matter would be settled, and the Method of Proceedings adjusted, the Commons should then be ready to proceed upon the Trial of the Pardon of the Earl of *Danby*, against whom they had before demanded Judgment; but the Commons as yet received nothing from your Lordships towards an Answer of that Vote, save that your Lordships have acquainted them, that the Bishops have ask'd Leave of the House of Peers, that they might withdraw themselves from the Trial of the Five Lords, with Liberty of entring their usual Protestation.

And tho' the Commons Committee have almost daily declared to your Lordships Committee, that that was a necessary Point of Right to be settled before the Trial, and offered to debate the same; your Committee always answered, That they had not any Power from your Lordships, either to confer upon, or to give any Answer concerning that Matter.

And yet your Lordships, without having given the Commons any satisfactory Answer to the said Vote, or permitting any Conference or Debate thereupon, and contrary to the said Agreement, did, on *Thursday* the 22d of *May*, send a Message to the Commons, declaring, That the Lords Spiritual as well as Temporal, had order'd, that the 27th of this Instant *May* be appointed for the Trial of the Five Lords.

So that the Commons cannot but apprehend that your Lordships have not only departed from what was agreed on, and in effect laid aside that Committee which was constituted for preserving a good Understanding betwixt the two Houses, and better Dispatch of the weighty Affairs now depending in Parliament, but must also needs conclude, from the Message, and the Votes of your Lordships on the 14th of *May*, that the Lords Spiritual have a Right to stay and sit in Court, till the Court proceeds to the Vote of Guilty, or Not Guilty. And from the Bishops asking Leave (as appears by your Lordships Books two Days after your said Vote) that they might withdraw themselves from the Trial of the said Lords, with Liberty of entring their usual Protestation, and by their persisting still to go on and give in their Votes Proceeding upon the Impeachment; that their Desire of Leave to withdraw at the said Trial, is only an evasive Answer to the before-mention'd Vote of the Commons, and chiefly intended as an Argument for a Right of Judicature in Proceedings upon Impeachments, and as a Reserve to Judge upon the Earl of *Danby's* Plea of Pardon, and upon

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these, and other like Impeachments, although no such Power was ever claim'd by their Predecessors, but is utterly denied by the Commons. And the Commons are the rather induced to believe it so intended, because the very asking Leave to withdraw, seems to imply a Right to be there, and that they cannot be absent without it.

And because by this way they should have it in their Power, whether or no for the Future, either in the Earl of *Danby's* Case, or any other, they will ever ask Leave to be absent; and the Temporal Lords a like Power of denying Leave, if that should once be admitted necessary.

The Commons therefore are obliged not to proceed to the Trial of the Lords on the 27th of this Instant May, but to adhere to their afore-said Vote: And for their so doing, besides what hath been now and formerly by them said to your Lordships, do offer you these Reasons following:

R E A S O N S.

I.

BECAUSE your Lordships have received the Earl of *Danby's* Plea of Pardon with a very long and unusual Protestation, wherein he hath aspersed his Majesty by false Suggestions, as if his Majesty had commanded or countenanced the Crimes he stands charg'd with; and particularly suppressing and discouraging the Discovery of the Plot, and endeavouring to introduce an arbitrary and tyrannical Way of Government; which remains as a Scandal upon Record against his Majesty, tending to render his Person and his Government odious to his People; against which it ought to be the first and principal Care of both Houses to vindicate his Majesty, by doing Justice upon the said Earl.

II.

The setting up a Pardon to be a Bar of an Impeachment, defeats the whole Use and Effect of Impeachments; and should this Point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future: Whereby the chief Institution for the Preservation of the Government (and consequently the Government it self) would be destroy'd. And therefore the Case of the said Earl (which in consequence concerns all Impeachments whatsoever) ought to be determin'd before that of the said Five Lords, which is but their particular Case.

And without resorting to many Authorities of greater Antiquity, the Commons desire your Lordships to take notice (with the same Regard they do) of the Declaration which that Excellent Prince, King *Charles* the First of blessed Memory, made in this Behalf, in his Answer to the Nineteen Propositions of both Houses of Parliament: Wherein, stating the several Parts of this regulated Monarchy, he says; *The King, the House of Lords, and the House of Commons, have each particular Privileges:* And among those which belong to the King, he reckons *Power of Pardoning*. After the enumerating of which, and other his Prerogatives, his said Majesty adds

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thus:

thus: *Again, That the Prince may not make use of this high and perpetual Power, to the Hurt of those for whose Good he hath it, and make use of the Name of Publick Necessity, for the Gain of his Private Favourites and Followers, to the Detriment of his People; The House of Commons (an excellent Conserver of Liberty, &c.) is solely intrusted with the first Propositions concerning the Levies of Monies, and the Impeaching of those who for their own Ends, though countenanced by any surreptitiously-gotten Command of the King, have violated the Law, which He is bound (when He knows it) to protect, and to the Protection of which they were bound to advise Him, at least not to serve him in the contrary. And the Lords being trusted with a Judicatory Power, are an excellent Skreen and Bank between the Prince and People, to assist each against any Incroachments of the other; and by just Judgments to preserve that Law, which ought to be the Rule of every one of the Three, &c. Therefore the Power legally placed in both Houses, is more than sufficient to prevent and restrain the Power of Tyranny, &c.*

III.

Until the Commons of *England* have Right done them against this Plea of Pardon, they may justly apprehend, that the whole Justice of the Kingdom, in the Case of the Five Lords, may be obstructed and defeated by Pardons of like Nature.

IV.

An Impeachment is virtually the Voice of every particular Subject of this Kingdom, crying out against an Oppression, by which every Member of that Body is equally wounded; And it will prove a Matter of ill Consequence, That the Universality of the People should have Occasion ministred and continued to them, to be apprehensive of utmost Danger from the Crown, from whence they of Right expect Protection.

V.

The Commons exhibited Articles of Impeachment against the said Earl, before any against the Five other Lords, and demanded Judgment upon those Articles: Whereupon, your Lordships have appointed the Trial of the said Earl to be before that of the other Five Lords; Now your Lordships having since inverted that Order, gives a great Cause of Doubt to the House of Commons, and raises a Jealousy in the Hearts of all the Commons of *England*, that, if they should proceed to the Trial of the said Five Lords in the first Place, not only Justice will be obstructed in the Case of those Lords, but that they should never have Right done them in the Matter of this Plea of Pardon, which is of so fatal Consequence to the whole Kingdom, and a new Device to frustrate publick Justice in Parliament.

Which Reasons and Matters being duly weighed by your Lordships, the Commons doubt not but your Lordships will receive Satisfaction concerning their Propositions and Proceedings; and will agree, That the Commons ought not, nor can, without deserting their Trust, depart from their former Vote communicated to your Lordships; *That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower; and when that Matter shall be settled, and*

the Methods of Proceedings adjusted, the Commons shall then be ready to proceed upon the Trial of the Earl of Danby.

May 27, 1679.

The Narrative and Reasons delivered at the Conference Yesterday with the House of Commons were again read, and after a long Debate, the Vote of this House, dated the 13th of May Instant, and the Explanation thereupon, dated the 14th Instant, were read, and the Question was put, Whether to insist upon these Votes concerning the Lords Spiritual, and it was resolv'd in the Affirmative.

DISSENTERS Present.

Buckingham.
Huntingdon.
Kent.
Shaftsbury, P. R.
Bedford.
Winchester.
Rochester.
North and Grey.
Suffolk.
J. Lovelace.
Townshend.
Herbert.
Gray.
Stamford.
Newport.
Say and Seal.
P. Wharton.
Leicester.
Scarfsdale.
Strafford.
Derby.
Delamer.
Howard.
Paget.
Clare.
Salisbury.
Falconberg.
Windsor.

The same Day the King came to the House and prorogued the Parliament, and soon after dissolv'd it, and a new one call'd, which was not suffer'd to sit.

Proceedings in the KING'S BENCH, upon the Earl of DANBY's Motion for Bail.

THE Earl of *Danby* having been confin'd for above three Years, and no Parliament sitting, to which he could apply for his Liberty, brought an *Habeas Corpus* in the *King's-Bench*, in order to be Bail'd; which came to be argued May 27, 1682, *Easter Term*. 34 Car. II.

Immediately after his Lordship was in Court, the Return of the *Habeas Corpus* was read, and Mr. *Saunders* (of Council for his Lordship) did move the Court, That whereas in *Easter-Term*, 1681, the Court had dismiss'd his Lordship with a *Declaration*, that they would take into their Consideration, till the *Term* following, what Answer they would make to what had then been said to them by his Lordship and his Council; he there-

therefore moved, That they might now accordingly know the Pleasure of the Court, and that they would be pleased to grant Bail to the Earl of *Danby*.

But before the said Mr. *Saunders* could well have pronounced the foregoing Words, the Lord Chief Justice *Pemberton* did reprimand the said Mr. *Saunders*, for having offer'd to impose upon the Court what had never been said by them; saying, That there was no such thing as their having said, at any time, that they would take the Earl of *Danby's* Case into farther consideration; for that they had told my Lord of *Danby* the last time, That it was not in their Power to give him any Relief at all; and that he therefore wonder'd, and must extreamly blame Mr. *Saunders*, for moving the Court again in a Matter to which they had already given such a positive Answer; and could not but admire, that he should so misinform his Client, as to give him any such Advice, which could only be to the giving both him and the Court an unnecessary Trouble.

To all which Mr. *Saunders* replied, That he humbly begg'd his Lordship's Pardon, if he had mistaken him; for that truly he did understand, that his Lordship had declar'd that he would take time to consider of my Lord of *Danby's* Case till the following Term; but that if it was a Mistake, he must beg his Lordship's Pardon; and did believe the rest of his Brethren took it so, as well as himself.

The Earl of *Danby* then spoke himself for about two Hours, and said to the Lord Chief Justice, That he met with an Objection, which he did not expect; and that he must beg his Lordship's Pardon, not to let that pass for a Mistake which his Council had affirm'd, of the Court's having taken Time to consider of his Case, till the next Term after that of his Lordship's being last there; for that his Lordship did therein appeal both to the rest of the Judges, which were upon the Bench with him, and to all other Persons whatsoever, who were then in Court, whether his Lordship had not said, that if he (meaning the Earl of *Danby*) pleased, they would take time to consider of his Case till the next Term; and he did declare upon his Honour, that those Words had been pronounced to him by my Lord Chief Justice himself, and that he did then accept it as a Favour from the Court, and did return his humble Thanks to them for it: Insomuch, that his Lordship said, That he confessed he was very much surprized to meet with such an Introduction at the first entrance into a Matter which he conceived to be of so great Weight, as he doubted not but he should make this Case of his appear to be.

But yet, that it did give him Reason to believe, that he came with some Prejudice before his Lordship, and that they were so much prepossessed in this Matter, that if he did not think every Man in *England* would find that he might be concern'd in what Resolution should be given in this Case, as well as himself, he should scarcely have ventured upon it, though he had lain so long under so unreasonable a Confinement, as he took himself to do; and therefore he must desire their Lordships Patience and Attention to what he had to offer in his own Behalf, and (as he believed) in the Behalf of the *Liberty of the Subject* in general.

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His Lordship, directing himself to the Lord Chief Justice, said, It was just now a Year since he was before his Lordship in this Court; and that he was assured, that his Lordship did then please to tell him, That they would take Time to the following Term to consider of what they should think fit to do in his Lordship's Case: But he said, that Care was then taken the first Day of that following Term to prevent his coming there, by an *Indictment* which was brought against him (*ready cut and dry'd*, as he had been told) for his being privy to the Murther of Sir *Edmund-Bury Godfrey*.

He said he did not wonder at it, because there was nothing so *black*, which had not been Invented to be said against him; but, he confessed, he did wonder to hear, that such an Evidence of an *Irish Papist* (who was upon Trial for his own Life, and upon an *Hear-say* only) should be believed against an *English Protestant*, by a Jury of *English-Men*, and some of them *Gentlemen*; but yet that Wonder had been much abated, when he heard that the same *Fore-man* had been as favourable in the Case of a *Notorious Murder*, as he had been ready to find that *Murder* against him, which had not the least *Probability* in it, and which no Man could think of with more Detestation both of the *Fact*, and of any *Man* that could have an hand in it, than himself.

However, this prevented him from coming there again, till after Notice had been given to Sir *Edmund-Bury Godfrey's* Brothers, to know if they had any thing further to say against him on that Matter, and that he could get himself discharg'd from that *Indictment*; and as to the Wretch himself, *Fitz Harris*, (who had accused him) he did Two Days before his Death send the *Minister* of the *Tower* to his Lordship, to beg of him that, before he died, his Lordship would forgive him his having sworn falsely against him; and he did confess, that he was put upon it to *Save his own Life*; and did say by *whom* he was prompted to it. And whether it proceeded from those Men, who might think their Villanies discovered, and so might fear they could no way be safe but by putting that Matter yet farther against him, or from what other Cause, his Lordship could not tell; but (if his Lordship was not misinformed) he did hear that *Some Men* were still endeavouring to get something more of the same Nature to be sworn against him, if they can contrive how to make their forg'd Testimonies to agree about it.

He said he thought that Time would have tired out the Malice of such *Blood-Suckers* before now, whom he had found so busy, for the first Year and half after his Imprisonment; that he was not a Week without Endeavours used by strange People to get to speak with him, and such as he had Reason often to suspect to be *Knights of the Post*; amongst whom the Story of one *Magrath*, (another *Irish-Man*) he said, was notably remarkable, in his Endeavour (under Pretence of Kindness) to have made him their *Tool*, to prove, that Sir *Edmund-Bury Godfrey* had killed himself: But he said, he had the good Fortune immediately to *detect* that Villany, as he hoped yet to live to do of *some* others; but that in the mean time he foresaw, that he was always to be a particular Object of the Malice of such Men, so long as he was left under this *Confinement*, from which he saw no Hopes to be relieved, but

by that Court, where the Law directs every *Englishman* to come for Justice that is oppress'd in his Liberty.

He said, he hoped his Lordship would forgive him for having been a little tedious on that Subject of Sir *Edmund-Bury Godfrey*, because his Reputation had been so much exposed in that Particular, and before that Court.

After his Discharge from that Indictment, he said, there seem'd to be a Probability of the Call of a *Parliament* in some short time; and whenever he could give himself the least Hopes of that, he resolv'd to trouble no other Place: But that now he had not the least Prospect of that kind; and that he had been a Prisoner above Three Years, and yet could safely swear, he was without the Knowledge to that Day, for what real Crimes he was committed; only he knew that the Name of *Treason* had been laid to his Charge, without saying wherein the *Treason* consisted.

He said he came, therefore, now to that Court (as the only proper Place for all Persons to resort to for their *Liberty*) and he was sorry, that he was put to the great Disadvantage of speaking in his own Cause. But because he saw the last time he was there, that some Fault seem'd to be found with his Council, for urging things which seem'd to relate to Matters of *Parliament* (altho upon a due Consideration of his Request, there is nothing in it which does touch their Jurisdiction) he had chosen rather to rely upon the Court's Pardoning his Defects, than put any further Hardships upon those Gentlemen, who had been his Counsel, to whom he had been more beholden, than they had been to him; for that they had undergone some unheard-of *Rebukes* already in another Place, for offering to be of Counsel with him, (though in Matters of Law) which he believed had never been heard of, but in his Case; and he hoped, that (when all his Circumstances shall have been well considered) he shall be the last *Englishman* that will ever have so many Hardships put upon him; as will appear to be thro every Part of his Case.

In the first Place he said, That he had been both Accused and Committed, without any *Oath* or *Affidavit* made against him, for any *Crime* whatever: Which had been in the Case of no other Lord but himself, and he did believe of no other Man.

Secondly, That there was no particular *Treason* mention'd in the *Articles* against him, only the Word *TRAITEROUSLY* had been applied to things which were not *Treason*, if they had been true (as was then declared by Sir *William Jones*, the King's Attorney) and he said, there were good Store of Witnesses to prove, that when it could not be maintained by Argument in the *House of Commons*, that any of the Crimes mentioned against him were *Treason*; It was answered by one of the long *Robe* there, (who would not have spared to have assigned the *Treason*, had there been any) that however they ought to give the Title of *High-Treason* to the *Articles*, for that otherwise they would dwindle to nothing when they came into the *House of Peers*. Now in the Impeachments of the other Lords (not to meddle with the Truth or Falsity of their Accusers) they were charg'd with the highest Treasons in Name, and upon *Oaths* made against them.

Thirdly, When a short Day was set by the

Lords for his being heard; and that he appeared that Day accordingly, his Counsel was then threatned if they did dare to plead Matter of Law for him: Which he said was never heard of before in any Man's Case whatsoever, nor in the worst of Times.

Fourthly, He said if all the *Articles* had been true against him, and had been *Treason*; he had his Majesty's *Pardon* (which he then shew'd to the Court, and demanded the Benefit of it) saying, That that did pardon both his Crimes (if he were Guilty of any) and his Imprisonment; and yet, that both that *Pardon* and *He* had been Prisoners together for above three Years (of which he said he durst confidently affirm, that his was the first Precedent since the Conquest.)

Fifthly, He set forth, That he had not only his Majesty's *Pardon*, but that there had been his Majesty's *Declaration* of it in his *Speech* to his two Houses of *Parliament*, together with a *Declaration* of his Innocency, and a *Declaration* that he would give him his *Pardon* Ten times over, if that were defective either in *Matter* or *Form*. And in this also he said, that his Case was not only particular from any others, but that such *Declarations* of the King's Intentions to pardon, (altho the formal Pardons have not been obtained) have heretofore been alone a Ground to procure Bail at least, when the Party has been the King's Prisoner, and at the King's Suit; which he supposed was not doubted in his Case.

Sixthly, He said that he had not only been thus Committed, and thus Detained for above forty Months, but he had been kept a Prisoner, without any Prosecution, for the greatest part of that time; which is another sufficient Ground by the Law for Bail: But instead of a Restraint *Ad Custodiam*, he said he had undergone Punishments greater than the Crimes alledged against him could have deserved, if they had been true; both by the length of his Imprisonment, which was agreed to be a sufficient Ground for Bail, both by the King's Council and the Prisoner's, in the Arguments on the Grand *Habeas Corpus*, 3 Car. as also in *Melvin's Case*, 1 Car. and in Sir *Thomas Darnell's* and other Cases.

By the Inconvenience of his Accommodations in the Prison, for above two Years and an half of the time.

By Two most dangerous Sicknesses in the Prison. And

By the Loss of divers of his Family since his being in Prison, who would some of them most certainly not have been in those Places where they have been lost, had he been at Liberty.

He said he was informed, That his Majesty had been again pleas'd to give his Directions to Mr. Attorney, to give his Consent a second time to his Bail, and he did beg leave to ask Mr. Attorney if it were so? Whereupon Mr. Attorney did stand up, and say, that he had his Majesty's Directions to give his Majesty's Consent again to his Lordship's being Bailed.

His Lordship did thereupon say, That this also was Particular in his Case; and he did believe, there was scarce a Precedent in the World, of the King's Prisoner, and at the King's Suit, not being Bailed when there hath been the King's Consent to it; unless where the Prisoner hath not been able to find sufficient Security for his Appearance to abide his Trial. For that the two only justifiable Grounds for the continuance of Restraint by

by the Law are, either for keeping the Party from being able to do any harm by his being at Liberty, (of which the King is the best Judge) or for securing the Party to abide the Judgment of the Law, (in which the Court ought to have good Satisfaction) and so they might have sufficiently in his Case.

He said, That the Precedent would be no less strange and new against the King, than against himself, if they should not permit him to be Bail'd under such Circumstances: For he had heard, that the Law did admit of no *Absurdity*: Now he did desire to know, how any thing could in Reason be more *Absurd* on behalf of the King, than if the King's Prisoner, and at the King's Suit, should be kept in Prison by any of the King's Courts, against the King's Will?

Or how, said he, can any thing be more dangerous to the Subject, or be a plainer failure of Justice (whatever may be pretended to the contrary) than to say, That there can be any such Restraint of *English* Liberty, as cannot obtain so much as Bail, but by the leave of the House of Lords? When that House can neither meet but when the King pleases, nor can never sit longer than he pleases: So that to say a Man shall be a close Prisoner (I mean by that a Prisoner without Bail, for Bail it self is Imprisonment in the Eye of the Law) till he shall be discharged by the House of Lords; is to say, that a Man shall be a Prisoner during the King's Pleasure; which was the Great Grievance complained of, when the *Petition of Right* was granted, and that was thought to have fully and for ever Redressed that Grievance.

But if after so many Heats and Disputes which our Ancestors have had with the Crown about their Liberties, this Doctrine should now be admitted for Law; We would seem to endeavour, (as much as in us lies) to bring it to this Conclusion, and be our own *Felo's de se*; That the King shall have a way found out by our selves, and without his seeking, how he may Imprison any Man, or number of Men, when he pleases, in a Parliamentary way; and by Dissolving that Parliament he may keep them as long as he pleases in a Prison without Remedy: But that he shall neither have Power to Relieve us himself by his own Authority, nor by his Courts of Justice. So as in short, by this Doctrine, the King should only have Power to hurt his Subjects as much and as long as he pleases, but should not be able to do them any Right if he would; and then we shall have *Magna Charta* and the *Petition of Right* revers'd, instead of receiving that Benefit by them, which the Kings of England have been so Gracious as to give us, and all the Learned Writers upon those happy *Laws of Liberty* have told us, we are secure under, at all Times, and against all Accidents whatever.

He then beg'd leave to observe to his Lordship what he found in my Lord Chief Justice Coke's Comments upon *Magna Charta*; who said, That the Words *Nulli Vendemus, Nulli Negabimus, aut Differemus Justitiam vel Rectum*, are spoken in the Person of the King, who (in Judgment of Law) is always present, and repeating the said Words in all his Courts of Justice.

And therefore (says he) every Subject in the Realm may, at all times, have Remedy by the Course of the Law; and may have Justice done freely, fully, and speedily, without Delay; for that Delay is a sort of Denial.

The said Lord Coke observes farther, That those Words of *Magna Charta* are fully expounded by latter Statutes, viz. 20 Eliz. 3, &c. which do direct, That there shall be no Delay nor Hindrance of speedy Justice to any Man, neither by any Seal, nor by any Order, nor any Writ whatsoever; neither from the King, nor from any other, nor by any other Cause.

Now, whatever may be said out of other Considerations, he said, No Man can deny, but that there is great Delay of Justice (to say no worse of it) to any Man who (through no Neglect of his own) can neither get Trial nor Bail in above three Years, altho his Crimes were never so great. And he said, he durst be confident, that the Makers of *Magna Charta* did believe they had secured all *Englishmen* from ever being under the Possibility of such a Danger; and that he made no Question at all, but that by Law we are so.

He said, That the said Lord Coke does say in his Comment upon the 15 W. 1. (where he speaks of what Things areailable, and what are not; and names Treason amongst the Things notailable) that is (says he) such Offences shall not be Replevied by the Sheriff; but all or any of these, he saith, may be Bailed in the King's-Bench.

And he said, he had also some of the present Judges Opinions to shew, in this Point, which he desired to read out of a Copy of the Lords Journal, (viz.) 23d Decemb. 1678. The Question being put, Whether the Lord Treasurer should withdraw? 'Twas carried in the Negative. And on the 27th of the said December, The Question being put, Whether the Earl of Danby, Lord High Treasurer, (who stands Impeached by the House of Commons) should be Committed? It was Resolved in the Negative.

And it was the same Day proposed to the Judges, Whether the Judges can Bail any Person, in Case of Misprison of Treason, wherein the King's Life is concern'd?

To which Sir William Scroggs (Lord Chief Justice of the King's-Bench,) Sir Francis North (Lord Chief Justice of the Court of Common-Pleas,) Justice Windham, Justice Jones, and other of the Judges then present, gave severally their Opinions; That the Court of King's-Bench may take Bail for High-Treason of any kind, if they see Cause.

He cited the Lord Coke also in his Comment on the 24 W. II. where he says, That it is a Rule in Law, *Quod Curia Regis non debet Deficere Conquerentibus in Justitia Exhibenda*. And the Reason of this is, that a Failure of Justice may be prevented; which, he frequently says, is Abhorred by the Law: So as it appears, That the Law abhors all Failure of Justice; and he said, That if such Failure do appear in his Case; or any Man's else, no Order can license such Failure; nor no Court can Justify the not giving Relief against it: And he said, he should either make such Failure appear, or his Lordship (meaning the Lord Chief Justice) would be able to tell him where he might repair for Justice; which both *Magna Charta* and the *Petition of Right* are understood to have provided at all times for the Subjects Liberty: But if his Lordship could not inform him where he might appeal forthwith for his Liberty; in that Case, he said, That for that Reason alone (were there no other) he ought of

Right

Right to be admitted to Bail by that Court; till he could be brought before such a *Judicature*, as had Power to discharge him.

He observed also, That the Lord Coke (in a Chapter on the *King's-Bench*) did say, That that Court might Bail for any Offence whatsoever: And that in the said Chapter it was particularly observed, That there had been such Care taken by the Law to avoid *Failure of Justice*, (even in small Matters, in comparison of Liberty) that he gives there an Example concerning a Clerk or Officer of that Court: For he takes notice of what Things, and against whom that Court hath Power to hold *Plea by Bill*. And amongst those, he names against any Officer or Clerk of that Court; and gives the Reason: Because if they should be Sued in any other Court, they would have the Privilege of that Court, which might be the Cause of a *Failure of Justice*. And from this his Lordship said it did appear, That the Law intended that there should be no *Failure of Justice* by the Privilege of any Court, how great soever it was; for that (as was said before) the Law did abhor all *Failure of Justice*. And he said, if such Care had been taken against a Failure, in such small Matters, and not in what concern our Liberties; all *Englishmen* ought justly to break out into the like Exclamations, as the same Lord Coke and many others did, in their Speeches in Parliament, and in their Pleadings, 3 & 5 Car. upon the Argument of the *Habeas Corpus* at that time: Where the Lord Coke breaks forth into this Expression; *Shall I have an Estate of Inheritance for Life, or for Years, in my Land? And shall I be Tenant at Will for my Liberty? Shall I have Property in my Goods by the Laws; and not Liberty in my Person?* And thereupon he tells us, That *Perspicue vera non sunt probanda*; As taking for granted, That our Liberties were not to be doubted, where our Properties were so secured: And the King (says he) had distributed his *Judicial Power* to Courts, and to his Ministers of Justice; *Who are to see Right done*.

And he said, The Lord Coke gave the Reasons of those Laws which are against undue Imprisonments; and that one of those is, *For the Indefiniteness of Time*; which, he says, may be perpetual during Life: And that his Words are, *That it is unreasonable to think, that a Man has a Remedy for his Horse or Cattle, (if detained) and none for his Body indefinitely Imprisoned: For that a Prison without any prefixed time is a kind of Hell*.

And here his Lordship said, That he hoped the Court would either allow him Bail, or tell him a prefixed Time, when he should be Tried or Discharged. He did then also quote the Case of the Duke of Suffolk, 26 H. VI. and the Opinions of *Prescot* and *Fortescue*, (who were eminent Judges) who said, That he ought not be Committed, (tho' for Treason) without Especial Cause of the Treason shewed; which had not been in his Case.

He further said, That many other Principal Gentlemen of that Parliament had spoke most Sensibly on the same Subject of Liberty; and amongst the rest, Sir Robert Phillips had said, to have our Liberties (which are the Souls of our Lives) taken from us, and to be pent up in Goals without Remedy by Law; and this to be so adjudged (for so that Court had then thought fit to deny Bail, for Reasons which were at that

time also best known to themselves) he cries out, *O Improvident Ancestors! O Unwise Fore-Fathers! To be so curious in providing for the quiet Possession of our Lands, and to neglect our Persons and Bodies! And to let them lie in Prison! And without Remedy, durante bene placito! If this be Law, what do we talk of our Liberties? This (says he) is Summa Totalis of all Miseries*.

He said also, That Mr. Selden did in the same Parliament argue, at a Conference with the Lords, That in all Cases where any Right or Liberty belongs to the Subject, by any Positive Law, written or unwritten, if there were not also a Remedy by Law, for enjoying or regaining of this Right of Liberty, when it is violated or taken from him, the Positive Law were most vain, and to no purpose; and it were to no purpose for any Man to have any Right in Land, Liberty, or other Inheritance, if there were not a known Remedy, by which, in some Court of ORDINARY JUSTICE he might recover it; and in this Case of Right and Liberty of Person, if there were not a Remedy in the Law for regaining it, when it is restrain'd, it were to no purpose to speak of Laws.

Here he desired leave to shew his Lordship what Sir Nicholas Hide (when sitting as Lord Chief Justice in that Court) did say on this Occasion, viz. That the King's Pleasure is, his Law should take place and be executed; and for that do we sit here: And whether the Commitment be by the King, or others, this Court is the Place where the King doth sit in Person to do Right, if Injury be done; and if it appear that any Man hath Wrong done to him by his Imprisonment, we have Power to deliver or discharge him. And he farther said, That the same Lord Chief Justice Doderidge, Jones, and Whitlocke, (answering the Prisoner's Council at that time) did say, the Attorney-General had told them, That the King had done it; and that they (the Judges) do ever trust him in great Matters. And here he took occasion to say, That he hoped that the King's Consent to his Bail, and his Declaration of his Innocency, would be now as much trusted in this Court.

He cited also the Arguments of Mr. Calthorpe for Sir John Corbet, on the same Occasion, who said, That, admit the Commitment were lawful, yet when a Man hath continued in Prison a reasonable time, he ought to be brought to Answer, and not to be continued still in Prison: For that it appears by the Books of our Laws, that Liberty is a thing so favour'd by the Law, that the Law will not suffer the Continuance of any Man in Prison, longer than of necessity must.

He cited also Mr. Hackwell; who said, upon the same Occasion, That the Law admits not the Power of detaining in Prison at Pleasure, when the Imprisonment is but *pro Custodia*: For a Man, by long Imprisonment, might otherwise be punished before his Offence. And he mention'd an Expression of his, That long Imprisonment was, *Vita peior Morte*.

He mentioned how the Commons, at the End of the Parliament 3 Car. did desire, That the Judges might declare themselves upon the Matter, why those Gentlemen had not been Bailed, when (by the Judges Arguments) it was possible they might have been kept Prisoners all their days.

To which, he said, Whitlocke answer'd, First, Not so; but they did Remand them, that they might

might better advise of the Matter; and that the Gentlemen, if they had pleased, might have had a new Writ of *Habeas Corpus*, when they thought fit. And Secondly, That he had spent much time in this Court; and that in such great Cases, he never knew any Man Bailed without the King first consulted in it: And the same, he said, was then said by the rest of the Judges of that Court.

Hereupon he made two Remarks: First, that by this it did appear, that upon Consideration, That Court had altered their Opinions in the Case of Bail, just contrary to what their first Opinions had been positive in: And, Secondly, That the consulting of the King was ever necessary in such great Cases. And he said, he did believe, that there was not a Precedent, where the King had agreed to the Bail, that ever it had been denied.

He said, That those Men whom he had quoted, were Men of no Ordinary Understanding in the Laws: And as the Judges then did at last acknowledge their Sense of them to be right, so he said, he hoped our Laws were neither changed nor diminish'd, in what related to the SUBJECTS LIBERTIES; and he hoped that no Order of one House, nor Ordinance of both Houses, nor King alone, nor King and either House alone, could alter them: And he rested assured, that a King and Parliament would never alter them to the Prejudice of Liberty.

He proceeded, That if the Law were still the same it was heretofore, it was plain that that Law did both give a Power to that Court to Bail for all Offences whatsoever (and for Treason particularly) and did require, that *the Subject should at all times find Remedy in it*, when his Liberty was Restrained, BY ANY CAUSE WHATSOEVER.

The Chief Reasons, he said, why such large Powers had been given to that Court, were principally for avoiding all Failure of Justice; and to the End, First, That the King may both have a Means of giving Right to his Subjects at all times, according to his Oath at his Coronation, and according to the Intent of *Magna Charta*, and the *Petition of Right*. And Secondly, That there might be a constant Place for the Subject to resort unto for Remedy at all times, whensoever he was oppress'd in his Liberty: And he hoped we were not now to learn a new Law, That the King could neither keep his Oath, nor maintain *Magna Charta*, nor the *Petition of Right*, without the assistance of an Extraordinary Court, which he may both chuse, whether he will call, or when he will call it, and how long it shall sit; which (as he had said) would put all under the King's absolute Will.

He then said, he took for granted, that there would be no Dispute made in this Matter, but that there was an Order of the Lords which was supposed to stand in the way: But he said, if his Lordship would give him Leave, he would first say something to the Order it self, and then he hoped to show his Lordship, that it stood not at all in the way, as to his Request of Bail; and that it should neither be interfered with in the least, nor the Jurisdiction of the Lords, nor their Proceedings meddled with in any kind, by his being Bailed; but rather owned and submitted to, by his being Bailed to the Parliament.

And first for the Order it self, he desired the Court to observe, that it was dated the 19th of March 1678, and worded as followeth, viz.

Die Mercurii, 19th Martii, 1678.

THE House this Day taking into Consideration the Report made from the Lords Committee for Privileges, that in pursuance of the Order of the 17th Instant to them directed, for considering whether Petitions of Appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on; and for considering of the State of Impeachments brought up from the House of Commons the last Parliament; and all the Incidents relating thereto; upon which the Lords Committees were of Opinion, That in all Cases of Appeals, and Writs of Errors, they continue, and are to be proceeded on in Statu quo, as they stood at the Dissolution of the last Parliament, without beginning De Novo. And that the Dissolution of the last Parliament doth not alter the State of the Impeachments brought up by the Commons in that Parliament.

Now upon this Order, he observed, That it related as well to Appeals and Writs of Error, as to Impeachments; and seemed to be more fully worded to them, than to Impeachments; the Words STATU QUO, and without beginning DE NOVO, being annex'd in the Order more particularly to the Appeals and Writs of Error; whereas all that was said as to the Impeachments, he observed to be, that the Dissolution of THAT LAST PARLIAMENT doth not alter the State of Impeachments brought up by the Commons in THAT PARLIAMENT, and are not Words which (strictly taken) can bind after the Dissolution of any other than that Parliament.

But he said, If the Order should be Expounded otherwise, yet that both the Law, and the the Practice of the Inferior Courts, were undoubtedly contrary, In the Cases of Appeals and Writs of Error. And, he hoped, no Court would take upon them to Expound the Order so, as if they were at Liberty to split the Order, and to judge, which Part of the same Order should be binding, and which not; for that would be to meddle, in a more extraordinary Manner, with the Proceedings of the Lords, than he had desired.

Now, as to Writs of Error, he said, there were full Resolutions of the Judges in the Case, tho' in times of Prorogations only, when a Day is set for the sitting of the Lords House; and he cited the Case of *Heydon* and *Godsalve*, in *Croke's Reports*; as also the Lord Chief Justice *Hale*, who did not only grant Execution upon a Writ of Error (depending in Parliament) but did also answer the Defendant's Council (who would have pleaded the Lords Order in Bar of the Execution) that he should always pay all due Respect to that Superior Court of the Lords; but that he must act according to Law; and, that he knew, that the Lords did not intend otherwise. And of this Lord Chief Justice *Pemberton* himself, who he said had denied Restitution upon an Execution lately taken out, in Case where a Writ of Error was, and is still depending in Parliament. And in Cases of Appeals, he said, he was inform'd, that the Court of Chancery did not take any Notice of the Appeal being in Parliament after a Dissolution, but did notwithstanding proceed to Sequestration. And he said, that there was a late Precedent in the Court

Court of *Exchequer*, in the Case of one *Fountaine*, where an Appeal was brought from a Decree in the *Exchequer*, and Recognizance entred into by the said *Fountaine*, to abide the Order of the House of Lords: and after the Parliament was dissolved, the Council of the said *Fountaine* did insist on the said Order before the Barons, That the House being possessor of Mr. *Fountaine's* Cause, and Security having been given by him to abide the Order of the House, that no Proceedings ought to be had in the *Exchequer* upon the said Decree, until the Matter on the Appeal was determined before the Lords. Notwithstanding which, and that Mr. *Fountaine* produced the Lords Order in Court, and produced the Security allow'd; yet the now Barons declared and ordered, That the Decree by them made should be proceeded on, against the said *Fountaine*, in the Court of *Exchequer*: And a Proceeding hath been had accordingly.

By all which he observed, That the Inferior Courts did proceed upon Matters, *forbid as much by the House of Lords*, in the Matters of Appeals and Writs of Error, as it was upon Impeachments; and yet that the Reason was plain why they did so, for that the Parliament might proceed again upon the same Appeals, and Writs of Errors, notwithstanding those Proceedings in the Inferior Courts, in the Interval of Parliaments; for that none of those Acts of the Inferior Courts do so hinder the Proceedings of the Superior, but that the Plaintiff in Parliament may revive the same Matter there again, by *Scire Facias*, or by Resummons, &c. But he said, it was never heard of, that the Lords themselves did proceed again *Ex Officio*, without the Petition of the Party to revive the Cause. And so he said in the Case of Impeachments, that the Lords would no more proceed *Ex Officio* upon that neither, unless they were called upon by the Prosecutors; and then *their Lordships Proceedings upon the Impeachment, would be no more hinder'd by the Bailing of him in the Inferior Court, than they were in the other Cases by the Executions and Sequestrations, which are granted in the Intervals of Parliament, which were for the Prevention both of DELAY and of FAILURE of JUSTICE.*

Besides, he said, If this should not be done, how could it be known whether the Prosecutors of an Impeachment from the House of Commons (who are never the same Men in a new Parliament) will proceed any more upon a Former Impeachment? For, he said it had many times fallen out otherwise; and he cited a late Case of the Lord *Mordant*, who was Impeach'd upon Articles in one Session: and having taken out a Pardon during the Prorogation, was never more called upon, nor never question'd upon the former Impeachment; altho' the very same Parliament sat again, which had Impeach'd him: And therefore, he said, that the Case might more probably happen to fall out so, when a new Parliament should meet again, which would consist of new Men.

He said, It was likewise to be observed, that altho the Transcript of the *Record* in a *Writ of Error* might have days of Continuance, yet no *Supersedeas* is grantable; and he said, that if the Lords Order be no Ground for a *Supersedeas* on a *Writ of Error*, why the lying of an Impeachment should be a Ground for confining a Man

within the *Tower Walls* all his Life, he was sure must be both less reasonable and less just, as Liberty was more valuable than Property, and without which, Property could be of no Comfort.

In the next Place he observed, That if the Order should be continued literally to mean, that the Impeachments, as well as the Appeals and Writs of Error, (and the Incidents relating to all of them) should remain in the same State they were at the Dissolution of THAT PARLIAMENT mentioned in the said Order, his Case thereupon, he said, would be quite different from any others; for that he was *not under any Commitment* at the *Dissolution of THAT PARLIAMENT*, nor at the time when THAT ORDER was made, but was then at Liberty to be a Sitting Member of that House, and by a *Vote of the House* had Leave to continue so; for that (as he had already observed) the Date of the Order was the 19th of *March* 1678, and the Warrant of his Commitment did appear by the Return before the Court, to be the 16th of *April* following: Insomuch, that he desired the Court to take Notice, that the strict Letter of the Words *Statu Quo* in the Order (compar'd with the time when the said Order was made) would be an Argument to set him in a state of Liberty, as he then was.

He then told the Court, That by what he had said, he hoped he had made appear, that the Order did not afford the least shadow for the hindering of his being Bailed; but that on the contrary, the Reasons were much stronger for the doing of that, (as it related not only to him, but to the Liberty of the Subject in general) than for the Proceedings which the Inferior Courts do daily practise upon Appeals and Writs of Error (*which are but for Property*) and are comprized in the same Order; and therefore he said, that he hoped he should at least find the same Favour in a Case of Liberty, which is allow'd every Day in Cases of lesser Moment.

He then said, That altho' it did not concern his particular Case, yet for the sake of *English Liberty it self*, he could not but say something farther upon this Point: For he could not but be of Opinion, That if the Order had directly forbid Bail; which it was far from doing; and besides, the Lords own Practice had shew'd their Meaning to the contrary, by the Bailing of a Commoner, whose Crimes were declared to be greater than his; and in which Case they made no *Non Obstante* to their Order, but take that to be still in the same Force towards him, as towards any others, who are in Custody: Yet he said, in that Case, if such an Order should be found to be against *Magna Charta*, and the Fundamental Right of the Liberty of the Subject, (as any thing must be, *which does subject any Man to an INDEFINITE IMPRISONMENT*;) he conceived, that of Right that Court ought to free any Man from such a Slavery; for he said, he could give it no better a Name. And he then cited an Argument of the Earl of *Shaftsbury's* upon that Point, which that Lord argued in that Court upon an *Habeas Corpus*; when the Court agreed they would have Bailed him, had it not been in a time of *Adjournment* only of the Parliament. His Words, he said, were, *That this Court will, and ought to judge AN ACT OF PARLIAMENT VOID, if it be against MAGNA*

MAGNA CHARTA; and more might it judge of AN ORDER OF THE HOUSE OF LORDS, that is put in Execution to deprive any Subject of his LIBERTY. And, as he said, this could not be denied to be Law; so he was confident the Earl of Shaftsbury was still of the same Mind, and so must every Lord in England be, or (when they consider their own Cases) they would make their Liberties to be very precarious.

He proceeded to say, That the Earl of Shaftsbury being allow'd to be a knowing Man, both in the Laws, Orders, and Constitutions of Parliaments, he would beg leave to quote another Part of the same Speech, viz. That Mr. Attorney (which was then Sir William Jones) was pleased to answer the Instance of one of his Lordship's Council, That if a great Minister should be committed, he hath the Cure of a Pardon, a Prorogation, or a Dissolution: But (says the Earl) if the Case should be put, why Forty Members, or a greater Number, may not as well be taken without any Remedy of any of the King's Courts? His Lordship said, That Mr. Attorney could not very easily answer. And if in this Case (says he) there can be no Relief, no Man can foresee what may be hereafter. And in another place of the same Speech he says, he does not think it a Kindness to the Lords to make them Absolute, and above the Law; for so it must be, if it be adjudged, that they may Commit a Man to an INDEFINITE IMPRISONMENT.

He said, he took these Men whom he had named, for no small Authorities in this Age: And the Earl of Shaftsbury, he said, was a Man still as much for the maintaining of this Order as ever; but that his Lordship did shew himself, at the same time, to be for English Liberty. And he plainly shew'd his own Sense, both of this and of all Orders whatever, which concern'd the Liberty of the Subject; and declared, That he took that Court to be the proper Judge of all such Orders.

He said, It thereby appear'd how sensible that Lord was, that such Cases might concern Forty, as well as One, and Members of either House, as well as other Men; and without Relief, if it should be admitted, that ORDINARY COURTS could not Relieve. And the Earl of Danby said, That there was no answering of these Arguments of the Earl of Shaftsbury; unless it could be denied, That the King can Impeach as well as the Commons; or that the King cannot Call and Dissolve Parliaments at his own Will and Pleasure: For if he may (as was not to be doubted) he said, he was sure every Man in England was in the same Danger when the King pleased; and then he saw nothing whereby he had any Security; but that we lived under a King who would not exercise this Power over us, which we will needs put into his Hands, altho he does not desire it himself. As if we were so weary of our Liberties, that we would be Industrious in contriving how we might insensibly slide into those Slaveries, which our Ancestors have been some Ages taking Pains to secure us from; and our Kings have been so Gracious as to grant and confirm to us, so many times over as they have done; and which other Kings may be as ready to reassume hereafter, as we are to give them away.

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He concluded his Observations upon that Speech of the Earl of Shaftsbury's, with taking Notice, that his Lordship had shew'd he was one of those Peers who would take it for no Kindness to be made Absolute, and above the Law, by such Orders of theirs being construed to extend to INDEFINITE IMPRISONMENT.

He then repeated Sir William Jones's Declaration in that Court; That either a Pardon, a Prorogation, or a Dissolution, was a Cure against such Imprisonments. And he observed thereupon, That if that Doctrine were true, That any one of those was a Cure against such Imprisonment, (and he could not doubt of its being good Law) then certainly he ought to find Relief from his Imprisonment, who had every one of those Cures on his Side.

He then desired to put the Court in mind, How in the worst of Times, Justice had taken place so far, as to lay aside the Force of Orders made in Parliaments, after the Dissolutions of those Parliaments which made them; altho' it was to the Prejudice of the Interest of those Usurpers themselves.

He cited an Instance of one Sir John Stowel, who, by the Articles of Exeter, was to have been admitted to Composition for his Estate; but yet, contrary to those Articles, the Parliament did afterwards order his Estate to be sold. After the Dissolution of which Parliament Sir John Stowel pleaded by his Council (which were Serjeant Maynard and Mr. Latch,) That that Order was Dissolved by the Dissolution of that Parliament; and that therefore the Articles were again in Force: And that the Plea was admitted to be good, and Sir John restored to the Benefit of the Articles upon that Plea, even by Bradshaw himself. But he said, he was sorry, that he could neither have Sir William Jones, to argue those Points for him which he had used against my Lord Shaftsbury; nor Serjeant Maynard, to make good the Invalidity of Parliamentary Orders after Dissolutions: But he said, That it was not his Fault, and he doubted not but that he was before more just Judges than there were in those Ill Times; and that he hoped, That the Liberty of the Subject was not now more Precarious than it was in those Days.

He added, That if upon such Orders Men could not be Bailed in the Interval of Parliaments, they would become Grievances equal to the Multiplications of Treasons in former Days; which have sometimes been greedily made heretofore by Parliaments in distemper'd Times; but the Commons had never been quiet, till they could get their Bear chain'd up, and their Laws reduced to the old Standard of Treason again: But yet those things had been done by Acts, and not by Orders of Parliament.

He desired them likewise to remember, That it had been one of the chief Grounds of the late War betwixt the King and his Parliament, (in which so much Blood had been shed) That an Ordinance of Parliament should not be held equal to an Act of Parliament; and yet those were Orders of both Houses. And now, said he, shall we be Defending, that an Order of One House only shall be Equivalent to a Law? and shall be in Force against our greatest and most Sacred Laws of Liberty, which have been so confirmed to us? This, said he, I am not able

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to understand the Reason of; nor will any Man who shall give himself the least leisure to think upon it.

He then said; he desired to ask any Man that then heard him, or any Commoner of *England*, who would but take Time to consider this Case, (*which may be any Man's in England*;) Whether they would be contented to invest the Lords with such an *Inherent* Power over their Liberties, which they can no more be exempted from than the Peers themselves?

And he said, That the Lords had already made it appear, that they would not have any such *Arbitrary Power* placed in them, for that they had refused to pass a *Favourite Act* (which was for their own Trials) only by reason of a Clause which was inserted therein, *To have Enacted the Substance of this present Order into a Law.*

And he said, That the House of Commons desiring that such a Power might have been Enacted into a Law, (*tho' themselves would have been the first who would have repented such a Law*;) did sufficiently denote, *That the Commons did not think the Order would be binding in Law after their Dissolution*; for otherwise what need was there of a Law, if the Order was in force after Dissolution, *without a Law.*

Upon the whole he said, he thought the Distemper of that time had given more weight to the Order, than any thing else; and some of their Lordships on that Bench did know, both in what an Heat it had been made, and how it had been since blown upon by the Lords themselves; who he was confident would no more endure to have it construed in that Sense which now seems to be put upon it, (*of Subjecting Men to be under INDEFINITE IMPRISONMENT*;) than they will endure themselves to be every Day put in the Stocks.

As he had said thus much to the Order it self, so he said, he hoped to make appear, *That the Court's Bailing of him would not at all Intrench upon the Order, nor meddle with the Jurisdiction of the Lords, nor their Proceedings in any kind.*

For that he took it for granted, That what is done by that Court, and the Courts of *Chancery* and *Exchequer*, on Appeals and Writs of Error, was understood not to meddle at all with the Jurisdiction nor Proceedings of the Lords in those Cases; and that *this was just the same, all being alike subject to the final Determination of the Lords, whenever they pleased to call the Appeal, Writ of Error, or Impeachment, before them, and without any Prejudice to their Lordships Proceedings by any of those Acts done by that or the other Courts in the Interval of Parliaments.*

Besides, he said, it had been usual to Bail in that Court to the Justice Seat in *Eyre*, and yet that that Court could not proceed further.

He instanced also, That Court's allowing of the Pardons of Peers, (when pleaded there) and yet that they had no Power to proceed to the Trial of a Peer.

And so he said, There were divers other Instances of that Court's Proceeding to such and such Degrees of Exercising their Power to avoid Delays, &c. where the Court had no Jurisdiction to determine the Matter.

Precedents he said were not to be expected, which were exactly fitted to his Case, because he durst be bold to say, there never was such a

Case before, (when well considered in all its Circumstances,) nor he hoped never would be again: But he said, that therefore both the King's Power and the People's Liberties would be the more concern'd in what Resolution should be given by the Court in this Case of his.

He said, there were Precedents of Discharging of Men Impeach'd in Parliament upon the King's Writ to that Court, commanding the Proceedings to cease, and they have been discharg'd accordingly by that Court, without any other Reason given in the Writ, but because the King held the Parties to be Innocent and Free from the Crimes charg'd against them. As in the Cases of *Melton* Archbishop of *York*, and *Gravesend* Bishop of *London*, 7 E. 3.

He mentioned also *Hugh Spencer*, and *Sir Thomas Berkley's* being Mainprised to Parliament, and yet that the latter was upon Suspicion for the Murder of a King, (*viz*) *Edward* the Second.

He said, Inferior Courts had Bailed to Parliament about the Pope's Bull, &c. *Reg. Writs*, 274.

He said, a single Judge, (*viz*. *Sir Robert Atkins*) had lately Bailed one for Treason, and another for Murder; and that he did himself hear his Justification of both allow'd (as to the legal part) before the King and Council.

He said, That Kings had formerly abolish'd Accusations of Treason, and instanced a Case of *Talbot* against *Ormond* in the time of *H. 6.*

And to shew how powerful the bare Intention of Kings to Pardon hath been heretofore, he instanced the Case of a Man Indicted of Felony, who (without any Council) shew'd forth a Charter of Pardon to the Court, which was discordant to the Indictment, and also to his Name; and yet because the Court perceived that it was the King's Intention he should be pardoned, he was remanded to get a better Pardon, 26 *Aff.* p. 46.

And he did thereupon say, That he hoped the King's Intention of Pardon as to him, had been sufficiently declared to the whole Kingdom.

And in short, he said, That if the Matter was proper for the Jurisdiction of that Court, before it was in Parliament; its having been there, did not take away the Jurisdiction from a Competent Court, when the Extraordinary Jurisdiction fails; which was not to be supposed could lay all other Jurisdictions asleep, when it self was not in being; and especially when that Competent Court should do nothing in Contradiction to the Proceedings of the Extraordinary Court, as he hoped he had made appear, that that Court would not do by the Bailing of him.

Whereas on the contrary, he said it was most evident, that *Justice did fail in the highest Concern*, (*which is that of Men's Liberties*) unless he could be inform'd when and where he might certainly be either Tried or Discharged; for that (as he had said before) it was agreed both by the Council for the King, and the Council for the Prisoners, in the Arguments on the Grand *Habeas Corpus*, that INDEFINITE IMPRISONMENT was held to be PERPETUAL IMPRISONMENT, *which the Law did admit in no Case where the Imprisonment was only AD CUSTODIAM.* And altho' his had been intended

tended but *AD CUSTODIAM*, yet it could not be denied, but it had already been *ad Gravem Pœnam*, and without any particular Cause yet shew'd for which he ought not be Bailed by Law.

He then said, That *Littleton* had declared in his Arguments, 5 Car. That if Treason in general should be held to be a sufficient Return, yet that the *King's-Bench* might Bail: And the said *Littleton*, and the King's Attorney in their Arguments (one for the King, and the other for Mr. *Selden*) did agree, That where the Party could not avoid the Judgment of the Law, nor that there was no Danger by his being at Liberty, He ought to be Bailed after long Imprisonment; and, at that time, Six Months was taken to be long Imprisonment.

He said he had read a Passage in the Lord *Coke's* Institutes, where he spoke of such Imprisonments as he compared to the Imprisonment of *St. Paul*, by the *Centurion*, who first put him in Chains, and then enquired who he was, and what he had done.

He said he would not compare his Case to that; but that there was so much of resemblance in it, that he had been in Chains, or what was there meant by Chains (which was a Prison) for above Three Years, on a pretence of Treason, without being told to that day what kind of Treason he had committed; which had been done in no-body's Case but his, and by so much the greater was his Hardship.

He had also both been Accused and Committed without any Oath made against him.

When a Day had been appointed for his Hearing, his Council had been forbid to plead Matter of Law for him.

It had been acknowledged, that there was no Treason contained in any of the Articles against him, if they were all true.

And if they had been true, and had amounted to Treason, he had there shewed the King's Pardon, which did release both the Crimes and the Imprisonment.

That besides that Pardon, he had had his Majesty's Declaration in full Parliament, both of his Innocence, and that he would grant him his Pardon ten times over, if this were defective.

That he had now had his Majesty's Consent to his Bail, a second time, declared to that Court by the Attorney-General, by the King's Direction.

That in all these foregoing Particulars, his Case was singular, and different from all others, who are or have been made Prisoners since the beginning of the late Plot, or (as he believed) at any other time.

Besides these Things, which are peculiar to his own Case, he said that there was also what was common to other Cases as well as his.

The Length of his Imprisonment, which had been above 40 Months.

The being confin'd so long under pretence (as he conceived) of an Order of the House of Lords, which neither directs nor implies any thing to forbid Bail. But in that also he had what was particular to himself (which he had already said, and desired leave to repeat, because it would deserve their Consideration,) viz. That he was at Liberty, and had leave to be a sitting Member in the House of Lords, at the time when that Order did declare that the Impeachments, Appeals, &c. and the Incidents belonging to them should stand

in *STATU QUO*; so that (as is already observed) the *STATUS QUO* (as to him) he again said, was to put him into a State of Liberty.

Lastly, he said, That he had no Prospect now when any Parliament would sit, and by the Examples of past Parliaments, he might reasonably fear, whether, when they did meet, they might sit so long as to give him Relief; for that his Petition had been read the first Day that the last Parliament entered upon any publick Business; or whether greater Business of the Kingdom might not (as it had done already) so take up their Time, as not to give them Leisure to consider the Case of a single Person: And since this had already fallen out to be his Misfortune in three Parliaments successively, he took it to be but too plain a Demonstration of his lying under an indefinite Imprisonment, unless he should find Relief in that Court, for that there was no other to appeal unto.

He said, That in those great and eminent Cases which fell out 3 & 5 Car. about the bailing of Persons committed to indefinite Imprisonment, the Judges were then very positive against their Bail, and yet changed those Opinions afterwards; and so he hoped that Court might do upon a due Consideration of his Case and Circumstances; or else he hoped that his Lordship would convince him, that his Imprisonment was not indefinite, by letting him know at what prefixed Time and where he might resort for Remedy, which the Law does, without Question, allow to a Man, and at all Times.

He said he was a very reasonable Man, and when he was convinced by Reason (upon which he was sure all Laws were founded) he could be content to suffer still, tho his Imprisonment had been so long already; for that however he may have been misrepresented for an arbitrary Man, he would rather perish in his Prison, than have any thing done for him which the Law would not warrant: But, on the other Side, he should be sorry, that his Case should be made a Precedent against Law, and against English Liberty, which he was sure it would be, if he should be continued to lie under an indefinite Imprisonment without being bailed; and he said he was not ashamed to say, in the Behalf of all Englishmen's Liberties, as well as of his own Case; That it was a Case which did concern every Man to take care of in the Consequences of it, and which did cry loudly for Relief.

He then told the Court, That he had troubled them long, but that he hoped it would be excused in a Case of that Moment: And, in the first Place, he said, he hoped it was plain, that That Court had it in their Power to grant him Relief, if they pleased.

That it was as plain, that there was nothing in the Lords Order against it, and that the Practice of the Lords had been otherwise, even in the Behalf of Commoners.

That it was apparent, that both that Court, and the Courts of Chancery and Exchequer, do relieve upon Appeals and Writs of Error, which are in the same Order with the Impeachments, and yet do in no Sort meddle with the Judicature or Proceedings of the House of Lords.

That it was manifest, that let the Order be construed as any Man pleases, yet that bailing could be no sort of judging of any Proceedings in the superior Court, but would leave the Judgment

ment entirely to the Parliament, and would continue him a Prisoner in Law, bound to appear before that extraordinary Court, whenever his Majesty shall be pleased to call it; and he said it was more evident, that otherwise he was an indefinite Prisoner, and at the King's Will only for his Liberty, the Consequences of which every Man ought to lay to his Heart, with a Dread of it, whenever they should live under a Prince that might not be so merciful as our present King; and he hoped the Court would duly consider it.

Besides all this, he said, he durst confidently affirm, *That there was not a Precedent since the Conquest, of any Man's being refused Bail under such Circumstances as his were:* Whereas, he said, the detaining of Men under long Imprisonment, ought either to have express Law for it, or a good Number of Precedents, and in good Times, to justify it, and not any single Instance or two (if they could be produced) which he thought they could not.

And he hoped that Precedent which he had already mentioned on his Majesty's Behalf, would be very well considered, which was, How the King's Court should keep the King's Prisoner, and at the King's Suit, in the King's Prison, with the King's Pardon, and against the King's Will, twice declared in that Court by his Attorney-General.

He said, he should conclude with letting his Lordship know, that as the King himself had sufficiently declared that there was no Danger in the letting him have his Liberty, so he had such Bail to offer to his Lordship, as would sufficiently satisfy the World, that he should be forthcoming to answer when and where that Court should appoint; and then, he hoped, the two chief Grounds for Detention in a Prison (*viz. The Danger of a Man's having his Liberty, and the Danger of his not appearing to abide his Trial*) would be fully answered.

And if it might not seem too great a Vanity to say (altho the true Reason does take away the Vanity of it, because it would not be for his, but for their own Sakes, as what may happen to be their own Cases) he said, he doth believe, he could have the major Part of the House of Lords to be his Bail in this Case, and some of those very Lords who were for the making of this Order, altho not in that Sense which would seem to be put upon it. Inasmuch, that there would be no more to fear in the granting him Bail, than, he hoped, there was either Reason or Justice to deny it. And he doubted not, but he was there before very just Judges, who would duly consider what he had said.

The Lord Chief Justice then speaking, did say, That the Earl of Danby had seemed to reflect upon the Court, as if they had denied him Justice in not hearing his Council.

Then the Earl of Danby desired Leave to interrupt his Lordship, saying, That his Lordship had mistaken him, for that he had said no such Thing of that Court, nor did he mean of that Court; but said, it was very well known, that his Council had been forbid to plead for him in another Place; which was then acknowledged by Justice Jones to be very true.

The Lord Chief Justice then proceeded, and said, That for his Lordship's saying they needed not to fear, because he did believe the greatest Part of the Lords would be his Bail: That it was not the Fear of another Court that had

any kind of Influence upon them, or that they should do such Things as they feared to be called to an Account for; but that they were to govern themselves by the doing of Justice.

That they had heard his Lordship with a great Deal of Patience; and that he had said many material Things, and with much Acuteness; and that they were not senseless of the Hardship of his Lordship's Case, and of the Greatness of his Sufferings.

That they were likewise sensible of the King's Desires, that his Lordship should have no longer Imprisonment than the Law requires. And he confessed, *That the King had done as much as lay in his Power.*

That it was not denied, because that Court could not bail for Treason; for that they had a Power to bail in all Cases whatsoever, if the Court saw Cause. Neither would the Indictment which was found against him about Sir Edmund-Bury Godfrey, have hindered; nor was it the Order of the House of Lords which hindered them: But that they were to act there according to Law; and he pray'd his Lordship to consider, that they could not relieve him according to Law.

That he did agree to some Things mentioned by his Lordship; and that it was a very hard Case he should lie so long in Prison: But here was the Misery; they could only compassionate him; for that his Lordship was imprisoned by an higher Hand, and where they had no Power to intermeddle.

He instanced in Indictments for Treasons, and several other great Crimes, in which they could bail Men; but in this Case, *the supreme Jurisdiction of the Nation had laid their Hands upon it, which was attended by the House of Commons with an Impeachment.*

Whether their Lordships had Cause, or not Cause, to commit his Lordship, they could not inspect; but that they ought to believe that his Lordship was justly committed; and that their Lordships, in their mature Deliberation, would do nothing unjustly.

He said, That they had a Jurisdiction over all the Courts in the Kingdom, (that only excepted.) *And as it would be very incongruous for an inferior Court to bail whom they had committed, or to call their Processes in Question; so would it be in like manner for them to do in this Case, because the Lords exceed their Jurisdiction, and were above them.* He said also, That the Opinion of all the Judges in England had been taken therein, and had delivered their Opinions, that he could not be bailed: And that the Truth was, his Lordship was imprisoned by too high a Court for them to bail him: For that his Lordship was not indefinitely imprisoned, as he had alleged; *For whenever his Majesty is pleased to call a Parliament, his Lordship would have Remedy.*

That the King has Power to do it when he pleases; and, for his People's Good, no doubt he will, when he sees fit: But that at some time the Circumstances of State differ from other Times, and that it may not for some Space of Time be thought convenient: And though this may prove mischievous to a single Person, or to two or three Persons, yet such Things must be endured for the Good of the Publick. He said also, *That if that Court should commit a Man for High-Treason, and the King should adjourn them from Time to Time, that Man could not be bailed until they sat again:*

again: So that he must confess, (as his Lordship had said) that as his Case did happen, he was under a *temporary indefinite Imprisonment*.

He concluded, with telling his Lordship, *That he must be contented to wait the King's Pleasure when he would call a Parliament*.

That, for his Part, he was before of Opinion, that they could not bail his Lordship, and he was so still.

The Earl of *Danby* to all this answered, that he must confess, his Ears did tingle to hear his Lordship say, *That the King had done as much as lay in his Power*; when his Majesty is bound both by his Coronation Oath, and by the Laws, to see Right done at all Times to his Subjects; and he desired to know, *Whether this was not the King's Court, and whether he had not deputed a Power to them to see Right done to all accordingly?*

He said also, That he was now under greater Amazement than before; since his Lordship had both granted, *That this Court could bail any Treason*, and that the Order of the House of Lords did not hinder it; which, till now, he confessed, he had taken to be the only Obstruction to his Liberty.

That he had hoped, he had satisfied his Lordship, that altho he was imprison'd by an higher Hand, yet *that the bailing of him did not intermeddle with the Jurisdiction of that higher Judicature*, and he had yet heard nothing to shew him that it did.

That for what his Lordship had said of the Opinion of all the Judges in *England*, being taken in his Case, he must needs inform his Lordship, That that was a Mistake; for that the Opinion of the Judges had never been asked in this particular Case, saving once, upon petitioning the King for Liberty to go to his Country House at *Wimbledon*, with a Guard, or otherwise, as his Majesty should think fit; which Petition was referred by his Majesty to the Judges: And they (according to their wonted Prudence and Caution) did only report, That they thought his Majesty could not legally grant the Petitioner's Request.

That whereas his Lordship said, That he was not indefinitely imprisoned, for that *whenever his Majesty is pleased to call a Parliament, he will have Remedy*; and that he must be content to await the King's Pleasure when he will call a Parliament; He took those to be fuller Arguments than any himself had made, to prove, *That his Imprisonment was indefinite, and at the King's Pleasure*; so that he was now more fully confirm'd than ever to be of that Opinion, and wish'd that every Man, that heard that Doctrine given for Law, might fully consider the Consequences of it.

He said further, That his Lordship had mistaken him, in thinking that he had said he was under a *temporary indefinite Imprisonment*; for that he had said he was under an *absolute indefinite Imprisonment*: And that his Lordship had rather proved him to be so, than shewed any thing to the contrary; nor did he know what *temporary indefinite* did mean.

The Lord Chief Justice then said, That he was not a Judge at that Time when the Judges Opinions were asked, but desired his Brother *Jones* to relate how it was.

Mr. Justice *Jones* then said, That he remembered the Case had been put to the Judges, Whether the Lords in the Tower might be bailed, and

that it was then the Opinion of the Judges that they might not: But he said, he did think the Earl of *Danby* was not particularly concerned in the Question at that Time, but that it related to the Popish Lords only, and that there was much Difference betwixt his Lordship's Case and theirs; besides, he did think, that was at a Time when there was a Day appointed for the Meeting of a Parliament.

The Earl of *Danby* then said, That the Question which was put at that Time to the Judges, about the Popish Lords, did not concern his Case at all; for that it differed from theirs in very many Particulars, which he had already mentioned, *viz.* Of no Oath against him; No special Treason alledged, &c. which he was loth to trouble them with repeating again; but he supposed, that the then Opinion of the Judges ought not to be made any Argument against him.

He said also, That the Lord Chief Justice had argued very strongly for him: For that it was true, *That the King might call a Parliament when he pleased*; but if therefore a Man must stay in Prison till the King did please to do so, he may (by that very Argument) lie there all his Life-time, if the King pleases; which confirms what he had been a great Part of his Time labouring to prove: And, he said, he must confess, he did expect to have heard stronger and more powerful Arguments to have convinc'd him, that he was in the Wrong in what he had said; but that now he was more encourag'd than before, not to give over a Cause which did so much concern every Man in *England*.

The Lord Chief Justice then said, That his Lordship was mistaken in believing that that Court did keep him in Prison; for that he was not kept in Prison by them, but by a superior Court, which was too big for them to meddle with, or to examine what they did.

To this his Lordship answered, That he had Wrong done him, which must be done by somebody, and that it was a Maxim of the Law, *That the King could do no Man Wrong*, (being advised by his Courts); besides, that his Majesty had twice shew'd his Consent in that Court to have him bail'd. Neither could he say, that the Lords did him Wrong, because there was nothing in their Order to hinder his being bailed, (besides their own Practice to the contrary;) and it seem'd now to be said, that it was by the Law, and not by the Order, that he was kept a Prisoner. He said, he would not say, that That Court did keep him a Prisoner, but by somebody he was sure he was kept Prisoner; but perhaps it might be by the Stars, since he could not find who it was upon Earth that did it.

He concluded, That if he were legally imprison'd, yet by *Magna Charta* and the *Petition of Right*, &c. it was impossible for an *Englishman* to be without some certain Prospect of Relief in a reasonable Time, they being to have Justice done them by the Law at all Times, and without Delay; and that he was now in the King's proper Court for Justice; wherefore, as his Lordship had given his own Opinion, so he did desire that every Judge would be pleased to deliver theirs severally.

Then Mr. Justice *Jones* said, That he was not ready to give any present Opinion, there having been so much, and some Things so materially said by his Lordship: But that for his better Satisfaction,

tisfaction, he did desire to ask his Lordship a Question, in a Point which did much stick with him, and would go a great way in guiding his Judgment; and he was confident, that his Lordship was as able to give him an Answer to it, as any Man; which was this: His Lordship (he said) had been charged with Treason by an Impeachment, and had pleaded a Pardon to the Impeachment before the Lords; *He said he took that Plea to be a tacit Confession of Guilt in Law*, (tho the Party were never so innocent) and then it had been a *tacit Pleading of Guilty*; insomuch, that he did believe, there could be no Admittance of any second Plea; and if so, he did confess, he did not see how that Court could then have any thing to do with his Lordship in that Case; but it was what he had not well considered (tho at present he took the Law to be so) and he did desire to hear what his Lordship did say to that?

His Lordship answered, That he gave him great Thanks for letting him clear any Objections, and giving him Liberty to answer them as well as he could. That this indeed was a Question of Law, which he was but little vers'd in, but that he was at present able to say, That he had read the Opinions of some great Men of the Law, to be otherwise; and instanced what the Lord Coke had said upon the Case of *Gravesend*, Bishop of London, 7 E. 3. who did get a Writ of Discharge to the *King's-Bench*, and did not take a Pardon; upon which he observed the said Lord Coke to have said, *That it may be he thought that the taking of a Pardon would have implied a Confession of the Fault, and therefore went a new Way; but that was a Mistake, for that no Man that is wise and well advised, will refuse God and the King's Pardon, how often soever he may have it; for there is no Man but offendeth God and the King almost every Day, and the Pardon is the safest and surest Way.*

And tho' at present, he said, he was not provided of Precedents in the Case, yet he remembered there was a Case of a Coiner tried at *Durham* upon a Pardon, where the Pardon proved defective, and yet he was allowed to plead over.

And he told him, That the same Question had been moved in the House of Lords upon his own Case, where divers Lords had declared themselves, *That they hoped it should never pass for Law amongst them, that a Man should not have one Plea for his Life; and gave for Reason, that if a Pardon was pleaded, and not admitted to be good, then the Prisoner had depended upon what he thought had been a good Plea, but was adjudged by the Court not to be so, and then, if he should not be admitted to plead over, it would be to ensnare a Man's Life, without giving him any Plea at all for it.* And he concluded, saying, He thought that this Question was rather going into the Merits of his Cause, than to what he only demanded, which was but Bail.

Mr. Justice *Dolben* then said, He must acknowledge there was a vast Difference betwixt his Lordship's Case, and the Case of the Popish Lords in the *Tower*, in many material Particulars, which his Lordship had mentioned; *and he must confess he thought it one of the hardest Cases in England.* He said also, that he could not but differ from what his Brother *Jones* had said, as to the not having Liberty to plead over; for that he was of Opinion, his Lordship ought not to be debarr'd

from having a second Plea, if the Pardon shou'd be over-ruled; and (if I did not mistake him) he cited the Instance of one *Hetley's Case*, (or such a Name) and he said, that his Lordship had said so many Things of great Consequence, that he thought it did very well deserve further Consideration; but if he should be put to give any present Answer, he must then say (as my Lord Chief Justice had done) that he thought they could not bail his Lordship; but he thought it might well deserve further Consideration.

Mr. Justice *Raymond* then said, That his Lordship's Case had so many weighty Circumstances in it, as ought to make it to be very well considered, before any Opinion could be delivered in it. That for what had been said by his Brother *Jones*, about the Pleading over or not, he thought that did not properly lie before them in that Place: That his Lordship had said some Things, to which he thought full Answers might be given; but that he had also said some things, to which he thought it would not be so easy to answer. That for his Part, he thought it was a Case which might well deserve the Consideration of more of the Judges, betwixt this and the next Term; and that he must acknowledge he must further consider it, before he would presume to give any Opinion at all upon it.

A Council at the Bar then moved, That a Rule of Court might be made to bring his Lordship thither again, the first Day of the next Term.

The Lord Chief Justice seemed displeased with the Forwardness of that Council; and the Earl of *Danby* excused it, saying, It was not moved by his Desire or Directions; but said, That was all alike to him, whether there were any Rule of Court or no; for that they were like to be troubled with him again, and that he should not easily give over a Cause, wherein he took the Liberty of the Subject in general to be as deeply concern'd as himself, and wherein he had found so little to be said against him, that he did believe he should be as troublesome to them as ever Judge *Jenkins* had been heretofore in the Defence of *English Liberty*.

The Lord Chief Justice then standing up, said, My Lord, your Lordship must for the present be content to be remanded; and speaking to the Lieutenant of the *Tower's* Officer, told him, he must take back his Prisoner.

And then the Lord Chief Justice immediately left the Court.

June 29, 1682. Trin. 34 Car. II.

THE Earl moved the Court again to be bailed; when he spake as follows:

My Lord,

WHEN I last attended your Lordships, and this Court, the Judges (or most of them) were of Opinion, That what I then said to your Lordship might deserve further Consideration; and therefore, my Lord, I doubt not, but that your Lordship has been pleased to consider further thereof.

At that Time, my Lord, none of the Judges but your Lordship, I think, made any very particular Objections against my being bailed; and if I am able to offer any thing to your Lordship that may give a sufficient Answer to those Objections, I do not doubt but that your Lordship

is so just, that you will not adhere to any Opinion, only because you have been once of that Opinion, if any thing can be shewed to convince you to change it. In Confidence therefore, that I am before a Court which is not to be influenced by any Body (*how great soever,*) nor by any Thing but by the Laws of *England*, and by your Oaths to do Justice according to those Laws; and being well assured of the Care which your Lordship will always have to maintain the *English Liberties*, with which your Lordship is intrusted by the King, and by the Laws, and invested with Power enough by both to defend them at all Times, and against all Opinions whatsoever: My Lord, I say, presuming, and not doubting of all this, I shall take upon me to add something to what I have said already to the Objections which were then made by your Lordship, and I hope I shall have Liberty to answer any new Objections that may be now made.

My Lord, I take it for granted, in the first Place, That the Order of the House of Lords is no Objection against my Bail, because your Lordship was pleased to tell me so the last Time I was here; and then I do reckon that those Objections which have been made against my being bailed, may be summed up under these three Heads.

The first, my Lord, as well as my Memory will serve me, was, That as it was incongruous for a Court which was inferior to this, to bail any Man that was committed by this Court, or to call in question the Process of this Court; so it would likewise be for this Court to do in my Case; for that if a Man were committed by this Court, no inferior Court could bail that Man, (in case his Majesty should think fit to adjourn this Court from Time to Time) until this Court should sit again.

The second Objection was, That I am not indefinitely imprisoned, for that when his Majesty shall please to call a Parliament, I would have Remedy; and therefore I must wait till his Majesty should please to call a Parliament.

The third was, That this Cause of mine was depending in a superior Court, which was too big for this Court, and that the supreme Court having laid its Hands upon me, therefore this Court could not intermeddle in that Matter; my Lord, these, to the best of my Remembrance, are the Substance of the Objections then made.

The first of these, I have been told without Doors, is taken to be one of the weightiest Objections against me, and truly I should be very glad it should prove so, because I think it may be so easily answered.

For in the first place, As to the calling in question the Process, I conceive that Bail is no calling in question any Process, and this Court did truly think so, when in the Case of the Earl of *Shaftsbury* they did declare, That had he not come to them in the Time of an Adjournment of Parliament, they would have bailed him; and, my Lord, as nothing is more evident, than that this Court and other Courts do meddle with the Proceedings of that superior Court, so I do not doubt but to make appear, that they do meddle in a much greater degree than what I desire of Bail; and that the Consequences of what they do every Day practise, may be far more dangerous to the Subject, than the bailing of me can be.

For that Part of the Objection that compares a Commitment of this Court, to a Commitment of the House of Lords, and doth from thence conclude, that because an inferior Court to this cannot bail a Man who is committed by this Court, therefore this Court cannot bail a Man who is committed by a superior Court:

This seems so very unequal a Comparison, and the Inequality of it so obvious, that truly I thought it had not needed any Answer; for I would desire no other Answer from your Lordship, (if you can give it me,) than what an inferior Court may give to any Person that shall come before them with the like Request: For they may give him good and sufficient Reasons why they do not bail him; they may not only tell the Party that he is committed by the superior Court of the *King's-Bench*, and that he must go thither for his Relief; but they can give him good Reasons why he must do so; for they can tell him that the Court of *King's-Bench* will sit next Term, they can tell him when that Term will begin, and they can tell him how long that Term will last, and they can tell him that the Court of *King's-Bench* cannot be dissolved, as the Parliament may be: And, my Lord, this takes away all that Prisoner's Pretences, to say that he is an indefinite Prisoner; and if your Lordship can give me any such Answers as these, I shall be as well satisfied as that Man ought to be; but if no such certain Answers as these can be given, then I must beg Pardon, to tell your Lordships, that it cannot be denied, but that my Imprisonment is indefinite, and if it be so, I do as an *Englishman* affirm, that no Law in *England* can support it.

For the saying that if the King should adjourn this Court from Time to Time, the Party could not be bailed till such Time as this Court should sit again; my Lord, If this should be admitted as a reasonable Supposition (which under Favour, I do not think your Lordship your self does take it to be) yet it is but an Adjournment that is objected, and if the Parliament were but under an Adjournment, I would not have troubled your Lordship: But this is not the Case; for though sometimes the King may adjourn this or any other Court of *Westminster*, by reason of some extraordinary Occasion, as in case of a Pestilence or something of that Nature, (and I know there have been Precedents of it) yet, my Lord, these are upon extraordinary Occasions, and it is not to be thought, nay I am very certain, that his Majesty will never do any thing that shall deprive his Subjects of any of those Rights the Law allows them; so that in one Case the Law obliges that the Terms should be kept four Times a Year, and that then the Court shall sit if there be not extraordinary Occasions to hinder it; but in the other Case of a Parliament, the King lies under no Obligation, nor Restraint, whether he shall call, or whether he will call it; and therefore the Inequality of the Comparison is sufficiently apparent: And, besides this, it is as unknown how long a Parliament shall sit, as when it is to sit; Insomuch that I take all this but to have offered additional Arguments on my Side, and shews how little the Arguments are that can be brought against me; and I think it makes out to me and to all *Englishmen*, that no Man ought to lie under such an indefinite Restraint as I do: And truly, my Lord, I thought

I thought I shewed more Respect to the Court, in giving a more general Answer to this Objection (as I did before) than I can do now by being so particular.

For the second Objection, *viz.* That I am not indefinitely imprisoned, for that when the King will please to call a Parliament, I would have a Remedy there, and therefore I must wait till the King will call a Parliament.

Truly, my Lord, perhaps your Lordship may know the Mind of the King or his Ministers better than I do; but if you do not, I am sure no Man but the King can tell whether I shall have Remedy then or no; for by the Experience of three Parliaments that have been called since I was a Prisoner, it hath appeared that I have had no Remedy: Therefore I should be very glad to see this Matter any better proved, than it hath been, that I am not indefinitely imprisoned; but if this cannot be proved neither, but that I must wait till the King shall please to call a Parliament; and when he shall call a Parliament, I shall be no more certain of my Remedy than hitherto I have been, truly then I shall need no other Council but your Lordship to prove, I am under an indefinite Imprisonment; and that any Man in *England* may be so when the King pleases; and how any Doctrine can be more arbitrary than that, or less to be defended by Law, when ever that Matter shall be brought into question, others than either your Lordship or I must be Judges, and those who will be Parties so much concerned in this Question for their own Sakes, as well as the Publick, that I believe there is small Doubt to be made how they will then decide this Question.

My Lord, If it should then be found that this would hold Water, and should be maintained for good Doctrine; truly, I think, there would need no other arbitrary Power to be set up to make Men quit this Country: For as to any Man's Liberty, it might be equal to him whether he lived under the *French* Government, or under the Grand Signior's Government, as under a Government so arbitrary as this Doctrine alone would make ours; and therefore I make no doubt, my Lord, but that you will be very careful how you give it us for Law.

As I should be very sorry that there should be any such arbitrary Doctrine taught to set the King's Prerogative higher or greater than it ought to be by Law, or than this King desires, so I should be as sorry that the King should not have that Right which duly belongs to him, which is a Right and Power at all Times to administer Justice to his Subjects, and which I never heard denied to the Kings of *England*, nor I hope I never shall; And, my Lord, I must say, that the Preservation of that Right to the King, would take away all Pretences for any of these dangerous and new Doctrines, for if the King may administer Justice at all Times to his Subjects, (as it hath been the Care of Parliaments, and by *Magna Charta* it self that he should) there is no Reason left for any of those Things to be started or put upon us.

'Tis true, indeed, that the King cannot make Laws without a Parliament; but I did never hear in my whole Life, but that he could administer Justice without his Parliament; and if he could not, his Subjects would be in a miserable Condition; for surely it would be a very hard Case,

if his Subjects could have no Hopes of being righted by their Sovereign's Authority, either by himself, or in his Courts, in all Cases, and at all Times.

The House of Peers in Parliament ('tis true) is his greatest Court, but they sit only by Vertue of the King's Writ, and if the King should die (which I hope I shall never live to see) they would not then be a Court of Justice, nor any Court at all; and therefore, my Lord, in this Question, the Royal Authority and the Subjects Liberties are so involved, that what Judgment soever shall be given, must pass upon the one, as well as upon the other, and cannot possibly be divided.

The third Objection that was made, is, That this Cause of mine is depending in Parliament, which is a superior Court to this; and that the supreme Court having laid its Hands upon me, therefore this Court cannot intermeddle.

My Lord, There is no Man living that hath a greater Reverence for that supreme Court, than I have, or that will go further than I will, to defend it, in all the Rights and Privileges that belong to it by Law: Nay, my Lord, I have so much a greater Esteem for that Court, because I am sure it will never suffer me, nor any Man living, to go unpunish'd, that shall transgress the Law, or that shall go about any way to make them Transgressors of the Law, or to make them such as would be Restrainers of the *English* Liberties, beyond what the Law permits. They have shewed the contrary, when it was offered to them by a Bill from the House of Commons, that they would have no such absolute Authority put into their Hands over the Liberties of the Subject, but did then refuse it; so that to say, that supreme Court hath laid its Hands upon any Man's Liberty in *England*, further than the Law permits, would be to put an unjust Odium upon the House of Lords to the Nation, instead of doing them Right; and therefore I must needs say, that in this particular Case of my own, I find only the Word and Name of superior Court to be made use of against me, but nothing in Reality; just as they were pleased in the House of Commons to use the Word traiterously, in the Articles against me, when there was not a Tittle of Treason in them, only that by calling it Treason, it might serve to lay me where I am.

But, my Lord, I know no Court that is superior at this Time to this Court where I am now, and how any thing can be said to be depending in a Court that hath no Being, I think will not very easily be defended from Nonsense, without having the Matter extremely well explained; and whenever that superior Court shall have a Being, my Cause will then be before it, by my being bailed to appear there. And for saying, it has laid its Hand upon this Case of mine, it ought to be shewn in what the superior Court hath laid its Hand upon me, so as to keep me from Bail, when neither that superior Court it self (though it were willing so to do) is able to give me any Relief, nor that I can get to be Tryed or Discharged elsewhere, nor have any Time prefixed when that Superior Court shall Sit; as if there were no Justice left in *England*.

But if it be so, that I shall neither be Bailed, nor have it shewed, what Hand the Superior Court

Court has laid upon me to hinder it, then truly any Man may be so concluded, and the Argument may be decided, by the Will and Pleasure of those who have Men in their Power; but the Shadows of Things, when there is no Substance in the Argument, will not satisfy reasonable Men for an Answer, why so publick a Grievance shall not be remedied; and I am confident, that the Superior Court it self will never suffer its Name to be made use of, nor themselves to be made Properties, to support such a Grievance as may concern not only themselves, but the whole Nation, both in this Age, and to all Posterities; and by which, not only *Magna Charta*, and the Petition of Right, would be evaded, but the late Act of *Habeas Corpus* may also be eluded by this Device; and the Parliament (when it shall meet again) will find, that instead of securing their Liberties, they have only been hedging in the Cuckow; for that there is now a new way found out, by which all Acts for our Liberties may be made of no effect: And this cannot be contradicted, unless (as some would fancy) the King could not Impeach as well as the Commons; but there are so many Evidences to the contrary of that, as there is no room left for the Dispute: And amongst the Precedents of that kind, there is one (because it hath a double Consequence) that I do desire to put your Lordship in mind of.

It is in the 5^o H. 4th, in the Records of the Tower. There you will find, that the Commons came to petition the King, that his Majesty would be pleased, not to Impeach the Archbishop of *Canterbury*, the Earl of *Northumberland*, and some others that were at that time accused for being in the Confederacy of Sir *Henry Percy*, and the King grants their Request, and does agree he would not Impeach them.

I have quoted this the rather, because of the double Precedent that is in this Case; for again the same Day the Commons came (after his Majesty had granted their former Request) and did further Petition his Majesty, that he would be pleased to affirm those Lords (whom he had promised he would not Impeach) to be his true Liege-men; and the King did grant that also; by which it was then taken for granted, that he had set them *Recti in Curia*, (even though they were in that Conspiracy with Sir *Henry Percy*) and, my Lord, I give you this Instance, that you may observe two things by it: First, That the Commons did Petition the King not to Impeach; and when he had granted that, it appears also, that by the King's declaring them to be his true Liege-men, it was by the Commons conceived, that the King did set them *Recti in Curia*; by which it does appear, what great Regard the House of Commons had to the King's bare Affirmation, of their being his true Liege-men; and I hope, that neither this King's Power nor Credit shall be less with his own Court, than that King's was with his House of Commons; and I am sure, no King's Affirmation can be greater, nor more publick, both to his Parliament and Kingdom, of any Man's being a true Liege-man, (to use that old Word) than the King's hath been concerning me.

My Lord, there are some Men, very unable to distinguish (tho' they would) between Sound and good Sense, and there are a great many, that are as willing to let Men remain under their Mistakes;

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but since it weighs a great deal with some who do not very rightly distinguish, it will be of absolute Necessity for me to explain what it is, that is meant by a Case depending in Parliament, when there is no Parliament: This will be best shewn by an Instance in a Writ of Error depending in Parliament, in which Case, when the Parliament is sitting, and so the Writ is really and truly depending in the Court that is in Being, there can (during such Sitting) be no Execution sued upon the Judgment. But, my Lord, no sooner is the Parliament dissolved, but Experience shews, that Execution may be sued, and Goods levied, and the Properties of Mens Estates changed; and therefore it is by this sufficiently plain, that Depending is not then meant in the same Sense, or in the same Manner, as it was meant when the Parliament was actually sitting; for then there could have been no Execution sued.

Now, my Lord, when a Parliament shall meet again, what does it meet with? It meets, it is true, with the same Cause again, (as to the Merits) but it meets it quite altered as to other Circumstances, viz. as to the Execution that hath been granted by an inferior Court, in the Interval of Parliament. And, as to the Change of Property, for a Man's Estate (and perhaps of great Value) may happen to be in another Man's Hands at the same Time by the Execution; so that when a Parliament doth meet again, it doth meet, it is true, with the same Cause (as to the Merits) but indeed as to nothing else.

And therefore, by this, it is clear, that a Parliament does only expect, when it meets again, to meet with the Cause in the same State (as to the Merits of the Cause) and doth not at all meddle or concern it self to find Fault with those suppletory Acts that have been done by an inferior Court in the Interval, which was only to prevent Failure of Justice, but it commends them for not having delayed Justice, and that Men should not be kept too long out of their Rights, (even tho there may have been prodigious Wrong done to the Parties, if the Judgment have been erroneous) for that the superior Court will at last see to the Error, if any have been committed by the Judgment of the inferior Court, and will enter upon all as entire again, (as to its Merits) as if nothing had been done by the inferior Court; so that in Reality, that which can only reconcile the Sense of being Depending in Parliament, when the Parliament is dissolved, is this last Order of the House of Lords, which declares Impeachments, &c. to be continued, notwithstanding Dissolution. For by Vertue of this last Order, the Lords do proceed upon the Cause, without beginning *De novo*, or having any new Writ or new Impeachment brought up to them: But this is new Doctrine, and never practised till of late; however, since they have done so, in this Sense, and in this only, a Cause may be said to be depending; and so it was adjudged, in that single Instance of the Trial and Condemnation of my Lord *Stafford*; but there they proceeded to the Merits of the Cause, and they tried and condemned my Lord *Stafford*; and there is no manner of Doubt, but by Vertue of their late Order, they may proceed upon me when they shall meet, as they shall think fit, notwithstanding my having been bailed; for I desire not to have the Merits of my Cause removed from before the Lords, if I might, but that they may do

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do with me as they please, even to Condemnation, if they shall have Cause, which I hope in God they never shall.

Therefore, I say, my Lord in this Sense only which I have explained, a Cause may be said to be depending, though a Parliament is not in being; but I will challenge the ablest Lawyer, with all the Sophistry he can use, together with his Law, to shew me how he can possibly distinguish the Case of Writs of Error, from the Case of Impeachment, or wherein they differ, as to their depending, in the Intervals of Parliament; and I likewise challenge him to make appear, how Bail is any other than such a suppletory Act, to relieve a Man from being kept too long from his Liberty, as the granting of Execution in the Interval, is to relieve a Man from being too long kept out of his Money or Estate; for that the Merits of the Cause, both in the one Case and the other, remains entire for the Parliament to recommit upon (if they see Cause) as well as to reverse the Judgment, and all the Proceedings, upon the Writ of Error.

Where is then the Difference, my Lord? if there be any Difference, I think it lyes only in this, that in one Case there may be an erroneous Judgment, and a Man may be almost undone and ruined, by being wrongfully dispossest of his Estate (be it never so great;) but in this Case, the suppletory Act which is done to admit to Bail, can only be to ease a Man from his too long or perhaps perpetual Imprisonment, and can hurt no Body, nor take no Man's Liberty from him, to grant him his; but yet this must be thought an hard Case, and the other a very easie one, and fit to be practised every Day.

My Lord, if the Law has taken Care, and made such Provision, that a Man shall not be kept too long out of 10*l.* in Money, or out of 40*l.* a Year in Land, then it would be strange, that the Law should not have made Provision, that a Man should not be kept too long out of his Liberty, and when there is no Prospect of his having it.

Besides, in a Writ of Error the Judgment given is controverted, and the Power of awarding Execution is suspended upon that very account, because the Judgment of the Court is in question, and the Justice of it is brought in dispute, whether they have judged right or wrong.

Now, my Lord, if the Dissolution of a Parliament can restore the Judges Power in the interval of Parliament, so as to award an Execution upon a Man's Estate, where the Property shall be changed and altered, and notwithstanding their Justice was brought in question, and that they may have done great wrong to the Party by their Judgment, and yet we are to believe, that the same Dissolution cannot restore the Power of the Judges so as to give a Man a little Ease from a Confinement within four Walls, where the Justice of no Court is question'd nor arraigned, nor no Wrong can have been done to any Body; But on the contrary, does Right to the King, who by his Consent shews his Will to have a Man Bailed; and great Right to the Subject, who ought to be delivered from the danger of an indefinite Imprisonment which is so contrary to Law: Then indeed there must be some Infallibility supposed in that Chair, which shall maintain such Doctrine, and must be submitted to, with the same Implicite Faith, which they do who can believe Infallibility.

But for my part (who can believe Infallibility in no kind upon Earth) I confess I must have my Reason better satisfied, before I can any more believe this Exposition of the Law, than I can believe those infallible Mens Expositions of the Gospel.

My Lord, I hope I have made plain to your Lordship, what it is that is meant, or can be understood, by a Cause depending in Parliament when there is none, and how and in what Sense only it can be understood to be so depending; and it is as plain, that the bailing of me is no intermeddling with the Merits of the Cause in Parliament, but on the contrary, an evident Affirmation of the Jurisdiction of that Supreme Court; and if I cannot be admitted to Bail in some other Court than the House of Lords, it is contrary to what my Warrant of Commitment implies, by which I am committed only till I am discharged by due course of Law, for which I am properly in this Place.

My Lord, it cannot be meant that Bail can be any more than a suppletory Act (*propter rei necessitatem*) and for the Ease of the Subject; and it is impossible for that old Rule, of *Salus Populi Suprema Lex esto*, to be more aptly applied in any Case in the World than in this, that concerns every Man in *England* in his Liberty: For should it be otherwise, pray see what the Consequence of this Doctrine would be; that because a Superior Court which is not now in being (nor hath it in its own Power to be so) hath committed a Man, therefore he cannot be admitted to Bail; what should become of Men, if after the Dissolution of a Parliament, there can be no Possibility of having Justice done them?

Nay farther, if it should be granted that this Court cannot intermeddle, because the Superior Court has committed, by that Doctrine it would not matter whether the Commitment were for Treason, or for the smallest Quarrel or Misdemeanor, for which a Man might happen to be in Prison at the time of a Dissolution of a Parliament; nor would it be any matter, whether the Order of the House of Lords were revoked or not.

For it is an Order of a Superior Court, which will still be a Superior Court though the Order were Burnt, and yet that must be enough to keep one in Prison by this Rule, for that there would still be no other Remedy, though the Order were repealed.

But, My Lord, the Warrant of Commitment shews the Lords Directions to be contrary to this Opinion, for I can shew several Instances of Warrants which run, some to be kept *till further Order of that House*, others to be kept *till they shall be discharged by the House*, and others to be kept *till the Pleasure of the House be further signified*, and others *during the Pleasure of that House*; But my Warrant is, *till I am discharged by due Course of Law*: Now I doubt not, but if the Lords had thought those Words had not given a latitude for Relief elsewhere, they would have worded the Warrant otherwise, and instead of saying *by due Course of Law*, would have said, *till I were discharged by that House*, if the Lords had thought there had been no other Remedy by Law, but by that House. But, my Lord, the Lords will not act any thing above the Law, they will keep every thing within the compass of the Law; and I am sure that there cannot be

a better Example to follow, than the Example of those wise and great Men of that great Court, and I desire it may be followed, and not contradicted.

For by this Doctrine, truly, my Lord, Liberty it self would not only be utterly lost; but to make the Riddle the greater, and the Manner more ridiculous, it would be lost, and yet no Body invade it: For the *King* he consents to my Bail (if he hath any Power) so he does not intend to deprive me of my Liberty; The Lords would for their own Sakes and Justice Sake (if it were in their Power to meet, and have Time to sit so long as to take the Case of a single Person into consideration) do me Justice, either in discharging or trying me; So that in my Case, here is a Subject of *England* imprisoned by no Body, and yet no Power upon Earth can relieve me. Shew me an Example of this in any Nation under the Sun, but this, that there wants a Power in the Government to relieve a Prisoner at all times (if it would) and I will be satisfied; Nay my Lord, the very *Spanish Inquisition* is more reasonable than this, for though the Cause may be unjust that they commit a Man for, and their Usage of him may be very severe while he is there, yet the *Inquisitors* (if they please) *can* deliver him; there is no Prisoner in the World but *can* be delivered by some Power or other, but me; and, my Lord, this is a Rule that must be for every Man in *England* as well as me, and I am not so inconsiderable but that my Fate may be made a Precedent of Note.

The Opinions, my Lord, that were given by the Judges in the Case of Ship-money, appear far more tolerable, in my Opinion, than this; for I know there is no Man but had rather have a Sentence pass'd against his Estate (which he may recover again) than have it passed against his Liberty, which he may never have, and which is more valuable than any Estate.

Besides, where is the Justice of the Nation? and what a Shame would it be to our Laws and to our Government; that it could be said of this Country, that a Man might be punished by Imprisonment in *England* (where the Government is not Arbitrary) for seven Years or more, and at last be found Guilty of no Offence? and what Satisfaction could be in Nature given to that Man? I say, if that Man could have a Crown given him, it could not make him Satisfaction for the loss of his Liberty all his Life, which may be the Consequence of this Doctrine; and, my Lord, there are Precedents good store where Men have suffered sufficiently for their Judgments against the *Liberty and Property of the Subject*, but I never found one that suffered in the Defence either of the one or the other.

I have shewn, I think, sufficiently what can be meant either in my Case or any other, by a Cause depending in *Parliament*, when there is no *Parliament*; as also how much Inferior Courts do meddle with things of much an higher Nature, than Bail will be; insomuch that truly I should think it might be sufficient to say no more than I have said: But I do not know what may be sufficient in my Case; and therefore, my Lord, you must pardon me, if I do put you in mind of a Case wherein you have gone to the Merits of the Cause it self, when Depending in *Parliament*.

It is *Fitz-Harris* his Case; and I know very well what Answers will be given me; as that

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that was a Case rejected by the Lords, and that it was not the same Treason for which he was Impeached, and other things that I could mention; but I know your Lordship will speak by the Record of the Court (of which I have here a Copy) and the Record is that which must satisfy the World an hundred Years hence, by which it will appear to them, that he was Impeached, and Tryed, and Condemned, depending that Impeachment; for he made that his *Plea*, and Mr. Attorney General demurring to it, the Court must take the Matter pleaded, as confessed and allow'd; and this being so, I should think there should be no Scruple made in the point of Bail; or if there should, there must certainly be very great Hardship in one Case or the other, and must be very difficult to be answered.

But to conclude, Besides all this, I am the King's Prisoner, and I have the *King's* Pardon; and if I cannot get to be Bailed, there is not only a Defect of Jurisdiction in this Court, but a Defect of the Regal Authority and Power of the Kings of *England* to administer Justice to their Subjects; which was never heard of, I think, and I hope I shall never live to hear of it (especially from the *King's* Supreme Ordinary Court of Justice.) And that, my Lord, that must make this Case the more unhappy at this time is, that we live in Days wherein his Majesty's Prerogatives are so much brought in question: For what Prerogative hath He which is more undoubted than his Power of Pardoning? and yet you see that brought in Question to the utmost, and those that are the ablest Men that speak against that Power, do laugh at the little small Triflers who object, that the *King* may Pardon before Impeachment, and after the Sentence be given, but not betwixt those Times; They laugh at this, and tell you that he cannot Pardon at all; and it is easily perceived that if they could reach their design, they would have it understood, That *Treason* may be committed against the People, and by that Doctrine another High Court of Justice may be set up, and the *King* may be Tried by his People, as well as he can Try them. My Lord, there are a great many Consequences attending upon that Doctrine, which I am sure will ne'er be countenanced by the *King's* Courts; but I shall not wonder that such Men as these be trying their Projects, and think themselves in the Right to do so, if they find his Majesty cannot do so much as a lesser Act of Grace for his Prisoner, which is but to give him Ease from too long or perhaps a perpetual Imprisonment; for if he hath not Power so much as to Bail his own Prisoner, I shall not wonder if others question whether he hath Power to Pardon him.

My Lord, I have seen such Keepers of our Liberties, from whom I should expect such Doctrines; but I thank God that by our Laws the *King* is the Keeper of our Liberties, and therefore I hope I shall not hear any such Doctrine by which he can only be the Keeper of us in Prisons, but shall have no more Power than another Man, to set his Prisoner at Liberty, although his Will be only to give his Prisoner Ease (as the Law intends) against Indefinite Imprisonment.

Lastly, My Lord, If I should die in Prison with this Pardon by me, which I have shew'd your Lordship; or suppose that the House of Commons (if it were but with a design to de-

stroy the Pardon) would give some other Reason than the Pardon (as being better satisfied concerning me, or any thing else) why they would prosecute me no more (of which there be divers Precedents.) What a Wound would thereby be given to the *King's* Prerogative? and pray how is it possible almost to give it a greater Blow than this would be?

What a Precedent would it be to Posterity to say, that a Man had lain three, four or five Years or more in Prison notwithstanding a Pardon, that signified nothing all that time? for that the *King* would have Eased him if he could, and hath shewed his Court that he would do so, but was not able so much as to have him Bailed? would not this put that Prerogative in great hazard? I confess I do wonder that some others besides your Lordship have not taken more care of the Prerogative of the *King*, for their own Sakes as well as the *King's*; For it would be very convenient it should be useful, if ever it should become necessary; And it is not improbable, but if the *King* should hereafter find such a Prerogative diminish'd, he would not only reflect upon his Loss, but upon those who might have advised better, or might have better defended this Prerogative of the *King*; And for the Subjects Liberties, there will never be Eyes wanting to inquire after any Invasion which shall be made of that kind.

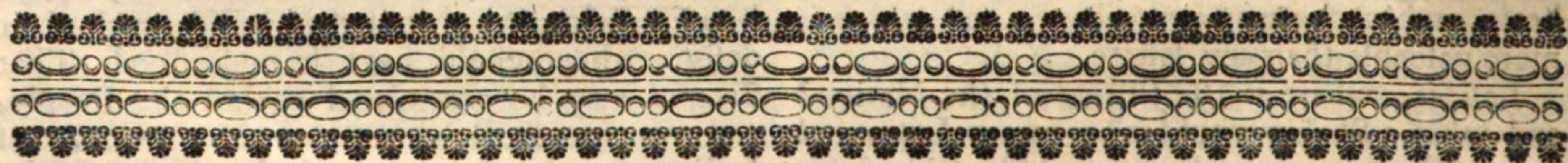
Upon the whole, I have troubled your Lordship too long, but it hath been upon a Subject of the greatest Concern to *Englishmen*: I have such Bail to offer to your Lordship, as I am sure cannot be denied, and I am in my own Conscience sufficiently satisfied, that I am detained a Prisoner from Bail, neither by the *King*, by

the Lords, nor by the Laws; and therefore, my Lord, I do humbly pray your Lordship you would please to accept my Bail, and as I here offer your Lordship my Pardon again, so I again pray the Benefit of it, and I desire your Lordship it may be read in Court.

The Lord Chief Justice then spoke, and so did all the rest of the Judges, (upon the Earl's desiring that they would severally deliver their Opinions) And the Lord Chief Justice, and Mr. Justice *Dolben*, did deliver their Opinions, that the Earl could not be relieved by that Court. Mr. Justice *Jones* concluded his Discourse with saying, that he could not give his Judgment that the Earl should be Bailed AT THAT TIME. Mr. Justice *Raymond* did say, he could not see but that there would be a *failure of Justice* if so be his Lordship should not have Liberty upon Bail; but that he had not had time to view Precedents, and therefore it would be very unfit for him at present to be positive in what he did say.

And then the Lord Chief Justice did tell the Earl, he must be contented to be Remanded.

But afterwards, on the last Day of *Hilary* Term, 1683, the Judges delivered their Opinions severally, and were Unanimous, that the Earl † ought to be Bail'd. And accordingly Bail was taken in 40000*l.* his Lordship in a Recognizance of 20000*l.* and the Dukes of *Somerset* and *Albermarle*, and the Earls of *Oxford* and *Chesterfield* in 5000*l.* a Piece; upon Condition, that the Earl of *Danby* do appear in the House of Lords the next Session of Parliament, and not depart without leave of that Court.



LXXVIII. *The Trial of ROBERT GREEN, HENRY BERRY, and LAWRENCE HILL,* at the Kings-Bench, for the Murder of Sir EDMUND-BURY GODFREY, Feb. 10, 1678. Hil. 31 Car. II.*

ON Wednesday the 5th of February, 1678, Robert Green, Henry Berry, and Lawrence Hill, were brought from His Majesty's Goal of Newgate, to the Bar of the Court of King's-Bench, to be Arraigned for the Murder of Sir Edmund-bury Godfrey, upon an Indictment found by the Grand Jury for the County of Middlesex, on Monday the Morrow of the Purification of the Blessed Virgin Mary; and the Court proceeded thus:

Mr. Justice *Wild* Arraign'd the Prisoners.

Clerk of the Crown. Robert Green, hold up thy Hand; Henry Berry, hold up thy Hand; Law-

rence Hill, hold up thy Hand. Which they severally did.

You stand Indicted by the Names of Robert Green, late of the Parish of St. Mary le Strand, in the County of Middlesex, Labourer; Henry Berry, late of the same Parish and County, Labourer; And Lawrence Hill, late of the same Parish and County, Labourer; for that you three, together with — Giralde, late of the same Parish and County, Clerk; Dominick Kelly, late of the same Parish and County, Clerk; and Phillibert Vernatt, late of the same Parish and County, Labourer, who are withdrawn: Not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 12th day of

† This was now done on purpose to be a Precedent for the four Popish Lords, who were Bail'd out that same Day.

* Burn. Hist. own Times. Vol. I. p. 445.

October, in the Thirtieth Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. at the Parish of St. Mary le Strand aforesaid, in and upon Sir Edmund-bury Godfrey, Knight, in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily and of your Malice aforethought, did make and assault; and that thou the aforesaid Robert Green, a certain Linen Handkerchief of the value of Six-pence, about the Neck of the said Sir Edmund-bury Godfrey, then and there feloniously, wilfully, and of thy Malice aforethought, didst fold and fasten; and that thou the said Robert Green, with the Handkerchief aforesaid, by thee the said Robert Green, in and about the Neck of the said Sir Edmund-bury Godfrey, in manner and form aforesaid, folded and fastened, then and there him the said Sir Edmund-bury Godfrey didst choak and strangle, of which said choaking and strangling of him the said Sir Edmund-bury Godfrey, in manner and form aforesaid, he the said Sir Edmund-bury Godfrey then and there instantly died: And that you the said Henry Berry and Lawrence Hill, together with the said ———— Gerald, Dominick Kelly, and Phillibert Vernatt, then and there feloniously, voluntarily, and of your Malice aforethought, were present, aiding, abetting, comforting and maintaining the aforesaid Robert Green, the aforesaid Sir Edmund-bury Godfrey in manner and form aforesaid, feloniously, voluntarily, and of his Malice aforethought, to Kill and Murder; and so you the said Robert Green, Henry Berry, and Lawrence Hill, together with the said ———— Gerald, Dominick Kelly, and Phillibert Vernatt, in manner and form aforesaid, the aforesaid Sir Edmund-bury Godfrey, feloniously, wilfully, and of your Malice aforethought, did Kill and Murder, against the Peace of our Sovereign Lord the King, his Crown and Dignity.

How say'st thou, Robert Green, art thou Guilty of this Felony and Murder whereof thou standest Indicted, and hast been now Arraigned, or Not Guilty?

Green. Not Guilty.

Cl. of the Cr. Culprit, How wilt thou be Tried?

Green. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance. How say'st thou, Henry Berry, art thou Guilty of the Felony and Murder whereof thou standest Indicted, and hast been now Arraigned, or Not Guilty?

Berry. Not Guilty.

Cl. of the Cr. Culprit, How wilt thou be Tried?

Berry. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance. How say'st thou, Lawrence Hill, art thou Guilty of the Felony and Murder whereof thou standest Indicted, and hast been Arraign'd, or Not Guilty?

Hill. Not Guilty.

Cl. of the Cr. Culprit, How wilt thou be Tried?

Hill. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance.

Capt. Richardson. I desire to know when they must be brought up to be Tried?

Mr. Just. Wild. Upon Friday next.

Cl. of the Cr. You shall have a Rule to bring them up on Friday.

But on Thursday, the 6th of February, Mr. Attorney-General mov'd the Court that it might be defer'd till Monday, that the King's Evidence might be the more ready; which was granted accordingly.

On Monday the 10th of February, 1678, the said Robert Green, Henry Berry, and Lawrence Hill, were brought again to the Bar for their Trial; which proceeded as followeth.

Cl. of the Cr. Make Proclamation.

Cryer. O Yes.

Cl. of the Cr. Again, Again.

Cryer. O Yes, O Yes! Our Sovereign Lord the King doth straightly Charge and Command all manner of Persons to keep Silence upon Pain of Imprisonment.

Cl. of the Cr. Make an O Yes!

Cryer. O Yes! If any one can inform our Sovereign Lord the King, the King's Serjeant at Law, the King's Attorney-General, or this Inquest now to be taken of the Felony and Murder whereof Robert Green, Henry Berry, and Lawrence Hill, the Prisoners at the Bar, stand Indicted, let them come forth and they shall be heard, for now the Prisoners stand at the Bar upon their Delivery. And all others that are bound by Recognizance to give Evidence against the Prisoners at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

Cl. of the Cr. Robert Green, hold up thy Hand; Henry Berry, hold up thy Hand; Lawrence Hill, hold up thy Hand. Which they severally did.

Those good Men that you shall hear call'd, and personally appear, are to pass between our Sovereign Lord the King and You, upon Trial of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them when they come to the Book to be sworn, and before they are sworn. Cryer, Make an O Yes.

Cryer. O Yes! You good Men that are Impannel'd to enquire between our Sovereign Lord the King, and Robert Green, Henry Berry, and Lawrence Hill, the Prisoners at the Bar, answer to your Names, and save your Issues.

Cl. of the Cr. Sir William Roberts.

Cryer. Vous avez, Sir William Roberts.

Cl. of the Cr. Sir William Roberts, to the Book.

Cryer. Sir William Roberts, look upon the Prisoners: You Prisoners look upon the Jury. You shall well and truly Try, and true Deliverance make, between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

And the same Oath was administred to the rest, and their Names were as follow:

Sir William Roberts, Baronet.
Sir Richard Fisher, Bar.
Sir Michael Heneage, Knight.
Sir Thomas Bridges, Knight.
William Avery, Esq;
Charles Humphrevile, Esq;
John Bathurst, Esq;
Richard Gowre, Esq;
Thomas Henslowe, Esq;
John Sharpe, Esq;
John Haynes, Esq; and
Walter Moyle, Esq;

Cl. of the Cr. Cryer, count these. Sir William Roberts.

Cryer. One, &c.

Cl. of the Cr. Walter Moyle.

Cryer. Twelve, good Men and true, stand together, and hear your Evidence. Gentlemen, are you all Sworn? And you that are not Sworn, pray withdraw.

The Standing-place for the Jury being so throng'd, that those who were sworn had not room to stand together, the Clerk of the Crown was order'd to make Proclamation thus:

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O Yes! My Lords the King's Justices do straitly charge and command all Persons, that are not of the Jury, to withdraw forthwith, upon Pain of one hundred Pounds a Man.

Cl. of the Cr. Robert Green hold up thy Hand; Henry Berry, hold up thy Hand; Lawrence Hill, hold up thy Hand. Which they severally did.

Gentlemen, You that are sworn look upon the Prisoners, and hearken to their Charge: You shall understand, that they stand Indicted by the Names of Robert Green, late of the Parish of St. Mary le Strand in the County of Middlesex, Labourer; Henry Berry late of the same Parish and County, Labourer; and Lawrence Hill late of the same Parish and County, Labourer; for that they, together with, &c. (as before) against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment they have been Arraigned, they have thereunto severally pleaded Not Guilty, and for their Trials have severally put themselves upon God and their Country, which Country you are. Your Charge is to enquire, whether the Prisoners at the Bar, Robert Green, Henry Berry, and Lawrence Hill, or any of them, are Guilty of the Felony and Murder, whereof they stand Indicted, or Not Guilty; and for them which you shall find Guilty, you shall enquire what Goods or Chattels, Lands or Tenements, they had at the time of the Felony committed, or at any time since. If you find them, or any of them, Not Guilty, you shall enquire, whether they, or any of them, that you find so Not Guilty, fled for the same; if you find that they or any of them fled for the same, you shall enquire of their Goods and Chattels, as if you had found them Guilty: But, if you find them, nor any of them, Not Guilty, nor that they did fly for it, say so and no more, and hear your Evidence. Cryer, make Proclamation.

Cryer. O Yes! If any one will give Evidence on behalf of our Sovereign Lord the King, against Robert Green, Henry Berry, and Lawrence Hill, the Prisoners at the Bar, let them come forth, and they shall be heard.

Mr. Serjeant Stringer. May it please your Lordship, and you Gentlemen of this Jury, The Prisoners at the Bar, Robert Green, Henry Berry, and Lawrence Hill, stand Indicted for that they, with one Gerald a Priest, one Kelly, and one Vernatt, did the twelfth of October last, at the Parish of St. Mary le Strand in this County, feloniously, willfully, and of their Malice aforethought, assault the Person of Sir Edmund-bury Godfrey, Kt. and that the Prisoner, Robert Green, did put about the Neck of the said Sir Edmund-bury a twisted Handkerchief, and did with that twisted Handkerchief so choak and strangle the said Sir Edmund-bury, that he immediately died,

and that the other Prisoners, Henry Berry, and Lawrence Hill, with the other Persons, Gerald, Kelly, and Vernatt, were aiding and assisting the said Robert Green to Murder the said Sir Edmund-bury; and so the Prisoners at the Bar, with the said other Persons, the said Sir Edmund-bury Godfrey did kill and murder, against the King's Peace, his Crown and Dignity. To this they have pleaded not Guilty, and for their Trial have put themselves upon their Country, which Country you are. If we prove them, or any of them Guilty, you are to find it so.

* Mr. Attorney General. May it please your Lordship, and you Gentlemen of this Jury, the Prisoners who stand now at the Bar, are Indicted for Murder. Murder, as it is the first, so is it the greatest Crime, that is prohibited in the Second Table. It is a Crime of so deep a Stain, that nothing can wash it away but the Blood of the Offender, and unless that be done, the Land in which it is shed, will continue polluted. My Lord, as Murder is always a very great Crime, so the Murder which is now to be try'd before your Lordship, is, it may be, the most heinous and most barbarous that ever was committed. The Murder was committed upon a Gentleman, and upon a Magistrate, and I wish he had not therefore been murdered, because he was a Protestant Magistrate.

My Lord, I will not spend much of your Time in making my Observations before hand, because I must in this Case crave leave to do it in the Conclusion of the Evidence. For I, that have made a strict Examination into this matter do find, that I shall better spend my Time in making Observations, and shewing how the Witnesses do agree, after the Evidence given, than before. Therefore, my Lord, I shall at present only make a short Narrative of the Fact, to shew you the Course of our Evidence, that it may be the better understood and remembred by the Jury.

My Lord, Upon the Discovery of the late horrid Plot —

* Lord Chief Justice. And present Plot too, Mr. Attorney: But pray go on.

Mr. Attorney General. If your Lordship please, you may call it so, for 'tis to be feared they have not yet given it over: But upon the Discovery of that Plot (call it late or present) Sir Edmund-bury Godfrey (whom I suppose the Jury all knew, and every Man, that lived thereabouts, must needs remember to have been a very useful and active Justice of the Peace) had taken several Examinations about this Matter, and perhaps some more than now are extant: (but we have proof he had some) and was very industrious in finding out the principal Actors in this Plot, among whom, some Priests and Jesuits foreseeing their own danger, and likewise the Overthrow of a Design which they had been so long in contriving, they had several Consultations how to prevent the Discovery. And as they are Men who never stick at Blood, but rather account it meritorious to shed it, though never so unjustly, when their Interest may be profited by it, they did resolve to secure themselves and their Design by taking away the Life of this Gentleman. In order thereunto they had several Meetings, and the Place of their Meeting, you will find by the Evidence,

* Sir William Jones.

* Sir William Seroggs.

to be at the *Plow-Alhouse*, and there they did consult how to take away the Life of Sir *Edmund-bury Godfrey*. And they made several Attempts to do it: One while they dogg'd him into the Fields, another while they sent People to spy when he came abroad, that they might follow him into some dark Alley, or other obscure or unfrequented Place, and there dispatch him; and at last, after many Attempts, they succeeded in that wicked one, when the Murder was committed.

My Lord, There are contained in this Indictment six Offenders, all Principals; three of them, I think, are Priests, or at least two of them are so, that is, Father *Girald* an *Irishman*, Father *Kelly* likewise of the same Nation, and one *Vernatt*, whether a Priest or Layman I know not. These Priests (as they are always the first that contrive Mischief, so they are always the first that fly Punishment) have taken care for themselves, and run away, and left their blind Followers, the Prisoners at the Bar, whom they had drawn into this bloody Act, alone to answer for it.

The Day, when this Murder was committed, was *Saturday* the 12th of *October* last; and I must desire your Lordship to take Notice of the Day, for upon that much of the Evidence will depend. And we shall prove, that as they did before send several times to Sir *Edmund-bury Godfrey's* House to get Intelligence of his going abroad, so this very Day in the Morning, *Hill*, one of the Prisoners at the Bar, came to his House upon pretence of Business with him; and, as we guess, and have reason to believe, to learn whither he went that Day: *Green* (another of the Prisoners) had been there before on the same Errand. And so much we shall prove to you by the People of the House. Sir *Edmund-bury Godfrey* happened about Noon, or some time in the Afternoon of the same Day (as we have it by the confession of one of the Parties) to be at an House near *St. Clement's Church*, where these Murderers had Notice he was, and had prepared a Trap for him as he came back. They had appointed Men to watch him, and give them Notice when he did come back, and whatever his Business was at the House that he was in (for it cannot yet be known) he staid there till about seven or eight a Clock at Night: And your Lordship knows that at that time of the Year it is then dark. He coming from about *St. Clement's Church* towards his own House near *Charing-Cross*, Notice was given to the Murderers of his approach near to *Somerset-House*. And thus they had laid their bloody Contrivance: Some of them were Appointed to meet him at the Back-Gate of *Somerset-House*, and to inform him that there was a Quarrel in the Yard, and he being a Man always careful to keep the Peace and punish them that broke it, they thought it a very apt means to train him into the Yard. And when he came near the Back-Gate they did accordingly acquaint him that Two of the Queen's Servants were fighting in the Yard, and that they needed his Presence to part and quiet them. He, at first, thought it might be but some ordinary idle Scuffle, and was not willing to go down, but being very much importun'd by them, down he went, thro the Back-Gate into the Yard, where were indeed two Men scuffling together, but counterfeitedly; the one was *Berry*, the Prisoner here; the other

was *Kelly*, the Priest that is run away. And when Sir *Edmund-bury Godfrey* was come, and within their reach, then, as it was before contrived, the Fray of it self ended, and *Berry* goes to the lower Water-Gate, and Mr. *Praunce* (who was in that foul fact, but hath since repented, and hath made this discovery) to the Upper-Gate, to keep back any casual Passengers for a little while, till such time as the Murder was over.

My Lord, Things being thus prepared, whilst Sir *Edmund-bury Godfrey* stood still, or was returning, having no more to do there, after the Scuffle was thus appeased, *Green*, one of the Prisoners, coming behind him, puts a Cravat, or a Twisted Linen Cloth, (which he had ready for the purpose) about his Neck. And he, *Hill*, and those Holy Fathers *Girald* and *Kelly* (with great veneration be it spoken, for Men of their Order to stain their Hands with the Blood of an Innocent Gentleman, and that in so treacherous a manner) All set upon him, and very manfully, being four upon one, and he altogether surprized, threw him down and strangled him. And this was done (as it is easy to imagine) without much Noise; so that I doubt not but many that were near the Place might be ignorant of it, and did not hear it.

My Lord, Tho the thing was done with a great Zeal, and a very good Will to dispatch him, yet it so happen'd, that when Mr. *Praunce* came back from keeping Sentinel at the Gate, there was some Life left in Sir *Edmund-bury Godfrey*, he did stir his Feet, and thereby they perceived that he was not quite Dead. But to make thorough Work with him, *Green* (who begun, and was to give an Accomplishment to this bloody Fact) takes hold of his Head and twists his Neck round, and stamps upon his Breast, the Marks of which outrageous Cruelty did plainly appear in his Body after it was found.

My Lord, After they had thus kill'd him, *Girald* the Priest thought he was not yet Dead enough, and was very willing to run him through with Sir *Edmund-bury's* own Sword; but that was not liked by the rest, lest it might be discovered by a great effusion of Blood in that Place; and so they forbore it for that Time. Having thus dispatch'd him, they remov'd him to the Chamber of *Hill*, where they kept him some time, and after that to another Chamber. I will not be particular herein, because the Witness will give the best account of it. But after some time, (I desire it may be observed, 'twas on *Monday* Night, two Nights after the Fact was committed) they brought him into another Room and laid him there, with a Cloak thrown over him. And I mention this last so particularly, because he then happened to be seen by another Witness here present, who concurs as to his lying there Dead, and that he saw him by the help of a Dark-Lantern, of which, and other Circumstances, I shall have occasion to make use hereafter.

My Lord, After he had lain in *Somerset-House* some Days, they thought it was high time to remove him, or rather to expose him: for having now kill'd him, they did endeavour to kill his Reputation, and lay the Blame of this foul Murder upon this Innocent Gentleman, as if he had killed himself: And on *Wednesday* Night, which by computation was the 16th of *October*, they carried him out of *Somerset-House* in this manner:

Hill

Hill having late in the Night procured a Sedan, they made a shift, by bending the Body to a fit Posture, to crowd him into it; and *Berry*, one of the Murderers, and Porter of *Somerſet-Houſe*, was of all Men moſt proper to help them out with Privacy; and therefore it was agreed between them, that whenever a Man ſhould come before and make an Hem, it ſhould be a ſign to *Berry* to open the Gate. And, my Lord, having put him into the Sedan, Mr. *Praunce* and *Girald* firſt carried him out in it to *Covent-Garden*, and there they reſted, (being ſomething wearied with their Burthen) and two more ſupplied their rooms, and carried him to *Long-Acre*. Then *Girald* and *Praunce* took him up again, and carried him to the *Grecian Church* near *Soho*: And when they had him there, they got an Horſe ready and mounted him upon it, and *Hill* was ſet behind him to hold him up; by which means they carried him to the place where he was found; and there, to accompliſh the laſt part of their Deſign, which was to murder his Reputation, after they had killed his Body, they took his own Sword and run him thro, and left him in ſuch a manner, as that (according to the Weakneſs of their Underſtanding) the World ſhould conclude he had killed himſelf. In that Condition was the Gentleman found. I have but little more at preſent to trouble you with, and that ſhall be to ſhew you what the Murderers did after they had committed this Faſt. They gave an Account of it the next Morning to Mr. *Praunce*, who went no further than the Sedan went, which was to the *Grecian Church*: and the Prieſts were ſo far from any Remorſe, and had ſo little Humanity, (I believe there is none can think they had much of Divinity) that they did, in a Paper, ſet down a Narrative of this heroick Act: And I doubt not, but by this time it is ſent to *Rome*, where it finds as great Approbation, and cauſes as great Joy, as their other Acts of a like Nature have heretofore done. Some Days after the Faſt was done, and, to their everlaſting Honour, thus by themſelves recorded, ſome of theſe Prieſts had a meeting at the *Queen's Head* at *Bow*, and there was the Paper produced and read; at which they were very merry, and were ſo loud, that ſome of the Houſe overheard them; and do yet remember, that they read, and were merry at, a Paper which concern'd Sir *Edmund-bury Godfrey*.

My Lord, This will be the Courſe of our Evidence, and tho your Lordſhip and the Jury will eaſily believe that moſt of theſe Particulars muſt ariſe from one who was Party to the Faſt, yet, my Lord, I will undertake, before I have done, ſo to fortify almoſt every Particular he delivers, with a concurrent Proof of other Teſtimony, and the Things will ſo depend upon one another, and have ſuch a Connexion, that little doubt will remain in any Man's Mind, that is come hither without Prepoſſeſſion, but that Sir *Edmund-bury Godfrey* was murdered, at *Somerſet-Houſe*, and that the Perſons who ſtand now Indicted for it were the Murderers.

* Mr. Recorder. My Lord, if your Lordſhip pleaſes, according as Mr. Attorney hath opened it, we deſire we may call our Witneſſes; and firſt we will call Mr. *Oates*.

Cryer. Mr. *Oates*, lay your Hand on the Book. The Evidence you ſhall give for our Sovereign

Lord the King, againſt *Robert Green*, *Henry Berry*, and *Lawrence Hill*, the Priſoners at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

* Mr. Sol. Gen. Pray, Mr. *Oates*, will you give my Lord and the Jury an Account what Tranſactions there were between you and Sir *Edmund-bury Godfrey*; and that, my Lord, is all we call him for.

* Sir Francis
Winnington.

Mr. Att. Gen. My Lord, I call this Gentleman to prove, what Examinations Sir *Edmund-bury Godfrey* had taken, and what was his own Opinion of himſelf about them.

L. C. J. Mr. Attorney, I ſuppoſe the Uſe you make of it is this, to ſhew, that that might be one of the Motives to theſe Perſons to do this Act, becauſe he was forward in the Diſcovery of their Plot.

Mr. Att. Gen. It is ſo, my Lord; and that it was his Opinion himſelf that he ſhould have ſome Miſchief from them for it.

L. C. J. Come, Mr. *Oates*, pray tell your Knowledge.

Oates. My Lord, upon the 6th of *September* laſt I did go before Sir *Edmund-bury Godfrey*, and there upon Oath gave in ſeveral Depoſitions, and after that I had made Oath of thoſe Depoſitions, we took the Record along with us home again. And on the 28th of *September*, after we had taken two or three Copies of this Record, we went before Sir *Edmund-bury Godfrey* again, and ſwore all the Copies we had taken, and ſo made them Records. My Lord, after that, the Buſineſs was made known to the Council by my ſelf, and upon *Monday* Mr. *Godfrey* came to me, which was, I think, the 30th of *September*, and did tell me, what Affronts he had received from ſome great Perſons, (whoſe Names I name not now) for being ſo zealous in this Buſineſs. And, my Lord, he told me, That others, who were well inclin'd to have the Diſcovery made, did think that he had not been quick enough in the Proſecution, but had been too remiſs, and did threaten him, that they would complain to the Parliament, which was to ſit the 21ſt of *October* following. My Lord, that Week before Sir *Edmund-bury Godfrey* was miſſing, he came to me, and told me, that ſeveral Popiſh Lords, ſome of whom are now in the *Tower*, had threatned him, and asked him what he had to do with it. My Lord, I ſhall name their Names when time ſhall come. My Lord, this is all I can ſay, He was in a great Fright, and told me, he went in fear of his Life, by the Popiſh Party, and that he had been dogg'd ſeveral Days.

Mr. Att. Gen. Did he tell you that he was dogg'd?

Oates. Yes, he did; and I did then ask him, why he did not take his Man with him; he ſaid, he was a poor weak Fellow: I then ask'd him why he did not get a good brisk Fellow to attend him? but he made no great Matter of it, he ſaid, he did not fear them, if they came fairly to work; but yet he was often threatned, and came ſometimes to me to give him ſome Encouragement, and I did give him what Encouragement I could, That he would ſuffer in a juſt Cauſe, and the like; but he would often tell me, he was in continual Danger of being hurt by them.

Mr.

Mr. Att. Gen. We desire *Mr. Robinson* may be sworn. Which was done accordingly.

Mr. Recorder. Pray, Sir, will you tell the Court and the Jury, what Discourse you had with Sir *Edmund-bury Godfrey*, and what Apprehensions he had concerning this Business.

Tho. Robinson, Esq; (Chief Prothonotary of the Court of Common-Pleas.) My Lord, Sir *Edmund-bury Godfrey* and I were of a very ancient Acquaintance for above forty Years; we were bred up together at *Westminster-School*, and continued in that Acquaintance all along, except in the Times of the War, and were for many Years together in Commission for the Peace, both for this County and this City. We met at the Quarter-Sessions for *Westminster*, the 7th of *October*, which was *Monday*, as I take it, and meeting there, we went, after the Court was up, and Dined with the Head-Bailiff, as the Custom is; where Sir *Edmund-bury Godfrey* and I did discourse several things about this Plot; I said to Sir *Edmund-bury Godfrey*, I understand you have taken several Examinations about this Plot, that is now made publick: Truly, said he, I have; but I think I shall have little Thanks for my Pains, or some such Words: Saith he, I did it very unwillingly, and would fain have had it done by others. Why, said I, you did but what was your Duty to do, and it was a very good Act: pray, Sir, have you the Examinations about you, will you please to let me see them? No, I have them not, said he; I delivered them to a Person of Quality; but as soon as I have them, you shall see them. But, said I, I should be very glad to understand, Sir *Edmund-bury*, that the depth of the Matter were found out. I am afraid, said he, of that, that it is not; but discoursing further, he said to me, *Upon my Conscience, I believe I shall be the first Martyr*. Why so, said I, are you afraid? No, said he, I do not fear them, if they come fairly, and I shall not part with my Life tamely. Why do not you go with a Man, said I, if you have that Fear upon you? Why, said he, I do not love it, 'tis a Clog to a Man. But, said I, you should do well to keep a Man; I observe you never go with one.

Mr. Att. Gen. But did he tell you, Sir, that he did believe he should be the first Martyr?

Mr. Robinson. Yes, he did say, Upon his Conscience, he did believe, he should be the first Martyr: and this is all I can say of this Business.

Mr. Att. Gen. Then, if your Lordship please, we will, in the next place, call *Mr. Praunce*, who was drawn in to be present at this Business, and who knew of all the Fact, and will give you an Account of the whole Matter.

Then *Mr. Praunce* was Sworn.

Mr. Att. Gen. Pray, Sir, begin at the very beginning; the Meetings you had at the *Plow-Alehouse*, and the sending to Sir *Edmund-bury's* House, and all the Story.

L. C. J. *Mr. Praunce*, Pray tell us the first Motives that were used to you to do this Thing, and the first Time it was mentioned; who they were that first mentioned it, and where.

Praunce. My Lord, it was about a Fortnight or three Weeks before he was murdered, we met several times at the *Plow-Alehouse*.

L. C. J. With whom?

Praunce. With *Mr. Girald*, *Mr. Green*, and

Mr. Kelly. *Girald* and *Kelly* did intice me in, and told me it was no Sin.

Mr. Recorder. *Girald* and *Kelly* did?

Praunce. Yes, *Girald* and *Kelly*.

Mr. Recorder. What are they?

Praunce. Two Priests: And they said, it was no Sin, it was a charitable Act: They said he was a busy Man, and had done and would do a great deal of Mischief, and it was a Deed of Charity to do it; and so they told the rest besides.

Mr. Att. Gen. Where was it they said thus?

Praunce. They said it at the *Plow*, and by the Water-side.

Mr. Recorder. Well said. How long was it before he died?

Praunce. A Week or a Fortnight before he was murdered; and *Green*, *Hill*, and *Girald* met there together.

Mr. Att. Gen. What Discourse had you then?

Praunce. There they resolved, that the first that could meet with him should give notice to the rest to be ready, and so in the Morning, when they went out on *Saturday*——

Mr. Att. Gen. But before you come to that, do you know of any dogging of him into the Fields?

Praunce. Yes, it was before that, I heard them say, they would, and had dogged him into the Fields.

L. C. J. Who did you hear say so?

Praunce. *Girald*, *Kelly*, and *Green*.

Mr. Att. Gen. That *Green* is one of the Prisoners.

Mr. Recorder. Which way did they dog him? what Fields?

Praunce. *Red-Lyon-Fields*, and those by *Holbourn*.

Mr. Att. Gen. Why did they not kill him there?

Praunce. Because they had not Opportunity.

Mr. Att. Gen. Do you know of any sending to his House, or going to it?

Praunce. One time I do know of, and that was *Saturday-morning*, *Mr. Kelly* came to give me notice, that they were gone abroad to dog him; and afterwards they told me, that *Hill* or *Green* did go to his House and ask for him, but the Maid told him, he was not up, and then went away, and said he would call by and by.

Hill. What time was that in the morning?

Praunce. It was about nine or ten a Clock in the morning.

Hill. And had we been there before or after?

Praunce. You had been there before.

Mr. Recorder. Pray stay till such time as we have done with our Evidence, you shall have all free Liberty to ask him any Question; but you must stay till we have done.

Praunce. As soon as they heard he was within, they came out and staid for his coming out, and dogg'd him.

L. C. J. Did all three of them go to his House?

Praunce. No, my Lord.

L. C. J. Who was it did go?

Praunce. Only one, either *Hill* or *Green*.

L. C. J. How do you know that?

Praunce. They told me so themselves, for they came to give me Notice.

L. C. J. Who told you so?

Praunce. It was *Girald* and *Green* both.

L. C. J. Did *Green* tell you that he had been there?

Praunce. He told me one of them, but I am not certain which. And so, my Lord, after that, when he came out they dogg'd him that Day up and down.

Mr. Justice Jones. Who dogg'd him?

Praunce. *Girald*, *Green*, and *Hill* dogg'd him into *St. Clements*; and about seven a Clock, *Green* came and gave me notice, that he was at *St. Clements*, and I came to *Somerset-House* as fast as I could.

L. C. J. Where were you?

Praunce. At my own House.

L. C. J. How far did you live from *Somerset-House*?

Praunce. I lived in *Princes-street*, not far from *Somerset-House*.

Mr. Recorder. Who was it gave you notice?

Praunce. It was *Green*. He told me, that *Girald* and *Kelly* were watching him, and that he was at *St. Clements*.

L. C. J. Where was he?

Praunce. At *St. Clements*, my Lord.

L. C. J. Where there?

Praunce. I was not there; they told me so, and no more; and about eight or nine a Clock, *Hill* came before, up the Street, and gave us notice that we must be ready. And so, my Lord, as soon as *Hill* had given us notice, he went up to the Gate, and staid there till *Sir Edmund-bury Godfrey* came by, and then told him, there were two Men a quarrelling, and desired him to come and try whether he could pacify them; he was very unwilling. But pray, Sir, saith *Hill*, you being a Justice of the Peace, may qualify them; and so he went down till he came to the bottom of the Rails; and when he came to the bottom of the Rails, *Green* twisted his Handkerchief, and threw it about his Neck, and threw him behind the Rails, and there throttled him, and punched him, and then *Girald* would have thrust his Sword through him, but therest would not permit him, for fear it should discover them by the Blood. And about a quarter of an Hour after, I came down, and found he was not quite dead; for I laid my Hand upon him, and his Legs tottered and shook, and then *Green* wrung his Neck quite round.

Mr. Att. Gen. Who was it that took him by the Neck?

Praunce. It was *Green*, my Lord.

L. C. J. Did you see him?

Praunce. No, but he did tell me afterwards that he did it.

L. C. J. Who, *Green* himself?

Praunce. Yes, my Lord, for he boasted of it.

Mr. Att. Gen. Pray what did he do to him besides?

Praunce. He punch'd him with his Knee.

L. C. J. Did you see him do this? how do you know he did it?

Praunce. He and the rest told me so afterwards.

L. C. J. Where were you, at that time that the Handkerchief was twisted about his Neck?

Praunce. As soon as I came down I went towards the Gate.

L. C. J. Who ordered you to stand at the Gate?

Praunce. It was *Hill*.

Mr. Serj. Stringer. You watch'd the Water-Gate, who watch'd the Stairs?

Praunce. That was *Berry*.

Mr. Recorder. Pray give an Account what they did afterwards.

Praunce. Why afterwards —

Mr. Att. Gen. Who told you that *Green* twisted his Neck?

Praunce. All spoke of it.

Mr. Att. Gen. Did *Hill*?

Praunce. Yes, he and the rest.

Mr. Att. Gen. How came you to understand that he punch'd his Breast?

Praunce. *Green* spoke of it himself, and so did the others.

Mr. Att. Gen. Who were about his Body when you came down to the Gate?

Praunce. All Four.

Mr. Att. Gen. Name them.

Praunce. *Hill*, *Green*, *Girald* and *Kelly*.

Mr. Att. Gen. Was *Berry* there?

Praunce. He came to them a while after.

Mr. Att. Gen. When?

Praunce. Before they carried him into the House.

Mr. Att. Gen. How can you tell that?

Praunce. Because he help'd them to carry him in.

Mr. Sol. Gen. Where was *Berry* before they carried him into the House?

Praunce. He was about the Stairs.

Mr. Recorder. Who was it that carried him up into the Room?

Praunce. We all did.

Mr. Recorder. Pray name all that were in the Company.

Praunce. There was *Girald*, *Green*, *Hill*, *Kelly*, *Berry*, and I.

Mr. Att. Gen. Who set their Hands to do it?

Praunce. We all did help; *Hill* went before and opened the Door, and we carried him into the Room.

Mr. Att. Gen. Whose Room was that?

Praunce. It was a Chamber of *Hill's*, in *Dr. Godwin's House*.

Mr. Recorder. Was *Hill* *Godwin's* Man?

Praunce. Yes, he had been.

Mr. Just. Jones. Did *Berry* help to carry him in?

Praunce. Yes, *Berry* did.

Mr. Serj. Stringer. Was there any Discourse of a Sword to be thrust thro' him at that time?

Praunce. Yes, *Girald* said he would thrust a Sword through him, but they would not let him, for fear of Discovery.

Mr. Att. Gen. What became of the Body?

Praunce. It lay there till Monday Night, and on Monday it was removed into *Somerset-House*, and upon Monday Night *Hill* did shew me it with a dark Lanthorn.

Mr. Att. Gen. Who were in the Room then?

Praunce. *Girald*, and *Hill*, and *Kelly*, and all were there. And on Tuesday Night it was brought back again: *Mr. Hill* would have carried him into his own Lodging.

L. C. J. Whither did they carry him on Monday Night?

Praunce. Into *Somerset-House*.

Mr. Just. Wild. Is not *Hill's* Chamber in *Somerset-House*?

Mr. Serj. Stringer. Describe the Room, *Mr. Praunce*, as well as you can.

Praunce. I am not certain of the Room, and so cannot describe it.

Mr.

Mr. Just. Wild. But was not Hill's Chamber in Somerset-house?

Praunce. 'Tis in the lower part of the House, in a Court.

Mr. Att. Gen. When you saw him in this Room, pray, what was thrown over him?

Praunce. There was something, I cannot tell what; for I durst not stay long there.

Mr. Just. Dolben. What Light was there?

Praunce. Only a Dark Lanthorn.

Mr. Att. Gen. Who carried it?

Praunce. Hill carried it.

Mr. Just. Dolben. Are you sure you saw the body there?

Praunce. Yes, I am certain of it.

Mr. Att. Gen. What became of it after that?

Praunce. On Tuesday Night it was carried to Hill's, the Chamber where he was first brought after he was murdered; but there was some body there, and so they could not carry it into the Room, but they carried him to a Room just over against, I think they were Sir John Arundell's Lodgings, I can't tell. There it lay till Wednesday Night, and about nine a Clock on Wednesday Night they were removing the Body into the Room where it first lay; and I happen'd to come as they were removing it, and they were affrighted, and run away: But I spoke, and Berry came back again, and got the Body up into the Room, and about Twelve a Clock they cartied it away in the Sedan.

Mr. Att. Gen. Who brought the Sedan?

Praunce. Hill did.

Mr. Att. Gen. Who put him into it?

Praunce. We all set our Hands to it.

Mr. Att. Gen. Who carried him out first?

Praunce. I and Giralde.

Mr. Att. Gen. Out of which Gate?

Praunce. The Upper-Gate of the Upper-Court.

Mr. Att. Gen. How came you to have the Gate opened?

Praunce. Berry opened it.

Mr. Att. Gen. How came he to open it?

Praunce. Some Body hem'd, and that was the Sign.

Mr. Att. Gen. Who was it that carried the Sedan first?

Praunce. I and Giralde.

Mr. Att. Gen. Who went before?

Praunce. Green and Kelly.

Mr. Recorder. How far did you carry him?

Praunce. Into Covent-Garden; and there we rested.

Mr. Att. Gen. And who took him up then?

Praunce. Green and Kelly.

Mr. Att. Gen. How far did they carry him?

Praunce. They carried him to Long-Acre. Then we took him up, and carried him to So-ho Church, and there Hill met us with an Horse, and we help'd the Body up.

Mr. Att. Gen. Who was it that rid behind him?

Praunce. It was Hill.

Mr. Att. Gen. What did you do with your Sedan?

Praunce. We set it in a new House till we came back again.

L. C. J. You say you saw him on Horse-back?

Praunce. Yes, my Lord, I did.

L. C. J. How, in what Posture?

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Praunce. Astride; his Leggs were forced open, and Hill held him up.

Hill. Did I hold him?

Praunce. Yes, you did.

L. C. J. Did the others go with him?

Praunce. Yes, my Lord.

L. C. J. Who did go with him?

Praunce. Green, Hill, Giralde and Kelly.

Mr. Att. Gen. Pray, will you tell my Lord and the Jury, what Account they gave you the next Morning, concerning the Body, and how they had disposed of it.

Praunce. They told me ———

L. C. J. Who told you?

Praunce. Hill, Kelly, and Giralde.

L. C. J. What did they tell you?

Praunce. First, that they had run him thro' with his own Sword; then thrown him into a Ditch, and laid his Gloves and other things upon the Bank.

Mr. Att. Gen. Pray tell now the Story of your meeting at Bow. What was the House called you met at?

Praunce. It was the Sign of the Queen's-Head.

Mr. Att. Gen. Who was it that did meet there?

Praunce. They were Priests, I can't so well remember their Names, they are written down in this Paper.

Mr. Recorder. Look on the Paper your self, you can read, I suppose.

Praunce. There was one Luson a Priest, I think.

Mr. Att. Gen. Where did he live?

Praunce. He was with Vernatt.

Mr. Att. Gen. What was the Occasion of your meeting there?

Praunce. Vernatt told me only it was to be merry there.

Mr. Att. Gen. What was the Man of the House his Name?

Praunce. One Casshes.

Mr. Att. Gen. Did you dine there?

Praunce. Yes.

Mr. Att. Gen. What had you for Dinner?

Praunce. We had a Barrel of Oysters, and a Dish of Fish: I bought the Fish my self.

L. C. J. What Day was it?

Praunce. The Friday after the Proclamation, That all the Papiests were to be gone out of Town.

Mr. Recorder. Tell what Company you had there, and what Discourse.

Praunce. There was Mr. Vernatt, and I, and Mr. Giralde, and that other Priest, and one Mr. Dethicke.

Mr. Att. Gen. Who sent for him?

Praunce. Mr. Vernatt sent a Note for him by a Cobler.

Mr. Att. Gen. Did he come upon that Note?

Praunce. He came presently. And when he was come, then they read all the Writing of the Murder; for Mr. Vernatt should have been one at the doing of it, but something happen'd he could not.

Mr. Att. Gen. Mr. Vernatt was very sorrowful at the reading of it, was he not?

Praunce. If he was, 'twas because he was not there.

Mr. Att. Gen. How did he behave himself? Did he read it with any Pleasure and Delight?

5 E 2

Praunce.

Praunce. We were all very merry.

Mr. Att. Gen. What can you say about any body's over-hearing you?

Praunce. There was a Drawer came and listned at the Door, and I hearing the Door a little rustle, went to the Door, and catch'd him listning, and said I to him, Sirrah, I could find in my Heart to kick you down Stairs; and away he went.

Mr. Just. Wild. Was *Vernatt* with you there that Night he was murdered, the Saturday Night?

Praunce. No; there was only the Six I have named.

Mr. Just. Jones. You say that you met at the *Plow* the first Night?

Praunce. Yes.

Mr. Just. Jones. And there you were told, That it was a very charitable Act to kill Sir *Edmund-bury Godfrey*?

Praunce. Yes, I was so.

Mr. Just. Jones. Was it agreed there that he should be kill'd?

Praunce. It was agreed there; and the first that met him were to give notice to the rest.

Mr. Just. Jones. Who were there?

Praunce. *Girald*, *Kelly*, *Green* and I.

L. C. J. When came *Hill* and *Berry* into this Cause? How came they acquainted with it?

Praunce. They were in it before I.

L. C. J. Who told you they were in it?

Praunce. *Mr. Girald*, my Lord, told me so.

Mr. Just. Jones. *Hill* and *Berry* were not at the *Plow*, where did you first hear them speak of it?

Praunce. *Girald* and I have been at *Berry's* House divers times.

Mr. Just. Dolben. But there were two meetings at the *Plow*, were there not?

Praunce. Yes, there were.

Mr. Just. Dolben. And *Hill* was at the last meeting, was he not?

Praunce. Yes, he was, my Lord.

Mr. Att. Gen. Now I would ask you this Question, by the Favour of the Court; was there any Reward proposed by these Priests for the doing of it?

Praunce. *Girald* and *Vernatt* did speak of a great Reward that was to be given for it.

Mr. Att. Gen. Pray, how much?

Praunce. I do not remember what.

Mr. Att. Gen. Cannot you tell how much?

Praunce. There was to be a good Reward from my Lord *Bellasis*, as they said.

Mr. Just. Dolben. You had several meetings, you say: Did you there resolve what should be the way of doing it?

Praunce. *Girald* was resolv'd to kill him that Night; and if he could not get him into a more convenient Place, he would kill him with his own Sword, in the Street that leads to his own House.

Mr. Record. Who was that, that resolved so?

Praunce. It was *Girald*.

Mr. Record. The Priest, rather than fail, was resolved to do that Act of Charity himself.

Mr. Att. Gen. I would now ask you a Question, which though it does not prove the Persons guilty, yet it gives a great strength to the Evidence. Do you know *Mr. Bedlow*, *Mr. Praunce*?

Praunce. I do now know him.

Mr. Att. Gen. Had you ever any Conference

with him before you was committed to Prison?

Praunce. Never, in all my Life.

Mr. Att. Gen. Were you ever in his Company in your Life before, that you know of?

Praunce. No, not that I remember.

Mr. Att. Gen. Well, you shall see how far he will agree with you.

Mr. Record. Now they may ask him any Questions, if they please, for we have done with him.

L. C. J. Let them if they will.

Hill. My Lord, in the first place I humbly pray that *Mr. Praunce's* Evidence may not stand good against me, as being perjured by his own Confession.

L. C. J. How?

Hill. I suppose, my Lord, it is not unknown to you that he made such an open Confession before the King.

L. C. J. Look you, Sir, I will tell you for that, I do not know that ever he made a Confession to contradict what he had said upon his Oath.

Hill. He was upon his Oath before.

L. C. J. Yes, he had accused you upon Oath, but afterwards, you say, he confessed that it was not true: but that Confession that it was not true, was not upon Oath: How is he then guilty of Perjury?

Hill. My Lord, if a Man can swear a thing, and after deny it, he is certainly perjured.

L. C. J. If a Man hath great horrors of Conscience upon him, and is full of Fears, and the Guilt of such a thing disorders his Mind, so as to make him go back from what he had before discovered upon Oath, you can't say that Man is perjured, if he don't forswear it: But I believe no Body did believe his Denial, because his first discovery was so particular, that every Man did think his general Denial did only proceed from the disturbance of his Mind. But have you any mind to ask him any Questions?

Mr. Record. We can prove, that immediately after he retracted his Recantation.

Mr. Just. Dolben. Try if you can trap him in any Question.

Hill. Pray, what Hour was it that I went to Sir *Edmund-bury Godfrey's*?

Praunce. About nine or ten a clock, I am not certain in the hour.

L. C. J. No, no, a Man cannot be precise to an hour; but prove you what you can.

Hill. I have a great many Witnesses besides the Justice of my Cause, that I was not out of my House that day.

L. C. J. You shall be heard for that, but the present matter is, Whether you will ask him any Questions or no?

Hill. My Lord, 'tis all false that he says, and I deny every Word of it, and I hope it shall not be good against me.

L. C. J. Well, *Mr. Berry*, will you ask him any Questions?

Berry. *Mr. Praunce*, who was in my House at that Time you speak of?

Praunce. There was your Wife there, and several other Persons besides.

Berry. Who were they?

Praunce. There were divers People; it is an Alchouse.

Berry.

Berry. But who? Can you name any of them?

Praunce. There was *Girald*, and *Kelly*, and I.

L. C. J. Why, did you not all know Mr. Praunce?

Berry. My Lord, I knew him as he pass'd up and down in the House.

L. C. J. Why, what an Answer is that? What do you mean by his passing up and down in the House? Did you never drink with him?

Berry. Drink with him, my Lord? Yes.

L. C. J. Yes; why People don't use to drink as they go along.

Berry. It was in other Company that came to my House, no Acquaintance of mine.

L. C. J. Was not Mr. Praunce known by you all three? Which of you can deny it? What say you, *Hill*?

Hill. My Lord, I did know him.

L. C. J. What say you, *Green*?

Green. Yes, I did know him.

Mr. Att. Gen. But yet, my Lord, we shall prove in the Course of our Evidence, that upon their Examinations, they did deny they ever knew him; but because the Prisoners give us this Occasion, I desire Mr. Praunce may give an Account of one thing. He was concerned in this very Fact, and there was no other way to get any Proof of it, than by the Discovery of one among themselves. He was once of that Religion, or else he had never been concerned in this thing. And your Lordship will find, that Mr. Praunce, while he was of that Religion, and not sure of his Pardon, was under some Disturbances and Fears, which prevailed with him to come before the King, and deny what he had Sworn. But, my Lord, which is very observable, this Gentleman that had made that Denial before the King, was so far convinc'd that he had done amiss in it, and so troubled that he had done it, that he desired Capt. Richardson (as soon as he returned back to Prison) to carry him back to the King again; for he must go back, and make good that Confession which he at first had made; for it was every Word true. And being for the King, we desire Capt. Richardson may be Sworn.

Mr. Just. Wild. Can you tell where Sir Edmund-bury Godfrey was dogg'd?

Praunce. No, my Lord, I cannot.

Mr. Just. Wild. You say they did tell you, that they dogg'd him up and down; Did not they tell you from whence they dogg'd him, when they kill'd him?

Praunce. No, they did not.

L. C. J. Mr. Richardson, were you by, when Mr. Praunce denied all that he had confessed?

Capt. Richardson. My Lord, upon the Sunday Night before the Prorogation of the last Parliament, I received a Letter from one of the Lords of the Council, to bring up Mr. Praunce before the Lords of the Committee for his Examination. When I brought him thither, I found Mr. Praunce was disturbed, and desired to speak with the King; and I carried him into the King's Closet, where he fell down on his Knees, and said, *He was Innocent, and they were all Innocent*; and that was the Substance of all he said. I then had him up to the Council, where he said the same thing. The Lords asked him, Whether any body had been tampering with him; he answered, No. My Lord, when I came home, I was no sooner got within the Doors, but he begg'd of

me (for God's Sake) to go back to the King, and to acquaint him, not only that what he had now said, *was false*; but that all which he had sworn before, *was Truth*. And if his Majesty would send him a Pardon, he would make a great Discovery. And, my Lord, more than that, he said, It was Fear, that made him recant; and he gave a full Satisfaction, that it was only out of an Apprehension that his Life was not secure, that his Trade would be lost among the *Roman Catholics*; and in case he had his Pardon, and were Saved, he should have been in danger of being murdered by them.

L. C. J. Now you have an Account, Mr. Hill, how he came to deny, and how soon he recanted his Denial.

Mr. Just. Jones. You are upon your Oath, Mr. Praunce; Is this all true that he hath said?

Praunce. Yes, my Lord, it is.

Mr. Recorder. How hath he behaved himself since that time?

Capt. Richardson. As soberly as can be, since he had his Pardon.

Mr. Att. Gen. Pray, since that time, have you had any Discourse with him? And how did he carry himself?

Capt. Richardson. Very soberly.

Mr. Att. Gen. Did he express any Abhorrence of the Practice of that Church?

Capt. Richardson. Yes, my Lord, he did so.

Mr. Att. Gen. I hope it will make all People abhor and forsake them in time, if these be their Practices. In the next Place, my Lord, we will call Mr. Bedlow, who, tho' he was not present at the Murther, yet he saw the Body after it was dead in *Somerset-House*, which goes to the Matter as to the Place; and he will give you some Circumstances which will very much corroborate the Testimony of Mr. Praunce.

Mr. Just. Wild. What time was it before they carried him in, after they had kill'd him?

L. C. J. Brother, I think they say, between eight and nine they decoy'd him down thro' the Water-Gate. Was it not so?

Praunce. Yes, my Lord.

Mr. Just. Wild. How long had they kill'd him before they carried him into the Room?

Praunce. About a Quarter of an Hour.

Mr. Just. Wild. Had he his Sword about him?

Praunce. Yes, it was found run thro' him.

Mr. Just. Wild. Did Sir Edmund-bury Godfrey himself draw his Sword?

Praunce. No, he was strangled by Surprise, by getting a Thing about his Neck, and prevented him of drawing his Sword.

L. C. J. They were Persons that were ready prepared for him, they would not permit him to defend himself.

Mr. Serj. Stringer. My Lord, Before Mr. Bedlow be Sworn, I desire a little to open what we call him to. My Lord, there were four Priests that did design this Murder; *Le Faire*, and *Welsh*, and *Girald*, and *Kelly*, besides the other Priests; and they treated with Mr. Bedlow for Four Thousand Pounds, to undertake to kill a Gentleman. My Lord, he did promise to undertake it, but failing of his Promise, afterwards *Le Faire* met him, and told him it was done; and told him he should have half that Reward to help to carry him off; and withal, carried him into the Room where the Body was. And he will tell you, that Praunce was in the Room when he saw

him;

him; and tho' he never knew *Praunce* before, yet when he met with him in the Lobby of the Lords House, he knew him again, and charged him as the Man that committed this Fact. And he will acquaint your Lordship, that *Le Faire* saw the Body likewise, and gave Mr. *Bedlow* an Account of the Murder, with the same Circumstances that *Praunce* now relates it.

Then Mr. *Bedlow* was Sworn.

Mr. Recorder. Mr. *Bedlow*, Pray do you direct your Discourse to the Jury.

L. C. J. Mr. Attorney, Pray do you ask him your Questions, that you may put him in that Method you would have him take, to give his Evidence.

Mr. Att. Gen. My Lord, I would first ask him this Question: What Conference he had with any Persons, Priests or others, about murdering any Body?

Bedlow. My Lord, and the Jury, I have at other Times, and in other Places, proved what Familiarity I have had with the Priests and Jesuits; and if I have not satisfied the Court, and others, about it, yet I have done my Duty in endeavouring so to do. My Lord, I have been several times treated with, not only about the Plot, but by several Persons about murdering of a Gentleman. They never told me who it was that was to be murdered; but if I would undertake it, they, that is, *Le Faire* and *Prichard*, and Mr. *Kaines*, and several other Priests, who discoursed with me about it, would find out some to assist me, and my Reward should be very considerable.

L. C. J. When was this?

Bedlow. It was in *October* last, about the beginning, or latter end of *September*.

L. C. J. Well, Sir, go on.

Bedlow. I did adhere to them all along, for I had a mind to discover two Years ago, but was prevented; and I only drill'd them on, to know the Party, that I might prevent them. But they would never discover the Party.

Mr. Att. Gen. Pr'ythee come to this particular part of the Story.

Bedlow. Afterwards they set me to insinuate my self into the Acquaintance of Sir *Edmund-bury Godfrey*, not telling me they had a Design upon him.

L. C. J. Who did?

Bedlow. *Le Faire*, and *Pritchard*, and *Welsh*.

L. C. J. *Girald* was not one, was he?

Bedlow. No, my Lord: But they told me, that afterwards they would have me introduce them into his Acquaintance: And I had been, I think, six or seven Days together with Sir *Edmund-bury Godfrey*, at his House; and had got much into his Acquaintance.

Mr. Just Wild. By what Means did you get into his Acquaintance?

Bedlow. Why, I pretended to get Warrants for the Good Behaviour against Persons, that there were none such.

L. C. J. Well, and what then?

Bedlow. This was the Week before the *Saturday* that he was kill'd; and I was there every Day but *Saturday*: On the *Friday* I went to the *Greyhound Tavern*, and I sent my Boy to see if Sir *Edmund-bury Godfrey* were at home: Sir *Edmund-bury Godfrey* was not at home then.

L. C. J. When was that?

Bedlow. The very Day before he was kill'd: If he had been at home, I would have gone over to him, and would have desired him to go over to them.

L. C. J. Were the Priests there?

Bedlow. Yes, my Lord, there was *Pritchard*, and *Le Faire*, and *Welsh*, and *Kaines*, and another; five Jesuits: And, as I said, I sent my Boy to see if he were at home, and he brought me word he was not; and if he had, I was to have gone to him, to have fetch'd him thither, that they might insinuate themselves into his Acquaintance: And indeed, they had Tongue enough to wheedle themselves into any one's Acquaintance: So he not being at home, we came into the City, two of the Jesuits and I.

Mr. Att. Gen. Which two?

Bedlow. *Le Faire* and *Welsh*. The next Morning *Le Faire* came to my Chamber, and I was not then within; but by accident I met him, about Four of the Clock, in *Lincolns-Inn-Fields*: We went to the *Palsgrave's-Head Tavern*; where falling into Discourse, he told me there was a Gentleman that was to be put out of the way; that was the Phrase he used, he did not really say *Murder* him; for they don't count it *Murder*.

L. C. J. No, no, they put it into softer Terms.

Bedlow. They told me it was to be done to-night. I asked who it was, they said it was a very material Man: For he had all the Informations that Mr. *Oates* and Dr. *Tongue* had given in; that several had been employed in the doing of it, that several Attempts had been made, and that they had miss'd several Opportunities, and had not done it till then; but if he should not be taken out of the way, and the Papers taken from him, the Business would be so obstructed, and go near to be discovered, to that Degree, that they would not be able to bring this Design to pass, but must stay till another Age before they should effect it. I asked him again, who it was, he said he would not tell me, but it was a very material Man. I told him, that according to my Promise, I would assist; but in such a Case, I should need a great many Men to be with me, he being so considerable a Person. I asked him then, where the Money was, that was formerly promised? he told me no worse a Man was engaged for it, than my Lord *Bellasis*, and Mr. *Coleman* had Order to pay it.

Mr. Just. Jones. What was that Reward?

Bedlow. Four Thousand Pounds.

L. C. J. Who was it that first named this Gentleman to you to be Sir *Edmund-bury Godfrey*?

Bedlow. They never named him to me at all.

L. C. J. Let us know when you first knew it to be Sir *Edmund-bury Godfrey*.

Bedlow. I parted with him then, but came not according to my Promise. I was to meet him at the Cloysters at *Somerset-House* that Night; but I knew their Design was to murder some Body, and I would not come. I saw him no more till *Monday Night*, then I met him in *Red-Lyon-Court*, where he put up his Cane to his Nose, as who should say, I was to blame in not keeping my Promise. And we went together to the *Greyhound Tavern* in *Fleet-street*, where he charged me with my Breach of Promise. I told him I was taken up by other Company, and unless

less they would tell me who it was I was to kill, I would have no Hand in it: For I did not know but that it might be my own particular Friend. And I would not murder any private Person, unless I knew who it was, and for what Reason. Well, says he, we will tell you more anon if you meet me to-night at *Somerset-House*, at Nine a Clock. I did meet him exactly at that time in the Cloysters, where we walk'd and talk'd a great while. And then he took me into the middle of the Court, and told me, You have done ill, that you did not help in this Business; but if you will help to carry him off, you shall have half the Reward. Why, said I, *Is he Murdered?* Yes, said he. *May not I see him,* said I? Yes, you may, said he; and so took me by the Hand, and led me into the Room through a dark Entry. In the Room were a great many, I can't tell who they all were.

Mr. Att. Gen. How many were there?

Bedlow. There might stand a great many behind one another. I saw Four or Five.

Mr. Just. Jones. What kind of Light had they, *Mr. Praunce?*

Praunce. It was a middle-fixed Lanthorn.

Mr. Just. Jones. Was it a small Light, or a great Light?

Bedlow. It was a small Light.

Mr. Just. Jones. Had they no Light but that Lanthorn?

Bedlow. No: And they did not open it till I had had a turn about the Room.

L. C. J. Did they discourse of carrying him away then?

Bedlow. Yes, they did.

L. C. J. Did you know him, when he lay dead there?

Bedlow. Yes, your Lordship shall hear how I came to know him: One step'd to the Body, and threw off the thing that lay upon him, and I went and look'd upon him; and he had got about his Neck such a kind of a fashion'd Crevat as this about my Neck; and I went to try, and could not get my Finger in betwixt: So I saw him, his Bosom was all open, and I knew him presently; for those Jesuits that were there, were not those who had employed me to insinuate my self into his Acquaintance; and so they thought I had not known him. I asked who it was, they said it was a Man that belong'd to a Person of Quality. I was mightily struck and daunted when I knew him: I would fain have perswaded them to have tied Weights at his Head and Feet, and thrown him into the River; and afterwards I would have dragg'd for him, and took him up there. But they did not think that so safe: *No (said they) we will put it upon himself, there are none but Friends concerned.* I asked *Le Faire* how they would get him out? They said, *In a Chair.* Then I asked them, which way they would get him into the Chair, and out of the Gate? They said the Porter was to sit up to let them out.

Mr. Recorder. What Porter?

Bedlow. The Porter of the House.

Mr. Recorder. Who, *Berry?*

Bedlow. Yes. As for that *Hill*, or the Old Man, I do not know that I ever had any particular Knowledge of them; but only I looked upon them as ill-designing Men, seeing them in the Chappel.

L. C. J. Did you see e'er a one of the three Prisoners there at that Time?

Bedlow. No, my Lord: But I have such a Remembrance of Faces, that I could tell, if I saw them again, any that I did see there, tho' the Light was but small. They told me, *They had strangled him*; but how, I did not know. When they press'd me to help to carry him out, I then excused my self, and said, It was too early to carry him out yet; but about Eleven or Twelve a Clock would be a better Time. And I assured them I would come again. Said *Le Faire* to me, *Upon the Sacrament you took on Thursday, you will be at the carrying off of this Man at Night?* I promised him I would. And he went away, and left me there. I made what Speed away I could; for I was very unsatisfied in my self; having so great a Charge upon me, as the Sacrament of the Altar, which, after the Discovery of the Plot, was administred to me twice a Week to conceal it. I could not tell how to discover: I went then to *Bristol*, but very restless and disturbed in my Mind; and being perswaded by what God was pleased to put into my Mind, calling to Remembrance that some Murders had been already committed, and greater ones were daily intended, I was at last convinc'd, and could no longer forbear Discovery. I wrote to the Secretary of it, and went to the Parliament and gave in my Information. And one Day I met with *Mr. Praunce* in the Lobby, and knew him, and apprehended him.

Mr. Att. Gen. I will ask you one Question. Had you any Discourse with *Mr. Praunce* between the Time you saw him with the Body, and the Day he was apprehended?

Bedlow. No; I never saw him to this Day, to have any Converse with him.

Mr. Just. Wild. Did not you see *Hill* that Night, when you were to have carried him away?

Bedlow. No, my Lord.

Mr. Just. Wild. Nor *Green*, nor *Berry*?

Bedlow. *Green* I did see about the Court, and *Berry*, I was told, was to open the Gate that Monday Night. But, my Lord, when they found I did not come again, they desisted that Night, and kept it off longer, for fear I should come again to stop them.

Mr. Att. Gen. He did not refuse to help them, but promised to do it, and failed: And they finding that he had failed them, would not let the Body lie where it was for fear of Discovery, but removed it back again.

Mr. Just. Dolben. What did *Praunce* say, when you first took notice of him?

Bedlow. I understood afterwards that he was taken upon Suspicion, because at that time his Maid had made a Discovery, that he was about that Time out of his Lodgings. And while he was there in the Constable's Hands, *Mr. Oates* came by, and he desired to see him; and presently after I came thither, and the Constable asked him, *Mr. Praunce*, will you see *Mr. Bedlow*? No, he said, he would not: Then he put his Hat over his Eyes, that I might not see his Face, and kept it so. The Press being great, and being desirous to be private my self, I spoke to the Guard to put out all that had no Business there, and they cried out, that all should avoid the Room, but *Mr. Bedlow* and his Friends. And when he was going out with the rest, he lift up his Hat, to see his way; and tho' before I did not mind him, yet I happened at his passing by me

me, to cast my Eyes upon his Face, and presently knew him, and cried, Oh! pray, Sir, stay; you are one of my Friends that must stay here. And I presently charged my Guards to take Charge of him. Saith the Constable, He is my Prisoner: Is he so, said I, then you have a very good Prisoner, and pray look safe to him. And then when I went into the House of Lords, I made out my Charge against him.

Mr. Recorder. Now if the Prisoners have any Questions to ask *Mr. Bedlow*, they may have free Liberty to do it.

Hill. I never saw him before in my Life.

L. C. J. Do you know any of them?

Bedlow. I know *Mr. Berry* and *Green* very well.

L. C. J. Pray, *Mr. Praunce*, was the Dark-Lanthorn at *Hill's* Lodging, or at the other Place?

Praunce. At the other Place.

L. C. J. Look you here, *Mr. Praunce*, they carried him to *Hill's* on *Saturday* Night, and he lay there till *Monday* Night: What time on *Monday* Night was it that they removed him into *Somerset-House*?

Praunce. I was not there when they did remove him.

L. C. J. What Time did you see him there?

Praunce. About Nine or Ten a Clock.

L. C. J. What Time was it that you saw him there, *Mr. Bedlow*?

Bedlow. I was after Nine, my Lord.

Praunce. They had then removed him to *Somerset-House*, and *Mr. Hill* asked what they intended to do with the Body? They said, They would carry it out that Night; but they did not. But there the Dark-Lanthorn was, and on *Tuesday* Night they removed him back again.

Mr. Att. Gen. Now, my Lord, if you please, we shall go on to call some Witnesses that were not present at the Murder; for direct Evidence, as to that, can come only out of the Mouth of some that were concerned in it; but to corroborate, by concurrent Circumstances, the Testimony which hath been already given. And first we shall call the Constable, to prove that he found *Sir Edmund-bury Godfrey* in the Fields, in the same manner which *Mr. Praunce* says they told him they left him.

L. C. J. *Mr. Attorney*, you promised you would prove, that when these Persons were examined, they did deny before the House of Lords that they knew *Praunce*.

Mr. Att. Gen. My Lord, in that we were mistaken, I understand now, it was only *Berry* denied that he did know *Girald*.

L. C. J. Why, did you never know *Mr. Girald*?

Berry. Never in my Life.

L. C. J. *Mr. Praunce*, have not you seen *Girald* with *Berry*?

Praunce. Yes, I have, but they usually went by several Names.

L. C. J. Did you ever see *Girald* in *Hill's* Company?

Praunce. Yes, that I have.

L. C. J. Was there no Centinel set that *Monday* Night, that *Saturday* Night, and that *Wednesday* Night?

Praunce. My Lord, I am not certain, I took notice of none; if there were any, they were at *Berry's* House, and he opened the Gate, when we came out with the Sedan.

Mr. Att. Gen. *Mr. Berry*, I suppose, could take Order with the Centinel, and give them some Entertainment in his own Lodge.

Then *Mr. Brown* the Constable was Sworn.

Mr. Recorder. Pray, in what Posture did you find *Sir Edmund-bury Godfrey*?

Brown. I found him, my Lord, in a Ditch, with his Sword through him, and the end of it was two Handfuls out of his Back.

L. C. J. Was he bloody?

Brown. There was no Blood at all, there was no Blood in the Ditch.

L. C. J. Was the Sword sticking in his Body?

Brown. Yes, my Lord, but there was no Blood at all when it was taken out; they had run it into another Place, but that happened to be against a Rib, and so it could not go thro'; but there was no Blood there.

Mr. Just. Jones. Were there any Bruises on his Breast?

Brown. He did look black about the Breast.

Mr. Att. Gen. My Lord, I would ask, whether his Neck were broken?

Brown. Yes, I suppose it was.

L. C. J. How do you know it?

Brown. It was very weak, and one might turn his Head from one Shoulder to the other.

L. C. J. Where was his Stick and Gloves?

Brown. They were on the Bank-side.

L. C. J. Whose Sword was it?

Brown. His Servants said it was his own.

Mr. Att. Gen. Pray, had he any Money in his Pocket?

Brown. Yes; a great deal of Gold and Silver.

L. C. J. Ay, ay, for they count Theft Sin, but not Murder.

Mr. Just. Wild. They left that, to let Men think he murdered himself.

L. C. J. Well, will you ask this Witness any Questions before he goes?

Capt. Richardson. They say they will ask him none.

Mr. Att. Gen. Then we desire to call the Chirurgeons that view'd and opened the Body, *Mr. Skillard*, and *Mr. Cambridge*; both whom were sworn.

Mr. Att. Gen. We begin with *Mr. Skillard*; Pray, Sir, inform my Lord and the Jury, Did you see the Body of *Sir Edmund-bury Godfrey*?

Skillard. Yes, I did view the Body.

Mr. Att. Gen. When? What Time did you see it?

Skillard. About Twelve of the Clock.

Mr. Att. Gen. What Day of the Week was it?

Skillard. On *Friday*, the next Day after he was found.

Mr. Att. Gen. Did you observe his Breast? how was it?

Skillard. His Breast was all beaten with some obtuse Weapon, either with the Feet, or Hands, or something.

Mr. Att. Gen. Did you observe his Neck?

Skillard. Yes; it was distorted.

Mr. Att. Gen. How far?

Skillard. You might have taken the Chin and have set it upon either Shoulder.

Mr. Att. Gen. Did you observe the Wound?

Skillard. Yes, I did: it went in at one Place, and stopp'd at a Rib, the other Place it was quite thro' the Body.

Mr.

Mr. Att. Gen. Do you think he was killed by that Wound?

Skillard. No; for then there would have been some Evacuation of Blood, which there was not. And besides, his Bosom was open, and he had a Flannel Waistcoat and a Shirt on; and neither those, nor any of his Cloaths were penetrated.

Mr. Att. Gen. But are you sure his Neck had been broken?

Skillard. Yes, I am sure.

Mr. Att. Gen. Because some have been of Opinion, that he hanged himself; and his Relations, to save his Estate, run him through; I would desire to ask the Chirurgeon what he thinks of it.

Skillard. There was more done to his Neck than an ordinary Suffocation; the Wound went thro' his very Heart, and there would have appeared some Blood, if it had been done quickly after his Death.

Mr. Att. Gen. Did it appear by the View of the Body that he was strangled or hanged?

Skillard. He was a lean Man, and his Muscles, if he had died of the Wound, would have been turgid: And then again, all strangled People never swell, because there is a sudden Deprivation of all the Spirits, and a hindring of the Circulation of the Blood.

Mr. Att. Gen. How long do you believe he might be dead before you saw him?

Skillard. I believe four or five Days. And they might have kept him a Week, and he never swell'd at all, being a lean Man. And when we rip'd him up, he began for to putrify; we made two Incisions to give it vent, and the Liquor that was in his Body did a little smell. The very lean Flesh was so near turned into Putrefaction, that it stuck to the Instrument when we cut it.

Mr. Recorder. My Lord, here is another Chirurgeon, Mr. Cambridge. Pray, Sir, are you sworn?

Cambridge. Yes, I am.

Mr. Recorder. When did you see the Body of Sir Edmund-bury Godfrey?

Cambridge. Upon Friday, the very same Day the Gentleman did. I found his Neck dislocated, and his Breast very much beaten and bruised. And I found two Punctures under his left Pap, the one went against the Rib, the other quite through the Body, under the left Pap.

Mr. Att. Gen. Do you believe that Wound was the Occasion of his Death?

Cambridge. No, I believe it was given him after his Death.

L. C. J. And his Neck was broke?

Cambridge. His Neck was dislocated, Sir.

Mr. Att. Gen. Why, that is broken. Now, my Lord, we shall call Sir Edmund-bury Godfrey's Maid, Elizabeth Curtis. Swear her. Which was done.

Mr. Recorder. Your Lordship knows, that Mr. Praunce did say in the Beginning, that they had been several Times at his House, enquiring for him: Now we call this Person to tell you what she knows about that.

Mr. Att. Gen. Elizabeth Curtis, look upon the Prisoners, and tell my Lord and the Jury whether you know any of them or no.

Elizabeth Curtis. This Man, that I now hear called Green, my Lord, was at my Master's about a Fortnight before he died.

L. C. J. What to do?

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Eliz. Curtis. I don't know, but he asked for Sir Edmund-bury Godfrey.

L. C. J. What Time of the Day was it?

Eliz. Curtis. It was in the Morning.

Mr. Att. Gen. What did he say?

Eliz. Curtis. He asked for Sir Edmund-bury Godfrey, and when he came to him, he said, Good Morrow, Sir, in English, and afterwards spoke to him in French, I could not understand him.

Mr. Recorder. I desire she may consider well, look upon him.

Eliz. Curtis. That is the Man.

Green. Upon my Soul I never saw him in all my Life.

Eliz. Curtis. He had a darker-coloured Perriwig when he was there, and was about a Quarter of an Hour talking with my Master.

Mr. Att. Gen. Are you sure this was the Man?

Eliz. Curtis. Yes, I am; and that other Man, Hill, was there that Saturday Morning, and did speak with him before he went out.

L. C. J. That you will deny too?

Hill. Yes, I do.

L. C. J. How do you know he was there?

Eliz. Curtis. I was in the Parlour at that Time, making up the Fire.

L. C. J. Had you ever seen him before that Time?

Eliz. Curtis. No, never before that Time. I went into the Parlour to carry my Master's Breakfast, and brought a Bunch of Keys with me in, and there Hill was with him. And I went up Stairs about some Business, and came down again, wanting the Keys, which I had left upon the Table; and Hill was all that Time with my Master.

Mr. Sol. Gen. How do you know he was there?

Eliz. Curtis. I was in the Parlour, and stirred up the Fire, and he was there a good while.

Mr. Just. Jones. How long after did you see him again?

Eliz. Curtis. Not till I saw him in Newgate.

Mr. Just. Jones. How long was that afterwards?

Eliz. Curtis. A Month ago. But it is not the Man that brought the Note to my Master.

Mr. Att. Gen. What Note?

Eliz. Curtis. A Note that a Man brought to my Master that Night before.

Mr. Att. Gen. What is become of that Note?

Eliz. Curtis. My Lord, I cannot tell, my Master had it.

Mr. Att. Gen. Pr'ythee tell us the Story of it.

Eliz. Curtis. There was a Man came to my Master's House, and asked if Sir Edmund-bury Godfrey were within. He said he had a Letter for him; and shewed it me, it was tied up in a Knot. I told him my Master was within, but busy; but, said I, if you please, I will carry it in to him: He did so, and I gave it to my Master; when I went out again, the Man staid and asked for an Answer: I went in again, and told my Master, that the Man required an Answer. Pr'ythee, said he, tell him I don't know what to make of it.

Mr. Just. Wild. When was that?

Eliz. Curtis. On Friday Night.

Mr. Just. Wild. When? The Friday Night before he was murdered?

Eliz. Curtis. Yes.

Mr. Att. Gen. But you swear that Hill was there the Saturday Morning?

Eliz. Curtis. Yes, he was.

5 F

Mr.

Mr. Sol. Gen. In what Cloaths was he then?

Eliz. Curtis. The same Cloaths that he hath now.

Mr. Just. Wild. Are you sure they are the same Cloaths?

Eliz. Curtis. Yes.

Mr. Sol. Gen. Here is a great Circumstance, my Lord. I asked her what Cloaths he was in, when he came to Sir *Edmund-bury Godfrey's*? and she saith, the same that he hath now.

L. C. J. Have you ever shifted your Cloaths?

Hill. No indeed, I have not.

Eliz. Curtis. But for the Man that brought the Note, I cannot swear it is he.

Hill. But she did say, when she came to see me in *Newgate*, that she never saw me in my Life; and, my Lord, I hope I have sufficient Witnesses to prove where I was that Morning.

L. C. J. She says, she cannot swear you were the Man that brought the Note.

Hill. My Lord, I desire she will tell me about what Time it was I was there.

Eliz. Curtis. It was about nine or ten a Clock.

Mr. Att. Gen. That agrees with *Mr. Praunce's* exactly in Point of Time. Now, if your Lordship please, we will proceed, and call *Mr. Lancelot Stringer*, and *Mr. Vincent*.

Mr. Recorder. My Lord, we do call these Witnesses to prove, that these Men had meetings with *Mr. Praunce* at the *Plow*.

Then was Lancelot Stringer sworn.

Mr. Recorder. Pray tell my Lord and the Jury, whether you know *Mr. Praunce*.

L. Stringer. Yes, Sir, I do.

Mr. Recorder. Have you seen him at the *Plow* at any Time?

L. Stringer. Yes, Sir, I have.

Mr. Recorder. In what Company there? Was *Mr. Green* there?

L. Stringer. Yes, he was.

Mr. Recorder. Which was he? [*He points to him.*]

Mr. Recorder. And who else?

L. Stringer. There was that *Hill*.

Mr. Att. Gen. How often?

L. Stringer. Several Times.

L. C. J. How long before Sir *Edmund-bury Godfrey* was murdered?

L. Stringer. I cannot tell, my Lord.

L. C. J. Do you remember any other Company was with him?

L. Stringer. Yes, there were several other Company.

Mr. Recorder. Name them.

L. Stringer. There was *Mr. Fitz-Girald* and *Mr. Hill*.

Mr. Att. Gen. And yet *Hill* saith he never saw *Girald*.

L. Stringer. And there was *Kelly*, he was another of them, and *Praunce*.

L. C. J. Did you know *Vernatt*?

L. Stringer. Yes, my Lord.

L. C. J. How now? What say you to it, *Mr. Hill*, and *Mr. Green*? Were you never at the *Plow*, drinking with *Mr. Praunce*?

Hill. Yes, my Lord, several Times.

L. C. J. What say you, *Mr. Green*?

Green. I have drank with him there.

L. C. J. Do you know *Girald*?

Hill. I know one *Girald*.

Mr. Sol. Gen. Now, will your Lordship please to let me prove, that at the Council he owned

he knew *Girald* and *Kelly*, and now 'tis proved he hath been in *Kelly's* Company, he says, he does not know *Girald*.

Hill. My Lord, that was a Mistake, for I do know *Kelly* by sight, that is, I knew two Men that used the Chapel very much, and he was one of them.

L. C. J. But you, Witness, say you have seen *Girald* and them together?

L. Stringer. Yes, I have.

L. C. J. How many Times?

L. Stringer. I cannot tell how many, my Lord; several Times.

L. C. J. Have you seen them twice together?

L. Stringer. Yes, I have.

Mr. Recorder. Now to settle it, I would ask him, with your Lordship's Favour, when he came to live with his Master. You, young Man, when did you come to live with your Master at the *Plow*?

L. Stringer. Why, I have been with him two Years.

Mr. Recorder. But when was it you came last to live at the *Plow*?

L. Stringer. In *Bartholomew-Tide* last.

Mr. Recorder. It was but five Weeks before Sir *Edmund-bury Godfrey* was murdered.

L. C. J. Do you, *Green*, know *Mr. Girald*?

Green. Yes, I do.

Mr. Recorder. Then pray swear *Mr. Vincent*. Which was done.

Mr. Recorder. Come, pray Sir, do you live at the *Plow*?

Vincent. Yes, Sir, I do.

Mr. Recorder. Then pray, do you tell my Lord and the Jury, if you know any of the Prisoners at the Bar, and which of them?

Vincent. I know *Mr. Green*.

Mr. Recorder. Do you know any body else?

Vincent. Yes, I know *Hill*, and I know *Berry*.

Mr. Recorder. Have you seen these Persons at your House?

Vincent. Yes, I have.

L. C. J. With whom?

Vincent. I can't tell every body with whom they were.

L. C. J. Were they there with *Praunce*?

Vincent. Yes, Sir.

L. C. J. Did you know one *Girald*?

Vincent. Yes, Sir.

L. C. J. Hath he been at your House?

Vincent. Yes, Sir, he hath.

L. C. J. Who was with him?

Vincent. I can't tell justly.

L. C. J. Did you know *Kelly*?

Vincent. Yes, I did.

L. C. J. Hath he been there?

Vincent. Yes, he hath.

L. C. J. In what Company?

Vincent. With *Praunce*.

L. C. J. And with any of the Prisoners?

Vincent. Yes, but I can't tell particularly with whom.

Mr. Att. Gen. Now, my Lord, as these were meetings before the Fact was committed, to consult how to do it; so we at the Beginning told you of a Meeting after it was done, and that was at *Bow*. We shall therefore call some Witnesses as to that; and they are *Richard Cary*, and *William Evans*. First swear *Richard Cary*.

[Which was done.]

Mr.

Mr. Recorder. Do you remember you were sent of a Message from the *Queen's-Head* at *Bow*, and whither? Pray tell my Lord and the Jury.

Cary. I remember it very well; there were three Gentlemen that sent for me to the *Queen's-Head*, and I being sent for did come; and when I came up Stairs, they asked me if I knew *Poplar*; I said, I knew it very well. Then they asked me, if I knew *Mr. Dethick*; I told them, I thought I did. Then said they, you must carry this Letter to *George Dethick*, Esq; at *Poplar*, and deliver it to his own Hands, and to no body else. Accordingly, away I went, and carried the Letter: I went to the Door, and asked if he were within; his Man said he was above Stairs, but they would call him to me; and calling him to me, Sir, said I, there are some Gentlemen at the *Queen's-Head* at *Bow*, that have sent me with a Letter to you. So he looked upon the Letter, and, saith he, go and tell them I will be with them presently. So, may it please you, my Lord, I came again, and when I came, the Gentlemen were there still. Well, said they, go and drink a Glas of Claret, which stood upon the Table, and they gave me Six-pence, and I went away.

Mr. Recorder. Pray look upon *Mr. Praunce*, can you remember whether that Man was there?

Cary. There were three of them, and he looks like one.

Mr. Recorder. *Mr. Praunce*, do you remember this was the Man you sent?

Praunce. Yes, my Lord, this was the same Man that was sent.

L. C. J. Well, call the other.

Then William Evans, the Boy of the House at the Queen's-Head, was sworn.

Mr. Recorder. Hark you, do you remember any Company that was at your Master's House two or three Months ago?

W. Evans. Yes, I do.

Mr. Recorder. Do you remember that you heard them talk any thing there?

W. Evans. They pull'd out a Paper and read it.

L. C. J. You Boy, do you know *Mr. Dethick*?

W. Evans. Yes, I do.

L. C. J. Was he there?

W. Evans. He did come to them, my Lord.

Mr. Recorder. What had they to Dinner there?

W. Evans. They had Flounders.

Mr. Recorder. Who bought them?

W. Evans. One of them, I can't tell who.

Mr. Recorder. What had they else?

W. Evans. A Barrel of Oysters.

Mr. Recorder. Pray give my Lord an Account what you observed and heard.

W. Evans. Sir, I know nothing but that they pull'd out a Paper, and read it, and named *Sir Edmund-bury Godfrey's* Name. And while I was at the Door, some body came and threatned to kick me down Stairs.

L. C. J. He saith just as *Mr. Praunce* said in every Particular.

Mr. Att. Gen. Now, if it please your Lordship, we desire to call *Sir Robert Southwell*, to prove what *Mr. Praunce* said before the Council, and how particular he was; and did, to some of the Lords who were sent with him to *Somerset-House*, point out the Places.

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Mr. Soll. Gen. We call him to shew, that when *Praunce* was examined before the King, he was sent with some of the Lords, and *Sir Robert Southwell*, to *Somerset-House*, where he pointed with his Finger, and shewed the Places where all was done; and so we shall shew your Lordship and the Jury, how exact he was in every Thing.

Then Sir Robert Southwell was sworn.

Mr. Recorder. Pray, *Sir Robert*, will you tell your Knowledge?

Sir Robert Southwell. My Lord, I was, upon the 24th of *December*, waiting upon his Majesty in Council, and *Mr. Praunce* was sent for, to speak his Knowledge concerning this Murder, and he then gave a general Account of Things, which, because it did relate to that Bench, and this Corner, and that Room, and that Passage, and that Gallery, it was not understood by the Board, and thereupon his Majesty thought fit to appoint my Lord Duke of *Monmouth*, and the Earl of *Offory*, and *Mr. Vice-Chamberlain* to the Queen, to go thither, and take the Examination upon the Place, and report it to the Board: And I, being Clerk of the Council, tho' not in waiting at that Time, and having taken Notice of what *Mr. Praunce* had there deposed, I did wait upon those Lords, and took the Examination upon the Place. And what I did take upon the Place, This was done here, and that there, I drew up into a Report, and the Report is signed by those two Noble Lords, and was read that Afternoon at the Board; and to that I refer my self.

Mr. Att. Gen. Pray, *Sir Robert*, Did he shew the particular Places to those Lords?

Sir Robert Southwell. Yes, he did. First, the Bench whereon they were sitting when *Sir Edmund-bury Godfrey* was coming down; then the Corner into which they drew him when they had strangled him; then the Place where one *Berry* went to stay, which was at the Stairs that lead to the upper Court, then a little Door at the End of the Stables, which lead up a Pair of Stairs, and at the Head of the Stairs a long dark Entry, and at the Top of those Stairs, a Door on the left Hand, which being opened, shew'd us eight Steps, which lead up to the Lodgings that were *Dr. Godwin's*; in which *Hill* was said to be Inhabitant for seven Years before. And as soon as we were gone two Steps, there was a little Closet or Cabinet on the right Hand, in which there was a Bed, and there he shewed my Lords, This is the Place where we handed him up first, and here we left him, said he, in the Care of *Hill* for two Nights.

Mr. Just. Wild. You were there, *Sir Robert Southwell*, upon the Place, when he shew'd them these Things?

Sir Robert Southwell. Yes, Sir, I was there.

Mr. Just. Wild. Was it answerable to what he had declared to the King and Council?

Sir Robert Southwell. Yes, it was answerable to all Things he had said in the Morning.

Mr. Just. Jones. And suitable to what he says now?

Sir Robert Southwell. Yes, suitable to what he says now, but only now he says more than he said then. And as to what he says about the Chambers of *Sir John Arundel*, they could not

be Sir John's Lodgings, for they were not capable of receiving a Person of that Quality.

Praunce. I said, I did believe they did belong to Sir John Arundel.

L. C. J. They were Lodgings perhaps that belong'd to his Servants, tho' not to him.

Mr. Att. Gen. Sir Robert, I desire to know, whether Mr. Praunce, when he shew'd these Places, and made these Descriptions, did he do it with any Hesitancy, or did he do it readily?

Sir Robert Southwell. Hitherto, my Lord, he went directly and positively, as if any body should walk to *Westminster-hall* Door. But afterwards, when the Lords did desire to know whither the Body was carried, he said, it was into some Room of the House by the Garden; for this is an outer Part of the House, which any body may do any thing in, without their Knowledge that are within. And he undertook to lead them to the Place as well as he could; and so away we went thro' the long dark Entry that leads into the outer Court of the great House; and crossing the Quadrangle, he leads us to the Piazza, and down a Pair of Stairs, and so far, said he, I am sure I went; then, as soon as we were down Stairs, there is a great Square Court, then he began to stagger, as if he did not know his way, but there was no way but to go on however, and on we went, and coming cross the Court, we came into several Rooms, and going thro' them, we came up Stairs again, and so into several other Rooms again. Sure, said he, we were here, but I can't tell, and he was in a Distraction what Room he saw the Body in; but, said he, thus far I am certain I am right; which was according to the Paper, and I refer my self to that.

Mr. Just. Wild. But, you say, that what he had said to the Lords in the Council, was the same that he said when you were by upon the Place?

Sir Robert Southwell. Yes.

L. C. J. His doubtfulness of the Room does assert and give Credit to his Testimony, and confirms it to any honest Man in England. Here, saith he, I will not be positive, but having sworn the other Things which he well remembred, positively, he is made the more credible for his Doubtfulness of a thing which he does not remember, which a Man that could swear any thing would not stick at.

Mr. Just. Jones. Besides, he was not there but by Night, and all the Light he had was a dark Lantern.

Mr. Sol. Gen. Now, Sir Robert, I would ask you one Question, if you please, Do you remember that Hill was examined at the Council about this Matter?

Sir Robert Southwell. My Lord, these are the Notes that I took upon these Mens Examinations, if your Lordship pleases they may be read.

Mr. Recorder. Sir Robert, We ask you but as to one particular thing, therefore if you please to look upon it, and refresh your Memory, you may read it to your self, and tell us only the Substance. Which he did.

Mr. Sol. Gen. Now Sir, if you please, Do you remember that Hill was there?

Sir Robert Southwell. Yes, I find he was examined.

Mr. Sol. Gen. Did not he deny there that he knew Kelly, but that he knew Girald?

Sir Robert Southwell. Yes, I do find it here set down that he did deny he knew Kelly, but that he knew Girald.

Hill. I said I knew one Girald, but not that.

Mr. Recorder. But before the Council he said he knew Girald; not one Girald.

L. C. J. This way of answering is like the Examination that was taken lately amongst some of them. A Person was asked when he saw such a Priest? He denied that he had seen him in fourteen Days. But then comes one and proves to his Face, that he was with him in Company all Night, within a Week and less. Ay, says he, that's true, but I said I had not seen him in fourteen Days. And so they may take Oaths to serve the King faithfully all the Days of their Lives, but in the Nights they may murder him, and keep their Oaths for all that.

Mr. Just. Dolben. I would know, whether the Girald you know be a Priest or no?

Hill. He is not.

Mr. Just. Dolben. Then you do not know Girald the Priest?

Hill. No, I do not.

Mr. Recorder. Call Mr. Thomas Stringer. And he was sworn.

Mr. Recorder. Pray, Mr. Stringer, will you tell my Lord and the Jury what it was that Mr. Berry said about any Directions he had to keep all Persons out of Somerset-House, about the twelfth or fourteenth of October last?

T. Stringer. My Lord, upon his Examination before the Lords of the Committee, Berry did say he had Orders from the Queen, or in the Name of the Queen, That he should suffer no Strangers nor any Persons of Quality to come into Somerset-House.

Mr. Att. Gen. When was it he was to keep them out?

T. Stringer. The twelfth, thirteenth and fourteenth of October.

Mr. Att. Gen. What, three Days?

T. Stringer. Two or three Days. And he said that the Prince did come, and he did refuse him, and sent him back again.

Mr. Recorder. Did he say he ever had any such Directions before?

T. Stringer. No: He said he never before had any.

L. C. J. It was a very unlucky thing that he had it then.

Berry. The Prince might have gone in if he would.

T. Stringer. You said you did refuse him, you had Order to let none come in.

L. C. J. Had you any such Order?

Berry. Yes, my Lord, I had such an Order from the Queen's Gentleman-Usher.

L. C. J. Had you never had such before?

Berry. Yes, I have had before, since the Queen came to Somerset-House.

L. C. J. Mr. Stringer swears you said you had not any before.

Berry. Yes, I had.

L. C. J. Why did you deny it then?

Berry. I did not deny it; besides, there were several went in.

Mr. Recorder. We have proved indeed five or six did go in.

L. C. J. For how many Days had you that Order?

Berry. Two Days.

L. C. J. Which two Days?

Berry. The eleventh and twelfth, I think thereabouts.

Mr.

Mr. Recorder. Did you say before the Lords, that you never had such Orders before?

Berry. No, I did not.

L. C. J. Mr. Berry, When you were examined before the Lords, did you not say you never had such Orders before?

Berry. No, I did not say so, my Lord, as I know of; for they did not examine me about that.

L. C. J. You said you would prove it under his own Hand. Prove that.

Mr. Att. Gen. Mr. Stringer, Did he write his Name to his Examination?

T. Stringer. Yes, he did to one Examination?

Mr. Att. Gen. Pray look upon that: Is that his Hand?

T. Stringer. This was read to him before he signed it, and then he did sign it.

Mr. Att. Gen. I would fain shew it to him, to see whether he would own it or no.

Berry. Yes, that is my Hand.

Then the Clerk of the Crown read it.

Cl. of the Cr. This is subscribed by Henry Berry. The Information of Henry Berry, Porter at the Gate of Somerset-House; taken before the Right Honourable the Marquis of Winchester: This Depo-
nent saith, That about the twelfth, thirteenth and fourteenth of October last, he had Order to tell all Persons of Quality, that the Queen was private, and that they were not to come in: And this Depo-
nent saith, The Queen continued so private for two Days.

L. C. J. Where is that Part of the Examination wherein he said, he never had any such Order before?

T. Stringer. He did say so, but it is not in that that hath his Hand to it.

Mr. Just. Wild. Pray, my Lord, observe this is a kind of reflecting Evidence, and I would have no more made of it than the Thing will bear.

L. C. J. They only bring it, and make use of it against Berry as a Pretence of his.

Mr. Just. Wild. But it is a very reflecting Evidence.

Mr. Att. Gen. Surely there is no body here that offers it as such: We use it only to this Purpose, to shew that Berry, who was a Party to this Murder, did use all the means that he could to keep it private; and endeavoured to prevent Strangers coming in that Night to discover it; and therefore pretended these Orders.

If he had any such Orders, I suppose he will prove them, we do not say he had them; but 'tis a great Evidence, when he pretended to such Privacy, that he and his Fellows had something to do that was not fit to be known by every body.

Mr. Recorder. He may make use of any body's Name, and pretend what he will; but I suppose he will prove it from the Gentleman-Usher, if it be true.

Mr. Att. Gen. We have one Witness more to call, my Lord, and that is one Farr. Call Stephen Farr. Which was done, and he sworn.

Mr. Att. Gen. He is a Neighbour to Berry, and will give your Lordship an Account what Applications have been made to him, to tamper with him for Money, to keep away, and not give Evidence in this Cause. Pray Sir, are you Mr. Berry's Neighbour?

Farr. Yes, Sir, I am.

Mr. Att. Gen. Pray then tell what you know.

Farr. I know him very well, his Wife hath been with me last Week, and asked me if I knew what time he was with me on Wednesday, the 16th of October. I desired time to recollect my self: And she called four or five times after, and I did recollect my Memory and told her, that I was not with him all that Wednesday.

L. C. J. Why, this was reasonable, and fair enough to do.

Mr. Att. Gen. It was so, my Lord; but pray had you no Money offered you?

Farr. No Sir, none at all; and I told her I could not remember that I was with him that Day.

Berry. But you may remember it very well, when I came from the Queen I came to you.

Farr. My Lord, I was out of Town that Wednesday, from Two a Clock in the Afternoon, till Nine at Night.

L. C. J. Well, well, this is nothing: The Woman was willing, if she could, to have counterproved the Evidence, and what she did was fair; she offered no Money, nor did it in an indirect way.

Mr. Att. Gen. My Lord, We have now done with our Evidence for the King, and leave it till we hear what they say.

L. C. J. What do you say for your selves? You shall have all the free liberty you will desire.

Hill. In the first place, I take God to be my Witness, that I am wholly innocent, as to the Matter that is charged upon me: And as to what is said that I dogg'd Sir Edmund-bury Godfrey, I can prove that I went into my Lodging at Eight a Clock, and did not stir out.

L. C. J. Come, call your Witnesses.

Hill. Mary Tilden, Katharine Lee, Mrs. Broadstreet, and Daniel Gray.

L. C. J. Let them come in there.

Then Mary Tilden was first examined.

Mr. Att. Gen. This is Doctor Godwin's Neice, and his Housekeeper.

L. C. J. Well, what do you ask her?

Hill. I desire to know what you can say about my being in my Lodging, and not going out.

Mary Tilden. He hath lived in our Family Seven or Eight Years.

L. C. J. Your Family, what is your Family?

Mary Tilden. With my Uncle.

L. C. J. Who is your Uncle?

Mary Tilden. Doctor Godwin: we left him in the House always, when we were absent from it; he was always a trusty Servant, never kept ill Hours, always came home by Eight a Clock at Night.

Mr. Just. Dolben. Alway; For how long?

Mary Tilden. Ever since we came over last into England.

Mr. Just. Dolben. When was that?

Mary Tilden. In April last.

L. C. J. Were you there that Night Sir Edmund-bury Godfrey was kill'd?

Mary Tilden. I was.

L. C. J. What Night was that?

Mary Tilden. I don't know, my Lord, I heard of it in the Town.

L. C. J. When did you first hear of it?

Mary Tilden. The Thursday that he was found.

L. C. J.

L. C. J. Did you not hear of it on the *Wednesday*?

Mary Tilden. Yes, I did.

L. C. J. Who could tell you the *Wednesday* before?

Mary Tilden. Why, my Lord, in the Town it was said he was missing from *Saturday*, and a *Thursday* he was found.

L. C. J. What can you say concerning *Hill*, that he was not out after Eight a Clock that Night?

Mary Tilden. He was a very good Servant to my Uncle, and never kept ill Hours, but always came in by Eight a Clock, or before.

Mr. Just. Dolben. Were you not out your self that Night?

Mary Tilden. No not I, never out after that Hour.

L. C. J. Pray how can you give such an account of *Mr. Hill*, as if he was always in your Company?

Mary Tilden. He came in to wait at Table, and did not stir out afterwards.

L. C. J. Pray, what Religion are you of? are you a Papist?

Mary Tilden. I know not whether I came here to make a Profession of my Faith.

L. C. J. Are you a Roman Catholick?

Mary Tilden. Yes.

L. C. J. Have you a Dispensation to eat Suppers on *Saturday* Nights?

Mr. Recorder. I hope you did not keep him Company, after Supper, all Night.

Mary Tilden. No, I did not, but he came in to wait at Table at Supper.

L. C. J. I thought you had kept fasting on *Saturday* Nights.

Mary Tilden. No, my Lord, not on *Saturday* Nights.

Mr. Just. Jones. How many Dishes of Meat had you to Supper?

Mary Tilden. We had no Meat, though we did not fast.

L. C. J. Can you speak positively as to this Night, the *Saturday* that he was kill'd?

Mary Tilden. He was at home that Night.

L. C. J. And where was he the *Sunday*?

Mary Tilden. He was at home.

L. C. J. And you are sure he was at home every Night?

Mary Tilden. Yes, while we were in Town.

L. C. J. Where was you all that *Wednesday*-Night you speak of?

Mary Tilden. I was at home in my Lodging.

Mr. Just. Wild. How is it possible for you to say, that *Hill*, who was not your constant Companion, did not go out afterwards?

Mary Tilden. No, he was not my constant Companion.

Mr. Just. Wild. How then can you charge your Memory that he was at home?

L. C. J. Come, you are to speak truth, tho you are not upon your Oath. Can you charge your Memory to say that he came in constantly at Eight a Clock at Night?

Mary Tilden. Yes I can, because I saw him come in constantly; and when he came in, I always sent my Maid to bar the Door.

L. C. J. Maid, can you say that he was always at home at Night?

Mary Tilden. I can say he never was abroad after Eight at Night.

Mr. Recorder. Why, you did not watch him till he went to Bed, did you?

Mary Tilden. We were always up till Eleven a Clock at Night.

Mr. Att. Gen. Was he in your Company all that while?

Mary Tilden. I beg your Pardon; if your Lordship saw the Lodgings you would say it were impossible for any to go in or out, but that they must know it within. We were constant in our Hours of going to Supper; our Doors were never open'd after he came in to wait at Supper.

L. C. J. You may say any thing to a Heretic, for a Papist.

Mr. Just. Dolben. This is a mighty improbable Business.

Mr. Just. Wild. Where was he a *Wednesday* Night?

Mary Tilden. At home.

L. C. J. They have a general Answer for all Questions.

Mr. Just. Jones. Who kept the Key of your Lodgings?

Mary Tilden. The Maid.

Mr. Just. Jones. Hath *Hill* never kept the Key?

Mary Tilden. No, my Lord, the Maid.

Mr. Just. Jones. How do you know but that the Maid might let him out?

Praunce. My Lord, *Mrs. Broadstreet* said at first there was but one Key; but before the Duke of *Monmouth* she said there was six or seven Keys.

L. C. J. Look you what Tricks you put upon us to blind us: You come and tell us that he was every Night at home by Eight a Clock, and did not stir out, for there was but one Lock, and the Maid kept the Key; and yet there were three or four Keys to it.

Mary Tilden. There was but one Key to that which kept the Door fast.

L. C. J. Praunce, how many Keys were there?

Praunce. She confessed there were four or five.

Mr. Just. Wild. What time was it that you carried him out of *Somerset-House* on *Wednesday* Night?

Praunce. It was about Ten or Eleven of the Clock. *Hill* went to fetch the Horse.

Mary Tilden. We had never been out of our Lodgings after Eight a Clock, since we came to Town.

Mr. Just. Jones. When were you out of Town?

Mary Tilden. In *October*.

Mr. Just. Dolben. Nay, now Mistress, you have spoiled all; for in *October* this business was done.

Mr. Just. Jones. You have undone the Man, instead of saving him.

Mary Tilden. Why, my Lord, I only mistook the Month.

L. C. J. You Woman [speaking to *Mrs. Broadstreet*] what Month was it you were out of Town?

Broadstreet. In *September*.

L. C. J. 'Tis apparent you consider not what you say, or you come hither to say any thing will serve the turn.

Mary Tilden. No, I do not, for I was out of Town in *September*, came to Town the latter end of *September*.

L. C. J. You must remember what you said, that you came to *England* in *April* last, and from that

that time he was always within at Eight a Clock at Night.

Mary Tilden. Except that time that we were out of Town, which was in *September*, the Summer-time. And it is impossible but if the Body was in the House, as *Praunce* said it was, but I must see him, or some of us must. I used to go every day into that little Room for something or other, and I must needs see him if he were there.

L. C. J. You told me just now you were not upon Confession; and I tell you now so, you are not. Then *Mrs. Broadstreet* was examined.

Mr. Just. Jones. Well, Woman, what say you?

Broadstreet. We came to Town upon a *Monday*, *Michaelmas*-day was the *Sunday* following; and from that time neither he nor the Maid used to be abroad after Eight a Clock: we kept very good hours, and he always waited at Supper, and never went abroad after he came in to wait at Supper: and the Lodging was so little, that nothing could be brought in, but they must know that were within.

L. C. J. This is a lower Room than the Chamber, is it not?

Praunce. 'Tis even with the Dining-Room, my Lord.

L. C. J. What say you, *Sir Robert Southwell*?

Sir Robert Southwell. My Lord, it is an extraordinary little Place; as soon as you get up eight Steps, there is a little square Entry, and there is this Room on the one Hand, and the Dining-Room on the other. I think there is a pair of Stairs to go down at one Corner of the Entry, as I think, but the Body was laid in a little square Room at the Head of the Steps.

L. C. J. And must you go into the Room to go to the Dining-Room?

Broadstreet. No, 'tis a distinct Room; but the Key was always in the Door, and every Day some Body went into it for something or another.

L. C. J. Will you undertake to say it was always in the Door?

Broadstreet. Yes, it constantly was.

Mr. Just. Wild. For my own Part I will not judge you: but that his Body should be carried there about Nine a Clock at Night a *Saturday* Night, and remain there till *Monday* Night, 'tis very suspicious, that if you were in the House, as you say you were, and used to go into that Room every Day, you must either hear it brought in, or see it.

Broadstreet. But we did neither, my Lord.

Mr. Just. Dolben. It is well you are not indicted.

Broadstreet. Mr. *Praunce*, you know all these Things to be false, Mr. *Praunce*.

Praunce. I lay nothing to your Charge; but you said before the Duke of *Monmouth*, that *Hill* was gone from his Lodgings before that Time.

L. C. J. What say you, *Sir Robert Southwell*?

Sir Robert Southwell. There arose a little Quarrel between them, about the Time that *Mr. Hill* did leave those Lodgings. *Praunce* said it was a Fortnight after; *Hill* said, when he was upon his Examination, that the same *Saturday* Night that *Sir Edmund-bury Godfrey* was missing, he was treating with his Landlord, and from that time, to the time he went to his new House, it was about a Week or a Fortnight.

L. C. J. But he did pretend he was gone before?

Broadstreet. No, my Lord, I did not.

L. C. J. Two Witnesses upon Oath swear it, and you said it your self, and gave it under your Hand.

Broadstreet. My Lord?—

L. C. J. Nay, you will not hear, but you will talk; you say one thing now, and you set another under your Hand.

Mr. Att. Gen. Have you not a Brother that is in the Proclamation, one *Broadstreet* a Priest?

Broadstreet. I have a Brother, whose Name is *Broadstreet*.

Mr. Att. Gen. Is he not a Priest, and in the Proclamation?

Broadstreet. I hope I must not impeach my Brother here. I said upon my Oath, he came to Town on *Monday*, and *Michaelmas* Day was the *Sunday* following, and *Laurence Hill* went away a Fortnight after.

Sir Robert Southwell. She swore then, two or three Days after *Michaelmas* Day.

L. C. J. You must know we can understand you through all your Arts. It was not convenient for you at that time to say, that *Mr. Hill* went away about a Fortnight after *Michaelmas*, for then the thing that was charged to be done, part of it in your House, would have been within the Fortnight, for it was the 12th of *October*, but then you said only two or three Days.

Sir Robert Southwell. She did say, my Lord, that about *Michaelmas* two or three or four Days after he went away.

Broadstreet. I beg your Pardon, I only said, I could not tell the time exactly.

L. C. J. Well, have you any more to say?

Mary Tilden. There was never a Day but I went into that Room for something or other, and if any Body came to see me, there was so little Space that the Footmen were always forced to be in that Room.

Mr. Just. Dolben. Were you there upon *Sunday*?

Mary Tilden. Yes, my Lord, I was.

Mr. Just. Dolben. Well, I will say no more; call another Witness.

Hill. Catharine Lee.

L. C. J. What can you say, Maid?

Lee. My Lord, I did never miss him out of the House at those Hours.

L. C. J. May be you did not look for him.

Lee. I did go down every Night to the Door, to see if it were lock'd, and I went into the Parlour to see that things were safe there.

L. C. J. You are a *Roman* Catholick, are you not?

Lee. Yes, I am.

Mr. Just. Dolben. Might not he go out of the House, and you never the wiser?

Lee. Yes, for I did not watch him continually.

Capt. Richardson. All that she says may be true by the Place. The Servants keep down a pair of Stairs in the Kitchen, and any one may come in, or go out, having so many Keys, and they not know it that are below.

Lee. I went into the Chamber every Morning, as I went to Market.

Mr. Just. Wild. Have a care what you say, and mind the Question I ask you: Were you there on the *Sunday*, in that Room where they say *Sir Edmund-bury Godfrey's* Body was laid?

Lee.

Lee. I cannot say, that I was in that Room, but I called in at the Door every Day, and I was the last up every Night.

Mr. Just. Wild. I'll say that for thee, thou hast spoke with more Care than any of them all.

Then Daniel Gray was Examined.

L. C. J. What can you say? What Questions do you ask him?

Hill. I desire him to speak what he can say, where I was those five Days that Sir *Edmund-bury Godfrey* was missing.

Gray. I kept my Brother *Hill* Company, from the 8th of *October*, till he took his House, which was about the 22d or 23d.

L. C. J. What Time did you use to go to Bed?

Gray. About Nine or Ten a Clock at Night.

L. C. J. What Time did he go?

Gray. When I did, but I did not see him go to Bed.

L. C. J. Where did you lie?

Gray. At my own House.

L. C. J. And you went home about Eight or Nine a Clock at Night to go to Bed?

Gray. Yes, I did.

Mr. Just. Jones. You say he took his House the 8th of *October*, when did he go thither?

Gray. Yes, he took his House the 8th of *October*, but he did not go thither till the one or two and twentieth.

Mr. Just. Dolben. But you cannot tell what he did at Night.

Gray. No, not I.

Mr. Just. Dolben. But you were in his Company till Eight or Nine a Clock at Night?

Gray. Yes, my Lord, I was.

L. C. J. How far did you live off of him?

Gray. About a Bow's shoot.

L. C. J. Look you, Mr. *Hill*, he does you no Service at all, for he says he left you about Eight or Nine a Clock at Night, and he does not know what you did afterwards. Have you any more?

Hill. Robert How.

L. C. J. Come, what say you?

How. My Lord, I met with Mr. *Hill* the 5th of *October*, he asked me whither I was going? I told him, Home. I wish, said he, you would go a little back with me; I am about taking of an House, and I would have you view the Repairs; accordingly we did go, and treated in the House about an Agreement; for, said he, I will not agree with you (to the Landlord) till we know what must be repaired. On *Tuesday* Morning we met again, about Eight a Clock.

L. C. J. What Day of the Month was that?

How. The 8th. And a *Wednesday* about Noon we began to work for him, to repair his House, and we wrought that Week every Day, and for twelve Days and an half in all, and he was every Day with us, looking after Coals, or Beer, or something. On *Saturday* the 12th of *October*, we dined together, and parted with him about One or Two a Clock, and about Two a Clock I went back again to my Work, and he said he was going towards *Covent-Garden* in St. *James's*, but he came back again, and I was gone first; I asked my Man whether he was gone, or no; he said, he was there, but did not stay.

L. C. J. What Time was that?

How. A little before Night.

L. C. J. What Hour did your Man say that he was there?

How. About an Hour before they left Work.

L. C. J. What Time was that?

How. About Four a Clock, I think it was.

L. C. J. Can you say where he was that Night?

How. No, I cannot.

L. C. J. What Religion are you of, are you not a Protestant?

How. Yes, my Lord, I think so.

Mr. Recorder. My Lord asks you, are you a Protestant?

How. I was never bred up in the Protestant Religion.

Praunce. He is a Catholick, my Lord, he was the Queen's Carpenter.

Mr. Just. Dolben. Nay, now you spoil all; you must do Penance for this; what! deny your Church?

Hill. What Time was it a *Saturday* Morning I was with you?

How. About Nine a Clock.

L. C. J. How long did he stay?

How. From Nine to Two.

L. C. J. Are you sure 'twas Nine?

How. No Man can swear punctually to an Hour.

L. C. J. What think you of Ten?

How. It was thereabouts.

Mr. Recorder. If I am rightly informed by the Clerks, he is Outlawed for Recusancy.

L. C. J. Is he so? Pray let us know that.

Harcourt. (One of the Clerks of the *Crown-Office*.) My Lord, I have made out several Writs against him, for several Years together, and could never get any of them Returned.

Hill. He tells you, that I was with him from Nine a Clock on *Saturday* Morning, till One.

Mr. Just. Jones. But that is but as true as he is a Protestant, and how true that is, you know.

Hill. Here is another Witness; Mr. *Cutler*.

Tho. Cutler. Upon the 12th of *October*, *Lawrence Hill* did come into my House, about Four or Five a Clock in the Evening, and he staid there till between Seven or Eight, and then his Wife came for him and said some Gentlewoman was ready for her Supper, and so he went home; and I saw him no more, till the Day after he was taken.

L. C. J. Look you here, he speaks only about Seven or Eight a Clock. Well, have you any thing more to say?

Hill. There is one *Richard Lazineby*.

Lazineby. My Lord, I was with him on *Saturday* the 12th of *October*, at the Door, about Twelve a Clock.

L. C. J. And you dined with him and How?

Lazineby. Yes, Sir.

L. C. J. But you did not see him afterwards?

Lazineby. Yes, I did see him on *Wednesday* Night, from Five to Seven at Night.

L. C. J. What Time was he carried out of *Somerset-House*?

Mr. Att. Gen. About Eleven or Twelve a Clock at Night.

Lazineby. That is the last Time I was with him.

L. C. J. Well, have you any more?

Hill. Here is one Mr. *Archebold*, my Lord.

Archebold.

Archbold. My Lord, I had occasion for a Taylor, and I came to this Man's House, to seek for one Mr. Gray, that had formerly wrought for me.

L. C. J. When was that?

Archbold. That was on Monday Night. And he having formerly wrought for me, I found him at this Man's House; so Mr. Gray asked me, what News? I told him, Very good News; for Praunce was taken for the Murder of Sir Edmund-bury Godfrey. Says Hill, I am glad of that; I wish they were all taken. I came the next Day after, and they told me he was taken out of his Bed, for the Murder of Sir Edmund-bury Godfrey.

L. C. J. Was it that very Night that you came, that he was taken?

Archbold. Yes, it was.

L. C. J. You said he spoke of it before you at Seven a Clock, and you left him about Nine, and he was taken that Night; what then?

Hill. Why, then I had Time enough to make my Escape, if I had thought my self Guilty.

L. C. J. As no doubt you would, if you had thought they would have been so nimble with you.

Archbold. He knew it the Day before.

L. C. J. Well, have you any more to say?

Mrs. Hill. There is Mr. Ravenscroft, my Lord.

L. C. J. What, that Ravenscroft that is sent away?

Mrs. Hill. Yes, my Lord.

L. C. J. Then the Marshal must send for him, if he be a Witness for the Prisoner. In the mean time, what can you say for your self, Mr. Green?

Green. My Lord, I would call my Landlord and his Wife.

L. C. J. What are their Names?

Green. James Warriar, and his Wife.

L. C. J. Call in Green's Wife, and all her Witnesses.

Then Mrs. Hill, the Prisoner's Wife, offered a Paper to the Court, containing Observations upon the Indictment, which she desired them to read; but it was refused, and she bid to give it her Husband.

Then James Warriar was Examined.

L. C. J. What say you to your Landlord?

Green. I ask him no Questions at all, but desire him to tell what he knows.

Warriar. I will say, that the 12th of October, he was at my House, half an Hour after Seven, and he was not out of my House till after Ten.

L. C. J. How can you remember that Day? What Day of the Week was it?

Warriar. It was a Saturday.

L. C. J. How do you remember it was so?

Warriar. I have recollected my Memory.

L. C. J. By what?

Warriar. By my Work, and every thing exactly.

L. C. J. When did you begin to recollect your self?

Warriar. A pretty while ago.

L. C. J. How long after Sir Edmund-bury Godfrey was murdered?

Warriar. A Month after.

L. C. J. What made you to recollect your self a Month after?

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Warriar. Because he was in Prison in the Gate-house.

L. C. J. When was he taken up?

Warriar. He was taken up in Somerset-House, and not in my House.

L. C. J. But when did you recollect your self?

Warriar. When he was in Prison.

L. C. J. But I pray remember the Time when you did recollect your self, and the Occasion that made you recollect your self when he was taken up.

Warriar. I remember it very well, for he had been in my House but fourteen Days, before he was taken up.

Sir Tho. Stringer. He was not taken up for the Murder of Sir Edmund-bury Godfrey, till the 24th of December.

Mr. Just. Wild. Pray, did you never think of this, till he was in Prison?

Warriar. It was when he was taken up.

L. C. J. But, pray, when you came to recollect your self, how did you come to do it?

Warriar. I recollected it by my Work.

L. C. J. But what gave you occasion to recollect your self since he was in Goal?

Sir Tho. Stringer. My Lord, he was put into Goal for refusing to take the Oaths; but he was not at all charged with the Death of Sir Edmund-bury Godfrey, at that Time.

L. C. J. When was he put in for the Death of Sir Edmund-bury?

Sir Tho. Stringer. The 24th of December.

L. C. J. Then there is all the remaining part of October, all November, and the former part of December, was past, how could you recollect your self of the particular Day?

Warriar. I call'd it to mind by my Work.

Capt. Richardson. My Lord, I will rectify this Mistake: Since their Arraignment, I went to them, to know what Witnesses they had, and Green told me of his Landlord and Landlady; I then asked them, if they could say any thing as to this particular Day? and they said they could not do him any Good at all.

Warriar. I did not then call it to Memory.

L. C. J. When did you call it to Memory?

Warriar. I did say I could not do it then presently, as I have done since, in five or six Days.

L. C. J. How could you recollect it then?

Warriar. By the Time he came into my House, which was a Week before, and by the Work that was done.

L. C. J. What could the Work do as to this? Can you tell by that, any Thing that is done at any Time? Where were you the 9th of November last?

Warriar. Truly, I can't tell.

L. C. J. Why, how came you then to recollect what you did the 12th of October, when you did not know where you were the 9th of November?

Warriar. I can tell a great many Tokens, he was but fourteen or fifteen Days in our House.

L. C. J. What did he do the 12th of October, that you remember so particularly that Day?

Warriar. Sir, I remember other Days besides that; but I say, I never knew the Man out after Nine a Clock, in my Life.

L. C. J. Have you any body else? for this Man, I can't tell what to make on't.

Green. Here is the Man's Wife to give Evidence.

L. C. J. First consider what you say.

Mrs. Warriar. To tell you the Truth, I thought the Man was so clear of this Fact, that I never troubled my Head with it; but when Captain *Richardson* came to my House, I told him, that he was never in our House by Day-time, except being Cushion-layer in the Chappel, he used to come at half an Hour after Eleven, and many times he did desire me, because we were Protestants, to put in a little Flesh Meat with ours; sometimes he would sit down and eat his Meat in the Kitchen, and his Wife with him; and his Wife would say to him, 'tis a troublesome Time, pray see that you come home betimes. I did not at all remember the Day of the Month at the first, nor the Action; but my Husband and I have since remembred. We were desired by them once to eat a Fowl with them; and my Husband did command me the *Sunday* after to invite them to Dinner with us, and I went in the Morning very early, I think, and bought a dozen of Pidgeons, and put them in a Pye, and we had a Loin of Pork roasted; and when he was gone to the Chapel on *Saturday* in the Afternoon, his Wife came to me, and said, my Husband is not well, and when he comes home will ask for something of Broth; and away she went to Market, to buy something to make Broth of. While she was at Market, her Husband came home, and asked where his Wife was? Why, Mr. *Green*, said I, she is gone to Market: What an old Fool, said he, is this, to go out so late, such a Night as this is? But, said he again, I will go to the Coffee-house, and drink a Dish of Coffee, and pray tell my Wife so. In the mean time she returned, and by that time she had been above a little while, he came in again. And Mr. *Green* being there, my Husband came in, and called to me, Pr'ythee, Sweetheart, what hast thou got for my Supper? Pr'ythee, said I, Sweetheart, thou art always calling for thy Victuals when thou comest in. Then Mr. *Green* goes to the Stairs, and calls to his Wife, and bids her bring him down some Victuals, and she brings down the Bread and Cheese, and he stayed there till it was Nine a Clock; and then saith Mr. *Green* to his Wife, let us go up, for there is a Fire.

L. C. J. What Day was this, all this while?

Mrs. Warriar. Why, it was the *Saturday* Fortnight after *Michaelmas* Day.

L. C. J. Why might it not be that Day three Weeks?

Mrs. Warriar. It was that Day he was missing.

Mr. Att. Gen. Why there was no Alarm taken of it a *Sunday*.

L. C. J. When did you begin to recollect what Day it was, that they said he was missing?

Mrs. Warriar. On *Friday* Morning our Milkman came and told us, that one Mr. *Godfrey* was found murdered; now I knew one of the Exchange of that Name, and thought it might be he. And when we went up with him to his Chamber, we sate there till the Tattoo beat.

L. C. J. All the Thing is, how do you know it was this *Saturday*?

Mrs. Warriar. It was the *Saturday* Fortnight after *Michaelmas* Day.

Mr. Just. Dolben. Are you sure it was the *Saturday* Fortnight after *Michaelmas* Day?

Mrs. Warriar. Yes, we did look upon the Almanack, and reckon it so.

Mr. Just. Dolben. Then that was the 19th of *October*.

L. C. J. Why you told him, you could do him no Good, and indeed you do not.

Mr. Just. Jones. You and your Wife speak of the same Time, don't you?

Warriar. Yes.

L. C. J. Have you any more, *Green*?

Capt. Richardson. There is the Maid, let her come in.

L. C. J. What say you, Maid?

Maid. I can say, that he came in the *Saturday* Fortnight after Quarter-Day, pretty betimes.

L. C. J. Can you speak of any other Time besides that *Saturday* Fortnight?

Maid. I can tell he came in every Night before Nine a Clock.

Green. I can take my Oath, I was never out of my Lodging after Nine a Clock.

Hill. My Lord, here is Mr. *Ravenscroft* now.

L. C. J. Mr. *Ravenscroft*, what can you say?

Mr. Ravenscroft. What I can say, my Lord, is this; This *Lawrence Hill*, I have known him Thirteen or Fourteen Years, and he served my elder Brother so long, very faithfully. Afterwards he lived with Dr. *Godwin*, towards the latter end of the two last Years, and he married my Mother's Maid.

L. C. J. What Religion are you of?

Mr. Ravenscroft. My Father and Mother were Protestants.

L. C. J. But you are a Papist, are you not?

Mr. Ravenscroft. I have not said I am a Papist, yet.

Mr. Just. Dolben. In the mean time, I say you are one.

Mr. Ravenscroft. Do you so? then pray go to *Southwark*, and see.

Mr. Att. Gen. My Lord, I think he hath taken the Oaths of Allegiance and Supremacy.

L. C. J. Well, pray, Sir, go on with your Story.

Mr. Ravenscroft. If it please you, upon a *Saturday*, a little before *Christmas*, there was somebody taken, I think it was one Mr. *Praunce*, for I never saw the Man, neither do I know him at all: And it was reported that he was taken up on the Death of Sir *Edmund-bury Godfrey*, and I was glad to hear it. My House was in the *Savoy*, and my Father's House is in *Holbourn*; and I used often to go and see my Father, and coming home again, I went to see the Maid at her new House, she had not been long there, and she was standing at the Door of the House. I asked her what News? Says she, Here hath been a Man here that tells us, that *Praunce* hath discover'd several of the Murderers of Sir *Edmund-bury Godfrey*; and they talk up and down strangely of it, and ask me whether my Husband be acquainted with him? Then said I to her, Is he? She answered me, Very well, they have been often together; and so she told me the People did mutter, and talk of her Husband. But, said I, What says your Husband to it? Says she, He defies *Praunce* and all his Works. Said I, Where is your Husband? Said she, He is within. I was very glad to hear it; for, said I, he living in *Somerset-House*, and being acquainted with *Praunce*, I am glad to hear that your Husband can be so courageous; so I went away, and came again thither the next Morning, and found he was taken the Night before. All that I say then, is, that it was a good Evidence

Evidence of his Innocency, that when he had Notice of it, he did not fly.

L. C. J. So then, your Discourse was after *Archbold* had been there.

Mr. Ravenscroft. *Archbold* was there before me, and had spoken this in their Company. I spake with her that Night, and the next Morning too; and all that I say is, if Flight be a Sign of Guilt, as no doubt it is, *Adam ubi es?* and Courageousness is a Sign of Innocency, then this Man is innocent.

L. C. J. But you say, she told you they were acquainted?

Mr. Ravenscroft. My Lord, I have one thing more to say. Upon the Ocession of these Things, this Woman hath been often with me, and hath desired to know of me what Defence she should make, for I saw *Hill's* Wife and *Berry's* Wife were all simple People, without Defence for themselves, and they did desire that I would examine and see some of the Witnesses, and see how it was, and she had gotten me some Papers, and I conferred them together, there are Witnesses that will attest the Copy.

Mr. Att. Gen. What is all this to the Purpose? Only this Gentleman hath a mind to shew that he can speak *Latin*.

Mr. Ravenscroft. I thank God I can speak *Latin* as well as any Man in the Court.

L. C. J. Well, all this is nothing.

Mr. Ravenscroft. I declare it my self, if this Man were guilty, rather than I would speak for him, if there wanted a Hangman, I would do it my self.

L. C. J. Well, *Berry*, what have you to say?

Berry. I desire *Nicholas Trollop*, and *Nicholas Wright*, and *Gabriel Hasket*, and *Elizabeth Wilkes*, and Corporal *Collet* may be called.

Corporal William Collet first Examined.

Berry. Did not you place a Centinel on *Wednesday* Night?

Collet. What *Wednesday* do you speak of, Sir?

Berry. That Night the Queen went from *Somerset-House* to *Whitehall*.

Collet. Yes, this *Nicholas Trollop* I placed there first, the 16th of *October*.

L. C. J. How do you remember that?

Collet. Because I have been called to an Account before, and have given good Reasons for it. Our Company was at *Somerset-House* when the King came from *New-Market*, and the Queen went to *Whitehall*. Afterwards we were bid to fetch our Centinels off about Three or Four of the Clock in the Afternoon.

L. C. J. Did you leave any Soldiers there?

Collet. No, we did not, all our Company went to *Whitehall*.

Mr. Just. Dolben. Are you sure there were no Soldiers that Night there?

Collet. Yes, we were commanded with a Party to go thither again that Night.

L. C. J. What did you do then?

Collet. I placed the Centinels by the Porter's Order.

L. C. J. Who was that, *Berry*?

Collet. No, it was one that used to go about, and give Orders where we should set them.

L. C. J. How did you place them?

Collet. This Man I placed from Seven to Ten, then *Nicholas Wright* relieved him at Ten, and stay'd till One.

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L. C. J. At what Place?

Collet. To the *Strand*-ward.

Mr. Just. Wild. That was the Gate they carried him out at.

L. C. J. Do you hear; whereabouts did you set the Centinels? within the Gate?

Collet. Yes, within the Wicket.

L. C. J. That way he was carried out.

Nicholas Wright. There was no Sedan came out in my Time.

Trollop. There was one came in, in my Time, while I stood there.

L. C. J. Was it an empty Sedan?

Trollop. I suppose it was; but we had no Order to keep any out.

Mr. Just. Wild. But you might know whether it was an empty Sedan or no, by the going of it through the Wicket.

Collet. There is an empty Sedan that stands there every Night.

Trollop. It was set down within the Gate.

Mr. Just. Jones. If any Sedan had gone out, you would not have staid them, would you?

Collet. No, my Lord, we had no Order to stop any.

Mr. Just. Dolben. How can you then be positive, that no one did go out?

Trollop. None did go out again in my Time.

Mr. Just. Dolben. Could not the Porter open the Gate, as well as you?

Collet. Yes, my Lord, he could, but I should have seen him then: He did not open it in my Time.

Mr. Just. Wild. Let me ask you but one Question; Did not you go to drink, nor tipple all that time?

Trollop. No, nor walk a Pike's Length off the Place of Centry.

Mr. Just. Wild. Has not *Berry* an House there, hard by?

Trollop. Yes, but I did not drink one Drop.

Mr. Just. Dolben. How can you remember so particularly, so long ago?

Trollop. Why, I was twice before the Committee.

Mr. Just. Dolben. But how long ago was it that you were questioned about this thing, after this Night?

Trollop. A matter of a Month, or six Weeks.

Collet. For we were examined before *Praunce* was taken up.

L. C. J. You, *Trollop*, Can you say whether it was the Sedan that used to be within?

Trollop. No, I cannot, but it was brought in, in my Time, and did not go out again.

Then *Gabriel Hasket* was examined.

Berry. You stood there, Sir, from One to Four.

Hasket. Yes, after the Clock struck One, I was put Centinel, and stood till Four.

L. C. J. What Night?

Hasket. That Night the King came from *New-Market*, and the Queen went from *Somerset-House*.

L. C. J. What Day of the Month was that?

Hasket. The Sixteenth.

L. C. J. What Day of the Week?

Hasket. *Wednesday*.

L. C. J. Did you not drink at *Berry's* then?

Hasket. No, I did not.

L. C. J. Did you see *Berry* then?

5 G 2

Hasket.

Hasket. No, I did not.

L. C. J. He was gone before you came.

Berry. I was fast enough a-bed at that Time.

L. C. J. Well, what say you more?

Berry. Here is my Maid, *Elizabeth Minsbaw*, to give her Evidence where I was that Night the Queen went from *Somerset-House*.

Mr. Just. Jones. What can you say?

Minsbaw. May it please you, my Lord, my Master was within Doors, and about the Gate, when the Queen went away.

L. C. J. Who is your Master?

Minsbaw. Mr. *Berry*. He was about the Gates all the Forenoon.

L. C. J. When was that?

Minsbaw. The 16th of *October, Wednesday*. And as soon as the Queen was gone, my Master went out to Bowls; and when he came home again, he said he had been at Bowls.

L. C. J. What Time did he come home?

Minsbaw. It was dusky, and he was not absent all Night an Hour, till he went to Bed.

Mr. Just. Wild. When did he go to Bed?

Minsbaw. My Lord, I suppose he went to Bed about Twelve a Clock.

Mr. Just. Wild. They do not charge him with any thing, but what was done about the Gate.

Mr. Just. Dolben. What Time did you go to Bed that Night?

Minsbaw. Why, I went to Bed about Twelve a Clock.

Mr. Just. Dolben. And you saw him no more that Night?

Minsbaw. No, my Lord, but he must go thro' my Room to go to Bed at Night, and therefore I suppose he was a-bed.

Mrs. Hill. I desire Mr. *Praunce* may Swear why he did deny all this?

L. C. J. Stand up, Mr. *Praunce*; that Gentlewoman does desire to know, what induced you to deny what you had said.

Praunce. It was because of my Trade, my Lord; and for fear of losing my Employment from the Queen, and the Catholicks, which was the most of my Business, and because I had not my Pardon.

Mrs. Hill. I desire he may swear whether he were not tortured?

Mr. Just. Dolben. Answer her; were you tortured to make this Confession?

Praunce. No, my Lord. Captain *Richardson* hath used me as civilly as any Man in *England*; all that Time that I have been there, I have wanted for nothing.

L. C. J. See what he says; That he did not make this Confession by any Torture, but he made his Recantation thro' Fear, and the Thoughts of Death, because he had no Pardon; and Fear that he might live in Want, by the Loss of the Trade, prevailed with him to deny what he had confessed.

Mrs. Hill. It was reported about Town, that he was tortured.

Mr. Just. Jones. No, it was no such Thing; it was only the Tortures of his Conscience, for being an Actor in so great a Sin.

Mrs. Hill. There are several about the Court, that heard him cry out: And he knows all these Things to be as false, as God is true; and you will see it declared hereafter, when 'tis too late.

L. C. J. Do you think he would swear three Men out of their Lives for nothing?

Mrs. Hill. I desire he may be sworn to that particular Thing.

Mr. Just. Jones. He is upon his Oath already, and swears all this upon his Oath.

Mrs. Hill. Well, I am dissatisfied; my Witnesses were not rightly examined, they were modest, and the Court laugh'd at them.

Berry. The Centinels that were at the Gate all Night, let nothing out.

L. C. J. Why, you could open the Gate your self.

Berry. He says, he could have seen if the Gate had been open; and that, as he saw, the Gates were never open'd.

Mr. Just. Dolben. Well, the Jury have heard all, and will consider of it.

Mrs. Hill. Here is another Witness, my Lord; Mr. *Chevins*.

L. C. J. Well, Sir, what say you?

Chevins. I have nothing to say, but that I heard Mr. *Praunce* deny all.

L. C. J. Why he does not deny that now. Well, have you any more?

Chevins. We have no more.

Mr. Att. Gen. My Lord, I must crave leave to speak a Word, or two; and the Evidence having been so very long, I shall be exceeding short. I intended (when I began to open the Evidence) to have made some Observations after the Evidence ended; to shew how each part of it did agree, and how the main was strengthened by concurrent Circumstances. But, in truth, the King's Evidence did fall out much better than I could expect, and the Defence of the Prisoners much weaker than I could foresee. So that, I think, the Proof against the Prisoners is so strong, and so little hath been alledged by them in their Defence, that it would be but Loss of Time to do what I at first intended. Only I will observe, That Mr. *Bedlow* doth agree with Mr. *Praunce* as far forth as is possible; that is, in those parts of the Fact, of which he pretends to have any Knowledge. Yet had they never any Communication one with another, as both have Sworn. And your Lordship will observe in how many Particulars they do agree; namely, as to the Dark-Lanthorn, as to the covering of the Body in the Room; how they intended to carry the Body out in a Sedan, and the rest. So that if they had laid their Heads together to contrive a Story, they could hardly have agreed in so many Circumstances; and yet this they do, without discoursing with each other beforehand.

My Lord, I must likewise observe to you, that the Servants of the *Plow-Alehouse* concur as to Meetings there: The Maid agrees as to the Prisoners coming to Sir *Edmund-bury Godfrey's* House, and to the Time, viz. that *Saturday* Morning; nay, to the very Hours of Nine or Ten a Clock; That the Constable's Relation of the Posture in which the Body was found in the Field, doth perfectly agree with the Account that the Murderers gave thereof to Mr. *Praunce* the next Morning. The Chirurgeons do agree with Mr. *Praunce*, as to the manner of Sir *Edmund-bury Godfrey's* being killed, the Strangling, the bruising of his Stomach, the twisting of his Neck. And the Witnesses from *Bow* make it out, that *Dethick* was sent for; that they had a

Dinner

Dinner there. The Boy proves that he overheard them reading something about Sir *Edmund-bury Godfrey*, and that they were very merry; and that for his listening, he was threatned to be kick'd down Stairs.

So that, I think, there never was an Evidence that was better fortified with Circumstances than this: My Lord, I shall be bold to say, here is certainly as much Evidence as the Matter is capable of. It is not to be expected, that they should call Witnesses to be by, when they do such foul Facts; so that none can swear directly the very Fact, but such a one as was an Actor in it. All Circumstances relating to the Fact, both before, and after, are made out by concurrent Testimony. And, my Lord, I must observe, that this was a Murder committed thro' Zeal to a false Religion, and that Religion was a Bond of Secrecy. We all know, His Majesty hath been graciously pleased, by his Proclamation, to propose a Pardon, and a Reward to the Discoverers. And yet almost without Effect: Their Zeal to their false Religion was a greater Obstacle, than the Proclamation was an Incitement, to the Discovery. And I do believe, if Mr. *Praunce* had not had some Inclination to change his Religion, you had still been without so clear a Discovery of this Work of Darkness, as now you have. I shall say no more, but conclude to the Jury with that Saying, that I remember in the Book of *Judges*, (in the Case of a Murder too, tho' of another Nature) *Judges* xix. 30. *The People said there was no such Deed done, nor seen, from the Day that the Children of Israel came out of Egypt:* And I may say, there was never such a barbarous Murder committed in *England*, since the People of *England* were freed from the Yoke of the Pope's Tyranny; and, as 'tis said there, so say I now, *Consider of it, take Advice, and speak your Minds.*

Mr. Sol. Gen. My Lord, I would only make one Observation to your Lordship, which is this; I do not find they do in the least pretend to tax Mr. *Praunce*, that any Person hath bribed him to give this Evidence; nor, that there was the least Reward ever proposed to him to bear Witness against them, not so much as the Hopes of that Reward contain'd in the King's Proclamation; yet Mr. *Praunce*, if he had had a mind to bear false Witness, might have laid hold of that Opportunity; but so far was he from pretending to discover any thing, that he denied all when he was first apprehended. But after he was in Hold, and likely to be brought to Justice, and lying under the Conviction of a guilty Conscience, then, and not till then, does he discover it.

There is no Objection in the World to be made, but that since this Discovery, Mr. *Praunce* hath retracted what he said before, but he gives you a very good Account of it; the Terrors of Conscience he then lay under, the Fears that he should not be pardoned, and the Apprehensions he had from the Threats on their Side, and the Danger of his utter Ruine, put him upon that Denial.

But, my Lord, he tells you likewise, That as soon as ever he was brought back to the Prison, he owned all he had said at first, and desired he might be carried back again to testify the Truth of what he had first sworn to. This, my Lord, he gives you an Account of, and the same Ac-

count does the Keeper of the Prison give too. I have nothing to say more, but only just to observe the many Circumstances whereby Mr. *Praunce's* Testimony is fortified. Mr. *Bedlow* does agree with him in every Circumstance, as far as his Knowledge went: The Maid of the House agrees with his Testimony; that says, she saw *Green* at Sir *Edmund-bury Godfrey's* several Times, tho' here he denies he knew him. That she saw *Hill* there that very Morning her Master was miss'd; That he talked with her Master a Quarter of an Hour; That she knew him by a very good Token; not only by his Face, but also that he had the same Cloaths on then he hath now.

Mr. *Praunce* hath likewise told you of another Circumstance, the meeting at the *Plow-Ale-house*, where they laid the whole Design of Intrapping Sir *Edmund-bury Godfrey*; and herein he is Fortified by the concurrent Testimony of the Master of the House, and the Servant too, tho' they now deny that ever they had been in his Company there; or that they so much as knew *Girald*; tho' when they were Examined at the Council-Board, they said, they knew *Girald*, but not *Kelly*: and now they are prest with it here, *Hill* retreats to this, That he knows one *Girald*, but not *Girald* the Priest.

My Lord, I think the Matter is so fully, and so plainly proved beyond Exception, that there needs no Repetition in the Case: It is impossible that Mr. *Praunce*, a Man of that mean Capacity, should invent a Story with so many Circumstances, all so consistent, if there were not Truth at the Bottom of it. He shews you the particular Places, from Place to Place, where they decoyed him in, and how they disposed of him, to the Time they carried him out. And in each of these Circumstances, there is not the least Improbability or Cause to disbelieve him. It hath been already so fully repeated, and the Plainness of the Evidence is so convincing, that I need not make more Observations upon it; But submit it to your Lordship and the Jury.

Then the Lord Chief Justice directed the Jury in this manner:

Look you, Gentlemen of the Jury, This is an Inquisition for Innocent Blood that hath been shed, and your Business is to see if you can find out the Murderers.

We would not add Innocent Blood to Innocent Blood: But, on the other Side, if you have received Satisfaction so much as the Nature of the Thing can bear, then the Land is defiled, unless this be satisfied.

Now for that I will urge the Witness and Testimony no further than it does appear; for you and We are all upon our Oaths to do uprightly, neither to Spare Murderers, nor Condemn the Innocent.

In the first Place, We began with Mr. *Oates*, and he told you, that he had some Converse with Sir *Edmund-bury Godfrey*, and that he was threaten'd by some, and had no good Will for his Pains, in taking those Examinations he had taken, and he was afraid his Life was in Danger. This he tells you was the Discourse before-hand, and this is produced to lead you to consider what sort of Persons they were, of whom he

was

was likely to have these Fears; for his Fears did arise from his having done his part, as a Justice of Peace, in taking the Examinations upon Oath.

For the Testimony of the Fact they produce first Mr. *Praunce*, wherein you will do well to observe all the degrees that he goes by, before the Fact, and all the Circumstances in the Transaction of that Affair, and the Parties by whom it was to be Acted: First he tells you, how long it was before they could entice him to consent to such a Villany as this was, To Murder a Man; he tells you by whom he was thus enticed, which makes the Story more probable; that is, by *Girald* and *Kelly* (two Priests) and he tells it you still more probably by their Doctrine, that it was no Sin; but it was rather an Act of Charity to kill a Man that had done, and was like to do them mischief: So that if you consider the Persons that Preached to him, and the Doctrine they taught, it carries a great shew and presumption of Truth in it self. When they had met together at the *Plow* several times (which was deny'd by some of them, but is most manifestly proved by the Master of the House, and the Boy) and the wish'd-for time was come; for they were to watch the opportunity, and Mr. *Praunce* was to be at home, and they would call him to give his helping hand; he tells you, That Mr. *Hill* did go that Morning; for tho he talks of an Errand before, yet to keep to that which is most pressing in the Evidence, he went to Sir *Edmund-bury*'s House. This he seems to deny; but the Maid does Swear it expressly upon him; and says, She came first to him, and went up Stairs, and then came back again, and still he was there. And she swears positively she knows him by his Face, and by the Cloaths he then had on, which are the same Cloaths he hath on now, and that that is the Man that was with her Master; and this, which they cannot disprove, half proves the Matter.

What had he to do at Sir *Edmund-bury Godfrey*'s House? But that would be an hard puzzling Question to be put to him; What did you there? And therefore he is to deny it; but the Maid proves it upon him, as well as *Praunce*. So that I would have you consider how many Witnesses you have to one thing or another, all conducing to this Point.

You have first Mr. *Oates*, that tells you the Discourse that passed between Sir *Edmund-bury Godfrey* and him; the Maid tells you, that both these Men were there, one at one time, and the other at another; and you have Mr. *Praunce* that knew the whole Affair, who tells you so likewise, and that they were resolved to do the Work that Day, in so much that if they could not do it, as they had before contrived it (and Sir *Edmund-bury Godfrey* was sensible that he was Dogg'd up and down) *Girald* did resolve to dogg him to his own Door, and kill him in the Lane that leads to his House, he would have run him thro' himself, and this *Girald* is one of those Priests, whose Church counts it no Sin, but an Act of Charity, to murder a Christian, to propagate Christianity.

When they had Way-laid him and watch'd his coming, from what Place Mr. *Praunce* cannot tell; for he knows nothing but what they told him, and they only named in general, that he was Lodg'd in St. *Clement*'s; and thereupon one comes to acquaint him, that they would in-

tice him in at the Water-gate by *Somer-set-House*, and they would do it with Art enough, for they never want a contrivance for so charitable an Act; and it was upon this pretence that there were two Men a wrangling and fighting, and then he being a Justice of the Peace, was a Person that would part the Fray easily.

And it was a probable Invention: for Sir *Edmund-bury Godfrey* was a Man that was as willing to do all Acts of Justice as any one, and as little afraid to do it; for the Witness tells you before, that he said, if they did do him a mischief, they must do it basely, for he did not fear the best of them upon fair Play. Then when he was desired to get himself a Man to follow him, he slighted the Advice: And we all know, that he was a Man of singular Courage, and therefore it was the easier to lay a trap for him. Then, saith *Praunce*, when he was got in, *Berry* and I were to have several Posts, which we were to go to, I to one Place, and *Berry* to another; and I staid, saith he, till *Green* threw the Cravat about his Neck, and was assisted by *Girald* and the rest that were there. And then, as soon as we could imagine the thing to be done, *Berry* comes in, and *Praunce* comes back from his standing, and by some Motions finds that he was alive, and that till *Green* twisted his Neck round; which the Chirurgeons say was plainly a Broken Neck, and nothing of the Wounds which were in his Body were given him while he was alive.

When they had done this, he tells you, they carried him to Mr. *Hill*'s Chamber: *Berry*, *Girald*, *Kelly* and the rest, all help'd him in, and there they leave him. Then *Praunce* goes away. This was on Saturday Night. Then *Praunce* comes again on Monday Night, and finds him removed to another Chamber hard by, where he saw him by the light of a dark Lanthorn, with something thrown over his Face; and afterwards on Tuesday Night following they did remove him back to *Hill*'s Lodgings, and there he lay till Wednesday Night, when they carried him out.

Saith *Praunce*, I saw him that Night; I was the Man that help'd to carry him out, for it was *Praunce* and *Girald* that carried him first, and it was *Green* and *Kelly* who went before, and took him up afterward. He tells you, they set him upon an Horse-back, and *Hill* behind him. They carried him out in a Chair, which was a thing that used to come in and go out there, and so the less Notice would be taken of it. I will observe to you afterwards, on the Prisoners behalf, what is said for them to all this.

But as to *Praunce*, you see he hath given you an Account from the top to the bottom, from the first Transaction between them, from the Time of his being called by them to help in the Murder, and from his seeing the Handkerchief twisted about his Neck, his Neck twisted round; how they disposed of his Body at first, what removes they made, and when they carried him out, who were in Company, who relieved them, and what became of him at last.

He says, he saw him set up before *Hill* on Horseback, and they told him, they had thrown him in a Ditch, and *Girald* had run him through with his own Sword; and in that Posture, and in that Place the Constable found him: The Chirurgeons tell you, that it was by the twisting of his Neck, and the Strangling, that he was kill'd, and not by the Wounds; and the very Bruisings

Bruisings which *Praunce* speaks of, were found upon the view of the Body. So that here is not any one Thing, that is not back'd either in some particular Circumstance or other; besides Mr. *Praunce's* Testimony, who (alone) could give the Narrative of the Fact.

And it is no Argument against Mr. *Praunce* in the World, that he should not be believed, because he was a Party, or because he after denied what he first said: First, Because you can have no Body to discover such a Fact, but only one that was privy to it: So that we can have no Evidence, but what arises from a Party to the Crime. And, in the next place, his Denial after he had confessed it, to me, does not at all sound as an Act of Falshood, but Fear. It is not a good Argument to say, that he is not to be believed, because he denied what he once said; for he tells you he had not his Pardon, he was in great Consternation; the horror of the Fact it self, and the loss of his Trade and Livelihood was enough to do it. But how short was his Denial, and how quick was his Recantation! for he denied it before the King, not upon Oath: He swore it upon Oath, but he denies it upon his Word only; but by that time he got home to *Newgate*, with Captain *Richardson*, he fell down on his Knees, and begg'd him for God's sake to carry him back to the King, for what I did say at first, said he, is true, and this Denial is false. And here could be no Tampering, no Contrivance made use of; no, 'tis plain there could be no Art used to make him retract from his first Testimony. And these are the Particulars, as to *Praunce's* Evidence.

Then comes Mr. *Bedlow*, and tells you, that he was commanded by *Le Faire*, and the Priests he was acquainted with, to insinuate himself into the Acquaintance of Sir *Edmund-bury Godfrey*; they did not tell him why; they themselves knew privately wherefore, and they did intend him as an Instrument to do it, as appears afterward. He tells you, he got into his Acquaintance, by pretending to go for Warrants for the good Behaviour and the Peace, as he knew Sir *Edmund-bury Godfrey* was willing to have the Peace kept; and he was with him every Day almost, for a Week or more.

Then the Priests come a little nearer, and tamper'd with him to kill a Man, an ill Man for their turn, and that Mr. *Bedlow* should be very well rewarded, he should have Four Thousand Pounds to kill that Gentleman; but still they kept the Name secret. He promised them fair, but broke his Word. Afterwards he meets this Companion that he had most confidence in, and being tax'd with his Breach of Promise, said he, I had Business, I could not come. Well, said his Companion, you should have been as good as your Word; but the Thing is done, the Person is killed, and I would have you help to carry him away. He promises to do it, and to meet him at *Somerset-House*; accordingly he comes up on Monday in the Evening, and about Nine or Ten of the Clock at Night Mr. *Bedlow* swears, that in this Chamber that *Praunce* says he was laid in, he did see the Body, by the help of a Dark-Lanthorn; and his Face was cover'd with a Cloak or Mantle, or some such thing thrown over him.

And these two Men, viz. Mr. *Praunce* and Mr. *Bedlow*, as the Council have observed, had

not any Confederacy together, for they both swear, that they never had any Converse at all; and if it be so, then it is impossible for two Men so to agree in a Tale, with all Circumstances, if they never conversed together, but it must be true.

It is hardly possible for any Man to invent such a Story; for *Praunce* it is, I believe. I find it is no hard thing for the Priests to contrive such an Action; but for two Witnesses to agree in so many material Circumstances with one another, that had never conversed together, is impossible.

If all this had been a Chimera, and not really so, then *Praunce* must be one of the notablest Inventors in the World: And there must have been the mightiest Chance in the World, that Mr. *Bedlow* and he should agree so in all Things; and that the Maid should swear, that *Hill* was there that Morning; and that the Constable should find the Body, just as they told *Praunce* they had left him.

So that upon the Matter, you have two Witnesses almost in every Thing; for Mr. *Bedlow*, seeing him in the Place murdered, is a plain Evidence that the Thing was done; and all the other Witnesses, speaking to Circumstances both before and after, make the Evidence plain, that these were the Persons who did it. And I see nothing incoherent in all Mr. *Praunce's* Testimony.

I would not urge this so, if I was not satisfied in my own Conscience that the Relation is true. In the Prisoners Defence, there is but one Thing, that hath any sort of Weight; for the young Gentlewoman talking of his being constantly at home at Eight of the Clock, is nothing; for she says they always go to Bed about Nine a Clock, and they give no Answer to this, but that it could not be done in their House but they must know of it; but do not show how that must needs be; so that all their Evidence is slight, and answers it self, or else not possible to be true. All the Testimony that is considerable in this Matter, is that which *Berry* produces; and that is concerning the Centinels who kept the Guard that Wednesday Night the Body was carried out; and he says, there was no Sedan carried out. And altho' this Evidence be produced but by one of them, yet 'tis to the Benefit of them all three; for if it were certain and infallibly true, that the Centinels did so watch at the Gate, that no Mortal could go out of the Place, and if the Darkness of the Night might not hinder him from seeing what might go out, or that Mr. *Berry's* Voice being known to him, he might not call to him, and so Mr. *Berry* might open the Gate without any great Caution, or more particular Observation by the Centinel, so that this might escape his Observation or Remembrance, and yet that the Centinel be an honest Man, and speak true, as he thinks, to his best Remembrance, which I leave to your Consideration. But there is one Thing the other Centinel tells you, that about Eight or Nine a Clock (for he went off at Ten) there was a Sedan brought in, and he did not see it go out; and so says he that watched from Ten to One; and this is the only thing which hath any Colour in it, in Behalf of the Prisoners. But he that says there was no Body went out, says also, that he never saw the Sedan; but the Centinel that was relieved, says, that he saw it go in. Now how

far that single Testimony of *Nicholas Wright* the Centinel will weigh, who says that none went out, I leave with you, which may be mistaken, either by reason of the Darkness of the Night, or those other Particulars I have observ'd to you.

But this is all that can overthrow the whole Series of the Evidence that hath been given by Mr. *Praunce*, upon whom I find not the least Reflection, except you will call that one, which to me, as it is circumstanced, is rather an Argument for him, than against him, viz. his going off from what he said. And what Sir *Robert Southwell* says is regardable, that when he shewed them the Place where he was strangled, the House to which he was first carried, he did it very readily and confidently, but was puzzled to find out the Room where he was removed, when he saw him by the Dark-Lanthorn, and would not positively assert where it was; which shews the Integrity of the Man, who would else have gone thro' without boggling; for if all were a Lye, why should he stick at one Thing more than another, but have shewn some Room or other? but when he was confident, he appeared so, and when he was doubtful he appeared so, and so shewed himself an honest Man.

These are the particular Matters, and, as near as I can remember, all that hath been materially offered for the Prisoners, against the King's Evidence. For the Testimony of the Landlord, *Warrier*, and his Wife, it is plainly spoken of another Time, for it was the *Saturday* after the *Thursday* he was found, the 19th of *October*. So that they speak nothing but what is true, and yet nothing to the Purpose; for the Question is, of that which was done the 12th, but they speak of a Time when the Tragedy was passed, so that there is only the single Evidence of one Witness, the Centinel, which must be opposed to all the concurring Evidence given against them.

Berry. There was Centinels placed at every one of the Gates.

L. C. J. That is nothing, for we speak only of this Gate, the great Gate; but I will tell you what there is that does not arise from these Witnesses, but from the Nature of the Thing they were about, and the Persons that transacted it, that gives Credit to the Testimonies of the Witnesses, so as to incline any one to believe them, as Things stand at this Day, in reference to the known Design of the Priests to subvert our Religion, for they must justify one Ill by another, and the Mischiefs they have done will not be safe, unless they do more.

And for the Priests being the Preachers of Murder, and your Sin, that 'tis Charity to kill any Man that stands in their Way; their Doctrine will make you easily believe their Practice, and their Practice proves their Doctrine. Such Courses as these we have not known in *England*, till it was brought out of their Catholick Countries; what belongs to secret Stranglings and Poisonings, are strange to us, tho common in *Italy*. But now your Priests are come hither to be the Pope's Bravo's, and to murder Men for the Honour of his Holiness: And as they are Inhumane, so they are Unmanly too; for Sir *Edmund-bury Godfrey* had not been afraid of two or three of your Priests, if they would have dealt fairly with him.

Berry. He was a Gentleman that I never spoke with in all my Life.

L. C. J. You must say and believe, as your Priest will have you, and in such Actions as these, as your Priests suggest to you, so does the Devil to your Priests; if you are upon the Matter necessitated to what they will have you think; for tho your Priests preach up Freedom of Will, yet they allow none to the Understanding. They hold you may do Good or Evil, but will not suffer you to understand Right and Wrong, for you cannot be perfectly theirs, if you have any thing of your own to guide your selves by.

I know that every Body of that Party is apt to say their Priests own no such thing, but it is notoriously known to all the World, that they both Print it, and practise it. *What, shall any of you dispute the Power of a Pope?* saith a Jesuit: Or, *of a Pope and a Council?* say the most moderate Priests. Have you Power to say how far you will be a Papist, and how far not? You may as well bound the Sea, and bid it go thus far, and no farther, as limit the Pope's Authority. I wonder any Man should be of that Persuasion, and yet keep his Reason; much less turn from our Religion to theirs, if he considers how they impose, and what Mischiefs and Blood you are involved in by your Priests, that have alarmed the Nation. For I will affirm, the greatest Mischief the Papists have received, come from their Priests, who have such unworthy and unmanly Ways of setting up their Religion: What! do they think it an Act of Charity to kill Men; or is the Christian Religion, or yours, to be promoted by such Means as these? No, Gentlemen, 'tis the Fault of your Doctrine, and 'tis a monstrous Mistake in you, if you think that you have any Power of your own, whilst you continue in their Persuasion.

I know some will ascribe all to Conscience that guides them, and that even these Mischiefs are but the Effects of their Religious Obedience; but they are indeed the Consequences of the Blindness of their Obedience. I wonder how any Man can have the Face, thus to disorder a whole Nation, and yet pretend Conscience for it. Let no Man tell me, O, Sir, we desire none of these Mischiefs you talk of: What, not if Religion requires it, or if the Pope says it does? Hath not the Council of *Lateran* decreed, That every Popish Prince ought to root out Heresy upon Pain of Damnation? You must: Can you go and tell the Pope how far you will believe, or what you ought to do? You may as well tell me, that if he were once with us, and had the Power he once had, he would leave us to our selves, and that if he had the same Ability, he would not have the same Tyranny.

And therefore all the *Roman Catholick* Gentlemen in *England* would do very well to consider, how much it concerns Christianity not to give Offence; and if they cannot at this Time live in a Protestant Kingdom with Security to their Neighbours, but cause such Fears and Dangers, and that for Conscience sake, let them keep their Consciences, but leave the Kingdom. If they say, why should not we stay here, while we do no Mischief? alas, that's not in your Power. You cannot be quiet in your own Religion, unless you disturb ours; and therefore, if to shew your Consciences you acquit the Country, and let the Inconveniencies light on your selves only, I should then think you had Zeal, tho not according to Knowledge; and not ascribe it

to any Plot, but to the Simplicities of Understanding.

But, in short, there is a monstrous Evidence of the whole Plot it self by this Fact; for we can ascribe it to none, but such Ends as these, that such a Man must be kill'd; for it must be either because he knew something the Priests would not have him tell, or they must do it in Defiance of Justice, and in Terror to all them that dare execute it upon them; which carries a great Evidence in its self, and which I leave to your Consideration; having remembred, as well as I could, the Proofs against them, and all that is considerable for them. Add to this, the Condition that we are in at this Time, and the Eagerness of the Pursuit that these Priests make, to gain the Kingdom, that, for my own Part, I must put it into my *Litany*, *That God would deliver me from the Delusion of Popery, and the Tyranny of the Pope*: For it is a Yoke, which we, who have known Freedom, cannot endure, and a Burden, which none but that Beast who was made for Burden, will bear. So I leave it to your Consideration upon the whole Matter, whether the Evidence of the Fact does not satisfy your Consciences, that these Men are guilty. And I know you will do like honest Men on both Sides.

Then the Jury withdrew, to consider of their Verdict, and after a short Space returned again.

Cl. of the Cr. Gentlemen, answer to your Names. *Sir William Roberts.*

Sir Will. Roberts. Here. *And so the rest.*

Cl. of the Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of the Cr. Who shall say for you?

Omnes. Our Fore-man.

Cl. of the Cr. *Robert Green*, hold up thy Hand, (which he did.) Look upon the Prisoner; how say you, is *Robert Green* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

Fore-man. Guilty.

Cl. of the Cr. What Goods or Chattels, Lands or Tenements?

Fore-man. None, to our Knowledge.

Cl. of the Cr. *Henry Berry*, hold up thy Hand, (which he did.) Look upon the Prisoner. How say you, is *Henry Berry* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

Fore-man. Guilty.

Cl. of the Cr. What Goods or Chattels, Lands or Tenements?

Fore-man. None, to our Knowledge.

Cl. of the Cr. *Lawrence Hill*, hold up thy Hand, (which he did.) How say you, is *Lawrence Hill* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

Fore-man. Guilty.

Cl. of the Cr. What Goods or Chattels, Lands or Tenements?

Fore-man. None, to our Knowledge.

Cl. of the Cr. Harken to your Verdict, as the Court hath recorded it. You say that *Robert Green* is guilty of the Felony and Murder whereof he stands indicted. You say that *Henry Berry* is guilty of the Felony and Murder whereof he stands indicted. You say that *Lawrence Hill* is guilty of the Felony and Murder whereof

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he stands indicted; and that neither they, nor any of them, had any Goods or Chattels, Lands or Tenements, at the Time of the Felony committed, or at any Time since, to your Knowledge. And so you say all.

Omnes. Yes.

L. C. J. Gentlemen, You have found the same Verdict, that I would have found if I had been one with you; and if it were the last Word I were to speak in this World, I should have pronounced them guilty.

At which Words the whole Assembly gave a great Shout of Applause.

Mr. Att. Gen. Will your Lordship please to give Judgment this Evening? I know it is not usual the same Day.

Mr. Just. Wild. My Lord, I am ready.

L. C. J. No, Brother, I am to sit at *Nisi prius* this Afternoon, and 'tis time we broke up the Court.

Cl. of the Cr. Captain *Richardson*, you shall have a Rule to bring them to-morrow. And then the Court broke up.

On Tuesday the eleventh of February, the Prisoners were brought again to the Bar, in order to receive their Sentence; and the Court proceeded thus:

Mr. Recorder. MY Lord, as I was directed by Mr. Attorney, these Prisoners being convicted of Murder, I do, for the King, pray Judgment upon them; but I must first acquaint your Lordship, that immediately after their Conviction, one of the Officers, a Tipstaff, pretending it was his Fee, took their Cloaths off their Backs.

L. C. J. Who is that Officer?

Mr. Recorder. One *Ashby*.

L. C. J. Call him. Why do you offer to meddle with these Mens Cloaths?

Ashby. It hath been an ancient Custom this forty Years, some of us have known it, that the Marshal hath the upper Garment of all Prisoners Tried at this Bar.

L. C. J. Is there any such Custom, Mr. *Waterhouse*? Speaking to a Clerk of the Crown-Office.

Waterhouse. No, my Lord, not that I know of.

L. C. J. Here is Mr. *Waterhouse*, that hath known the Practice of the Court this threescore Years, says there is no such thing. Either restore them their Cloaths, or we will take some other Course with you. Are they in your Custody, pray?

Mr. Just. Dolben. I do not know that, my Lord, I think they always plead in Custody of the Marshal.

Mr. Just. Wild. But this seems a very barbarous Thing, to take their Cloaths off their Backs.

Mr. Just. Dolben. It doth so, Brother, and they must be restored.

L. C. J. Yes, yes, you must restore them.

Ashby. They shall be, my Lord.

Mr. Recorder. I pray your Judgment.

L. C. J. Ask them what they can say to hinder Judgment.

Cl. of the Cr. *Robert Green*, hold up thy Hand, (which he did.) Thou hast been indicted of Felony and Murder, thou hast been thereupon arraigned,

raigned, thou hast pleaded thereunto Not guilty, and for thy Trial thou hast put thy self upon God and thy Country, which Country hath found thee guilty; what hast thou to say for thy self, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

Capt. Richardson. What have you to say for your self?

Green. I declare to all the World, that I am as innocent of the Thing charged upon me, as the Child that is in the Mother's Womb. I die innocent, I do not care for Death, I go to my Saviour, and I desire all that hear me to pray for me. I never saw the Man, to my Knowledge, alive or dead.

Cl. of the Cr. Henry Berry, hold up thy Hand, (which he did.) Thou hast been indicted of Felony and Murder, &c. What canst thou say? &c.

Berry. I do declare, I am not guilty of any thing in the World of this.

L. C. J. We do not expect much from you, and it is no great matter; for your Confession will do us little good, but only for your selves. We regard it not otherwise, because the Evidence was so plain, that all Mankind is satisfied, there is no Scruple in the Thing; and we know you have either downright Denials, or Evasions, or equivocating Terms for every Thing; yet, in plain-dealing, every one that heard your Trial hath great Satisfaction; and for my own particular, I have great Satisfaction that you are every one of you guilty.

Cl. of the Cr. Lawrence Hill, hold up thy Hand, (which he did.) Thou hast been indicted of Felony and Murder, &c. What canst thou say? &c.

Hill. I have nothing to say for my self, but that God Almighty knows my Innocence.

Cl. of the Cr. Cryer, make an O yes.

Cryer. O Yes! Our Sovereign Lord the King doth straightly charge and command all manner of Persons to keep silence whilst Judgment is giving upon the Prisoners convicted, upon Pain of Imprisonment; Peace about the Court.

Then Mr. Justice Wild, who, as second Judge in that Court, pronounceth the Sentence in all criminal Matters, (except High Treason) spoke to the Prisoners thus:

Mr. Just. Wild. You that are the Prisoners at the Bar, you have all three been indicted for a detestable Murder, and thereunto have pleaded Not guilty, and put your selves, for your Trial, upon your Country; and your Country, upon a clear and pregnant Evidence, I believe to the Satisfaction of all good Men, that were indifferent, have found you Guilty. I have little Comfort to say any thing to you, because I observe your Obstinacy at the Bar; but it is so generally among you all, you will confess nothing to the Death.

Green. God forbid, Sir.

Mr. Just. Wild. But tho' I am of another Persuasion than you, and know you have no Charity for me, yet I have Charity for you. And if I shall say any thing, it is out of a zealous Affection I have for your Souls; God knows, I speak it upon no other Grounds; tho' the Offence be horrid, yet I commiserate your Persons.

For the Nature of your Offence, it is Murder: *He that sheds Mans Blood, by Man shall his Blood be shed*; for in the Image of God created he him. So saith God to *Noah*, intimating and declaring thereby, That the Intention of God Almighty, in the making of that Law, was, the Preservation of Mankind; and that he will not admit or suffer his Image to be defaced or destroyed. If it shall be accounted Treason against Earthly Princes to deface their Images, is it not much more Treason against the great God of Heaven and Earth, to deface his Image, who is the *King of Kings, and Lord of Lords*? The Greatness of this Sin struck such a Damp and Horror upon the Soul of *Cain*, that it made him cry out, *His Punishment was greater than he could bear*; or, as our Bibles have it in the Margin, *His Iniquity was greater than could be forgiven*; and it shall come to pass, that whosoever meeteth me, shall slay me: Being conscious to himself, that it was just and lawful, that whosoever did meet with him should slay him. And God himself doth set forth the Heinousness of this Offence, when he tells him, *His Brother's Blood cry'd to him*; that is, cry'd unto God from the Earth for Vengeance. Blood, it is of a crying Nature, and will never cease crying, till it find out the Man-slayer.

It is an Offence so heinous in the Eye of God, that he will not endure it in a Beast; God saith, he will require it of a Beast. And doth God require Blood of a Beast, a brutish Creature void of all Reason, and will he not require it much more of Man, whom he hath endued with those two great Faculties of Reason and Understanding? And certainly, if Murder in general be enquired after, I may well say this of yours, there hath not been committed a more impudent and barbarous Murder in this civiliz'd Nation, by one Subject upon another. And observe how you did effect this Murder, with Baseness enough. See the Baseness of it; as the Devil was the Father of Lies, so he was a Murderer from the Beginning; and you first begun your Murder with an hellish, studied, and premeditated Lie. Knowing that this Gentleman was a Person very vigorous in the Execution of his Place, that would omit no Opportunity of doing his Office; you pretend you have Occasion for him, and by this means draw him into your Snare; where what you do, you do cowardly and basely, first disarm him, then fall upon him and murder him; as the Prophet *David* saith of the ungodly Man, *first gets the righteous Man in his Net, and then ravisheth him*.

Had such a Thing as this been acted by us Protestants in any Popish Country in the World, I doubt there would scarce have been one of us left alive. They would not have taken this Course that hath been taken with you, to admit us to a fair Trial; no, they would have made their own Hands their Avengers: But, God be praised, we are of another Religion, and of another Persuasion. We leave Vengeance to God, and, under him, to the Magistrate, who beareth not the Sword in vain, as you now find.

If I could abstract Folly from Wickedness, certainly it was one of the greatest Pieces of Folly and Sottishness in the World: For what could be your End in it? Did you think, that all the Magistrates in England were lodged in *Sir Edmund-bury Godfrey*? That, if he were taken out of the way, there were not Men of Spirit and Courage,

Courage, as faithful and diligent as he was? Trouble not your selves, nor let those of your Persuasion trouble themselves, there are a numerous Company of Magistrates in this Kingdom, that will do the same thing, and act in, and execute their Offices with the same Courage.

And as to the Manner of the Murder: Whom have you destroyed? A Magistrate: For what? For the Execution of his Office. One that was a Conservator of the Peace; and whose Study it was to preserve you in Peace, on him you have violated the Peace, and nothing less would satisfy you than his precious Life: An Affront to the Law, to the Magistrate, to the King, to the Nation; yea, to God himself, upon whom an higher Affront could hardly have been put. For the Magistrate is God's Ordinance, God hath set him up to avenge himself upon the Wicked, and to reward the Good; *and he doth not bear, as it is a Sign by you he hath not born, the Sword in vain.*

I might say much more concerning the Heinousness of this Offence; but had I the Tongue of Men and Angels, I could not say enough to set out the Horror of it. And now, let me tell you, I do not speak this to insult and domineer over you; I praise God I am of another Spirit; he knows I have another End in what I say, and my End is meerly this, to persuade you from the Foulness of your Fact, to make a good Use of it; that the Horridness of your Sin, may make the greater and deeper Impressions on your Spirits; and so make your Repentance more severe and efficacious. Had you as many Years to live as you have Hours, it were little enough to bewail this horrid Offence. But, on the other Side, as that will be little enough, yet let me give you this Comfort, you have Time enough, if you make a good Use of it, to make your Peace with God.

Pray let me dehort you from one Thing; and that is this, Do not be of the Opinion of those wicked Miscreants the Jesuits, that have put you upon this Matter; for I have so much Charity for you as to believe, they made it a Matter of Religion to you, and justifiable upon that Account. Do not think so, for the Law of God is indispensable, and no Power under Heaven can license to murder. So that though the Offence in them is abominable, yet in you 'tis an Offence too, and an horrid one. And when you have consider'd it as such, I then desire you to take a right Course to make your Peace with God: For you must pass under another Judgment than that of Man, and that shortly you must stand before the Judge of Heaven and Earth. And therefore, if by this means you can prevent that future Judgment, you will have just Cause to thank God that you had your Punishment here on Earth. Therefore let me advise you to

spend every Minute you have left, in a free Acknowledgment of all your Offences: For certainly some Sin went before, or this had never come after. One Sin doggs another, and makes way for the Commission of another.

And what must you rely upon? Not upon any Trash or Trumpery, not upon any Merit of your own; there is but one Saviour and Mediator, the Lord Jesus Christ. And I would advise you, in the Words of that Great Cardinal, one that was one of the greatest Men of your Religion, *Bel-larmine* I mean, who having made a Scrutiny, which was the safest Way for securing Heaven, made the Conclusion thus, *To Trust only upon the Lord Jesus Christ for Life and Salvation.* Which I advise you to do.

I have now done what I intended to say to you; and what I have said, I spoke to deliver my own Soul, and upon no other Account. I now pronounce the Judgment which the Law hath appointed to pass upon such Malefactors; and that is this:

That you go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hanged by the Neck, till you are severally dead; and the Lord have Mercy upon your Souls.

Hill. I humbly beg one Favour, that I may have the Privilege to see my Wife and Children, and my Brother, before I die; some times.

L. C. J. God forbid else.

Hill. Any Day I hope, my Lord.

L. C. J. Captain *Richardson*, let them have the Liberty of seeing their Friends, but do it with Care and Caution.

Mr. Just. Wild. And I will say this more to you, if you will have any Religious Protestant Divines to come to you, they shall be sent you; but none of your Priests.

Hill. I desire only my Relations.

Mr. Just. Wild. You shall have them, and we offer you the others.

Green. I have no Relations that are Catholicks, but two, and they are not Priests. God blest the King: And I desire all good People to pray for us.

L. C. J. Mr. *Astry*, let the Rule be entred for their Execution on *Monday* next.

Cl. of the Cr. Captain *Richardson*, you shall have the Rule for their Execution on *Monday* next.

Then the Keeper carried away the Prisoners to the Goal, to be reserved till their Execution.

On *Friday* the 21st of *February* following, the Prisoners, *Robert Green*, *Henry Berry*, and *Lawrence Hill*, were executed, according to the Sentence pronounced against them; they all persisted to the last in denying the Fact, for which they suffer'd.



LXXIX. The Trial of Mr. SAMUEL ATKINS at the King's-Bench, for being accessory to the Murder of Sir EDMUND-BURY GODFREY, February 8, 10, and 11, 167^s.
31 Car. II.

ON Saturday the eighth of February, 1678, Mr. Samuel Atkins was brought from Newgate to the Bar of the Court of King's-Bench at Westminster, to be arraigned, as accessory to the Murder of Sir Edmund-Bury Godfrey, which was done in this Manner.

Cl. of the Cr. Samuel Atkins, hold up thy Hand (which he did.) Thou standest indicted by the Name of Samuel Atkins, late of the Parish of St. Mary le Strand in the County of Middlesex, Gent. for that whereas on the Morrow of the Purification of the Blessed Virgin Mary, before our Sovereign Lord the King at Westminster, by the Oath of twelve Jurors, good and lawful Men of the said County, tried, sworn, and charged to enquire for our Sovereign Lord the King, and the Body of the said County, Robert Green, late of the Parish aforesaid, in the County aforesaid, Labourer; Henry Berry, late of the same Parish and County, Labourer; Lawrence Hill, late of the same Parish and County, Labourer; ——— Giraldo, late of the same Parish and County, Clerk; Dominick Kelly, late of the same Parish and County, Clerk; and Philibert Vernatt, late of the same Parish and County, Labourer, are indicted, for that they not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the twelfth Day of October, in the thirtieth Year of the Reign of our Sovereign Lord Charles II. by the Grace of God of England, Scotland, France and Ireland King, Defender of the Faith, &c. at the Parish of St. Mary le Strand aforesaid, in the County of Middlesex aforesaid, in and upon Sir Edmund-bury Godfrey, Knt. in the Peace of God and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of their Malice aforethought, did make an Assault; and that he the aforesaid Robert Green, a certain Linen Handkerchief, of the Value of Six-pence, about the Neck of the said Sir Edmund-bury Godfrey, then and there, feloniously, voluntarily, and of his Malice aforethought, did fold and fasten, and that he the said Robert Green, with the Handkerchief aforesaid, by him the said Robert Green on and about the Neck of the said Sir Edmund-bury Godfrey, in Manner and Form aforesaid folded and fastened, then and there him the said Sir Edmund-bury Godfrey did choak and strangle, of which said choaking and strangling of him, the said Sir Edmund-bury Godfrey, in Manner and Form aforesaid, he the said Sir Edmund-bury Godfrey then and there instantly died; and that the said Henry Berry, Lawrence Hill, ——— Giraldo, Dominick Kelly, and Philibert Vernatt, then and there feloniously, voluntarily, and of their Ma-

lice aforethought, were present, aiding, abetting, comforting and maintaining the aforesaid Robert Green, the aforesaid Sir Edmund-bury Godfrey, in Manner and Form aforesaid, feloniously, voluntarily, and of his Malice aforethought, to kill and murder; and so they the said Robert Green, Henry Berry, Lawrence Hill, ——— Giraldo, Dominick Kelly, and Philibert Vernatt, in Manner and Form aforesaid, the aforesaid Sir Edmund-bury Godfrey, feloniously, wilfully, and of their Malice aforethought, did kill and murder, against the Peace of our Sovereign Lord the King, his Crown and Dignity. And that thou the said Samuel Atkins, at or upon the said twelfth Day of October, and divers Days and Times before, the said Robert Green, Henry Berry, Lawrence Hill, ——— Giraldo, Dominick Kelly, and Philibert Vernatt, the Felony and Murder aforesaid, at the Parish aforesaid, in the County aforesaid, to commit feloniously, willfully, and of thy Malice aforethought, didst command, counsel and abet, and knowing the said Robert Green, Henry Berry, Lawrence Hill, ——— Giraldo, Dominick Kelly, and Philibert Vernatt, the Felony and Murder aforesaid, in Manner and Form aforesaid, feloniously to have done and committed, at or upon the said twelfth Day of October, and divers Days and Times after, at the Parish aforesaid, in the County aforesaid, feloniously the said Robert Green, Henry Berry, Lawrence Hill, ——— Giraldo, Dominick Kelly, and Philibert Vernatt, didst harbour, comfort and maintain, against the Peace of our Sovereign Lord the King, his Crown and Dignity. How saiest thou, Samuel Atkins, art thou guilty as Accessary to the said Felony and Murder, whereof thou standest indicted, and hast been now arraigned, or not guilty?

Sam. Atkins. Not guilty.

Cl. of the Cr. Culprit, How wilt thou be tried?

Sam. Atkins. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance.

Sam. Atkins. My Lord, I do humbly desire, that the several Examinations taken concerning this Business, may at my Trial be brought into the Court.

L. C. J. This is to be left to Mr. Attorney to do in it as he pleaseth; for he is to take Care of the King's Evidence.

Sam. Atkins. I only desire, my Lord, that they may be brought in. Mr. Recorder had some of them taken before him.

Mr. Recorder. To satisfy this Gentleman, my Lord, whatever Examinations were taken before me shall be brought.

Sir William Scroggs.

Sir George Jefferies.

L. C. J.

L. C. J. Why, Mr. *Atkins*, do you know nothing of this Business, that you are so willing to have all the Evidence brought in against you?

Sam. *Atkins*. My Lord, I know nothing of it at all.

L. C. J. Are you a Papist, Mr. *Atkins*?

Sam. *Atkins*. No, my Lord, I am not.

L. C. J. Were you never one?

S. *Atkins*. No. I never was one, nor I hope never shall be. When is it, that your Lordship pleaseth to have me tried, for I have lain these sixteen Weeks in Prison, and do earnestly desire my Trial.

L. C. J. You shall be tried as soon as we can, when Mr. Attorney thinketh fit. We must try the others on Monday, and if there be Time afterwards, you may be tried then: However, Captain *Richardson* shall have a Rule to bring you up then.

Sam. *Atkins*. I humbly thank your Lordship.

Then he was carried back by the Keeper, and accordingly on Monday following he was brought up; and after the Trials of Green, Berry, and Hill were over, he was sent for to the Bar.

Lune 10 Februarii, 1678.

L. C. J. Mr. *Atkins*, have you any Bail ready?

Sam. *Atkins*. No, my Lord, I am prepared for my Trial, if your Lordship pleaseth, but not with Bail.

L. C. J. Ay, but Mr. *Atkins*, 'tis the latter End of the Term, and many Peoples Livelyhoods lie at Stake. We can't lay aside all Business for yours.

Sam. *Atkins*. My Lord, my Life lies at Stake, and I have been under severe Imprisonment a long Time. I humbly pray I may be tried; besides I have many Witnesses, who have remained in Town on purpose to give Evidence for me ever since the last Term. I hope my Trial will not take up much Time.

Mr. *Just. Dolben*. If you have so many Witnesses it cannot be soon over.

Sam. *Atkins*. I have many ready, but hope I shall have Occasion to use only a few.

L. C. J. Mr. *Atkins*, we cannot do it, you must be content; you shall be tried at the Sessions. Pray how long is it to it?

Mr. *Recorder*. It is about three Weeks, my Lord.

L. C. J. That indeed will be too long, but in the mean time you shall be bailed.

Sam. *Atkins*. I must submit, my Lord; I think I have Bail here. [Mr. *Atkins* was here calling his Bail.]

L. C. J. Come then, name them.

Capt. *Lloyd*. My Lord, I am a Witness on Behalf of this Gentleman, and cannot possibly be in England a Fortnight hence.

Sam. *Atkins*. My Lord, this is a Captain of one of the King's Ships, and his Occasions will indispensibly call him away, and this is the Case of several others of my Witnesses.

L. C. J. Well, I don't know; if it be so, you shall be tried to-morrow; and so bring him up very early. [Speaking to Captain *Richardson*.]

And so Mr. Atkins went from the Bar, and was brought up thither again on the Morrow, being Tuesday, when his Trial proceeded thus.

Martis 11 Februarii 1678.

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O yes! If any one can inform our Sovereign Lord the King, the King's Serjeant at Law, the King's Attorney General, or this Inquest, now to be taken of *Samuel Atkins* the Prisoner at the Bar, his being Accessary to the Felony and Murder whereof *Robert Green*, *Henry Berry*, *Lawrence Hill*, and others, stand indicted, and as Accessary of which said Felony and Murder the said *Samuel Atkins* stands indicted, and hath been arraigned, let them come forth and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance.

Mr. *Att. Gen.* My Lord, I must inform your Lordship, that *Sir William Jones* there is another Indictment against Mr. *Atkins* as Principal, which was preferred heretofore, but we have since thought fit to prefer another as Accessary. Now to discharge him of the first, I desire he may be arraigned on that before his Trial.

Cl. of the Cr. I did so intend to do, Mr. Attorney. *Samuel Atkins*, hold up thy Hand, (which he did) thou standest indicted by the Name of *Samuel Atkins*, late of the Parish of *St. Clements Danes*, in the County of *Middlesex*, Gentleman, for that thou, together with — *Welch*, and — *Lefaire*, of the said Parish and County, Gentlemen, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the twelfth Day of *October*, in the thirtieth Year of the Reign of our Sovereign Lord *Charles II.* by the Grace of God of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. with Force and Arms at the Parish aforesaid, in the County aforesaid, in and upon *Sir Edmund-bury Godfrey*, Knight, in the Peace of God and of our said Sovereign Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault, and that thou the said *Samuel Atkins*, a certain Linen Cravat, of the Value of one Penny, about the Neck of the said *Sir Edmund-bury Godfrey*, then and there feloniously, wilfully, and of thy Malice aforethought, did fold and fasten, and that thou the said *Samuel Atkins*, with the said Cravat, so by thee the said *Samuel Atkins*, about the Neck of the said *Sir Edmund-bury Godfrey* fastened and folded as aforesaid, then and there the said *Sir Edmund-bury Godfrey*, feloniously, wilfully, and of thy Malice aforethought, didst choak and strangle, of which said choaking and strangling of the said *Sir Edmund-bury Godfrey* by thee the said *Samuel Atkins*, in Manner and Form aforesaid done and committed, the said *Sir Edmund-bury Godfrey*, in the Parish aforesaid, in the County aforesaid, instantly died, and that the aforesaid — *Welch*, — *Lefaire*, feloniously, wilfully, of their Malice aforethought, were then and there present, aiding, assisting, abetting, comforting and maintaining thee the said *Samuel Atkins*, the Felony and Murder aforesaid, in Manner and Form aforesaid, to do and commit. And that so thou the said *Samuel Atkins*, with the aforesaid — *Welch* and — *Lefaire*, the said twelfth Day of *October*, at the Parish aforesaid, in the County aforesaid, the said *Sir Edmund-bury Godfrey*, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our Sovereign

reign Lord the King, his Crown and Dignity. How say'st thou *Samuel Atkins*, art thou guilty of the Felony and Murder whereof thou standest indicted, and hast been now arraigned, or not Guilty?

Sam. Atkins. Not guilty.

Cl. of the Cr. Culprit, how wilt thou be tried?

Sam. Atkins. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance. *Samuel Atkins*, hold up thy Hand (*which he did*) those Men that you shall hear called and shall personally appear are to pass between our Sovereign Lord the King, and you, upon the Trial of your Life and your Death. If therefore you will challenge them, or any of them, your time is to speak unto them as they come to the Book to be sworn, and before they be sworn. Call the Jury, Cryer, and make an O yes.

Cryer. O yes! you good Men that are impanelled to enquire between our Sovereign Lord the King, and *Samuel Atkins* the Prisoner at the Bar, answer to your Names.

Cl. of the Cr. Sir John Cutler.

Cryer. Vous avez. Sir *John Cutler*, look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in your Charge, and a true Verdict give according to your Evidence. So help you God. And so the rest were sworn. The Names of the twelve were these,

Sir John Cutler,
Michael Arnold,
James Partridge,
Thomas Cassee,
Thomas Gostwick,
John Wells,

Ambrose Arnold,
Rainsford Waterhouse,
John Searle,
Richard Pagett,
William Waite,
Arthur Blyth.

Cl. of the Cr. Cryer, count these. *Sir John Cutler.*

Cryer. One, &c.

Cl. of the Cr. Arthur Blyth.

Cryer. Twelve good Men and true, stand together and hear your Evidence; you that are sworn hearken to the Record, you that are not sworn stand down.

Cl. of the Cr. Samuel Atkins, hold up thy hand (*which he did*). You that are sworn, look upon the Prisoner and hearken to his Cause. You shall understand that he stands Indicted by the Name of *Samuel Atkins*, late of the Parish of *St. Clement Dane* in the County of *Middlesex*, Gentleman; for that he together with *Welfs*, *Lefaire*, &c. (*prout in the Second Indictment mutatis mutandis*) against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country are you. Your Charge is to enquire whether he be guilty of this Felony and Murder whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what Goods and Chattels, Lands or Tenements he had at the time of the Felony and Murder committed, or at any time since. If you find him not guilty, you are to enquire whether he did fly for the same; and if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, say so and no more, and hear your Evidence.

Mr. Att. Gen. My Lord, I am informed by *Mr. Ward* of the *Crown Office*, the Prosecutor's Clerk, that they have not sued forth a *venire facias* upon this Indictment as Principal; and therefore the Jury cannot enquire of that at all, but must be discharged of it. Our Writ is only for the Indictment for being Accessary.

Cl. of the Cr. If you make the Writ *de quibusdam felonis & accessariis*, and Seal it a-new (*which may be done presently, the Seal being in the Hall*) it will do for both.

L. C. J. Do so then, *Mr. Ward*, that both may be dispatched. [*Which was done accordingly.*]

Cl. of the Cr. Samuel Atkins, hold up thy Hand again (*which he did*). You of the Jury, look upon the Prisoner and hearken to his Cause. You shall further understand, that he stands indicted by the Name of *Samuel Atkins*, late of the Parish of *St. Mary le Strand*, &c. (*prout in the first Indictment mutatis mutandis*) against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he hath been arraigned, and thereupon pleaded Not guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of this Felony as Accessary to the said *Robert Green*, &c. or not guilty. If you find him guilty, &c. (*sicut antea*.) *Cryer*, make Proclamation.

Cryer. O yes! if any Man will give Evidence on the behalf of our Sovereign Lord the King against *Samuel Atkins*, the Prisoner at the Bar, let them come forth, and they shall be heard, for the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

Mr. Serj. Stringer. May it please your Lordship, and you Gentlemen of the Jury, *Samuel Atkins* the Prisoner at the Bar stands indicted here of two Facts by two Indictments; the one as Principal in this Murther, the other as Accessary. The first of which we shall lay aside, and of his being the Murderer give no Evidence; and so, Gentlemen, you must find him not guilty of that. But as to the Indictment as Accessary, that sets forth, that whereas *Robert Green*, *Henry Berry*, *Lawrence Hill*, and others, on the 12th of October last, at the Parish of *St. Mary le Strand* in your County, did make an Assault on the Person of *Sir Edmund-bury Godfrey*, and that *Robert Green* did throw about the Neck of *Sir Edmund-bury* a Linnen Handkerchief, and twisted and folded it about his Neck, by which twisting and folding the said *Green* did strangle the said *Sir Edmund-bury*, of which strangling he instantly died: and we say, Gentlemen, that the Prisoner at the Bar is indicted as one that was privy, knowing, consulting, and abetting to the Commission of this Murder, and that after the Murder committed (for the Acts are connected) he did receive, harbour, comfort, and maintain the Murderers. To this he hath pleaded Not guilty, if we prove him Guilty, we doubt not you will find him so.

Mr. Att. Gen. May it please your Lordships, and you Gentlemen of this Jury, *Mr. Atkins* the Prisoner is indicted upon two Indictments, the one is for being a Principal in this Murder, but upon that we can give no Evidence, for that was preferred

ferred before we had that full and plain Evidence, which now we have of this Fact by the Testimony of Mr. *Praunce*. And I must say thus much to Mr. *Atkins*, that he hath cause to bless God, that ever Mr. *Praunce* made this Discovery; for I assure you, without that, there are those Circumstances, Probabilities, and Presumptions, that he might have gone in great danger of being accounted a Principal in the Murder. But now, my Lord, that matter being fully and plainly discovered by Mr. *Praunce's* Testimony, that no Man may bear a greater Burthen than he deserves, we acquit him as to that Indictment, and now charge him only as Accessary. And in that you will find the Evidence to be such, as might give us just Cause to prefer the first Indictment.

For, my Lord, we shall make it out, that Mr. *Samuel Atkins* did come to a Gentleman of his own Sir-name, one Mr. *Charles Atkins* (who I think was of kin to him, but whether he was or not, is not material) and to him he did complain of the Proceedings of Sir *Edmund-bury Godfrey*, that he was a Man too active, and that he was in no sort to be permitted to live; for if he were, he would be very prejudicial to some he was concerned for. And at the same time he did enquire after some bold Man, I think one *Child* particularly, who had been with that *Charles Atkins* aboard the Fleet, whether he had behaved himself stoutly there; and finding him to be a resolute Person, he desired Mr. *Charles Atkins* to send for him, and send him to him, and he would employ him; and afterwards *Child* owned to Mr. *Atkins*, that he had been there.

L. C. J. To which Mr. *Atkins*? to the Prisoner?

Mr. Att. Gen. To Mr. *Charles Atkins*, who is the Witness. *Samuel Atkins* is the Prisoner. It was *Samuel* that complained to *Charles* of Sir *Edmund-bury Godfrey*; enquired after the Courage and Resolution of *Child*, and ordered *Charles* to send him thither, and afterwards *Child*, as he said, went thither; and when he came back he did discourse with *Charles Atkins*, desiring him to join with him in the killing of a Man, and did propose a great Reward to him so to do.

This, my Lord, was the Discourse precedent to the Fact. But now to shew to your Lordship and the Jury, that as the Prisoner *Samuel Atkins* and he did design the thing should be done, so he did pursue that design, and bear a part in it, and was privy to it, and knew of it; we shall prove, that Mr. *Bedlow*, when he saw the Body after it was murdered, which happened, as was proved to you Yesterday, on the 12th of *October* last, found it removed from the place, where by the Testimony of Mr. *Praunce* he was first carried, into another Room, and there by the help of a dark Lanthorn several People then in the Room saw him: Amongst whom, I say, Mr. *Bedlow* was one, and Mr. *Praunce* speaks to the same matter, and this was on the *Monday* Night following. And I think we have a sufficient Proof, that Mr. *Samuel Atkins* was one in the Room, that did see the Body, and was consulting with them, how to dispose of it: For we have this Proof against him. *Bedlow* finding a young Man there, whom he did not know, he went up to him, desiring to know his Name; he tells him who he was, one *Atkins*, and describes himself by a particular Circumstance to whom he had relation, and Mr. *Bedlow* will tell

you so much, that though the Light was not very great, yet it was enough to let him see the Faces of those he took notice of, and that this Prisoner was there. And if this be true, it will have the effect of proving him guilty as Accessary, either before or after the Fact.

This will be the course of our Evidence; our Witnesses are not many, and therefore our Proof will not be long. We shall now call them, and when they have done, submit it to your Lordship and the Jury; and first we call Mr. *Charles Atkins*.

Cryer. Mr. *Charles Atkins*, lay your Hand upon the Book. The Evidence which you shall give for our Sovereign Lord the King against *Samuel Atkins*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth; so help you God.

Mr. Recorder. My Lord, this is *Charles Atkins*, whom we desire to begin withal. It was he that had the Discourse first with *Samuel Atkins* about *Child*, and afterwards with *Child* about the Murder. Pray Sir, tell the Discourse you had with the Prisoner at the Bar, and what Discourse you had with *Child*, and the Time when.

Cha. Atkins. My Lord, it was much about the time that his Majesty went to *Newmarket*.

L. C. J. That was in *September*, I think.

Cha. Atkins. No, my Lord, it was in the beginning of *October*. I cannot speak to a Day, I cannot very well tell that, but it was much about that time. I had been with Sir *John Williams* about the same Business that I came to speak with Mr. *Atkins* about (this Gentleman whom I am forced to be Witness against on the King's Account; but otherwise I have a great Regard for him) and coming there I asked the Porter below Stairs whether Mr. *Atkins* were in the House.

L. C. J. At what House was it?

Cha. Atkins. At *Derby House* in *Channel-Row*. He said, Yes. So I went up Stairs, and found him there all alone in the Study, where he generally writes near another Study, where was the Clerk, that usually wrote with him, but he was alone; it was in the Afternoon: And after I had spoken to him, I desired him that he would walk out into the other Room. And at the Window, which is next the Door that is to the Office, he and I stood talking together. After we had discoursed a little about the Plot, he told me, that Sir *Edmund-bury Godfrey* had very much injured his Master; and if he lived would be the Ruin of him. And thereupon I having heard that his Master was questioned in the House of Commons, asked him whether he were a Parliament Man, thinking that might be the occasion of their questioning him; No, said he. But then he went off from what we were then discoursing, and he desired me to be secret, and went on upon that account in several Particulars, that I cannot now exactly remember. And as we were talking he broke off his Discourse short, and asked me if I knew Mr. *Child*; what *Child*, said I? He that I used to meet at the *three Tobacco Pipes*? Said he, It is that *Child* that you recommended to me: for I had recommended such a one to him to be Purser of a Ship, by the means of one *Owen*. Said he, is he a Man that is stout, or to be trusted with a Secret? Said I, As to his Valour I know nothing of it, but he has a very good Character; then said he, when you

you see him, send him to my Master; but as for myself, I desire not to have him ask for me when he comes thither. I could not meet *Child* that Night, but I did the next Night; and so he said he would go thither. And afterwards I met him again, and he said he had been there, and falling into discourse, he would have engaged me to join in the Murder of a Man.

L. C. J. What did *Child* say to you? What is Mr. *Atkins's* Master's Name?

Cha. Atkins. Mr. *Pepys*.

L. C. J. What, Mr. *Pepys* of the Navy?

Cha. Atkins. Yes, my Lord.

L. C. J. Had *Child* been with him?

Cha. Atkins. My Lord, he told me so.

L. C. J. What did he say when he came from Mr. *Pepys*?

Cha. Atkins. He told me nothing of Mr. *Pepys*, but he would have engaged me to join in the Murder of a Man. I was then just coming from walking, and met him in *Holbourn* Fields near the *three Tobacco Pipes*, and he desired me to walk with him, which I was unwilling to do. He told me he had something private to say to me; I told him there was a Shed in the back part of the House that was private enough; and thither we went, and I sat with my Back to the House, and he with his to the Garden. And as soon as the Master of the House had brought a Pot of Ale, he fell into discourse, and told me he believed, that by reason of the necessity of my Fortune, and the Troubles I lay under, and my want of Money, I would undertake a Business that might relieve my Wants. I replied, any thing that was honourable I would undertake, or that became a Gentleman, but to rob on the Highway, or any thing of that Nature, that was base, I would not do it. He answered me, that it was a thing of greater moment than that, he told me it was the killing of a Man. I immediately utterly denied to join with him in it; he gave me eight or nine Days to consider of it, and I should have a great Reward, if I would join with them. I heard of him no more for a considerable while, and then I met him at the *three Cans* or the *six Cans* in *Holbourn*, and renewing his Discourse, he told me, if I would not agree with them to help to Murder him, yet if I would conceal it, I should have 100*l.* brought to my Chamber; but if I did reveal it, I should not out-live it.

L. C. J. This *Child* said?

Cha. Atkins. Yes, my Lord.

L. C. J. Who were *them* were to be with you, Captain *Atkins*, do you know?

Cha. Atkins. I do not know, my Lord, he did not tell me who they were.

L. C. J. Pray tell us again: What was the first Discourse you had with Mr. *Samuel Atkins*.

Cha. Atkins. I came to borrow a little Money of him, and it was at the great Window in the great Room above Stairs, the very Window next the Office where the Prisoner writes, and there he began his Discourse. We were talking of this Plot that was discovered, and something about *Coleman*, but the Particulars I cannot remember, and then he fell into Discourse about Sir *Edmund-bury Godfrey*.

L. C. J. What Discourse was it?

Cha. Atkins. That he had injured his Master, and if he lived, he would ruin him. I asked him whether he was a Member of the House of Commons, because I knew his Master had been

there questioned for his Religion. No, said he; but then he went off from that, which he was then talking of, which was concerning the Plot and Sir *Edmund-bury Godfrey*, and asked, if I knew where there was a stout Man, and particularly enquired about *Child*, and bid me send him to his Master.

L. C. J. Did he fear Sir *Edmund-bury Godfrey* would ruin his Master by discovering something about the Plot?

Cha. Atkins. I understood so.

L. C. J. Why, he did not say that his Master knew of it, did he?

Cha. Atkins. No, not to me.

L. C. J. And what did he talk of killing any body?

Cha. Atkins. No, he did not mention it to me.

L. C. J. Then all that he said to you was, that Sir *Edmund-bury Godfrey* had very much injured his Master, and if he lived would ruin him, and then asked, if you knew a Man that would be stout and secret, and bid you send him to his Master, but not ask for him.

Sam. Atkins. Pray, Mr. *Atkins*, will you tell what time that Discourse was?

Cha. Atkins. I cannot tell that exactly. It was two Days before Sir *John Williams* went into the Country. It was about the time of the Dutchess her going beyond Sea.

Sam. Atkins. Was there no body by when we had that Discourse?

Cha. Atkins. There was another in a Study hard by, I cannot tell exactly who.

Sam. Atkins. Do you know his Name, when you hear it? Was it Mr. *Lewis*?

Cha. Atkins. I think it was so, I cannot exactly tell.

L. C. J. What Day was it, as near as you can?

Cha. Atkins. I cannot say what Day it was, it was about seven or eight Days in *October*, as I can remember.

L. C. J. You say it was about the time of the Dutchess her going over into *Holland*.

Cha. Atkins. I think so. I cannot positively remember.

Mr. Sol. Gen. Had you any Reward offer'd to you for killing of a Man?

Cha. Atkins. Yes, I had by *Child*.

Sam. Atkins. By whom was that Reward to be paid?

Cha. Atkins. He did not tell me.

Mr. Att. Gen. Now, my Lord, because it seems a strange thing, that Mr. *Atkins*, who says he is a Protestant, should be engaged in this Business, we have a Witness here to prove, that he hath been often seen at *Somerset-house* at Mass, and so he is a Party concerned; for those that are of that Party, it was their Interest to cut him off. And that is this Boy. [pointing to a Boy that was then brought in.]

L. C. J. How old are you, Child?

Boy. About Seventeen.

Mr. J. Wild. Do you know what, if you swear false, will become of you?

Boy. I will not swear false.

Mr. J. Wild. What, if you do swear false, will become of you?

Boy. I shall be damned.

Mr. Att. Gen. He is as like to speak Truth, as another.

Sam. Atkins. What Religion are you of, Boy?

Boy.

Boy. A Protestant.

Sam. Atkins. Do you know me?

Boy. No.

Mr. J. Wild. Sir, you are too bold with the Witnesses.

L. C. J. Swear him.

Mr. Att. Gen. Pray hold. My Lord, this is a Witness that Mr. Ward brings from below. I have him not in my Brief. I desire, before they swear him, that he would give an Account whether he knows the Prisoner or no.

Boy. No, I do not. [*And so the Boy was carried off, with some Expressions of Mr. Attorney's Displeasure to Mr. Ward for bringing him in.*]

Mr. Recorder. My Lord, I perceive it was a Mistake; it was some body else. We will proceed to other Evidence.

* Sir Francis
Winnington. * Mr. Sol. Gen. We have hitherto gone upon the Evidence to prove, that Mr. Atkins sought out for a stout Man, and when he had found one he thought was for his purpose, he bid him send him to his Master. This stout Man, Child, would have engaged the other Witness in a Murder; and it is very probable what that Murder was, to wit, the Murder of Sir Edmund-bury Godfrey, for we shall prove that the Prisoner was aiding and assisting to carry off the Body. And for this we call Mr. Bedlow.

Then Mr. Bedlow was sworn.

Mr. Recorder. Pray, Sir, will you tell my Lord, and the Jury, whether you were in the Room where the Body lay, and in what Company you saw it?

Bedlow. Your Lordship had an account Yesterday, how Lefaire came to acquaint me, that such an one was murdered, and that they intended so and so to dispose of the Body. When I came to meet him at Somerset-House, I asked him who were to be concern'd in carrying him off. He told me it was a Gentleman, one Mr. Atkins. I thought, it might have been this Gentleman, [*pointing to Captain Atkins*] whom I had known several Years since, and so I enquired no further, but remember'd he told me so; and when I came into the Room, there was a great many there, and some of them their Faces I did see. I asked a young Gentleman whether his Name was not Atkins, and he said yes; then I asked him, if he were Mr. Pepys's Clerk. He answer'd yes, and added *I have seen you often at my Master's House.* There was a very little Light, and the Man was one I was not acquainted with, though I had been often at the House, but could never meet with him, and yet the Man said, *he had seen me often there*: so that 'tis hard for me to swear that this is he. And now I am upon one Gentleman's Life, I would not be guilty of a Falsehood to take away another's. I do not remember that he was such a Person as the Prisoner is, as far as I can remember he had a more manly Face than he hath, and a Beard.

L. C. J. You do well to be cautious, Mr. Bedlow.

Mr. J. Wild. Pray, what store of People were there?

Bedlow. I believe there were seven or eight. Some there were that I knew.

L. C. J. Who were those?

Bedlow. Lefaire and Praunce. I remember very

well, I asked Mr. Atkins this Question, Are you Mr. Pepys's Clerk? He said Yes: I have seen you often at my Master's House.

L. C. J. And that was all the Discourse you had with him?

Bedlow. Yes, for I was but a very little while there.

L. C. J. But you cannot charge the Prisoner to be him?

Bedlow. I do think he had a more manly Face, than the Prisoner has, and a Beard.

L. C. J. So you think it rather was not he, than it was he?

Bedlow. I can't say it was he, nor I could not at first. I did not know, but it might be some one that did assume his Person to put me off.

Mr. J. Wild. Mr. Bedlow, pray let me ask you one Question. Did you never know of any Design to murder Sir Edmund-bury Godfrey, till Lefaire spoke to you to carry him off?

Bedlow. I knew not, till I saw him Murder'd. They told me I should help to carry off the Body of one that was Murder'd, but I could not imagine whom.

L. C. J. But you knew that they were to murder a Man?

Bedlow. Yes, my Lord, but I knew not whom.

Mr. J. Wild. But you were appointed to insinuate your self into Sir Edmund-bury Godfrey's Acquaintance?

Bedlow. Yes, my Lord.

Mr. J. Wild. And upon what Errands were you sent?

Bedlow. To take out Warrants for the Peace.

Mr. J. Wild. And did you take out any?

Bedlow. Yes, against some Persons, and there were none such.

Mr. Recorder. Now if your Lordship pleases, I desire Mr. Bedlow to let us know whether he did ask the Person, that said he was Mr. Atkins, any other Questions?

Bedlow. No, I did not.

Mr. Recorder. How came you to ask him no other Questions, but only whether he were Mr. Pepys's Clerk?

Bedlow. Because I never heard of any of that Name, but he and this Gentleman [*pointing to Captain Atkins*] whom I know very well, and I could not tell but it might be he.

L. C. J. Here is the thing. Lefaire told him one Atkins should help him to carry the Body off; and when he came into the Room, that Person told him his Name was Mr. Atkins; and then he asked, if he were Mr. Pepys's Clerk, for he could not tell but that it was Charles Atkins.

Mr. Recorder. We have another Reason, my Lord, for the asking that Question. Pray, what Discourse had you about any Commission?

Bedlow. I had often been with Captain Ford at Mr. Pepys's about his Commission, and I had often desired to speak with Mr. Pepys or Mr. Atkins his Clerk, but I could never find either of them at home; and therefore when I met that young Gentleman there, I asked him whether he were Pepys's Man, and he said Yes. I asked him if he knew me, and he told me Yes. I had been often at his Master's House with Captain Ford, but I had never seen Mr. Atkins.

Mr. Recorder. What did he tell you besides?

Bedlow. That was all the Discourse we had.

Mr. Sol. Gen. Did you ever hear of any other *Atkins*, that lived with *Mr. Pepys*?

Bedlow. No, none at all. And the same Testimony I give now, I gave at the first. And, my Lord, I could not be positive before the Lords of the Committee, and I cannot be positive now.

Mr. Att. Gen. Indeed he was never positive at the first. Now, my Lord, if you please, we will call a Witness to prove, that that Day, when this was suppos'd to be done, *Mr. Samuel Atkins* had bespoke a Dinner at Mount *Horeb*, but he had some other Business, and did not come, and lost the Price of a good Dinner. Pray, swear *Thomas Walton*. [*Which was done.*]

Mr. Recorder. Pray, Sir, what can you say?

Walton. As to the Body of the Cause, I have nothing to say. I have not seen *Mr. Atkins* these two Years; but there having been some Friendship between us, I had a mind to see him, and sent a particular Friend to desire him to appoint a Meeting.

L. C. J. When?

Walton. At Mount *Horeb*.

Mr. Att. Gen. My Lord doth not ask Where, but When, at what Time?

Walton. At Two of the Clock.

Mr. Att. Gen. What Day?

Walton. The Twelfth of *October*.

L. C. J. How come you to remember the Day?

Walton. I will tell you my Reason, my Lord. When I heard that this Gentleman was in this unhappy Affair, I said, How much better had it been for him to have been in my Company, that I might have vouched for him. But you [*Pointing to the Prisoner.*] did appoint, you know, Sir, to meet me. And I took Cognizance of this Affair, speaking to a particular Friend.

L. C. J. How long after was this?

Walton. When the Tydings were, he was taken Prisoner.

Mr. Att. Gen. A great while ago, my Lord.

L. C. J. How long after *Sir Edmund-bury Godfrey* was murdered?

Mr. Att. Gen. About a Fortnight.

L. C. J. Was there a Dinner bespoke?

Walton. I bespoke one for him; he knew nothing of it.

Mr. Att. Gen. Did he appoint to be there that Day?

Walton. Yes, he did. I think he will not deny it.

Mr. Att. Gen. Did you send a Messenger to him?

Walton. Yes, I did.

Mr. Att. Gen. What Answer had you?

Walton. He brought me Word, he would come at two of the Clock to me.

Mr. Att. Gen. Did you bespeak the Dinner for him, and did you pay for it?

Walton. I never gave him any Account what was to be for Dinner.

Mr. Att. Gen. But let this Evidence go as far as it will. This Gentleman had a mind to meet him; sent a Messenger to him to meet him; he appointed at Two of the Clock; and he bespoke a Dinner for him, but he came not. Now we use it thus. I desire to know of him, when was the Message sent? How long before that Day? Or was it the Day before?

Walton. It was a Week before.

Mr. Att. Gen. What Day before?

Walton. It was a Week before.

Mr. Att. Gen. Can you remember what Day?

Walton. I do not, for I had no Dissatisfaction because he did not come.

Sam. Atkins. Will your Lordship give me leave to ask him one Question? I own, Sir, you sent to me by a School-fellow, about a Week before, and desired me to appoint a Day to meet you, and I appointed this Day, and that for this Reason, I knew my Master would be then out of Town, and so I thought I could conveniently meet you; but it being Ten Days before, I entirely forgot it; but can prove by several Witnesses, where I did dine that Day, which I desire may be called. But now, my Lord, this Gentleman is upon his Oath, who is a Protestant, and was my School-master, I desire him to declare, whether I was bred a Protestant, or no; and whether my Friends were so or no?

L. C. J. How was he bred, Sir?

Walton. He was bred up in the Protestant Religion, my Lord.

L. C. J. Were his Father and Mother Protestants?

Walton. Yes, my Lord, they were so, and I know them very well.

Sam. Atkins. Pray, Sir, declare whether I was not only bred a Protestant, but whether I was not so also when I left your School?

Walton. Yes, my Lord, he was always a Protestant, and a very zealous one too.

L. C. J. There is very much in that.

Mr. Just. Wild. Where is this Mount *Horeb*?

Mr. Recorder. It is in *Pudding-Lane*, at one *Mr. Appleby's*.

L. C. J. Well, have you any thing more, *Mr. Attorney*?

Mr. Att. Gen. No, my Lord, I have no more to say, till I hear what Defence the Prisoner makes.

L. C. J. Then, *Mr. Atkins*, you have Liberty to defend your self.

Sam. Atkins. My Lord, and Gentlemen of the Jury, I hope I shall in my Defence proceed very inoffensively towards God, and towards this Court. First, towards God (before whom I am, in whose Presence I must appear, and before whom I can protest my Innocence as to what is charged upon me) in that I shall declare nothing but what is true: And towards this Court in the next Place, because I intend to deliver my self with all the Respect and Submission to it, that becomes a Prisoner. My Lord, this Gentleman, *Mr. Atkins*, who hath brought this Accusation against me, is a Man whom I have kept from Perishing, I suppose he will own it himself; I Petitioned, Solicited for him, and was instrumental in getting him out of Prison for a Fact, which I shall by and by tell you. And though this, my Lord, may seem against me, yet by and by —

L. C. J. Hold, you mistake, *Mr. Atkins*, he does you no Mischief at all, for he saith no more than, that he had been discoursing with you about the Plot, and you said *Sir Edmund-bury Godfrey* had very much injured your Master; and that you desired to know, if he were acquainted with a stout Man; and asked particularly of *Mr. Child*, and bid him send him to your Master; and he said afterwards, he had been there, and would have engaged him to join in a Murder. All which is nothing to the Purpose.

Sam.

Sam. Atkins. But I never had any such Discourse with him, my Lord.

L. C. J. If you had, or had not, it is no matter, you need not labour your Defence as to any thing he says.

Sam. Atkins. I protest before God Almighty, I know nothing of it.

Mr. Just. Dolben. But what say you to Mr. Bedlow's Testimony? Did you see the Body of Sir Edmund-bury Godfrey at *Somerset-House*?

Sam. Atkins. No, my Lord; I am so far from that, that in all my Life I was never in the House.

L. C. J. Then call a couple of Witnesses to prove where you were that Monday Night, the 14th of October, and you need not trouble your self any further.

Sam. Atkins. There is Captain Vittles, and his whole Company.

L. C. J. Can any of these say where you were the 14th of October; if they can, a couple of them is enough. Who is this?

Sam. Atkins. This is the Captain, my Lord.

L. C. J. What is your Name?

Capt. Vittles. My Name is Vittles.

L. C. J. Do you know Mr. Atkins the Prisoner?

Capt. Vittles. Yes, very well.

L. C. J. How long have you known him?

Capt. Vittles. These Fourteen Years.

L. C. J. Can you tell where he was the 14th of October?

Capt. Vittles. I can tell you by several Circumstances, that your Lordship shall understand, that I do remember the Day.

L. C. J. Why, you cannot tell what Day of the Week it was.

Capt. Vittles. Yes, I can, it was of a Monday.

L. C. J. Where was he on Monday?

Capt. Vittles. The King was pleased to command me to go to *Antwerp*, to carry over some Officers of the King's to the Garrison; I returned back the 6th of October, which was Sunday.

Mr. Just. Jones. How come you to remember the Days so exactly?

L. C. J. Mariners are very exact and punctual; they keep Accounts of every Day, and have Journals of all Passages.

Capt. Vittles. Ay, my Lord, and I have it here in my Pocket: The 6th Day I arrived at *Greenwich*, which was Sabbath-Day, and that Day I would not come a-shore, but I let it alone while Monday, which was the 7th Day; then, my Lord, I went and appeared, and gave an Account to the Secretary of what I had done, according to my Instructions, to see whether he had any further Service to command me. At present, the Secretary told me, No; so I told him I would go down to the Yatch, and wait His Majesty's Commands; and there I stayed till Thursday; and on Friday the Secretary, I think, was going out of Town to *New-market*, and so I could receive no Orders from him, but was to stay till he came back. On the Monday following I came up about Eleven of the Clock, and I met with Mr. Atkins at the Office he had at his Master's the Secretary's; said I, I am glad you are at home; and, said he, I am glad you are not gone, for there are a couple of Gentlewomen that desire to see a Yatch, and if you

will go down, I will come down too, and bring down my Friends by and by: Said I, I am glad I am in a way to serve you, and you shall be welcome to what I have. So I disappointed two or three Friends that I had appointed to meet at *Billingsgate*, that I might get my Boat ready. When I came a-board, I order'd my Men to clean it, and I got ready some Provisions, such as I had: But in the mean time my young Lord *Berkely* and his Men came to see the Yatch in the Afternoon, where she lay then at *Greenwich*, over-against the College; and I being glad of such a Gentleman's Company, entertained him with a Bottle or two of Wine, and what the Ship would afford, and when he went away, I fired five Guns. And when he was gone, I was walking upon the Deck; and I wonder, said I to my Men who were with me, that Mr. Atkins doth not come; he told me he would be here with some Friends; I will go a-shore if he does not come quickly. And so, if it shall like your Honour, I stay'd an Hour longer; and, said I, if he doth not come in half an Hour, I will go a-shore; and I was ready to go, when I saw a Boat at a Distance, and then said I, I will stay, for I believe that is the Boat; and it proved so. It was Two of the Clock when my Lord went away, and it was then half an Hour past Four, or thereabouts. So when he came a-board, his two Friends came aboard with him, and went down into the Cabbin, and drank a Glass of Wine, such as we had; and the Wine being good, and just come from beyond Seas, we drank till Seven of the Clock, and I would not let them go. Then, said he, I will not keep the Boat upon Charge here; No, you need not, said I, my Boat shall see you a-shore. So he discharged the Boat, which was, I say, about Seven a Clock, and so about Eight or Nine a Clock we had drunk till we were a little warm; and the Wine drinking pretty fresh, and being with our Friends, we did drink freely, till it was indeed unseasonable: I must beg your Lordship's Pardon, but so it was; and at half an Hour past Ten, I ordered my Men to go off with the Boat of four Oars, that belonged to the Yatch, and that would go much swifter than any other Boats, and I put him into the Boat very much fuddled. Now, my Lord, away goes he, with four of my Men (they are here) and I ordered them, Pray, said I, put a-shore Mr. Atkins and his Friends where they will go ashore. So I went to sleep when he was gone; and the next Day in the Morning, when the Boat came a-board, said I, Where did you put a-shore Mr. Atkins and the two Gentlewomen? At *Billingsgate*, said they. Why so, said I? Which way would they get home? for I knew Mr. Atkins was very much in drink. Why, said they, the Tyde was so strong at the *Bridge*, that we could not get thro' with our Boat. Now it flowed that same Night till twelve Minutes past Ten; so that it must be near half an Hour past Ten when they went away.

Mr. Just. Wild. What, it flowed there at past Ten?

Capt. Vittles. Yes it did.

L. C. J. Mr. Bedlow, what Time of the Night was it, that you were at *Somerset-House*?

Bedlow. It was betwixt Nine and Ten.

L. C. J. He was on Shipboard then.

Mr. Just. Wild. He was very sober, that you spoke withal, was not he?

Bedlow. Yes, very sober, my Lord.

L. C. J. Then call another Witness, one of your Men, and we have done.

Capt. Vittles. Give the Word for the Boat-swain *Tribbett*.

L. C. J. Did the Women pledge you, Captain?

Capt. Vittles. Pledge me, my Lord!

L. C. J. Ay, did they drink with you?

Capt. Vittles. Ay, and drink to us too, my Lord.

L. C. J. Those be your Men that stand there? [*He, and several other of the Ship's Company were there.*] Whither did you carry *Mr. Atkins* when your Captain commanded you to set him ashore?

Tribbett. To *Billingsgate*.

L. C. J. What Time of Night came you there?

Tribbett. At half an Hour past Eleven.

L. C. J. What Time did you carry him from the Yatch?

Tribbet. It was about half an Hour past Ten a Clock.

L. C. J. What Day of the Week was it?

Tribbet. It was on a *Monday*.

L. C. J. Well, you need not trouble yourselves any more.

Mr. Att. Gen. My Lord, in this Matter, it is in vain to contend in a Fact that is plain. But I would desire (because some perhaps will make an ill Use of it) that they would please to take notice, here is no disproving the King's Evidence. For *Mr. Bedlow* did not at first, nor doth he now, charge him directly to be the Man: So that whoever reports, That the King's Evidence is disproved, will raise a very false Rumour.

L. C. J. No, no; it is so much otherwise, that for all he hath said herein, he is the more to be credited in his Testimony; and *Mr. Atkins* needed not to make any Defence, but must have come off without any, upon what *Mr. Bedlow* says for him.

Mr. Att. Gen. So likewise for the first Man, all that he says consists together, and may be true, and yet *Mr. Atkins* innocent.

L. C. J. So it may.

Mr. Att. Gen. I desire the Company may not go away with a Mistake, as if the King's Evidence were disproved.

L. C. J. Not in a Tittle.

Mr. Att. Gen. Then I have done, my Lord.

L. C. J. No, I will tell you how it did arise. It arose from the Jealousy of the Murder of *Sir Edmund-bury Godfrey*, and Persons were willing to lay hold on any Opportunity to find it out. And *Mr. Bedlow* was told such a Man should be his Fellow to help him to carry away the Body; and hearing of such a Name, thought it possible it might be such a one; and he owning himself to bear that Name, and to be

Mr. Pepys's Clerk, when he gave in his Information, the People, who were put into such Alarms as these, were very ready to catch at it. Therefore no Body was to blame for pursuing *Bedlow's* Evidence. He said nothing then, but what he says now, and that is nothing at all positive, which is all true, and yet *Mr. Atkins* doth appear to be a very innocent Man in this Matter.

Then the Jury consulted together at the Bar, and agreed.

Cl. of the Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of the Cr. Who shall speak for you?

Omnes. Our Fore-man.

Cl. of the Cr. *Samuel Atkins*, hold up thy Hand. [*Which he did.*] Look upon him. How say you, is he Guilty of the Felony and Murder whereof he stands Indicted, or Not Guilty?

Fore-man. Not Guilty.

Cl. of the Cr. Did he fly for it?

Fore-man. Not that we know of.

Sam. Atkins. God bless the King, and this Honourable Bench. [*On his Knees.*]

Cl. of the Cr. *Samuel Atkins*, hold up thy Hand. [*Which he did.*] Look upon the Prisoner. How say you, is he Guilty of the Felony, as Accessary to the Murder, as he stands Indicted, or Not Guilty?

Fore-man. Not Guilty.

Cl. of the Cr. Did he fly for it?

Fore-man. Not that we know of.

Sam. Atkins. God bless the King, and this Honourable Bench. [*On his Knees.*]

Cl. of the Cr. Then hearken to your Verdict, as the Court hath recorded it. You say, that *Samuel Atkins* is not Guilty of the Felony and Murder, whereof he stands Indicted; nor that he did fly for it. And you say, that he is not Guilty, as Accessary to the Felony and Murder whereof he stands Indicted, nor that he did fly for the same; and so you say all?

Omnes. Yes.

L. C. J. *Mr. Atkins*, I should have been very glad that the rest, who have been condemned, had been as innocent as you are; and I do assure you, I wish all Mankind had been innocent. For, if any Protestant had been guilty of such a thing as this, it would have grieved me to the very Heart, that any Protestant should do such things, as those Priests provoke their Profelytes to at this Day.

Capt. Vittles. My Lord, here is his School-master will give your Lordship an Account how he was bred and brought up, and what a good-condition'd young Man he was.

L. C. J. Well, well, Captain, go you and drink a Bottle with him.

Then Mr. Atkins went from the Bar.



LXXX. *The Trial of DAVID LEWIS, a Jesuit, (pretended Bishop of Landaff) at Monmouth Assizes, for High-Treason, March 28, 1679. 31 Car. II. Wrote by Himself.*

THE 28th of *March*, 1679, the Assizes began at *Monmouth*, Sir *Robert Atkins* being sole Judge. A Grand Jury of Gentlemen was returned by the Sheriff, and called, against several of whom Mr. *Arnold* and Mr. *Price* excepted, and so put by, as such they conceived might befriend me; a Challenge not known before; for in the Case between the Marquis of *Worcester*, and the Tenants of *Wentwood*, upon a Riot, *Henry Williams*, Esq; and others, would have excepted against some of that Grand-Jury, the same Judge *Atkins* then positively said, It was ridiculous, and not usual to challenge out of a Grand-Jury. At last a Jury was sworn, and an Indictment drawn up against me, upon the Statute of the 27th *Eliz.* and preferred to the Grand-Jury. That Evening, being *Friday*, I was arraigned upon that Bill, to which I pleaded, Not guilty. The next Day, about ten of the Clock in the Morning, the Judge came from the *Nisi prius* Side, and sat at the Crown Side, and I at the same Time being brought to the Bar, the Crier made Proclamation for Silence, that a Jury for Life and Death might be impannelled, and I made my Challenges; presently a Jury from the other Bar was called, which was not usual, and I to challenge, the Judge telling me, I might challenge without Hindrance; by guess I challenged three; but out of that *Nisi Prius* Jury called to the Crown Bar, and that by Mr. *Arnold's* own Suggestion, who had a strong Influence upon the Judge, as being his Kinsman, and sitting at his right Hand, divers were excepted by Mr. *Arnold*; whereupon, to make up the Jury, the Judge commanded the High-Sheriff to call in some, and he called many, and of those, still Mr. *Arnold* excepted, as either being of my Neighbourhood, or Acquaintance, for there being many in the Country; the Sheriff seeing so many of his calling excepted, he desired Mr. *Arnold* himself should call whom he pleased; whereat the Judge checked the Sheriff, and said he was saucy: At last, with much Difficulty, a Jury was impannelled, a Jury now contriv'd, of none but such as pleased Mr. *Arnold*, principal Prosecutor against me, which was very hard, and an ignorant Jury it was withal: The Jury being impannell'd, it was sworn, the Indictment read, and Witnesses called, thus:

Clerk of the Assizes. *David Lewis*, hold up thy Hand.

Here thou standest indicted of High-Treason,

by the Name of *David Lewis*, for that thou, being a natural Subject of the King of *England*, hast pass'd beyond the Seas, and hast taken Orders from the Church and See of *Rome*, and hast returned back again into *England*, and continued upwards of forty Days, contrary to the Statute 27 *Eliz.* in that Case made and provided, which by the said Statute is High-Treason. What hast thou to say for thy self? Art thou Guilty, or Not guilty?

Prisoner. Not guilty.

Clerk. By whom wilt thou be try'd?

Prisoner. By God and my Country.

Clerk. God send thee a good Deliverance.

Clerk. Cryer, call *William Price*, *Dorothy James*, *Maney Trott*, *John James*, *Catharine Thomas*. He calls them, and they all appear. Then says the Clerk to the Cryer, swear them: And he sware them all.

Judge. (Sir *Robert Atkins*.) *William Price*, Look on the Prisoner, do you know him?

Price. Yes, my Lord, I do know him.

Judge. What have you to say of him?

Price. My Lord, about a Year and a half ago I saw him at Mrs. *Bartlet's* House, at a Place called *Castle-Morton* in *Worcestershire*, and there I heard him read Mass, I was at Confession with him, and I received the Sacrament from him, according to that Way.

Judge. Was there any Altar, or any Crucifixes or Coapes?

Price. Yes, my Lord, that there were.

Judge. How many Times did you see him?

Price. But that once, my Lord.

Judge. Were you of that Way then?

Price. Yes, my Lord, upwards of Eighteen Years.

Judge. What are you now?

Price. A Protestant, my Lord.

Judge. Well, Mr. *Lewis*, what have you to say to this?

Prisoner. With your Lordship's Leave, I will answer all together.

Judge. Very good, you do well, it will be so much the shorter. *Dorothy James*, look on the Prisoner, do you know him?

Dorothy. Yes, my Lord.

Judge. What have you to say of him?

Dorothy. My Lord, I saw him say Mass, take Confessions, give the Sacrament, Marry, Christen, and heard him Preach in the *English* and *Welsh*.

Judge. Were there Altar and Crucifixes?

Dorothy. Yes, my Lord, Altars, Crucifixes, Chalice,

Chalices, and such other Things belonging to that Way.

Arnold. Did you see him give that they call *Extream Unction*?

Dorothy. Yes, that I did, to my Uncle, my Father's Brother.

Judge. Do you know what *Extream Unction* is?

Dorothy. Yes, that I do, it is anointing sick People with Oil, when they are dying.

Judge. It's right; that's another Sacrament of their Church, grounding themselves upon these Words of St. Paul, as I take it, *If any be sick among you, let him be anointed:* But that was in Times of Miracles only.

Arnold. Did he take upon him to free Souls from Purgatory?

Dorothy. Yes, that he did, and he had of me eight Pounds in Silver, and one Piece of Gold, to free my Father's Soul.

Prisoner. God is my Witness, to my best Knowledge, I never had one single Piece of any Money from her, or her Husband, upon any Account whatsoever.

Judge. Have you any more to say?

Dorothy. No, my Lord. [*And with that she laughed at the Bar.*]

Judge. How now, Woman! do you make a Laughing-game of it? Carry your self more modest, for the Gentleman is for his Life, and it is no jesting matter. Well, *William James*, look upon the Prisoner. Do you know the Prisoner? and what have you to say of him?

William James. Yes, my Lord, I do know him, and I have seen him read Mass many Times, and take Confessions, and give the Sacrament, and Christen, and Marry.

Judge. Have you any more to say?

William James. No, my Lord.

Judge. Mr. Trott, what have you to say of the Prisoner? did you ever hear him read Mass? Was he reputed commonly a Jesuit, or Popish Priest?

Trot. Yes, my Lord, he was commonly reputed so, and I heard him often read Mass; and I saw him marry Mr. Gunter's Daughter to Mr. Body.

Judge. Were you then of that Religion?

Trot. My Lord, I was deluded by my Wife out of the Protestant Religion, and was a Papist during her Life-time.

Judge. Are you of that Religion still?

Trot. No, my Lord. When I saw their wicked Designs to kill my Gracious King, I abhor'd their Traiterous Proceedings, and left them, and am now a Protestant, in which I shall continue.

Judge. You do well.

Arnold. My Lord, there is Mr. Roger Sayes, a very material Witness.

Judge. Cryer, swear him. Mr. Sayes, what have you to say against the Prisoner?

Sayes. My Lord, I was employed with others, on the 16th of November last, to go and search for him, and we found him, and took him, with several Popish Things, which we carried away, &c.

Judge. Did you see him at Mass?

Sayes. No, my Lord.

Judge. Then sit down. What have you to say, *John James*? What, are you dead, or afraid to be whipt? Look upon me, and speak out.

John James. He married me and my Wife.

Judge. Is that all you know? Did you see him at Mass?

John James. I know no more.

Judge. *Catharine Thomas*, did you see him at Mass? Why do not you speak, Woman? Speak, Woman.

Catharine Thomas. Yes. I have no more to say, do what you please with me.

Arnold. My Lord, there is one *Cornelius* in Court, I see him, who was Clerk.

Judge. Cryer, call him, swear him. Well, *Cornelius*, did you ever see the Prisoner at Mass?

Cornelius. I am an ignorant Fellow, I know not what Mass is.

William James. My Lord, he was his Clerk.

Cornelius. No, I was his Servant.

Judge. Well, sit down. Mr. Lewis, now what have you to say to all these Witnesses, for your self?

Prisoner. My Lord, my Indictment was, That being a natural Subject of the King of England, I was Ordained beyond the Seas, by a Jurisdiction derived from the See of Rome, and returned back again into England, &c. contrary to the Statute in that Case made and provided, 27 Eliz. Under your Lordship's Favour, I conceive that there has not been here any one Witness, who hath proved the Indictment, or any Part thereof.

Judge. What then? Do you expect that we should search the Records at Rome, or should bring Persons to prove, that they saw you Ordained there? No, Sir; it is enough that you have exercised the Function of a Priest, in Copes and Vestments used in your Church, and that you have read Mass, taken Confessions, given Absolutions, Married, and Christned; if all this will not make you a Priest, what will? I have Tryed several Popish Priests, but never met with so full a Proof as this now.

Prisoner. All these Things supposed proved, will not make me a Priest, unless proved to be performed by me, as one Ordained beyond the Seas, by the Jurisdiction derived from the See of Rome; for the very Ministry of the Church of England take special Confessions, and give formal Absolutions; many, in case of Necessity, Christen, tho' no Priests; and lately, the Country knows it, one, no Popish Priest, solemnly married a Couple; neither can one prove to have seen me read Mass, unless it be proved first, That I was Ordained beyond the Seas, by a Jurisdiction derived from the See of Rome; for, no such Ordination, no Priest; and, no Priest, no Mass.

Judge. To disprove all these Witnesses, by saying, it cannot be proved you were Ordained beyond the Seas, by a Jurisdiction derived from the See of Rome, is as much as that saying, *Bel-larmine*, thou lyest.

Prisoner. My Lord, were it proved that I read Mass, that were not Treason in me, for I am inform'd, that it were but the Forfeiture of 200 Marks, by a Statute of 23 Eliz.

Judge. 'Tis true, who hears Mass, forfeits one Hundred Marks, But he that uses to read it, commits Treason: But these are the Tricks of you all, yet all will not do: Have you any thing else to say?

Prisoner. With your Lordship's Leave, now I desire to speak something to the Evidence of every particular Witness.

Judge.

Judge. Speak then.

Prisoner. My Lord, as to the first Witness, *Price*; as I hope to be saved, to the best of my Memory, I never saw him, till this very Day, before. I never knew or heard, before now, of that Mrs. *Bartlet*, or of that Place *Castle-Morton*; I never was in that Place all my Life-time; nay, I never was in *Worcestershire*, or in any House in *Worcestershire*, but twice, the last Time whereof was about five Years ago; and that was but at my Inn in *Worcester* Town, where, with a Servant, I alighted, bespoke my Supper, went to the Coffee-house, drank two Dishes of Coffee, read the *Gazette*, returned to my Inn again, Supped, went to Bed, next Morning bought some few Books at the Stationers, Dined, took Horse, returned home again: This is all the being I ever was in *Worcestershire*.

Judge. Look upon him, do you know him?

Price. Yes, my Lord, he is the Man.

Judge. Have you any more to say?

Prisoner. Yes, my Lord. Mr. *Trot* was married to a Kinswoman of mine, and she was a considerable Fortune to him, which he having spent very idly, and she dying, he went to *London*, where finding an Employment at Court, and there having done some unhandsome Things, he was banished the Court, and now lives upon the Charity of Gentlemen and Friends for his Bread; so that with good Reason it may be believed, it is rather Poverty and hope of Gain, than any thing else, that brings him here to accuse me.

He was a Dwarf. *Judge.* *Paupertas ad Turpia Cogit.* Little Gentleman, what can you say to this?

Trot. My Lord, I was over with the King, and he commanded me to attend him at *White-Hall* on his Restoration, where I came when I returned, and I was received into his Service, but was never banished the Court, only I came away upon Discontent, and still I may go there when I please: My Lord, I am desirous to do my King and Country good Service, but I am in danger of my Life amongst them, and must look to my self.

Judge. Ay, Mr. *Trot*, have a care of yourself, you do well. Mr. *Lewis*, have you any more to say for your self?

Prisoner. My Lord, *Dorothy James*, and *William James* her Husband, their Evidence is grounded upon plain Malice, and that Malice thus grounded; They pretending I owed them Money, they sued me in *Chancery*; but, after a considerable Charge at Law, finding themselves not like so to prevail, then they fell to threatening me, that they would have me in Hand, that they would make me repent, that she would never give over to prosecute against me, till she had washed her Hands in my Heart's Blood, and made Pottage of my Head.

Judge. Can you prove that?

Prisoner. Yes, my Lord, that I can.

Judge. Call your Witnesses then.

Prisoner. Cryer, call *Richard Jones*, *Anne Williams*, *Anne James*, and *Catharine Cornelius*.

Judge. What can you say, *Richard Jones*?

Richard Jones. I heard *William James* say, he would make Mr. *Lewis* repent.

Judge. *Anne Williams*, what can you say?

Anne Williams. I heard from several Persons, that *Dorothy James* said to several Persons, in and

about *Carlion*, that she would wash her Hands in Mr. *Lewis* his Blood, and that she would have his Head to make Pottage of, as of a Sheep's Head.

Catharine Cornelius. My Lord, and I heard the same.

Judge. *Anne James*, what can you say?

Anne James. I heard *Dorothy James* swear, that she would wash her Hands in Mr. *Lewis*'s Heart's Blood.

Judge. Where did you hear her say so?

Anne James. I heard her say so in her own House, at the Fire-side, when I lived with her.

Judge. Well, Mr. *Lewis*, all this will not do, all will not excuse you from being a Priest; or were you a Hypocrite?

Prisoner. My Lord, I am a Native of this Country.

Judge. What, of this Country?

Prisoner. Yes, my Lord, of this Country; and those Years I lived in this Country, I lived with the Reputation of an honest Man, amongst all honest Gentlemen and Neighbours.

Judge. Well, Mr. *Lewis*, have you any more to say?

Prisoner. My Lord, Mr. *Sayes* was sworn Witness against me, I desire to ask him one Question.

Judge. Do so.

Prisoner. Mr. *Sayes*, when you took me, was there a Justice of Peace with you, at taking of me?

Sayes. No.

Prisoner. My Lord, with this Opportunity I humbly beg leave to clear my self from a foul Asperision, wherewith I am calumniated over the whole Nation, in a Printed Pamphlet, which Pamphlet I can here produce; and wherein there is not one Line of Truth. For it says at the End of it, that I was taken by a Justice of Peace, and others, in a Place cunningly contriv'd, under a Clay-Floor, which Mr. *Sayes* knows to be untrue; and whereas it alledges, That I cheated a poor Woman of Thirty Pounds, to redeem her Father's Soul out of Purgatory, the Pamphlet names neither the Woman nor her Husband, nor her Father, nor the Place nor Time, when nor where.

Judge. Does it not?

Prisoner. No, my Lord; so that the whole Pamphlet is one entire Lye, devised by some foolish Malice.

Judge. Mr. *Lewis*, I, for my part, do not believe it to be true. Have you any more to say?

Prisoner. No more, my Lord.

Judge. Then withdraw and repose. Gentlemen of the Jury, Here he stands Indicted, &c. [And summ'd up the whole Evidence.] if you believe what the Witnesses swore, you must find the Prisoner guilty of High-Treason; you have heard what was proved against him, therefore go together.

Prisoner. My Lord, before the Jury go, I desire to speak something, which now occurs unto me, and is material against the Evidence of *Price*.

Judge. Jury, stay.

Prisoner. This very Morning that *Price* came to my Chamber, with the Goaler (it seems it was to view me) he took a Turn about the Room, all the Time eying me; at his going out, he was ask'd by the Goaler, whether I was the Man

Man he meant? and he answered, If I was he, I was much changed, and if I was he, I had black short curled Hair.

Judge. Can you prove that?

Prisoner. Yes, my Lord.

Judge. Where are your Witnesses?

Prisoner. Cryer, call *Elizabeth Jones*, and *Charles Edwards*.

Judge. Woman, what can you say to this?

Eliz. Jones. My Lord, *Price* this Morning, after he had view'd the Gentleman in his Chamber, as he was going out he said, If he be the Man, he is much changed, and hath black curled short Hair; which is not so.

Judge. *Charles Edwards*, what can you say?

Edwards. I heard *Price* say the same Words she relates.

Judge. Where is *Price*? Cryer, call him. *But he was not to be found, being gone out of the Hall.* (This was the Trick of *Coleman*, to asperse the Witnesses.)

Here the Jury went out, and immediately returned again.

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Fore-man.

Clerk. *David Lewis*, hold up thy Hand. Do you find the Prisoner Guilty, or Not Guilty?

Jury. Guilty.

Judge. Have you any more to say?

Prisoner. No more, my Lord.

Clerk. *David Lewis*, hold up thy Hand.

Judge. Give me my Cap. *David Lewis*, thou shalt be led from this Place, to the Place from whence thou camest, &c. [*as usual in Cases of High-Treason.*] so the Lord have Mercy on thy Soul.

Then I made a Bow to the Judge, and the Court arose.

Afterwards, Aug. 27, 1679, he was executed according to the Sentence, at *Uske* in *Monmouthshire*, where he spake as follows.

HERE is a numerous Assembly, I see; the great Saviour of the World save every Soul of you all; I believe you are here met not only to see a Fellow-Native die, but also with Expectation to hear a dying Fellow-Native speak. If you expected it not, at least I intended it, I hope the Favour will not be denied me, it being a Favour so freely granted to several late dying Persons in *London* it self. I shall endeavour to speak inoffensively; I hope the same Favour will not be denied me.

Let none of you suffer as a Murderer or a Thief, but if as a Christian, let him not be ashamed: *St. Peter's Words*, 1 *Pet.* 4. 15, 16. I hope by God's Holy Spirit now whisper'd to my Memory, and that to my abundant Consolation; for I suffer not as a Murderer, Thief, or such like Malefactor, but as a Christian, and therefore am not ashamed.

I distinguish two sorts of Life on Earth, Life-moral, and Life-natural; Life-moral is that by which we live with good Repute in the Esteem of other Men of Integrity; Life-natural is that by which we breathe; in the first sort or kind, I thank God I have suffer'd lately, and exceeding-

ly, when maliciously, falsely, and most injuriously, I was branded for a publick Cheat, in Pamphlet, in Ballad, on Stage, and that in the Head City of the Kingdom, yea, and over the whole Nation, to the huge and great Detriment of my good Name, which I always was as tender of, as the other I am now quitting.

The Pamphletical Story (believe my dying Words) had no Truth in it, neither to Substance nor Circumstance of the Thing; a Story so false, that I could have easily defied the Face that had attempted to justify it to my Face; so sordid a Business, a Story so ridiculous, that I wonder how any sober Christian, at least who knew me, could as much as incline to believe so open an Improbability; who that Protestant young Man there mention'd was, I know not; who that Popish young Woman; who the Father dead a Year and a half before; in what County, what Parish, were all transacted, I know not, none of all these there particularized; and when in the Face of the Country at last *Lent-Affizes*, I vindicated my Innocency herein, to the Satisfaction of the then Judge himself, why appear'd not there then some one to make good the Charge, and disable my Defence? But none of this offer'd; a plain Demonstration to all candid Minds, the Whole was a meer Fiction of some malicious Person against me: God forgive them or him, I heartily do. How forward my Endeavours always have been to my Power to relieve the Poor, and not directly to defraud them, impartial Neighbours that know me can tell you; besides this, during my nine Months Imprisonment, several foul and false Aspersions were cast out against me, and that by those unto whom, for full thirty Years, I had been charitably serviceable: God forgive them, I heartily do. Yet notwithstanding all these Calumniation, I hope I still retain the Character of an honest Man amongst Gentlemen of Worth, with whom I conversed, and with all Neighbours of Honesty, with and amongst whom I lived.

And now I am parting with the other Life by which I breathe, behold that within these few Moments of Time is to unbreath me; but why thus sleg'd to this Country-Tyburn? Why this so untimely Death of mine? Have Patience, and I'll tell you; not for any Plotting, I assure you; and what I shall now say as to that, God is my Witness, I shall speak without any Equivocation, mental Reservation, or Palliation of Truth whatsoever.

By all that is sacred in Heaven and Earth, I here solemnly protest, that I am as innocent from any Plot whatever against his Majesty's Person or Government, as the Infant that left the Mother's Womb but Yesterday; neither did I ever hear or know any thing directly or indirectly of any such Plot, 'till publick Fame had spread it over the Country between *Michaelmas* and *All-Saints Day* last: This is true, as God shall judge and save my Soul; neither was there any Guilt of any such black Crime found in me by Mr. Oates, Mr. Bedlow, Mr. Dugdale, and Mr. Praunce, when by them I was strictly examin'd on that Point, last *May*, in *Newgate, London*; nay, had I had the least Knowledge or Hint of such Plot, I had been as zealously nimble in the Discovery of it, as any the most loyal Subject his Majesty hath in his Three Kingdoms; wherefore, when I am dead and gone, if some Malevolent give out,

out, I lose my Life for Plotting, by Charity strive to disingage him of his Mistake; do that Right to my dead Ashes.

I was never taught that Doctrine of King-killing, from my Soul I detest and abhor it as execrable, and directly opposite to the Principles of the Religion I profess; what that is, you shall know by-and-by; it being the positive Definition of the Council of *Constance*, That it is damnable for any Subject, or private Person, or any Subjects in Council joined, to murder his or their lawful King or Prince, or use any publick or clandestine Conspiracy against him, tho' the said King or Prince were a Turk, Apostate, Persecutor, yea, or a Tyrant in Government: Never tell me of *Clement* the Murderer of *Henry* the Third of *France*; never tell me of *Ravilliac*, Murderer of *Henry* the Fourth of *France*; they did so, but wickedly they did so, and for it they were punish'd to Severity, as Malefactors; and for it, to this very Day, are stigmatiz'd by all *Roman* Catholicks for very Miscreants and Villains. I hope you will not charge the whole *Roman* Catholick Body with the Villanies of some few Desperadoes: By that Rule, all Christianity must be answerable for the Treason of *Judas*; for my part, I always lov'd my King, I always honour'd his Person, and I daily pray'd for his Prosperity; and now, with all unfeign'd Cordiality, I say it, God bless my gracious King and lawful Prince, *Charles II.* King of *England*, and Prince of *Wales*, God bless him temporally and eternally, God preserve him from all his real Enemies, God direct him in all his Councils, that may tend to the greater Glory of the same great God; and whatever late Plot hath been, or is, the Father of Lights bring it to Light, the Contrivers of it, and the Actors in it, that such may be brought to their condign Punishment, and Innocence preserved.

But why again this untimely Death? My Religion is the *Roman* Catholick Religion, in it I have liv'd above these Forty Years, in it I now die, and so fixedly die, that if all the good things in this World were offered me to renounce it, all should not move me one Hair's Breadth from my *Roman* Catholick Faith; a *Roman* Catholick I am, a *Roman* Catholick Priest I am, a *Roman* Catholick Priest of that religious Order call'd *The Society of Jesus* I am; and I bless God who first call'd me; and I bless the Hour in which I was first called both unto Faith and Function.

Please now to observe, I was condemn'd for reading Mass, hearing Confessions, administering the Sacraments, anointing the Sick, Christning, Marrying, Preaching: As for reading the Mass, it was the old, and still is, the accustomed and laudable Liturgy of the Holy Church; and all the other Acts, which are Acts of Religion, tending to the Worship of God; and for this dying, I die for Religion: Moreover know, that when last *May* I was in *London*, under Examination concerning the Plot, a prime Examinant told me, that to save my Life and increase my Fortunes, I must make some Discovery of the Plot, or conform; discover Plot I could not, for I knew of none; conform I would not, because it was against my Conscience; then by Consequence I must die, and so now dying, I die for Conscience and Religion; and dying upon such good Scores, as far as humane Frailty permits, I die with Alacrity interior and exterior; from the

abundance of the Heart, let not only Mouths, but Faces also speak.

Here, methinks, I feel Flesh and Blood ready to burst into loud Cries, Tooth for Tooth, Eye for Eye, Blood for Blood, Life for Life; No, cryeth holy Gospel, *Forgive, and you shall be forgiven; pray for those that persecute you; love your Enemies*; and I profess myself a Child of the Gospel, and the Gospel I obey.

Whomever, present or absent, I have ever offended, I humbly desire them to forgive me; as for my Enemies, had I as many Hearts as I have Fingers, with all those Hearts would I forgive my Enemies, at leastwise, with all that single Heart I have, I freely forgive them all, my Neighbours that betray'd me, the Persons that took me, the Justices that committed me, the Witnesses that prov'd against me, the Jury that found me, the Judge that condemn'd me, and others whoever, that out of Malice or Zeal, covertly or openly, have been contributive to my Condemnation; but singularly and especially, I forgive my capital Persecutor, who hath been so long thirsting after my Blood; from my Soul I forgive him, and wish his Soul so well, that were it in my Power, I would seat him a Seraphin in Heaven, and I pray for them in the Language of glorious St. *Stephen* the Protomartyr; *Lord, lay not this Sin unto them*; or better yet, in the Style of our great Master, Christ himself, *Father forgive them, they know not what they do*.

And with Reason I love them also; for though they have done themselves a vast Soul-prejudice, yet they have done me an incomparable Favour, which I shall eternally acknowledge; but chiefly I love them for his sake, who said, *Love your Enemies*; and in Testimony of my Love, I wish them, and it is the best of Wishes, from the Center of my Soul, I wish them a good Eternity. O Eternity, Eternity! How momentaneous are the Glories, Riches, and Pleasures of this World? and how desirable art thou, endless Eternity?

And for my said Enemies attaining thereunto, I humbly beseech God to give them the Grace of true Repentance, before they and this World part.

Next to my Enemies, give me leave to lift up my Eyes, Hands, and Heart to Heaven, and drop some few Words of Advice unto, and for my Friends, as well those present as absent. Friends, *Fear God, Honour your King*, be firm in your Faith, avoid mortal Sin, by frequenting the Sacraments of holy Church, patiently bear your Persecutions and Afflictions, forgive your Enemies, your Sufferings are great; I say, be firm in your Faith to the End, yea, even to Death, then shall ye heap unto yourselves Coelestial Treasures in the heavenly *Jerusalem*, where no Thief robbeth, no Moth eateth, and no Rust consumeth; and have that blessed Saying of the blessed St. *Peter*, Prince of the Apostles, always in your Memory, which I heartily recommend unto you, viz. *Let none of you suffer as a Murderer or a Thief, but if as a Christian let him not be ashamed, but glorify God in his Name*.

Now it is high time I make my Addresses to Heaven, and supplicate the Divine Goodness in my own Behalf, by some few short and cordial Ejaculations of Prayers.

His Prayers being ended, he was turn'd off.

LXXXI. *The Trial of NATHANAEL READING,* Esq;*
for a Trespass and Misdemeanour, April 24, 1679.
 31 Car. II.



ON *Wednesday* the 16th of *April*, 1679, His Majesty's Commissioners of Oyer and Terminer did meet at *Westminster-Hall*, in the Court of *King's-Bench*, when and where the Commission was read; and Proclamation for Attendance being made, and the Grand-Jury sworn, Sir *James Butler*, Her Majesty's Attorney General, and Chief Commissioner that then appeared, gave them their Charge thus:

Gentlemen,

His Majesty, upon the Address of the Honourable House of Commons, hath been pleased to give Order for this Commission of Oyer and Terminer that hath been read, to issue out; and the Court thereby hath Authority to inquire of, hear and determine several other Offences: Yet, at this present, you shall have no other in Charge than the particular Offence recited in the Indictment in my Hand. It is a Crime of an unusual and rare Nature: The Indictment is against *Nathanael Reading*; it sets forth the Plot against the King, the Government, and the Religion established here by Law, the horrid and pernicious Mischiefs and Consequences of it: It sets forth likewise, that several Persons, and (names them) as *Coleman*, *Ireland* and *Grove* were Tried, Condemned, and Executed for the same: That several Lords in the *Tower* do stand Impeached in Parliament, of the said High-Treason, and other High Crimes and Misdemeanours; that this was well known to Mr. *Reading*, and that notwithstanding he hath so misbehaved himself, in endeavouring to lessen and stifle (as much as in him lay) the King's Evidence, that if it had not been happily prevented, might have been of most mischievous Consequence. I shall not take upon me to recite the whole Indictment to you, being very long, and not seen or perused by me till now; but you shall have the same along with you, it shall be read to you. Your Duty is, to examine and consider of the Evidence to be offered you, on the Behalf of the King, for the Proof of the Charge against the Offender: If you find it amount to a Proof of what is laid therein, nay, I must tell you, if you have but probable Evidence, you ought to find the Bill, because your Presentment and Verdict is not a Conviction, but in the Nature of an Accusation, in order to bring the Prisoner to a fair Trial: And if you do not find the Bill, he shall never be brought to his Trial; but if you (having probable Evidence) find it, he shall receive his Trial by the petty Jury; and upon the Merits, be either Acquitted or Convicted. This is as much

as I think is fit for me to say to you at this Time, upon this Occasion. You may please to go together, and take the Witnesses along with you.

Then the Witnesses were sworn, and the Grand-Jury withdrew, and after the Space of about half an Hour, returned, finding it Billa Vera. After which, the Court adjourned to Thursday, the 24th Day of April, at Eight a Clock in the Morning, in the same Place.

On which Day the Commissioners here-under named being met, viz.

Sir *Francis North*, Knight, Lord Chief Justice of His Majesty's Court of *Common-Pleas*.

William Mountague, Esq; Lord Chief Baron of His Majesty's Court of *Exchequer*.

Sir *William Wylde*, Kt. and Bar. one of His Majesty's Justices of the *King's-Bench*.

Sir *Hugh Wyndham*, Kt. one of His Majesty's Justices of the *Common-Pleas*.

Sir *Robert Atkins*, Knight of the *Bath*, another of the Justices of the *Common-Pleas*.

Sir *Edward Thurland*, Kt. one of the Barons of the *Exchequer*.

Vere Bertie, Esq; another of the Justices of the *Common-Pleas*.

Sir *Thomas Jones*, Kt. another of the Justices of the *King's-Bench*.

Sir *Francis Bramston*, Kt. another of the Barons of the *Exchequer*.

Sir *William Dolben*, Kt. another of the Justices of the *King's-Bench*.

Sir *William Jones*, Kt. His Majesty's Attorney General.

Sir *James Butler*, Kt. one of the King's Council, and the Queen's Attorney.

Sir *Phillip Mathews*, Bar.

Sir *Thomas Orby*, Kt. and Bar.

Sir *Thomas Byde*, Kt.

Sir *William Bowles*, Kt.

Sir *Thomas Stringer*, Serjeant at Law.

Sir *Charles Pitfield*, Kt.

Thomas Robinson,

Humphrey Wyrley,

Thomas Haryot, and

Richard Gower.

} Esquires.

Proclamation was made for Attendance, and the Grand Inquest being called, Sir Francis North, Lord Chief Justice of the Common-Pleas, (the Lord Chief Justice being out of Town) spoke to them thus:

Lord Chief Justice North. You of the Grand Jury, This Session is upon a particular Occasion,

* He had been Secretary to Massianello, at the Insurrection at Naples, about Thirty Years before.

and that which lay upon you was to find the Bill, and that you have done, and we do not see any thing further for you to do, and therefore the Court discharges you from any further Attendance this Session.

Then Mr. Reading was sent for, and brought to the Bar, by Captain Richardson, the Keeper of Newgate; and Silence being Proclaimed, the Clerk of the Crown read the Indictment to him.

Clerk of the Crown. Mr. Reading, hearken to your Indictment.

You stand Indicted, by the Name of Nathanael Reading, late of the Parish of St. Margaret Westminster, in the County of Middlesex, Esq; That whereas Edward Coleman, William Ireland, and John Grove, and other (unknown) false Traitors against our most Serene Lord King Charles II. the 24th Day of April in the Thirtieth Year of his Reign, at the Parish of St. Margaret's Westminster, in the County of Middlesex, had Traiterously, among themselves, Conspired, Consulted, and Agreed, our said most Serene Lord the King to bring and put to Death and final Destruction; and to move War against him our Lord the King, within this Realm of England, and the Religion in the same Kingdom rightly and by the Laws of the same Realm Established to Change and Alter to the Superstition of the Romish Church, and the Government of the same Kingdom to Subvert; for which certain most wicked Treasons, and Traiterous Conspiracies, Consultations, and Agreements aforesaid, They, the said Coleman, Ireland and Grove, in due Manner, and according to the Laws of this Kingdom of England afterwards were Attainted, and had therefore undergone the Pains of Death: And whereas William Earl of Powis, William Viscount Stafford, John Lord Belafis, Henry Lord Arundel of Warder, William Lord Petre, and Sir Henry Tichburn, Bar. the 30th Day of November in the aforesaid 30th Year of the Reign of our said Lord the King, at the said Parish of St. Margaret's Westminster, in the County aforesaid, were of the aforesaid Treasons in a lawful manner Accused, and thereupon, according to the due Form of Law, to the Tower of London (being the Prison of our said Lord the King) were Committed, there safely to be kept, to Answer the aforesaid Treasons, whereof the same William Earl of Powis, William Viscount Stafford, John Lord Belafis, Henry Lord Arundel, and William Lord Petre in Parliament, by the Commons in the same Parliament assembled, are Impeach'd: But you, the said Nathanael Reading, the aforesaid Premises sufficiently knowing, and being Devilishly affected against our most Serene Lord the King, your Supreme and Natural Lord, and devising, and with all your Might intending, to disturb the Peace and common Tranquility of this Realm, and the Government of the same Kingdom, and the sincere Religion of God in the same, rightly and by the Laws of the said Realm Established, at your Will and Pleasure to Change and Alter; and the State of this Kingdom, thro all its Parts well Instituted and Ordained, wholly to Subvert; and to obstruct, hinder and stifle the Discovery of the said Treasons, and, as much as in you lay, the due Course of Law in that Part to shift off, and retard in the Prosecution of Justice against the said William Earl of Powis, William Viscount of Stafford, William Lord Petre, and Sir Henry Tichburn: You, the said Nathanael Reading, the 29th Day of March, in the 31st Year of our said Lord the King,

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at the said Parish of St. Margaret's Westminster, in the County aforesaid, on the Part of the aforesaid William Earl of Powis, William Viscount Stafford, William Lord Petre, and Sir Henry Tichburn, falsely, advisedly, corruptly, and against the Duty of your Allegiance, did unlawfully solicit, suborn, and endeavour to persuade, one William Bedlow, (who, on the 29th Day of March, in the said 31st Year, in due Manner did give Information of the said Treasons; and whom You, the said Reading, the Day and Year last aforesaid, did well know the Information of the said Treasons as aforesaid to have given, on the Part of our Lord the King) upon the Trial of the aforesaid William Earl of Powis, William Viscount Stafford, William Lord Petre, and Sir Henry Tichburn, for the Treasons aforesaid, to be had, to lessen and stifle, and to omit to give in Evidence the full Truth, according to his Knowledge, of the aforesaid Treasons, against Them, the said William Earl of Powis, William Viscount Stafford, William Lord Petre, and Sir Henry Tichburn, and to give such Evidence, as You, the said Nathanael Reading, should direct: And You, the said Nathanael Reading, sooner and more effectually to persuade the aforesaid William Bedlow to lessen and stifle, and to omit to give in Evidence the full Truth, according to his Knowledge, against the said William Earl of Powis, William Viscount Stafford, William Lord Petre, and Sir Henry Tichburn, upon their Trials, and to give such Evidence as You, the aforesaid Nathanael Reading, would direct: You, the said Nathanael Reading, afterwards, on the said 29th Day of March, in the 31st Year aforesaid, at the aforesaid Parish of St. Margaret's Westminster, in the said County, falsely, advisedly, corruptly, and against the Duty of your Allegiance, unlawfully did give to the same William Bedlow Fifty six Pieces of coined Gold of this Kingdom, called Guineas: And also falsely, advisedly, corruptly, unlawfully, and against the Duty of your Allegiance, the Day and Year aforesaid, at the aforesaid Parish of St. Margaret's Westminster, in the said County of Middlesex, did promise to the said Bedlow, that He, the said Bedlow, within a certain Time, by You, the aforesaid Nathanael Reading, to the said Bedlow proposed, should have and receive divers other great Sums of Money, and other great Rewards, for lessening and stifling and omitting to give in Evidence the full Truth, according to his Knowledge, of the aforesaid Treasons, against the said William Earl of Powis, William Viscount Stafford, William Lord Petre, and Sir Henry Tichburn, and for giving such Evidence, as You, the said Nathanael Reading, to the said William Bedlow should direct, to the great Hindrance, Obstruction, and Suppression of Justice, in manifest Contempt of the Laws of this Realm, to the evil and pernicious Example of all others in the like Case offending; and against the Peace of our Lord the King, his Crown and Dignity, &c.

How say you, Mr. Reading, are you Guilty of this Trespafs and Misdemeanor, or Not guilty?

Reading. Not guilty, in Thought, Word or Deed.

L. C. J. Not guilty, is your Plea?

Reading. Yes, my Lord.

Cl. of the Cr. Cryer, make Proclamation. You good Men of this County of Middlesex, summoned to appear here this Day, to try the Issue joined between our Sovereign Lord the King, and Nathanael Reading, answer to your Names, and save your Issues.

Then the Pannel was called over, and Proclamation for Information in usual Form was made.

Cl. of the Cr. Mr. Reading, look to your Challenges. Will your Lordship please to have Sir John Cutler to be Foreman?

L. C. J. Yes.

Reading. My Lord, I have a very great Honour for this worthy Person, Sir John Cutler; he is in Commission of the Peace, I do therefore humbly desire he may be excused at this Time.

L. C. J. Mr. Reading, you cannot challenge him peremptorily in this Case, it not being for your Life; and therefore you must shew Cause if you have any. He is not in this Commission at all; and for his being in Commission of the Peace, that signifies nothing, for we oftentimes in the Circuits take them off the Bench to be Jurymen; but if you can shew any cause of Challenge, it must be allowed you.

Reading. My Lord, I look upon my self Indicted for Treason; (I desire God to give me Strength, and I am sure of your Lordship's Patience,) and I look upon the Indictment which hath been read to me, and upon which I have been arraigned, to be expressly Treason; and I do humbly pray your Lordship's Judgment in it, whether it be so or not: For, my Lord, (if your Lordship please) if it be so, as I understand my own Innocency, so your Lordship understands my Charge better than I do. And God knows I have neither strength of Body, nor presence of Mind to manage my own Defence; but my Happiness is, that I am alive at this Day, and am to be tryed here before so Honourable a Bench. My Lord, I have not had the Advantage of any Council to assist me, nor the benefit of any Common Friend, no not my Wife to come to me. I have not been able to help my self thro the great Indisposition which I have been under, reduced to it by that barbarous and illegal usage which I have had: For (my Lord) I hope I may say I am the first *Englishman* that in my Circumstances hath ever been used as I have been; and my Hopes are, whatsoever becomes of me, (the Lord's Will be done,) I shall be the last that ever shall be so used. My Lord, upon the weakness of my own apprehension, I do take it, that 'tis as high a Treason, nay a greater Treason, and that in the Words of the Indictment, than ever Mr. Coleman or any of the others that have been Executed, dyed for; or the Lords now in the Tower stand Charged with; and therefore, my Lord, I pray your direction in it, if it is but a Misdemeanor, (for truly what the Crime is I know not,) but in construction of Law, admitting the Indictment true, the whole does contain in it the blackest Treason that ever Villain was guilty of. If it is so in your Lordship's Judgment, whatever should become of it now, I may be Indicted for it again; and should this Indictment be found upon me, I am as certainly in the Eye of the Law a dead Man, as thro the Mercy of God I am now alive: And (my Lord) if it be so, I desire your Lordship's Judgment, whether I may not be allowed a peremptory Challenge.

L. C. J. Mr. Reading, You speak in due time, for 'tis pertinent to the matter of peremptory Challenge, to consider whether this be an Indictment of Treason; for if it be, the Law does allow in favour of your Life a peremptory Chal-

lenge to such a Number; and I will tell you, your Apprehensions have something in them: That the Fact as 'tis laid in the Indictment, might have been laid so as to have made it an Indictment of Treason; and if you are Guilty of this Fact, and not Indicted for Treason, but only for a Misdemeanor, 'tis a favour to you, and that of which you cannot take Advantage or complain of. I'll now shew you that this Indictment is not an Indictment of Treason, nor can the Judgment of Treason be given upon you for it; and so thereby your Life is not in danger. First, here is not the Word *Proditorie*, which is necessary in all Indictments of Treason: Next, you must observe that all Treasons are expressly particularized in the Statute of 25 Ed. 3. And nothing is Treason but what is contained in that Act, as *Compassing the Death of the King, Levying War against the King*, and other Facts mentioned in that Statute. Now if this Fact had been here laid as an Overt-Act for the Evidencing of the Imagination of your Heart in *Compassing the Death of the King*, and the destruction of the Realm, there it had been an Indictment of Treason: But being there is no Treason formally laid, nor the Word (*Proditorie*) which is necessary in all Indictments of Treason, 'tis only a Misdemeanor you stand Charged with; which I must tell you is a great ease and favour to you in such Circumstances as we are now; and if it be so, you must shew Cause if you challenge any Juror.

Reading. If I may (with your Lordship's favour) I am very highly disposed for the taking of the least of Favours that can be shew'd me, with the deepest acknowledgment that an Innocent Man and one in Distress can make: But (my Lord) among the greatest of Misfortunes, this I own as my Happiness, that I am now on my Trial before your Lordship. But pray (my Lord) may not I (having this Favour shew'd to me, and should it be only found a Misdemeanor) afterwards be Indicted for Treason? And pray (my Lord) does there want any one Circumstance of the formality of an Indictment for Treason in this against me, but that one of *Proditorie*?

L. C. J. No, it is not laid that you did *Compass the Death of the King*.

Reading. Then (with Your Lordship's Pardon) I do not understand it: for the Indictment does set forth, *That Coleman and others did Conspire the Death of the King, Levying War, the Altering of Religion and Subversion of the Government; for which they justly suffered Death*. And further, as to the several Lords in the Indictment mentioned, they are accused for the same Treason; And justly, and according to Law sent to the Tower, to Answer what they stand justly impeached of by the Commons: And it sets forth further, that I *præmissa prædicta satis sciens*, did so and so: Were there no other Expression, that, my Lord, is expressly Treason, or no doubt Misprision of Treason; for, my Lord, it does charge me that I am *satis sciens* particularly, sufficiently well apprised of those Treasons they were Executed for, these Accused. And that I did not this out of the weakness of my own Apprehension, but falsely, advisedly and maliciously. My Happiness is, I shall have your great Judgments to determine this Matter for me.

L. C. J. Mr. Reading, you exercise great Elocution and Eloquence; but if I do apprehend you aright, what you say is this: That the Indictment

dictment sets forth, that you *satis sciens* of those Treasons did so and so, which will amount to a Misprision of Treason. I must tell you, there is a difference between the knowledge of a Treason that is secret, for the concealing of that, and endeavouring to stifle the Evidence, is Misprision of Treason; but the knowing of a Treason that is revealed and discovered is knowing no more than all the World knows; and not laid as a Fault, but to aggravate the Fault afterwards charged. This Discourse is nothing to the matter; if you would have our Opinion, whether you may afterwards be question'd for Treason, 'tis that we are not to give you; answer the Indictment as now it is: You have favour enough that it is laid this way, and not the other. An Indictment of Treason or Misprision must not be laid so as that the Crime must be collected out of the Matter of Fact only, but it must be formally laid. How you shall be Prosecuted hereafter, must depend upon the Justice of the Kingdom: We sit here now to determine upon what Matter lyes before us, and so cannot grant you a peremptory Challenge in this Case, which is only allowed in Matters Capital in favour of Life.

Reading. My Lord, I do desire to know whether this be Treason or no, *That being devilishly affected to the King my Supreme and Natural Lord, and intending to levy War in the Kingdom, and to change the Government, and to alter the Religion, and subvert the Peace of England; whether that be not Treason?*

L. C. J. Mr. *Reading*, We will answer none of those Questions: But this I will say to you, no Judgment of Treason can be given upon you upon this Indictment; and tho' these Acts (if formally laid) might have been Treason, yet it not being so, we must proceed as it lyes before us: And therefore if you have any particular Cause to challenge Sir *John Cutler*, shew it, and we will hear you.

Reading. My Lord, I have this Cause, I have been but a little time acquainted with this worthy Gentleman; but, my Lord, I have seen him in Company with Mr. *Bedlow*, mine Accuser, I know there is not a common Intimacy and Friendship between them: I am very certain, my Lord, that Sir *John* hath too much Honour to do me wrong; but I do humbly desire that he may have his Ease, and be excused at this time: not that I do distrust his Justice, but for the Reasons I have humbly offered.

L. C. J. Look you, Mr. *Reading*, your Accusers are Witnesses for the King, and are neither to gain nor lose by your Trial; and therefore cannot be presumed to make any Party for your Conviction. And do you challenge a Juryman because he is supposed to know something of the Matter? for that reason the Juries are called from the Neighbourhood, because they should not be wholly Strangers to the Fact. If you can shew that he hath already given his Verdict by his Discourse, and that you are already condemn'd in his Opinion, that may be some cause of Challenge; but that he hath discoursed with Neighbours as others do, it may be he believes it, and may be does not believe it, he is now to give his Verdict upon what he hears upon Oath.

Reading. My Lord, I was very glad to see Sir *John Cutler* here, for I did intend to have his Evidence for me.

L. C. J. That you may have, tho he be Sworn.

Then the Jury were sworn, and their Names were as followeth, viz.

Sir <i>John Cutler</i> .	<i>Thomas Casse</i> , Esq;
<i>Joshua Galliard</i> , Esq;	<i>Rainsford Waterhouse</i> , Esq;
<i>Edward Wilford</i> , Esq;	<i>Matthew Bateman</i> , Esq;
<i>Thomas Henslow</i> , Esq;	<i>Walter Moyle</i> , Esq;
<i>Thomas Earsby</i> , Esq;	<i>Richard Paget</i> , and
<i>John Serle</i> , Esq;	<i>John Haynes</i> , Esq;

L. C. J. If Sir *John Cutler* desires Pen, Ink and Paper, or any other Convenience, let him have it.

Cl. of the Cr. Gentlemen of the Jury, hearken to the Indictment. He stands Indicted by the Name of *Nathanael Reading*—

L. C. J. You need not open the Indictment, let the Council do that.

Then Edward Ward, Esq; being of Council for the King in this Cause, opened the Indictment.

May it please your Lordship, and you Gentlemen of this Jury, *Nathanael Reading*, Esq; stands Indicted for this Offence: That whereas *Edward Coleman*, *William Ireland*, and *John Grove*, and other unknown Persons, (Traitors against our Sovereign Lord the King,) the 24th Day of April, in the Thirtieth Year of the King, did traiterously contrive the King's Death, the Subversion of the Government of the Kingdom, and the Religion in the same Kingdom by Law establish'd, to alter and change to the Superstition of the Romish-Church; for which Treasons they have been in due manner Attainted and Executed: And it farther lays, that whereas *William Earl of Powis*, *William Lord Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel of Warder*, *William Lord Petre*, and Sir *Henry Titchburn*, Baronet, were the 30th of November last, in a lawful manner, accused of those Treasons, and for them committed to the Tower; and thereof the said Lords were and stand Impeached by the Commons in Parliament: The said Mr. *Reading* well knowing of these Things, and being devilishly affected to the King, his supream and natural Lord, and devising to disturb the Peace of the Kingdom, and the Government and Religion thereof rightly establish'd, to change and alter; the state of the Kingdom well instituted, to subvert; and to obstruct and stifle the discovery of these Treasons, and as much as in him lay to shift off and retard the course of Law and Prosecution of Justice against the said Lord *Powis*, Lord *Stafford*, Lord *Petre* and Sir *Henry Titchburn*; the said Mr. *Reading* the 29th of March last past, at *St. Margaret's Westminster*, on the part of these three last mention'd Lords, and Sir *Henry Titchburn*, did falsly, corruptly, advisedly and against his Allegiance, unlawfully sollicit, suborn and endeavour to perswade one Mr. *William Bedlow* (who before had given Information of these Treasons against the said Persons, and whom Mr. *Reading* knew so to have done) to lessen, stifle, and omit to give in Evidence the full Truth according to his knowledge of the said Treasons against the said three Lords, and Sir *Henry Titchburn*, upon their Trial to be had, and to give such Evidence as he the said Mr. *Reading* should direct; and to that purpose, falsly, corruptly, advisedly, and against the Duty of his Allegiance, unlawfully did give to Mr. *Bedlow* fifty six Guineas, and promised

promised him, that within a certain Time (by the said *Reading* proposed) he should have and receive divers other great Sums of Money and Rewards, for lessening, stifling, and omitting to give in Evidence the full Truth, according to his Knowledge of those Treasons against the said three Lords and Sir *Henry Titchburn*; and for giving such Evidence as he should direct: And this is laid to be to the hindrance and suppression of Justice, in manifest contempt of the Laws of this Realm, to the evil Example of others in the like Case offending, and against the Peace of our Lord the King, his Crown and Dignity. To this Indictment Mr. *Reading* hath pleaded Not Guilty. If we prove the Offences aforesaid against him, we doubt not but you will find him Guilty.

Sir Creswel Levinz, one of the King's Learned Council in the Law, thus opened the Charge.

May it please your Lordships, and you Gentlemen of the Jury, I am of Council for the King in this Case: Gentlemen, This Indictment is not an Indictment of High-Treason, nor of Misprision of Treason; and truly the Gentleman at the Bar hath something wondred at the King's Lenity to him; the Fact in the Indictment does indeed sound of another Nature, than what it bears the Name of; it does in this Indictment carry the most moderate Character that the Fact will bear: It is only an Indictment of Trespass and Misdemeanor, but 'tis a very high Misdemeanor; 'tis to stifle the King's Evidence, and that not in an ordinary Case, but where it is attended with the greatest Aggravations that can be in any Case whatsoever. If a Man should endeavour to stifle the Evidence in an Action betwixt Party and Party, in the Courts of *Westminster-Hall*, for a Business of about 40*s*. those Courts of Justice would find a ready way to punish him. This is a Crime of another Nature, for it is set forth in the Indictment, That *Coleman*, *Ireland*, and *Grove* had a Traiterous Design in hand, for the which they were Executed, that is, the Plot; and when I have said that, I have said all, That implies all; you all know what was thereby designed. 'Tis set forth in the Indictment, That such Lords, and Sir *Henry Titchburn*, were privy to the Plot, and accused for it, and to prevent the Evidence to be given against these Lords, three of them (for the Bargain was only made for three, viz. my Lord *Stafford*, my Lord *Powis*, and my Lord *Petre*; the rest were out of the Bargain, and had not, it seems, found out the Way of Commerce now used by these Persons) was this Gentleman, Mr. *Reading's* Business. It was to diminish and lessen the Evidence that was to be given against them, who were charged and accused to be as highly Guilty of the Plot as any that were Executed for it. And when I have told you this, you will surely conclude 'tis an high Offence, and an high Misdemeanor: For if the Life of the King, if the Law of the Land, if the Religion Established, if the settled Government be valuable; if your own Lives, your own Liberties, and your own Fortunes, have any Consideration with you, this is a very high Misdemeanor; for you must look upon these as all at Stake: This Plot, as it was laid, did reach to all; so that an Endeavour to conceal the Evidence that should discover, and thereby prevent the Execution of so horrid a

Conspiracy, is a very heinous Misdemeanor; and you will easily believe, that the Gentleman at the Bar, the Prisoner whom you are to Try, had reason to doubt within himself, why it should be called so small an Offence as an high Misdemeanor: But I will not, I need not aggravate this Offence, and the rather because the Gentleman that stands accused for it, is of a Profession (for which I am sorry) which obliges him to know and understand all the Aggravations of his own Crime. I will not open the Evidence, nor tell you what the Witnesses will say, I had rather you should have it from themselves; but, if I am rightly informed, you will have the Matter fully proved; and therefore we will call the Witnesses, and let them tell you what it is they have to say.

Mr. *Ward*. There are some Things laid in this Indictment, that are to be previously proved, in Order to the Charging of the Prisoner; as the Execution of *Coleman*, and the rest; and the Impeachment of the Lords. If Mr. *Reading* stands upon it, we have those here that will prove it.

L. C. J. Mr. *Reading*, Those Publick Passages that are laid in the Preamble of the Indictment, do you insist they should be proved first?

Reading. My Lord, I am very willing to save your Lordship's Time.

L. C. J. Do you admit that *Coleman* and *Ireland*, &c. were Executed for Treason?

Reading. Yes, my Lord, and very justly.

L. C. J. Do you admit that the Lords in the Tower are Accused and Impeached in Parliament for this Plot?

Reading. Yes, my Lord, I do.

L. C. J. Then you ease them of the reading those Records.

Reading. And, my Lord, I do further say, I do verily believe there never was a greater Plot laid in Hell than this. I have abhorred it in my Thoughts, and have not only endeavoured to encourage the Discovery, but always gave it as my Counsel, that nothing that was true should be left out in the Evidence. And I do, and will, save your Lordship's Time as much as I can.

Sir Cr. *Levinz*. Then, if your Lordship please, we will call our Witnesses, and prove the Fact; and if there be any thing that Mr. *Reading* doubts of, we will prove it afterwards. Swear Mr. *Bedlow*. Which was done.

Mr. *Ward*. Mr. *Bedlow*, I shall only ask you the general Question. Will you be pleased to tell my Lords and the Jury, what you know of this Business? Tell the whole Story, what Discourse and Bargainings there have been between you and Mr. *Reading*, for the diminishing and lessening of your Evidence.

Bedlow. My Lord, Mr. *Reading* was altogether a Stranger to me, till Sir *Trevor Williams* brought me acquainted with him; he was always very just to me, in whatsoever he did for me, and wherein he was employed by me. I found him very honest, in reference to my own Concerns. And tho Mr. *Reading* will bring a great many People, perhaps, that he hath press'd me to discover the whole of the Plot; I do confess, he did it in a very high measure, in all publick Company, and that I would not be baulk'd in any Point: And for the Discovery, and Convicting, and Executing, of those that had died about this Plot, he never deny'd but they suffered justly and

and lawfully enough : But in private Counsels where we have been together, he hath spoken to me to be cautious. Indeed he hath never endeavoured to have me stifle the whole Plot, but only for some particular People that he solicited for; not but that he believed them guilty, as well as the rest; but he desired me that I would not be so hot against them. And after he had made me Easy, (that was his Word that he himself used) he would have had me made Mr. *Dugdale* Easy too. At several Times, when we have been together, his very Expressions have been to me, Mr. *Bedlow*, Tho' there hath been so damn'd a Design on foot, and so terrible a one, yet it is not for your Safety nor Credit to run at the whole Herd of Men: For I was this Day, or Yesterday, he said, with my Lord Chief Justice, and he told me, That at this Rate that Mr. *Bedlow* accuses Men, none are safe, for he runs at the whole Herd; and seemed to me to intimate, that my Lord Chief Justice was not pleased with my Forwardness. And he told me likewise, You gain your Point with the Parliament, and with the King, and with the Kingdom, if some suffer, as I believe you can do it, and not run at the whole Herd, and 'tis an indifferent Thing to you, so you make the Parliament your Friend, by proving there is a Plot, and the King your Friend, in not charging all these Lords, and you'll make all the Lords your Friends, by your Kindness to them. You shall take my Instructions, I will never advise you any thing that is ill, but I'll tell you how far you shall proceed. If you can fix any thing for them, you shall be sure to be well gratified.

L. C. J. Did he name any Lords to you?

Bedlow. This was the Beginning of the Discourse, my Lord; and I answered him, Mr. *Reading*, This is a very nice Point, and I know them to be guilty of all the Things I charge them with, and I can prove it. If your Advice be so, I'll consider of it. I think it was after the Prorogation of the last Parliament, and then my Encouragement for Discovery was not so great. But, said I, if any of them deny it to you, that they are guilty, then they must expect no Kindness from me at all, for I will swear all that I can against them; but if they acknowledge that I do them a Piece of Service in not swearing too severely against them, then I will be ready to take your Advice and Instructions. He told me many Times, that Sir *Henry Titchburn* did think he had seen me in *Paris*, but he did not use this Expression to me, That I charged him with bringing Commissions over from *Rome*. I answered again, you may tell Sir *Henry Titchburn*, if he denies any thing of the Fact that I have sworn against him, he does me and himself a great Injury. And to take him off as an innocent Man, I cannot do it, I will never do it. But upon Acknowledgment, I may do them some Kindness. So likewise my Lord *Powis* and *Caryll*. The Gentlemen that he most solicited for, were, my Lord *Powis*, my Lord *Petre*, my Lord *Stafford*, Sir *Henry Titchburn*, Mr. *Roper*, Mr. *Caryll*, and one Mr. *Corker* a Jesuit. And likewise he made me easy, upon that Day that that Mr. *Whitebread* and Mr. *Fenwick* were upon their Trial; for I have enough against them, because I could be no Stranger to *Whitebread* and *Fenwick*, two such considerable Men, being so much concerned as I was in their Affairs. It

was impossible I should be so much a Stranger to them, as I said I was, but it was because Mr. *Reading* had then made me easy, and I intended to carry on the Intrigue with him, till it could be handsomly discovered. But my Lord Chief Justice asked me whether that was all I could say? And I told him, My Lord, I have something more to say, when Time and Place require it, and when I can be safe in telling it; that is, when I had found out all that Mr. *Reading* intended to do, how far he would go, and then I thought it would be a proper Time, when I could make out some such Information as I now do; but I would not stifle that Treaty that was between him and me, about the Lords in the *Tower*, which I knew was of greater Consequence than two old Priests. After the Dissolution of the Parliament, he told me, We must see other Times and other Changes, and that the Lords did not think themselves in so much Danger as when the Parliament was sitting. But at several Places, the *Palgrave-Head* Tavern, and others, we have had Discourse to the like Effect. He would very frequently come to me, and talk with me about it. Now I asked Counsel of no Man, for I have no need of it in my Matter; 'tis not Matter of Law, but Matter of Fact, that I am to make out, therefore I had no need of his Advice, but he would be at my Bedside very often in a Morning, and before I was dressed, and then we used to discourse together about this Business, and the Manner and Form how it should be done, and how well I should be rewarded if I got off those Lords, that is, my Lord *Petre*, my Lord *Powis*, my Lord *Stafford*, and Sir *Henry Titchburn*; these were the Four that made the Promises: But Mr. *Reading* solicited for the other Lords too; they did promise a noble Reward, but I could never settle or fix what it should be, but I should have Acknowledgments both in Money and Estate, from the Lords, for shortning the Evidence, and bringing them off from the Charge of *High-Treason*. We had several Consultations about this. The *Monday* that my Lord *Danby* was sent for by the Black Rod, Mr. *Reading* came to me in the Speaker's Chamber, and told me, Mr. *Bedlow*, here is a great Turn, my Lord Treasurer is sent for by the Black Rod, and Things are like to go quite another way. Well, said I, when were you with the Lords in the *Tower*? Said he, I have not been there these two or three Days, but said he, I intend to go to-morrow, and then I'll bring you word what they say. And the next Day, or the Day following, he came to me, and told me, That the Lords did think, that I was in a great measure capable of serving them now; and they would have an Account of what I could say against them, that so they might view it and correct it. Accordingly he did go, and appointed to meet the 28th of *March*. I omit several other Times that we had Consultations, and now come homeward to the Business. I had then a Command from the Lords to inspect the Papers of the *Spanish* Ambassador at *Wild-House*, and I could not meet Mr. *Reading* according to Promise, and I think the other Witnesses will give you Reasons better than I. This Appointment was on *Friday* Night; on *Saturday* Morning, he, having miss'd of me the Night before, came to my Lodging, where I had placed Mr. *Speke* and my Man ready against he came. None

of all these Conferences did I conceal, but revealed them to some of the Members of the Privy Council, to the Prince, and to my Lord of *Effex*. As soon as ever I had discoursed with Mr. *Reading* about this Matter, I did write it in the very Words, as near as I could, and gave it to the Prince, and my Lord of *Effex*, and I think your Lordships are very well satisfy'd that the Prince and my Lord knew it. And I told it to several others, as Counsellor *Smith*, Mr. *Kirby*, and several others, who I was certain would be true to the Secret, fearing that Mr. *Reading* had laid a Trap to catch me with, and therefore I was very cautious, that no Particular of the Consequence should be unknown to them. Indeed, my Lord, I was very sorry to see Mr. *Reading* should do so, for I had a very great Respect for him; and he did use to give me publick Advice in general, for the Discovery of the Plot; only for some particular People he did solicit me that I would be a little Easy, those he did solicit for. Upon the 29th of *March*, which was *Saturday* Morning, when he came into the Room, he asked me, is there no Body here that can overhear us? I told him, no, there was not. Now I had planted that Gentleman, Mr. *Speke*, behind my Hangings, and made an hollow Place in my Bed, and therein laid my Man, and cover'd him with the Rug so smooth, that it did appear as if it were but newly made, and he could not perceive there was any Body there; he would have spoke to me in the Dining-Room, but I excused it, telling him, That Madam *Greves*, who lay in the next Room, had over-heard several Discourses that I had with some Persons there, and therefore it would not be safe, but he had better go into my Chamber, (not that she could hear thro' the Wall, but it was to bring him into my Chamber;) he commended my Caution, and came in with me thither; and his first Word, as I said, was, Is there no Body that can overhear? No, said I, 'tis my Concern to look to that, that all be private: But, said I, what say the Lords in the *Tower*? What says my Lord *Stafford*, what do they intend to do? I must know speedily, for I am to give in my Information to the secret Committee of what I can say against them this Night. And I can stay no longer, but must have their final Answer, that I may know what to say when I come to the secret Committee. Saith he, I will go and get their final Answer, but pray put it off till *Wednesday*, if you can. Saith I, I cannot do that, put it off so long, but I'll do what I can to put it off till *Monday*. Well, said he, on *Monday* you shall be sure to hear from me then, and I will have all Things ready, as to what you have to say, and you shall have it from me. Accordingly I did stay till *Monday*, but the Committee of Secrecy knew it all this Time; and when I met him on *Monday*, I had ordered the Witnesses that were by to over-hear us, to be present at the Delivery of the Paper; accordingly they were there, and Mr. *Reading* did bring it in his own Hand-writing.

Reading. What Room was it you were in, pray, Sir?

Bedlow. In the Painted-Chamber. And as he gave me the Paper, pretending to put my Hand in my Pocket, I clapp'd it with my Hand privately behind me thus, and Mr. *Speke* took it out of my Hand, and he and my Man went into my

Lord *Privy-Seal's* Chamber, and there they read it, and had it three Hours before ever I saw it. Well, said I, what will the Lords do? Why, saith he, tho I have not a full Answer as to what they will do, yet you may expect a noble Reward; and I have Order to draw up blank Deeds.

Reading. Who did you give that Paper to, Sir?

Bedlow. To Mr. *Speke*, the rest will justify it, 'tis your own Hand-writing. But saith he, I have Order to draw blank Deeds to be signed in ten Days after their Discharge. And you may be sure that they shall be signed. Mr. *Reading*, said I, this is but a verbal Promise, and they may perhaps hereafter charge me, for all my bringing them off, and do me a great deal of Injury. That cannot be, saith he, my Soul and my Life for it, I have taken their Words, and, if there be any Faith, Honour and Conscience in Men, it shall be done: I dare answer for them. And, Mr. *Bedlow*, your Safety doth most consist in it; for as they must never be false with you, so they must never be at Enmity with you; for at last, if you charge them with corrupting of you, you will be able to ruin them, and it will not look ill upon you, so much as upon them. But, take my Word for it, you shall have a noble and worthy Acknowledgment. I have Authority to draw blank Deeds, both for Sums and Estates, which they will settle upon you, and likewise a speedy Supply of Money, as soon as they can get it in; for my Lord *Stafford* said, He is now cutting down Wood and selling it, and when he hath raised the Money, you shall have it; but he protests, at present he hath not now Money to defray the Charges of his Family; but I have Order at any time to give you what you need for present Occasions. And indeed accordingly I have had a great deal of Money from him, several Guineas. I had all I asked for, and many times Gold I did not ask for; upon what Terms, other Witnesses will prove better than I, hereafter. When we had done, said he, Let me see what Papers you have, the Copy of what you have accused the Queen about, and the Lords, that I may carry them to the Lords, and have their Answer. Said I, they are at my Mother's. I must needs have them, said he. So, that I might give the Witnesses leave to come out, I went with him to my Mother's Lodgings, and pretended to look for them, but found them not, for none but the secret Committee knows what is in them. But when I had look'd over my Papers, said I, my Brother, perhaps, hath got them away with him, I'll go back to my Lodgings and see. Oh! said he, you should make sure of such Copies as you have, in some Friend's Hands, to secure them, as well as the Original. I told him, I should be sure of them at Night; so he was satisfied: Tho I never intended he should have them, because there was Business of so great Consequence in them. When we came back again, we found Mr. *Speke* and my Man in the Chamber, writing. I asked Mr. *Speke* how long they had been there? he told me, as soon as I went out. Then said I to Mr. *Speke*, Pray withdraw, for now I am to have Mr. *Reading's* Instructions; if you'll go before by Water, I'll meet you at *Westminster* by and by. Then I lock'd up the Street Door, and came back to Mr. *Reading*, and then to work we fell

fell to write out those Things that he and I did conclude upon.

Reading. You say that you and I were then alone, and your Man gone away.

Bedlow. I said, that then you and I concluded upon what I should say, and what I should pitch upon they were to correct, according to what they thought would most conduce to their own Safety. And when there were any Words that seemed to urge any thing home upon them, then he would tell me what was Law, and that, perhaps, would reach them, and then altered it. And the Monday after brought a Copy to me, of his own Hand-writing, far from the Words that were set down in the Paper that he and I concluded of together, and delivered it to me privately, and I delivered it to this Gentleman, carrying it behind me thus, and he came after me and took it from me.

Sir C. Levinz. Mr. *Bedlow*, This, you say, was for the shortning of the Evidence; how was it to be shortned?

Bedlow. To take off the whole Charge of Guilt, that I had sworn against them.

Sir C. Levinz. Did that, which you agreed upon to shorten, take off from the Treason?

Bedlow. That which the Witnesses had in writing did take off the Charge of Treason wholly.

Sir C. Levinz. Was it less than the Information you had given in against them?

Bedlow. I told him, that it was not delivered into the secret Committee, but indeed I had a great while before—

L. C. J. I'll tell you what I apprehend he did say; if I mistake, he will set it right. He saith, When he came back with Mr. *Reading*, he found Mr. *Speke* and his Man in the Chamber together, he asked Mr. *Speke* how long he had been there, and how chanced he was up so soon? Mr. *Speke* said to him, I have been here ever since you went away. That, upon Mr. *Bedlow's* Desire, he went away before him to *Westminster*, and they went together to consult, and great Care was used, that they might not be hindered or surprized. Then Mr. *Bedlow* was to pen his Testimony, and it was to be carried to the Lords in the *Tower*, and they were to consider how to have it minced, that they might be out of Danger. And Mr. *Reading* understanding the Law, whenever Mr. *Bedlow* spoke plain, or dictated any thing that would come home to them, would tell him of it, and that Mr. *Bedlow* might correct and mitigate it himself. I understand you so, Mr. *Bedlow*.

Bedlow. Yes, my Lord, it was so. And that Paper, which he brought me back, was ten times shorter than that he had of mine, which was forty times shorter than what I had given in to the secret Committee.

Ward. Mr. *Bedlow* hath fully proved the Discourse and Bargain between him and Mr. *Reading*, for the lessening of his Evidence.

Bedlow. All Mr. *Reading's* Words were, That I would so shorten and lessen the Charge against them, that they might come off.

L. C. J. Mr. *Reading*, if you have a Mind to it, you have Liberty to ask him any Questions.

Reading. My Lord, I humbly desire I may do it, when the Evidence for the King is all given.

L. C. J. It is most proper to do it now.

Reading. With your Lordship's Favour, I have

this Reason for it, I do desire that the Witnesses may be examined apart.

Mr. Just. Wild. Mr. *Bedlow*, Pray let me ask you one Question. I am upon the Indictment, for the Jury is charged upon that, and we must judge upon that, Was the Agreement between you and him, that you should swear what he should direct you?

Bedlow. It was, to what he and the Lords would direct.

Mr. Just. Wild. Did the Lords correct your Paper?

Bedlow. As he said, they had done it.

Mr. Just. Wild. Did he acknowledge it?

Bedlow. Yes, he did.

L. C. J. Mr. *Bedlow*, I don't understand that you were to have any Conference with the Lords, but you were to be shy of that, lest it should be discovered, but what Conference you were to have was with Mr. *Reading*.

Bedlow. Yes, my Lord, and he was to give me an Account what they would have me say.

Mr. Just. Jones. Shew him the Paper, I suppose he will own his own Hand.

L. C. J. Is that your Hand, Sir?

Reading. My Lord, this is my Hand, and this is that Paper that I did deliver to Mr. *Bedlow* before Mr. *Speke* in the Painted-Chamber.

Ward. We desire it may be read, if your Lordship think fit.

Mr. Just. Atkins. Methinks it should be material to read the Paper that he gave to *Reading* first.

L. C. J. Have you it here, Mr. *Bedlow*?

Bedlow. No; he carried that Paper to the Lords, and brought me this again.

L. C. J. But had you never that other Paper again?

Bedlow. No, I had not.

L. C. J. Did you ever take a Copy of it?

Bedlow. No, I did not. But this is that corrected Paper that I was to give in to the secret Committee, and corrected by the Lords.

Sir C. Levinz. We do prove it in Fact, that he had before given further Evidence, and by this Agreement he did contract to give less.

L. C. J. Mr. *Reading*, what do you say to Mr. *Bedlow*?

Reading. My Lord, if I have your Lordship's Direction that I may not examine my Witnesses apart, I'll go on.

L. C. J. But what say you to the Paper?

Reading. I do own, the Paper that was shewn to me, is my Hand, and that I delivered it to Mr. *Bedlow*.

L. C. J. Then it must be read.

Sir C. Levinz. My Lord, we don't desire it should be read, for we cannot shew the former Paper, that did contain more, and therefore what will the reading of the latter, which contains less, signify?

L. C. J. If you do not desire to have it read, we won't read it.

Sir C. Levinz. Mr. *Bedlow's* Evidence is, That there was a Paper much more large than this, and yet both those short of the Information he had given in; now what will the reading of the one signify, without the other?

L. C. J. Do you consent to the reading of it?

Reading. My Lord, I would save your Time, and make it plain.

L. C. J. Mr. *Reading*, You must not come to

make your fence yet, till the King's Evidence is over.

Reading. My Lord, I do it to open his Evidence, and for your Information. My Lord, Mr. *Bedlow* charges me, That I did write in his Chamber, when his Man and Mr. *Speke* were gone, a Paper that was much larger than the Paper your Lordships have before you; he does say, that he did desire me to go with that to the Lords, and that they did correct it in several Places, and being so corrected, I did bring him this Paper back, and delivered it to him in the Painted-Chamber, before Mr. *Speke*. My Lord, I do pray your Lordship's Favour in it; when I had the King's Directions for giving in to the secret Committee what Information I had to give, I did deliver it into the Chamber, where were Mr. *Sacheverell* and others, that very Paper, which was written at his Chamber. My Lord, I have sent to him several Times, that he would deliver that to me in order to my own Justification at my Trial. I did desire likewise, that some other Papers which I did receive from Mr. *Bedlow* under his own Hand, and which would be very material to my Defence, might be brought to me, but I have not had the Favour of an Answer from Mr. *Sacheverell*, to this very Hour. I do humbly desire that he may be sent to, for the Delivery of them.

L. C. J. I do not know how we can send for them, if the Committee will not deliver them.

Reading. Will your Lordship give me leave to send to him?

L. C. J. But not by our Direction, to bring them as by our Command.

Reading. No, my Lord, but by my own Intreaty.

L. C. J. Do what you will, as from your self. Mr. *Reading*, your Wife was with me Yesterday, and said, you could not get *Subpœna's* for your Witnesses; and I sent for the Clerk about it, and he told me, there never was any *Subpœna's* denied you, but you might have had them at any Time. But what say you to this Paper, you of the King's Council?

Sir C. Levinz. My Lord, we do not desire to have it read without the other.

L. C. J. Look you here, this Paper must be read, for we would see whether there was a Paper under your Hand, expressing what Evidence Mr. *Bedlow* was to give in this Matter, and whether you did one way or other put any thing in writing which he should swear, to lessen his Evidence. As for the other Matter of tampering, we shall hear from others concerning it; but let us have this read, not for comparing it with the other Paper, to shew the Testimony is less in this than in the other, but as an Evidence of the Fact in it self, for we will expect a good Account from you, Mr. *Reading*, what you had to do to prescribe him his Evidence in writing; therefore pray read the Paper.

Then the Paper was read in hæc verba.

Lord STAFFORD.

On Discovery of the Plot, to me, I asked *Harcourt* and *le Phaire* how Things were to be managed, they told me that his Lordship was to be Treasurer, and he, and *Ireland*, and *Coleman*, had Money to defray all Charges; I then said, I never heard that his Lordship was engaged before; they said he had not been long concerned, nor was he acquainted with the Affair much;

but that the Money which was lodged with him was to be disposed of by him for the Use of the Church and the Catholics, and they had bound his Lordship up by Sacraments not to discover what the Money lodged with him was to do till the time of using it, and then his Lordship should know what great Trust he had upon him for them; and till Things were ripe he was not to be acquainted with the Depth of the Plot, for they knew he would never consent to the King's Death till it was done. His Lordship always promised to be ready to serve the Church with his Life and Fortune.

Lord POWIS.

That the Lady Abbess of *Panthois* told me, That his Lordship had sent his Daughters over to be educated in the Monastery, but that his Lordship's Lady had declared to her by Letter, that she meant them as Pledges according to her Promise, to assure her that her Lord was real to carry on what he had promised concerning the introducing the *Roman* Catholick Religion into *England*. I brought over a Letter from the Monks in *Paris*, directed to his Lordship, with several other Letters to other Popish Gentlemen, tending to the Death of the King, and subverting of the Government; but what was in that Letter to his Lordship I know not, for that I did not open it, as I had done the others, it being directed to a Peer, but I believed it might be to the same Effect, the Monks having informed me so at the delivering them to me; several other Letters to the same Effect (as the Priests told me) I saw in the Priests Hands, directed to his Lordship; but I never did read any of them, nor can I say that his Lordship ever received any of them; but I saw them put into the Post-house to send forwards, and I never saw his Lordship at any Consultation, neither did I ever hear his Lordship named at any Consultation where the killing of the King was mentioned or debated of: But I verily believe that his Lordship was acquainted with the Design of introducing Popery, for that the Lady Abbess and the Priests have several Times told me so, or to that Effect.

Lord PETRE.

Mr. *Tyrrel* a Priest, and Madam *Thimbleby* his Lordship's Sister, told me, that Mr. *Thimbleby* was gone to my Lord *Petre's* House to consult with him how to proceed in the managing of their Business. Mr. *Thimbleby* having received Letters from beyond Sea in order to the introducing the *Roman* Catholick Religion into *England*, and that his Lordship would not in any sort be perswaded to bring it in by Force, but rather by Policy; and tho his Lordship had truly engaged himself never to quit the Design, yet she was sure he would not do it by foul Means. I told her at her Husband's House at *Ernly*, that where a Design was to be carried on for so general a Good, no particular Way was to be pitched upon, but any Thing, and all Means was to be used to bring it to pass, rather than lose the Design; To which she replied, that she believed and approved the same, but that she well knew his Lordship's Mind, that he would never agree to do it by Force; but as he would not hinder it, should it go on by Force, so he would further it by any other means whatsoever.

L. C. J.

L. C. J. Here is an Evidence indeed, but so minced, that it would have signified nothing as to the Charge against them.

Bedlow. In the Information that I gave into the secret Committee, there is ten Sheets of Paper in every Evidence against every Lord.

L. C. J. Now go to the other Witnesses.

Ward. Pray swear Mr. Speke. (*Which was done.*)

Ward. Come Mr. Speke, declare your Evidence, and pray come over on this Side.

L. C. J. I would have him stand on the other Side, because Mr. Reading desires to examine them apart.

Speke. My Lords, and you Gentlemen of the Jury, I should have been very loth and unwilling to have made my self so publick as to have appeared here as a Witness against Mr. Reading the Prisoner at the Bar, upon any other Account than this: But at such a Time as this, and in such an Intrigue as this was, in which both the King and Kingdom was concerned, I thought my self bound both in Duty and Allegiance to appear in what I have done, and to testify the Truth of what I know, for the Preservation and Defence of both; and therefore shall declare to you the Treaty that was in my hearing the 29th of *March* last, between Mr. *Bedlow* and Mr. *Reading* now at the Bar, and I shall not for the World attest any thing but what I heard discoursed between them, but will relate it to you in their own Expressions, as near as possibly I can remember; and as to the Matter and Substance of what I shall declare to you to be discoursed between them, I will and can both positively swear.

But before I acquaint you thereof, I must beg leave to tell you, that I knew almost daily from Mr. *Bedlow*, for some considerable Time before, what was in the Treaty between him and Mr. *Reading*, and how they proceeded in this Affair, and therefore could the better charge my Memory with their Discourse, and with the Passages which passed between them; and Mr. *Bedlow* having himself told you that he acquainted two or three Persons likewise of very great Quality all along with this Treaty between him and Mr. *Reading*, and with Mr. *Reading*'s constant and almost daily Consultation and Advice to him upon this Account, and with his large Promises to him from these Popish Lords and other Gentlemen accused and in Custody upon the Account of this horrid Plot.

I shall not now tire your Patience so much as to acquaint you with what I had from Mr. *Bedlow* from Time to Time, after Mr. *Reading* had been with him discoursing of this Affair; but I shall be as short as I can in coming close to the Point, and therefore shall only acquaint you with the Matter and Substance of what I my self heard discoursed between Mr. *Reading* and Mr. *Bedlow* the 29th of *March* last.

The 28th of *March* last, I met with Mr. *Bedlow* here at *Westminster*, who privately told me, that Mr. *Reading* had appointed to be with him in the Evening about the old Affair, and therefore desired me to come to his Lodgings about seven a Clock, and there should be some private Place found out for me advantageously to hear their Discourse: I went to Mr. *Bedlow*'s Lodgings at *Whitehall* about the Time he desired me to come; where I met with Mr. *Reading*, who was then just come, and asking *Henry Wiggins*

whether his Master was at home; who told him that he was not; upon which Mr. *Reading* went away, and left Word with this young Man that he would come again presently, and desired him to acquaint his Master with it as soon as he came home: I staid there with this young Man a short Time after Mr. *Reading* was gone, asking him whether he could tell where his Master was, who told me he could not, but told me that there was some Company at the *King's-Head Tavern* at *Charing-Cross* which staid there for him, and that his Master would call there before he came home; upon which I immediately went to the *King's-Head Tavern*, and asked whether Mr. *Bedlow* was there; but I understood that there was some Company staying there, expecting to speak with Mr. *Bedlow*, but that he was not then come to them; upon which I went then to *Man's Coffee-house*, and staid there a while, but had ordered one of the Boys of the Tavern to come and acquaint me as soon as Mr. *Bedlow* came; but finding that no one came from the Tavern, after some time I went thither again, and understood that he had not been there, and that the Company was gone which staid for him, and then I went back again to Mr. *Bedlow*'s Lodgings, where as soon as I came, this young Man came out and told me, Mr. *Reading* was above, and staid there to speak with his Master; on which I call'd him out to me, and told him I was desired by his Master to come to be hid in some private Place conveniently to hear the Discourse between them, and therefore I contrived some way to get Mr. *Reading* out, that I might in the mean time convey my self into some private Place, where I might be able to hear their Discourse; whereupon I ordered this young Man (whilst I was walking without at some Distance) to go up and tell Mr. *Reading* that there was one which came from the *King's-Head Tavern* at *Charing-Cross* to acquaint him that his Master was there with some Company, and to tell Mr. *Reading* that his Master would not be able to get away from them, if he did not go to him; whereupon this young Man went immediately to Mr. *Reading*, and acquainted him with it according to my Desire and Direction, and then Mr. *Reading* went presently to the Tavern, and in the mean time I got up into the Bed-chamber, and placed my self between the Hangings of the Bed and the Wall; but Mr. *Reading* finding not Mr. *Bedlow* at the Tavern, went away home, and left Word with this young Man that he would be with his Master by seven a Clock in the Morning, and ordered him to acquaint his Master with it, that he might be up when he came; and as soon as *Henry Wiggins* returned back and acquainted me that Mr. *Reading* was gone home, and had left Word with him that he would be with his Master by seven a Clock in the Morning, I went home, but left Word with this young Man, that I would be with his Master by five or six a Clock in the Morning, and desired him to acquaint his Master with it. I got up the next Morning by five a Clock, and went immediately down to Mr. *Bedlow*'s Lodgings.

Reading. Sir, You are pleased to say, that the twenty-eighth of *March* you was told, that I would be there about seven of the Clock in the Morning, and that you at first met me there, and that the Appointment failing, then you

came the next Morning, which was the twenty-ninth.

L. C. J. I'll tell you how I apprehend him: The first Appointment was the twenty-eighth of *March*, which was on *Friday*, and then failing, the other was the next Morning, which was the twenty-ninth.

Speke. As soon as I came to Mr. *Bedlow's* Lodgings, I caused the Centinel to knock hard at the Door to raise them up; and in the mean time I went into *King-street*, expecting to have got into some Coffee-house or other for to drink a Dish of Coffee, whilst they were rising, but it was so early that there was no Coffee-house open; upon which I was forced to return back again to Mr. *Bedlow's* Lodgings, and then this young Man and Maid were both got up, and did let me in, and I went up immediately to Mr. *Bedlow*, and raised him out of his Bed; and somewhat before seven a Clock we plac'd this young Man upon the Bed, with the Rug only on him, and prepar'd a Place for me on the Inside of the Bed, between the Hangings of the Bed and the Wall.

L. C. J. You say he was on the Bed, and you between the Bed and the Wall.

Speke. Yes, my Lord, between the Bed and the Wall I was, and he on the Bed, and as soon as ever I heard some body knock at the Door (the Door being lock'd by Mr. *Bedlow's* Order, to give me Notice of his coming) I ran immediately into my Station before he came up, and presently after the Door was open, I heard Mr. *Reading's* Voice as he was coming up Stairs, (which I know almost as well as his Person) as he was speaking to the Maid, and afterwards to Mr. *Bedlow*, who met him either in the Passage or at the Stair-Head, and then they came both into the Bed-Chamber, (where, I believe, Mr. *Reading* little thought any Body was) tho he was so cautious as to ask whether there was no Body there that could over-hear him; to which Mr. *Bedlow* reply'd, *No, no*, or some Words to that Effect. And then Mr. *Bedlow* began, and said to Mr. *Reading*, *What say the Lords in the Tower now? and what says my Lord Stafford as to the Estate in Gloucester-shire?* To which Mr. *Reading* then reply'd, and said, *My Lord has faithfully promised me to settle that Estate upon you, and I have Orders from my Lord to draw up a Blank Deed in order to settle it on you; which Deed my Lord hath engaged to me to Sign and Seal ten Days after he shall be discharged, you bringing him off from this Charge of High-Treason, by shortning and contracting of your Evidence.* And Mr. *Reading* said, *my Lord Powis, my Lord Petre, and Sir Henry Tichburn, have faithfully engaged and promised me, that they will every one of them give you a very large and noble Reward, which shall be suitable to the Service you shall do them, by shortning and contracting of your Evidence against them, and in bringing them off likewise from this Charge of High-Treason.* To which Mr. *Bedlow* reply'd and said, *I will not rely upon their Promises only, but do expect to have something under their Hands.* To which Mr. *Reading* then reply'd and said, *They do not think it fit and convenient for them to do that as yet, but you may safely and securely take my Word, as I have done theirs, they having all so faithfully promised me to perform all I have told you from them.* And Mr. *Reading* finding that Mr. *Bedlow* doubted their Performances, according to

their Words, did moreover use these very Expressions, and said, *I'll engage my Life for it.* To which Mr. *Bedlow* then reply'd, *I'll then take your Word, as you have done theirs.* And also told him, *The Committee do press upon me to deliver in what I have to say against the Lords, and therefore I desire I may have their Answer speedily, that I may know what they intend to do, and what they do resolve upon, because I cannot well defer delivering in what I have to say against them any longer than this Night, because I hear they come very speedily upon their Trials.* To which Mr. *Reading* then reply'd, That he was sure they could not be brought to their Trials before *Easter*, telling Mr. *Bedlow* what the Parliament must do first, and how they were to proceed in this Case: That they must come down to be arraigned, and after that, they must have Time to give in their Answer, and after that they must have Time to prepare for their Trials; and told him, that he might very well defer it till *Wednesday*; but Mr. *Bedlow* told him, that he could not defer it till *Wednesday*, but he would put it off till *Monday*, and longer he could not: And then Mr. *Reading* said, that he would go presently to the Lords and acquaint them with what he said, and that he should not fail of having their Answer by him on *Monday*, and that it should be ready for him to deliver it into the Committee that Night. And after this Dialogue was over between Mr. *Reading* and Mr. *Bedlow*, they went out into the Dining-Room, and there Mr. *Reading* stay'd till Mr. *Bedlow* had quite dress'd himself, and afterwards went out both together, and stay'd away about half an Hour; and when they return'd, I and this young Man were both together in the Dining-Room, and then Mr. *Bedlow* spoke to me as if I were but just come, asking me how long I had been there; I told him I just call'd on him as I was going to *Westminster*, or somewhat to that Purpose, so that Mr. *Reading* might not any ways suspect my being there before-hand, to hear the Dialogue which pass'd between them. Mr. *Reading* then call'd for a Sheet of Paper and Pen and Ink, and went into the Bed-Chamber, speaking and desiring Mr. *Bedlow* to follow him; but after Mr. *Reading* was gone into the Bed-chamber, Mr. *Bedlow* came to me, as I was standing by the Chimney, and whispered to me, that they were then just going to draw up what they had concluded on, that the Lords might see it and correct it, as they thought fit, and that they might send him on *Monday*, in writing, what he should deliver into the Committee to swear against them; which I saw deliver'd by Mr. *Reading*, according to his Promise to Mr. *Bedlow*, on the *Monday* Morning following, in the Painted-Chamber at *Westminster*, which Paper was writ by Mr. *Reading's* own Hand, Mr. *Bedlow* delivering it to me as soon as ever Mr. *Reading* left him; and then I and another Gentleman of Quality went up immediately into the Room they call the Lord Privy-Seal's Room, where the Committee of Lords use to sit, and there Mr. *Wharton* and I read the Paper so delivered, being writ by Mr. *Reading's* own Hand.

Jury. Did you see Mr. *Reading's* Face?

Mr. Speke. Ay, between the Door and the Wicket, but not in the Room. On the *Monday* Morning following, Mr. *Bedlow* desired that I would be here at *Westminster* before-hand, and he would come thither. And he told me they were

were to correct the Paper, and he was to bring it corrected, and, said he, pray follow me, and see the Paper delivered.

Reading. What Day was that he desired you?

Speke. It was upon *Saturday*, the 29th of *March*, that I over-heard what was said, and it was upon the *Monday* morning following that I met with Mr. *Bedlow*, and he bid me go to *Westminster* before. And I did so, and when we met at *Westminster* I went after Mr. *Bedlow* at a distance: And in the middle of the Court of Requests he met with Mr. *Reading*, and they went together into the Painted Chamber, and I followed them at a distance, my Eye was very much upon them, but I saw Mr. *Reading* was very cautious that I should not see the Paper delivered; and indeed I was as shy as he, that he should not see that I took notice of it, but I did direct my Eye somewhat carelessly that way, and at last I saw the Paper delivered by Mr. *Reading* to Mr. *Bedlow*, and as Mr. *Bedlow* told you, I and another Gentleman of Quality went away to the Lord Privy-Seal's Lodgings, where we opened the Paper, and saw what was delivered to him, and read it: and this is all I have to say.

L. C. J. Shew him the Paper. Is this that Paper, that you saw him deliver to Mr. *Bedlow*?

Sir Creswel Levinz. Look upon it, Sir, is that the Paper?

Speke. Yes, my Lord, certainly I take it so to be.

Mr. Just. Atkins. He hath owned it.

L. C. J. Mr. *Reading*, if you would ask this Gentleman any Questions, this is your proper time.

Reading. I hope your Lordship will give me the favour to examine them apart.

Mr. Just. Wild. Mr. *Reading*, you do confess what Mr. *Speke* says to be true?

Reading. My Lord, I did deliver that very Paper to Mr. *Bedlow* in the Painted Chamber in the Court of Requests before Mr. *Speke*, and 'tis every word of it of my own Hand-writing.

Mr. Just. Dolben. Did you see Mr. *Reading* in the Room?

Speke. I did not see him, till he was between the Wicket and the Door.

Mr. Just. Wild. Mr. *Speke*, let me ask you one Question; did not you know his Voice?

Speke. I knew his Voice almost as well as his Person.

L. C. Baron. You are sure it was he?

Speke. Yes, I am very confident it was he.

L. C. J. And the Discourse was, that he would have it put off till *Wednesday*, but Mr. *Bedlow* would not, but only put it off till *Monday*, and then they agreed upon a Paper, an account of which Mr. *Reading* promised to give on the *Monday* following.

Speke. Yes, my Lord, it was so.

L. C. J. So that the Fact does answer the Discourse, for on the *Monday* following the Paper was delivered.

Mr. Ward. Here is only one other Evidence, and that is Mr. *Bedlow*'s Servant, that was put in the Bed, as Mr. *Bedlow* tells you. Pray I wear Henry *Wiggins*. Which was done.

Sir C. Levinz. Come on, Young-man, speak your Knowledge of this matter.

Wiggins. My Lord, what I have to say is this.

L. C. J. Speak out.

Wiggins. What I have to say, is only what Mr. *Speke* hath said before; and indeed he hath

been so very plain, and so exact in all Particulars, that I need say but little, and therefore shall be very short. My Lord, on *Saturday* the 29th of *March* last, Mr. *Reading* came to my Master's Lodging between Seven and Eight in the Morning. I was placed on the Bed, with the Rug only on me; and Mr. *Speke* was behind the Bed, between the Hangings of the Bed and the Wall. As soon as Mr. *Reading* came into the Room, he asked my Master, if there were no Body there that could hear them? My Master said, No. Then my Master asked, *What say the Lords in the Tower now?* And, *What says my Lord Stafford, as to the Estate in Gloucestershire?* Saith he, *My Lord hath promised faithfully to settle it upon you; and has given me Order to draw up Blank Deeds, which, in Ten Days after his Discharge, he will Sign:* And this was for the lessening the Evidence. I think those were the Words. And just then the Rug troubling me, that I could not hear well, I put it off my Head; and, my Lord, I saw Mr. *Reading* stand by my Master in the Chamber. Saith he, *my Lord Powis, my Lord Petre, and Sir Henry Tichburn, have all promised you a suitable Reward, to the good Service you shall do them, in bringing them off from their Charge.* Saith my Master, *I don't think fit to rely upon their Promises only; but do expect something under their Hands.* No, said he, *they don't think it convenient for them to do that, as yet; but you may safely take my Word, as well as I have done theirs: And I will engage my Life for it.* (Which were the Words Mr. *Reading* used.) Saith my Master, *The Committee do press upon me to give in my Evidence, and I cannot defer it any longer than this Night.* Saith Mr. *Reading*, *They cannot come to their Trial till Easter; because such and such Things are to be done, (as Mr. Speke hath told you) before they can come to their Trials, which cannot be done till then: And you may very well defer it till Wednesday.* No, said my Master, *I cannot; but I will do what I can to defer it till Monday.* Saith Mr. *Reading*, *I will then go to the Lords, and acquaint them with what you say; and bring you an Answer from them on Monday Morning.*

And that Day, when he came to the Painted-Chamber, I saw him deliver that Paper to my Master, and my Master carrying it behind him; and I saw Mr. *Speke* take it from him; and Mr. *Speke* and another Gentleman went afterwards together, up into my Lord Privy-Seal's Room to read it.

Jury. How long was it e're you saw Mr. *Reading*, after the Discourse in the Room?

Wiggins. I got up presently after they were gone out, and I saw them together at the Door; and as soon as they were gone, (as I told you) we both went out into the Dining-Room, and went to write down what was said: And within half an Hour, they came back again into the Room. And saith my Master to Mr. *Speke*, *What makes you so early here? How long have you been here?* Said he, *I called upon you as I was going to Westminster.* And then my Master desired Mr. *Speke* to go before to *Westminster*: And Mr. *Reading* called for Pen, Ink, and Paper; and went into the Bed-Chamber, speaking to my Master to follow him: And so we went away.

Jury. You say, That you saw him there? and not only heard them talk, but saw him?

Wiggins. When he came into the Room, the Rug was over my Head, and they spoke so softly

softly, that I could not hear him very well; but I put it off, without his perceiving me, and saw him then, and heard him plain: And when they went out again, I saw them both.

Speke. We open'd the Hangings, my Lord, a little at the Bottom, that he might not suspect any thing, and the Curtains were but half drawn, or a little more: So that, when he put off the Rug, he might easily see him.

L. C. J. Have you any further Evidence for the King?

Sir C. Levinz. My Lord, if your Lordship please, we shall trouble you with no further Evidence: We have proved it by three Witnesses.

L. C. J. Then, Mr. *Reading*, now is the time for you to make your Defence: They have concluded, that are for the King.

Reading. My Lord, I am very unwilling to spend any of your Lordship's time in vain. There is one Part of the Indictment, which I do humbly take Notice of to your Lordship beforehand; they are so far from Charging me to be of the Plot, or knowing of the Plot, that Mr. *Bedlow* hath declared the Pressingness of my Persuasions to him, from time to time, that he would be very full and positive, in Charging any Man according to his Knowledge. Therefore, I shall not spend any time, my Lord, in speaking to that. I am obliged to Mr. *Bedlow*, that he hath done me so much Right, in saying what he hath said of me about that: But I shall apply my self singly to what he hath given in Evidence against me; and what hath been spoken to, by Mr. *Speke*, and his Servant.

My Lord, the Indictment is, That I should endeavour to persuade to lessen his Evidence against those Lords, and Sir *Henry Tichburn*; that is to say, my Lord *Powis*, my Lord *Stafford*, and my Lord *Petre*: They prove nothing against me, as to the other. And, my Lord, because the Indictment doth likewise set forth, that this was done on the Behalf of these Lords, and on their Account, as it says, I shall humbly (before I go on to censure the Evidence) give your Lordship an Account, upon what Occasion it was, and how I went to see any of these Lords, and Sir *Henry Tichburn*, here mentioned.

My Lord, within a few Days after the Lords were sent to the *Tower*, Mr. *Bulstrode*, a Gentleman of the Privy-Chamber to his Majesty, did come to me, from my Lord *Stafford*; telling me, That my Lord *Stafford* desired to be remembred to me, and to pray me to come to him.

My Lord, I did tell that Gentleman, That tho I had a very great Reverence for my Lord, having known him long, and having been my Client for several Years; yet, considering how his Circumstances then were, I should not venture to go to him, till I had acquainted some of the Lords of the close Committee with it, and had their Leave.

Mr. *Bulstrode* said, I acted very prudently in it: And accordingly I did go, and acquainted the Prince, my Lord Treasurer, the Marquis of *Worcester*, and some other Lords with it: And they told me, That my Profession did privilege me to go; and God forbid, but that Respect should be shewn him, and the rest of the Lords. Hereupon, my Lord, I did go; and when I was there, I acquainted the Lieutenant of the *Tower* with it; who invited me to Dinner with him: I did so, my Lord, and my Lord *Stafford* was

there: And afterwards he did desire me to go to his Quarters with him: And being there, he told me, That I was not ignorant of what he was Charged with, and upon what Account he was there: And he was pleased to say much concerning his own Innocency. I told his Lordship, I heartily wished, it might appear he was as innocent as he said he was.

Then he desired me to move for his *Habeas Corpus*. I told him, I thought it not seasonable yet to do it: I also told him, I would not at all admit my self to be of Council for him, but for his Innocency, and as an innocent Man; with this, that I did so expressly abhor and detest the Crime that he was charged with, that tho I were of Council with him, or in the very highest Degree of Friendship imaginable, should I discover he was guilty of it, I would be so far from continuing of Council for him, that I would come in as a Witness against him.

My Lord, upon these Terms it was, that my Lord took my Advice, and he gave me my Fee, which was two Guineas.

My Lord, afterwards I was desired by several of the Lords, to speak with Sir *Henry Goring*, and Sir *John Gage*, then Prisoners in the *Tower*: And, my Lord, they did desire me, that I would move for their *Habeas Corpus's*; and, my Lord, I did so. I was then sent to by my Lord *Brudnel*, and several other Gentlemen in the *King's-Bench*, Prisoners upon this Account: And, my Lord, I did, at this Bar, move for several of their *Habeas Corpus's*. And having the Direction of the Court, that tho they did not deny the granting of the Writ; yet notwithstanding, no Benefit should be had of that Writ, unless Mr. Attorney, being attended in it, should give Consent to their being Bailed. Accordingly, my Lord, Mr. Attorney did attend in it, and he was pleased to say, That he would not do any thing for the Bailing of any, for all that the Writ was granted, till he knew what their Accusers charged them with. I then knew it was in vain to bring them up, till Mr. Attorney was satisfied.

Mr. *Scroggs* and I did go from Mr. Attorney to Mr. *Bedlow* and Mr. *Oates*: And the several Persons for whom we were of Council, being set down in a List, we did also set down our Directions from Mr. Attorney about them; and did pray them to let us know what they had to charge any of them with. And if they were easy in their Consenting to their being Bailed, then we did go to Mr. Attorney, to let him know it; and he being satisfied from their own Mouths, did consent to the Bailing of several of them.

My Lord, this did occasion my discoursing several times with Mr. *Bedlow* and Mr. *Oates*, concerning the Nature of the several Charges, against the Gentlemen they had accused. My Lord, during the whole time of my being conversant with Mr. *Bedlow*, (and he hath given your Lordship an Account how I came acquainted with him) tho I did desire Sir *Trevor Williams* might be here, and did send him a *Subpœna*, because I knew he was unwilling to come, unless he were Summon'd; and I should be glad to see him here.

Bedlow. My Lord, Sir *Trevor Williams* is in the *House of Commons*; and ordered me to send for him, if there were Occasion.

L. C. J. Then pray send for him, because Mr. Reading desires it. (*Which was done.*) In the mean time, pray, Mr. Reading, will you go on in your Defence. But all that hath been spoken, is not much to the Purpose. I would have you apply your self to the Fact Sworn, which is comprehensive of all the Indictment; and that is, what happened in the Chamber, the 29th of March last: Answer that Fact.

Reading. I shall, my Lord; but I desire Mr. Bulstrode may be Examined to those Points I have spoken to.

Bulstrode. My Lord, I desire you would hear me, for he is very much mistaken in what he hath said concerning me: For he seems to say, I came to him, which I did not do; but accidentally met him at *White-hall*.

L. C. J. Look you, unless he calls you, you are not to be called by us, as a Witness for the King.

Bulstrode. My Lord, he served me with a *Subpœna*.

L. C. J. Mr. Reading, Would you have Mr. Bulstrode examined?

Reading. Yes, my Lord, if you please; I did pray him to be here to that End.

L. C. J. In this Case, tho he be a Witness for Mr. Reading, he must be Sworn: Therefore swear Mr. Bulstrode. (*Which was done.*) Well, what do you ask him?

Reading. My Lord, all I do humbly desire is, That he will give your Lordship an Account whether he did not come unto me in the Name of my Lord Stafford?

Bulstrode. My Lord, I happened, one Day, to go see Sir William Goring, who was my Neighbour in the Country: And, as I was going out, I saw my Lord Stafford walking: And saluting him, he asked me, *Do you know one Mr. Reading, a Lawyer?* I asked him, *What Reading?* He answered, *That used to be at the Parliament-House.* I said, *I did.* Then said he, *Pray tell him, when you see him, I would speak with him, and should be glad to see him:* And in two or three Days after, I met with him; and said I, *Mr. Reading, my Lord Stafford asked me, If I knew you; and desired me to tell you, He would be glad to see you.* My Lord Stafford! said he; and seemed surprized at the Name; and I repeated it to him: And this was all that past between me and him. And this was some time in *Michaelmas Term* last.

L. C. J. Look you, Mr. Reading, we know that the Acquaintance you had with *Bedlow*, and your going to the Lords, was in *Michaelmas Term*: The *Habeas Corpus's*, and the matter of Bailing, was in *Hillary Term*, which ended the 12th of *February*; and therefore, the Business between Mr. Attorney and you, must be during *Hillary Term*. But this Fact charged upon you in the Indictment, and sworn by the Witnesses, being on the 28th, 29th, and 31st of *March*, that is a quite other Thing: And therefore, I would have you apply your self to that.

Reading. My Lord, I shall humbly observe your Lordship's Directions in that: But I desire to be heard in this other Thing also, which was in *Michaelmas Term*. I say, my Lord, they were desiring of me to advise them, whether they should move in the *House of Lords*, whence most of the Commitments were issued. For as to some, the Charge was against them in the

House of Commons, some in the *House of Lords*, some were generally Committed by my Lord Chief Justice *Scroggs*; and according to the Nature of the Cases, so they did desire me, that I would advise them, how to address themselves, by one way or other, for procuring their Liberty by Bail, or otherwise. And as to the Writs obtained, and the Bailing of several of them, it was in *Hillary Term*, which was before the Fact charged upon me. But I did give your Lordship an Account how it was, in order to have it appear naked before you; and then I should be in your Lordship's Judgment, which, I am sure, will be right. And I do say, my Lord, that afterwards I met several times with my Lord *Powis*, and my Lord *Petre*, at the Lieutenant of the *Tower's House*.

L. C. J. Here is now Sir Trevor Williams; do you desire he should be Sworn?

Reading. I do, my Lord.

L. C. J. Then give him his Oath. (*Which was done.*)

Reading. My Lord, with your Lordship's Favour, that which I desire Sir Trevor Williams to give your Lordship an Account of, is this, Whether he was not pleased to bring Mr. *Bedlow* to my Chamber, and to recommend me to him about his Pardon?

Sir Tr. Williams. My Lord, Mr. Reading was an Acquaintance of mine; and upon what I knew, I had a great Opinion of his Knowledge in the Law; and Mr. *Bedlow* was a Countryman of mine, and I was very desirous he should have his Pardon as perfect as could be: And in order to that, I recommended him to Mr. *Reading*, and desired him to be careful about it. And that is all that I can say.

L. C. J. What further Questions would you ask him?

Reading. My Lord, I desire to know of him, What Advice he hath heard me give Mr. *Bedlow*, in order to his dealing ingenuously, and my pressing of him to a full Discovery of the Plot.

L. C. J. Mr. Reading, as to that, Mr. *Bedlow* hath already clear'd it himself, that in all publick Discourses between you and him, you did carry it very plausibly; yet we will not preclude you from having your Witnesses speak to that, if you will have them examined to it.

Reading. My Lord, I will trouble Sir Trevor Williams with no more Questions.

L. C. J. You need not, as to this Point; Mr. *Bedlow* hath testified, that publickly you did advise him to make full Discoveries, and spare no Person.

Bedlow. I did say so at first, and I will do him Justice, he did really, and honestly, I believe, give me that Advice, as to all in publick, and only spoke about those Men he was concerned for, towards whom he would make me easy.

L. C. J. Pray, Mr. Reading, will you come to the Fact?

Reading. My Lord, at the time of my being examined before the Committee, I did deliver some Papers, which I had from Mr. *Bedlow*, and under his Hand, and which do concern the Evidence I am to give in my own Defence: These I do beg the Favour may be sent to me, to make use of them for my self, and I shall, as soon as the Court hath looked upon them, return them again.

Bedlow.

Bedlow. There was a Proposition about it, in the *House of Commons*; and the main Paper, which, I suppose, *Mr. Reading* desires to produce, is in *Mr. Clare's* Hand, to be produced, when called for, if the Court think fit.

L. C. J. Have you it there, *Mr. Clare*?

Clare. Yes, my Lord, I have.

L. C. J. *Mr. Attorney*, when the Prisoner calls for a Paper, which he himself delivered in, I think it is but fair it should be produced.

Mr. Att. Gen. [*Sir William Jones.*] Yes, my Lord, I do not oppose it.

Sir C. Levinz. My Lord, *Mr. Reading* must understand, that this is no Hinge from us, but he desires such a Paper, which let him make what Use of it he can.

Bedlow. I suppose it is about the Protection for *Prickman*.

Reading. *Mr. Bedlow*, if you please to answer it by and by, when it is read, and let me open it my self.

L. C. J. Here is now *Mr. Sacheverel*; what have you to say to him?

Mr. Sacheverel. My Lord, in the *House of Commons* we have received a Letter from *Mr. Reading*, by which he doth desire, for his own Justification, to have some Papers sent him, which were delivered to the Secret Committee; I suppose he means a Paper about *Mr. Prickman*, and a Letter concerning him, and likewise a Paper that contained a State of the Evidence against the Lords, which he pretended *Mr. Bedlow* had dictated to him: That, I suppose, *Mr. Clare* hath; for the other two, the *House of Commons* hath ordered me to bring them here, that if he can use them, or any other, in his own Defence, he may have free Liberty so to do.

L. C. J. Is there any other thing you would have with *Mr. Sacheverel*?

Reading. Nothing, my Lord; I humbly thank him for this Favour, and the House too.

L. C. J. *Mr. Sacheverel*, these Papers you have brought, shall be put into the Hands of *Mr. Clare*, to carry to the Secret Committee, when the Trial is over.

Mr. Just. Wild. *Mr. Reading*, pray spare me one Word; You are a Lawyer, and you know how to make your Defence, speak *ad idem*, the Thing you are Charged with, the tampering with *Bedlow* to take off his Evidence against those Lords, or else you do nothing; for we are not about the Plot in general, nor are you charged with it.

Reading. My Lord, I shall do nothing else, I shall not give you the Trouble of speaking to any thing else; my Lord, *Mr. Bedlow* will give your Lordship an Account of the Discourse that I had with him, at the Time that I had been to wait upon my Lord Chief Justice *Scroggs*; I went to him upon this Occasion, *Mr. Bedlow* desired me to go wait upon my Lord Chief Justice, to give him an Account about the particular Evidence he had given; I think it was against *Mr. Coleman*, and that he being with my Lord Chief Justice, my Lord was pleased to treat him, not as he expected from him; whereupon he fell into great Expressions of Passion, and went down Stairs, and said, It would never be well in *England*, till there was an honest Man than the Lord Chief Justice. When he had told me this, I told him, at what rate his Lordship had endear'd himself to the whole Na-

tion, by his Zeal against the Plot; however, saith he, do me the Kindness to beg my Lord's Pardon, and pray him to accept of this Paper. My Lord, I was extremely sorry, that *Mr. Bedlow* had so misbehaved himself; I had a great Kindness for *Mr. Bedlow*, I have sufficiently re-
stify'd it, and now sufficiently suffer for it: And in Kindness to him, I went to wait upon my Lord, and deliver him the Paper; I told his Lordship, that I was heartily sorry, that he had carried himself in such a manner towards his Lordship, but I did desire his Lordship to pass it by, for I did believe *Mr. Bedlow* was very sorry for it. My Lord said, It was sufficiently known that he was not a Man of Passion, but that he pitied *Mr. Bedlow*, and desired he would be more careful and discreet for the time to come, for his own sake, and for the Kingdom's; I returned to him, and gave him this Account, and what was my Lord's Advice to him. My Lord, when he had his Pardon a drawing, and when he was asked by the King and my Lord Chancellor, Who was his Friend? Who was his Council? he was pleased to say, that I was his Council, and his Friend, recommended by *Sir Trevor Williams*, as hath been proved; and when his Majesty was pleased to ask him, What Advice I had given him? he returned the King this Answer; That I had bid him speak the Truth with Courage; to spare no Man, where he could justly charge any Man; and to trust God and his Majesty for a Reward. The King was pleased to say, the Advice was honest; and bad him follow it. What I did in this matter, I did in Friendship to him, because I had a great Kindness for him: I have supply'd him with several Guineas, with a Guinea or two, when he told me he has not had Bread. He was pleased to tell me, that he was very sensible of the Service I had done him. I appeal to him, whether ever I saw a Penny of Money from him in my Life; he was pleased to tell me, that upon the receiving of the 500*l.* in the Proclamation, he would give me a Third Part, for that Service I had done him, and would certainly repay me whatsoever I had lent him, and the Fees that were due to me. And, my Lord, upon this I did likewise tell him, That he had not carried himself well, that he had been a very great Scandal, Abroad and at Home, and that he would not do himself Right, till he had advised with *Dr. Stillingfleet*, *Dr. Tillotson*, and *Dr. Lloyd*. I did advise him to go to the Chapel, and, upon Conference with those worthy Men, I desired him seriously to consider, how he could digest so many as Thirty Sacraments, which he had taken as Obligations of Secrecy; my Lord, *Mr. Wharton* was at that time by, and he hath often heard me give him Advice to this Effect. *Mr. Wharton* undertook to go to *Dr. Stillingfleet*, but he desired to be excused; I did then pray him to go to *Dr. Tillotson*, *Mr. Bedlow* told me, it was no great matter, and so likewise for *Dr. Lloyd*. He told me they were all mercenary Men, that valued 10*s.* above any Man's Soul: And at this rate he was pleased to treat them. I told him, I was very sorry, and displeased to hear him to speak so ill of Men of so great Eminency in the World for Learning and Piety. My Lord, in further discoursing with *Mr. Bedlow*, he told me he was overjoyed, that his Majesty had been pleased to take off the Confinement they were under,

under, for they had not Liberty to speak to one another; he, and Mr. Oates, and Mr. Dugdale; but when it was so granted, that they might now speak together, he told me, with exceeding Rejoicing, that they could now lay their Stories together. He did further tell me, that he had now by him several Witnesses, that whatsoever he bid them swear, they would swear; and he did confess he had not done well in some things, particularly in charging Mr. Griffith. Now, my Lord, that Mr. Griffith was Steward to Mr. Sheldon.

L. C. J. Before you go on in this kind, Mr. Reading, I must tell you, 'tis not fair: Here is Oath made of such and such Facts against you, and you talk of Discourses between you and Mr. Bedlow; either produce Mr. Bedlow to say upon his Oath what he hath told you, or else produce some other Witnesses to prove it, if you think it material: Do you think your Word shall pass for Truth, by telling this Story? All this matter will be nothing in the Case, unless you apply it to discredit the Witnesses, therefore pray produce some Proof, and we will hear it; if you'll ask Mr. Bedlow any Questions, whereby you may entrap him, and make him contradict himself; or if you will produce any other Witnesses against him, do it; but you must not be suffered to go in such Discourses as these, and spend time to no Purpose.

Bedlow. My Lord, if your Lordship please to give me leave, I will answer him.

L. C. J. Mr. Reading, I must tell you, I have as much Patience as another Man, and when you are charged with a Crime, which you your self know, and at first said, cannot be aggravated, I thought it fit you should have all fair liberty of speaking to defend your self; I have had a great deal of Patience to hear you already, and so have my Brothers: I cannot say you have spoke unskilfully; I confess your Defence is Artificial, because 'tis nothing to the Purpose: But, we must hold you to the Point; if you can say any thing to disprove the Fact of the 28th, 29th, and 31st of March, that's the whole matter that lies upon you; as to all other Things, they signify nothing.

Reading. My Lord, if I understand any thing in my own Defence, I did look upon this as so material, as nothing more. My Lord, when I did find this, I appeal to Mr. Bedlow, and ask him this Question upon his Oath, Whether I did not desire him, as I had desired him before, to speak home, in what he knew for Truth; that he would do well to remember, that this Land groaned for the shedding of innocent Blood; and whether I did not tell him, That if he should go on to add Sin to Sin, and charge any Man unjustly, to take away his Life, whether, instead of preserving the Nation, by which he thought he might well deserve of it, he might not ruin it?

L. C. J. Do you desire that he should be asked that Question?

Reading. My Lord, I do.

L. C. J. Mr. Bedlow, you hear the Question, pray answer it.

Bedlow. My Lord, I do not deny, but that he hath publickly given me such Advice, and hath charged me with doing of Wrong, in particular, to Mr. Griffith; and I do acknowledge,

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that Mr. Griffith had a great deal of Wrong; but, How was it? It was by the mistake of them that took him; the Uncle was taken for the Nephew, who was really concerned in the Plot, and that occasioned his Trouble: And I told him I was very sorry for that,

Reading. Pray, Sir, did he give you a Gold Watch?

Bedlow. Yes, he did, and I told the Committee and the Prince of it presently.

Mr. Just. Wild. Mr. Bedlow, you received several Sums of Money from Mr. Reading, by the Oath you have taken, were those lent to you, or did you take them to be given?

Bedlow. Whereas he says, That I told him I wanted Bread, it was an unreasonable Thing for me to say so, for I have five Dishes of Meat every Day allowed me, and, How could I then want Bread?

Mr. Just. Atkins. And you had good Sums of Money too given to you.

Mr. Just. Wild. But, as I understood you, you said, whenever you wanted Money, he supplied you.

Bedlow. And sometimes gave me Money when I did not ask it.

Mr. Just. Wild. But answer my Question. Did he give you that Money for the intent that you should lessen your Evidence against the Lords in the Tower?

Bedlow. This Money that I received of Mr. Reading, he told me, that he had received Orders from the Lords, that I should have what Money I came for; that at present I could not have any great Summ, because they could not have Money, for my Lord Stafford, saith he, is selling his Wood, and till that be come in, he hath not wherewithal to provide for his Family, but I have Order to let you have what you want.

Mr. Just. Wild. And he gave you Money after that?

Bedlow. Yes, he did.

Mr. Just. Wild. And upon that occasion?

Bedlow. Yes, I thought so. And whereas he says, my Lord, that I was to pay him the Money again, I must confess he was to have 100 l. a Year out of every 1000 l. a Year of my Reward.

Reading. By the Oath you have taken, was that the Reward?

Bedlow. Yes, by the Oath I have taken, so it was agreed.

L. C. J. I never knew any Man go about such a business as this without some invention to palliate it with; they don't use to go down-right in suborning Witnesses, and say, here is so much Money for you, pray forswear your self, or pray be a Knave; but, pray remember that you speak nothing but the truth, and be cautious that you don't swear too much; and so 'tis all gilded with pretence of the desire of Truth, but then they add, You shall have a very good Reward for your Care in it; but if this way should be allowed, to Bribe Witnesses to speak the Truth, or upon Colour of speaking nothing but the Truth, I cannot tell what will be Subornation. For it is always done upon this Pretence.

Mr. Just. Atkins. Mr. Reading, there fell something from your own mouth that was discouragement enough; you asked him how he could digest 30 Sacraments, which he received as Obligations of Secrecy, and advised him to go to Di-

vines to receive Satisfaction about it. That was a discouragement.

Reading. My Lord, I did not mean it so; I did as a Christian, and a Loyal Subject, advise him not to shed Innocent Blood. Mr. *Bedlow*, you have brought me here to this Bar, pray remember you and I must be at a Greater.

Bedlow. I always remember it.

Reading. Pray, Sir, answer this Question upon your Oath. Did I ever directly or indirectly desire you to lessen any one Syllable of your Evidence you knew to be true?

Bedlow. I suppose there is no need to prove that, for there are two other Witnesses have prov'd it already.

Reading. But, pray Sir, answer my Question upon your Oath.

Bedlow. Yes, my Lord, I do upon my Oath declare, That upon my bringing the Lords off from the Charge that was upon them, I was to have such a Reward, and you told me, you had order to draw up blank Deeds.

Mr. Just. *Wild.* Mr. *Reading*, pray hear me; he hath gone farther than that, and hath Sworn that he did lessen his Evidence against *Whitebread* and *Fenwick* upon your Instigation, which is not indeed in the Indictment.

Bedlow. I did then say at the *Old-Baily* (because I would not spoil the Design I had upon him, when my Lord Chief Justice asked me, if that were all I could say) I told him, it was all I could say at present, but in time and place convenient I could say more.

L. C. J. That is not the Matter in question now here, but the other Witnesses have sworn it sufficiently. The young Lad swears expressly, that he remembers his Master asked about the Land in *Gloucestershire*, and you answered you had Order to draw up a Blank Deed for the Settlement: and as for the other Lords, you told him, he should have a good Reward suitable to the Service he should do them. And you, as to that, make no kind of Defence, but think we should forget it by your long Discourse to other purpose.

Reading. I would not desire to spend your Lordship's Time in vain Discourses. It lies purely on my Negation, and his Affirmation.

Mr. Just. *Wild.* No, no, it is not; here are two more, Mr. *Speke* and his *Man*, that swear the same.

Reading. My Lord, I come to that; and I take it for granted the Law is this, That in Cases of this Nature, nay, of a much less Nature, no Man shall be accused but by lawful Witnesses; And, my Lord, I do insist upon it as Law; So is my Lord *Lovelace's* Case, and 1 & 5 Ed. 6. If mine is not Treason, yet it is a very heinous Crime; and I am in your Lordship's Judgment, whether there is a Possibility of having these, Mr. *Bedlow*, and the others, to be lawful Witnesses. Mr. *Speke*, how worthy a Gentleman soever he is, is one to whom I have done particular Service, I have lent him Money, and to this day have it not. That he should go, my Lord, and place himself behind an Hanging, and put a Servant on a Bed, to over-hear, and to Eves-drop, which is the Term of a Crime in Law. That such should pass for lawful Witnesses, my Lord, I hope it was never pretended to before, nor will be admitted against me: But, my Lord, all my

Comfort is, that when I went to him, I did never propound such a thing to Mr. *Bedlow* since I was born. And God deal with me here, and in the next World, according to the Integrity of my Heart, and the Truth of what I speak now. Yesterday Sevensnight, when I did not hope to see another *Sunday*, so spent I was with the barbarous usage I have received, I did desire Dr. *Tillotson* to give me the Sacrament, for I did not expect to live till the next morning. And I did pray him to remember, against the Time when he and I were to meet before the great God, that what I was charged with in this Indictment, is as expressly false, as ever anything that was sworn against an Innocent Man. I can but say this now, come Life, come Death, the Will of his Majesty and of your Lordships be done. There never stood a more Innocent Man at this Bar than I am of this Fact I am charged with. And I do say, my Lord, that having said this, I must, with your favour, proceed to tell you, that I desire Mr. *Bedlow* will be pleased but to give an Answer to these two Questions, and I have done. Pray Sir, by the Oath you have taken, did you lay in Provisions of Fire, Coal, and Billets behind the *Palsgrave's-Head* Tavern, and hard by *Charing-Cross*, to burn the City of *Westminster*?

L. C. J. Mr. *Reading*, we must see Justice done on all sides: if you offer to ask him any Question upon his Oath, to make him accuse himself, we must oppose it.

Mr. Just. *Dolben.* He hath his Pardon, my Lord, and it ought not to be objected against him, if so.

Reading. The Pardon of the King doth remit the Punishment, but it doth not hinder its being objected to invalidate his Testimony.

L. C. J. It doth so far set him right, that you shall not make him calumniate himself.

Mr. Just. *Wild.* No, you shall never object it against him to accuse himself.

L. C. J. Mr. *Reading*, we are in a Court of Law, and you are skilled in the Law; you have no Evidence to defend your self by, and so you think your Protestations must serve for Evidence; When that will not serve your turn, you strive to lead us out of the Way. Upon this Question to Mr. *Bedlow* there lies this Dilemma against you: Either he hath his Pardon for what you object against him, or he hath not: If he hath not his Pardon, then he is in danger of Death for the Crime, and must not accuse himself; if he hath his Pardon, it doth take away as well all Calumny as liableness to Punishment, and sets him right against all Objection. So, you know, after an Act of general Pardon, 'tis a Scandal to reproach a Man for that which he is thereby pardoned for. So that if he have not his Pardon, his Life is in danger; if he hath, neither his Life nor Name must suffer, and therefore such Questions must not be asked him. But if you have any other Questions that are pertinent to the Business, propound them, and they shall be heard and answered.

Reading. My Lord, I took the Law to be, that no Man should be accused but by lawful Witnesses, which I took him not to be, tho' he hath his Pardon.

L. C. J. I understand Lawful Witnesses, or Accusers, to be such whose Testimony is not taken

taken away by the Law; if a Man stands so in Court that he cannot be received to give Evidence, he is no lawful Witness: As if a Man be convicted of Perjury, he is not a lawful Witness, because he cannot be heard at all. But every thing that lessens the Credit of his Testimony doth not make but that he is a lawful Witness; for I take him to be a lawful Witness as long as he can be heard at all. And as for the Eves-dropping which you from the Term of Law would infer a Scandal upon Mr. *Speke*; I take it to be a thing that makes much for the Credit of the Gentleman. For he was not the Man that did first detect you, you were detected before by Mr. *Bedlow*; and as it stood only upon his Testimony, should you deny it, it was but your Negation and his Affirmation, and therefore it concerned him (being a deed of Darkness in its own Nature, when he engaged himself by his Discourse as much as you) to have some of unquestionable Integrity and Credit to detect you further in it, and for his own Vindication. And it is therefore a Credit to Mr. *Speke* that he was thought such a Person, whose Credit was not to be suspected, and so was set to convict you. So that it is so far from detracting from his Credit, that it shews him a Man reputed to be of undoubted Integrity.

Bedlow. I say this, my Lord, we did design to propose it to another Gentleman of Quality, who had been before acquainted with the Design in general, but we could not find him out to acquaint him with it.

Speke. As for what he says of Money he lent me, I will acquaint your Lordship how it was. There was a Double-Return in the Case of my Brother's Election for this Parliament, and he and the other Gentleman that stood with him (for there were four returned) had gotten Order for the hearing of their Cause, and I had taken a Copy out before, and paid Six Shillings and Eight Pence for it, or thereabouts, and afterwards Mr. *Reading* comes to my Chamber and brings me another Order, and I told him I had one already, and asked him what he paid for it, he told me Ten Shillings. Now I knew it was but Six Shillings and Eight Pence, for I had paid so before: said I, what need I have another? but I suppose my Brother will pay you. I had before recommended him to my Brother, to manage his business in Parliament, and I did desire he might be of Council for him. I knew what passed concerning the Treaty between Mr. *Bedlow* and him daily; but because he should not suspect me, I did carry my self very fairly and friendly to him, and, as I said, I desired my Brother to imploy him, and let him be of his Council, but my Brother refused, and told me he would have nothing to do with him, for, said he, I hear an ill Character of him. And the Ten Shillings for the Order is the Money he speaks of.

L. C. J. Is that all the Money he lent you?

Speke. Yes, that is all.

Mr. Just. Atkins. Mr. *Reading*, this I must say to you, your Aspersions of these Persons with being Eves-droppers, is no Aspersions at all. For it was necessary for Mr. *Bedlow* to take this Course, and it was prudent for him to make use of unsuspected Persons, to have it understood by the Mouth of more than one Witness what your Practices were. For if he had not done it, and

it had been otherwise discovered, he had been in the same danger that you are in now.

Reading. My Lord, I have done. Since Mr. *Speke* hath been pleased to give you an account of this Matter, I desire I may ask him one Question: Whether he did not come to me to be of the Council with his Brother?

L. C. J. He hath said so already.

Reading. Did not you bring this Gentleman, your Brother, to my Chamber?

Speke. Yes, I did.

Reading. Did not you desire me to draw up his Case?

Speke. Yes, I think I did.

Reading. I spent most of a whole morning in it: Pray did I ever receive a Penny of Money of you?

Speke. No. I spoke to my Brother to imploy you, but he said he had heard an ill Character of you, and he would have nothing to do with you. And you asked Ten Shillings for an Order which I had before for Six Shillings and Eight Pence.

Reading. Here is this Gentleman, Mr. *Hayes*, who hath been a Clerk there, and knows it to be Ten Shillings every Order.

L. C. J. It is not at all pertinent to the Business we are upon.

Reading. He hinder'd me from receiving a Fee from the other Side, and I am Twenty Shillings out of Pocket, and yet am thus treated for my Kindness. There were three Orders I paid for.

Speke. There were more concern'd than my Brother: You deliver'd but one to me, I know not how many you deliver'd to the rest.

Mr. Just. Wild. I am sorry you disgrace your Profession by making so weak a Defence. What say you to that which pass'd on *Saturday* morning at Mr. *Bedlow*'s?

Reading. Mr. *Bedlow* did desire me to go to the Lords in the *Tower*, to tell them that he was called upon to give in his Evidence against them, and that he could delay it no longer; and he bid me tell them, that is to say, my Lord *Stafford*, my Lord *Powis*, and my Lord *Petre*, that if they did not assure him of a good Reward he would give in such an Evidence against them as should take away their Lives, and he had Witnesses to do it, as well as he himself; but he bid me tell them, if they would give him a Reward, he would put in such an Evidence as would do them no hurt at all.

Mr. Just. Wild. This is directly against you, and within the Words of the Indictment, 'tis a Contracting with him for a Reward to lessen his Evidence against the four Lords. He told you, as you say, thus and thus, and you agreed to do as he said.

Mr. Dolben. You do speak the Truth plainly now.

Reading. My Lord, I do say this, that what I have said is true; in the Presence of God I speak it. The Lords do know this, and the Lord of Heaven doth know it, he propos'd it first to me.

Mr. Just. Atk. It is to no purpose to talk, unless you can prove it.

L. C. J. Call your Witnesses, and we will hear them. Will the Jury give in their Verdict upon your bare Assertion? We have heard you a great while, if you will call any Witnesses, do.

Sir *James Butler*. My Lord, I desire Mr. *Reading* may be asked, whether 56 Guineas were not brought by him to Mr. *Bedlow*, and paid to him for to lessen his Evidence against the Lords?

Bedlow. I had sometimes Two Guineas, sometimes more, but not any such great Summ at once, but I believe more, at several times, and he told me that he had order to supply me at any time with what I wanted.

L. C. J. Come, where are your Witnesses, Mr. *Reading*?

Reading. Here is Mr. *Palmer*, my Lord. (*Who was Sworn.*) My Lord, I desire this Gentleman may give you an account what Mr. *Bedlow* did say to me concerning the borrowing of any Money, upon the *Tuesday* Morning before I was clap'd up. The 30th of *March*, as I take it, in the Morning.

Mr. Just. *Atk.* That was *Sunday*.

Reading. It was on *Tuesday*, my Lord, the Day before he received the 500 Pounds. I believe it was the first or second of *April*. My Lord, this Gentleman was there in the Room.

Palmer. My Lord, Mr. *Bedlow* at that time had Twenty Shillings in his Hand of his Mother's, as he said: Mr. *Reading* came in, said he, Mr. *Reading*, all my Money is gone, and I have no more than this, and this I borrowed of my Mother: with that Mr. *Reading* clap'd his Hand in his Pocket, and gave him Two Guineas. God-a-mercy, saith Mr. *Bedlow*, you are an honest Man, and my chief Fountain.

Sir Cr. *Levinz.* When was this Money delivered?

Palmer. It was about three Weeks ago.

Mr. Just. *Wild.* But he tells you, you were to have a Sup out of this Fountain.

L. C. J. He doth prove this (what use you will make of it I know not) that on *Tuesday* three Weeks ago, which we find to be the first of *April*, he saw Twenty Shillings in Mr. *Bedlow*'s Hand, and he said, *This is all the Money I have*; and you clap'd your Hand into your Pocket, and gave him Two Guineas, and he said, *God-a-mercy, you are my chief Fountain*.

Mr. Just. *Atkins.* This was after you saw Mr. *Bedlow* was for your turn. This makes against you.

Reading. I desire he may be asked, whether he hath not heard Mr. *Bedlow* confess that he hath had Money several times from me.

L. C. J. Mr. *Bedlow* hath confessed it.

Reading. I desire him to tell, whether Mr. *Bedlow* did not confess, that he did lay Fewel behind the *Palgrave-Head-Tavern* to burn *Westminster*.

Bedlow. I acknowledge it; that was part of the Treason I was guilty of, and for which the King pardon'd me.

Reading. I desire to ask Mr. *Bedlow*'s Man one Question, whether your Master, when I went along with him to fetch the Privy-Seal for the 500 Pounds, did not desire me to lend him Money for the Privy-Seal?

Wiggins. He said he had no Money about him, and asked you if you had any, and desired you would lend him some; and then I said I had some, and so he said no more.

Reading. Was there any thing of the Consideration spoken of?

Wiggins. I don't know that, I could not hear it. He spoke it in the open Court, where there were a great many by.

Reading. I have several other Witnesses, that will give you an account, that when he hath not had any Money to pay a Reckoning, he hath had it from me at several times; and the very Day when he had got this Money, the 500 Pounds, and it was laid upon the Table in the Room, in the Tavern where he was, he did then desire me to let him have a Guinea for to pay the Reckoning; and he would pay me in the Afternoon.

Bedlow. I do not deny it, but that I have received several Summs of Money, for he always told me; I must trouble no Body else when I wanted Money, but him.

Mr. Just. *Atkins*. They who have to deal with Men of such Art as you are of, must use some Art with you.

Mr. Just. *Wild*. Did you ever promise to pay him back the Money again?

Bedlow. No, my Lord, but he was to have a Hundred Pounds a Year out of every Thousand Pounds a Year that I should have from them Lords.

Reading. My Lord, I do here declare, that I never had any more from the Lords in the Tower, than thus: I had from my Lord *Stafford* six Guineas, and I do not know I had one more; I had never from my Lord *Bellasis* more than two Guineas; nor from my Lord *Petre* than five, and that was at the time when I carried him the Paper, which I'll give your Lordship an account of, by and by. I never spoke to my Lord *Arundel*, tho I met him often; nor with my Lord *Porwis*, than upon this account: Mr. *Bedlow* did desire me to go and tell the Lords in the Tower, that if they did well Reward him, he would make the Charge he had against them very easy. My Lord, I did tell him, *This is an Affair which I cannot in prudence deal in, for, said I, you are a designing Man, and how you will deal with me afterwards I don't know*. Said he, *'Tis in your Power, Mr. Reading, by this that I have said, to do me a Mischief, because if you do discover what I have said to you, you will be believed, but if I should offer this against you, I shall never be believed*. And with all the Imprecations in the World I do curse my self, if I did directly or indirectly offer to perswade him to diminish his Evidence, but he proposed it to me. But, said I, *here is one Mr. Dugdale, and he may give Evidence against my Lord Stafford, tho you don't, and what will you do as to him? Believe me, said he, that I deal entirely with you, by this Token: Did not Dugdale come to you to desire you to draw up his Evidence? And so he did, my Lord, and told me he would be responsible for it*. I told him I was unwilling to meddle with such an Affair, but if he would come to my Chamber I would give him what leisure I had, in order to the drawing up of his Evidence into a Method; but he never came. Mr. *Bedlow* told me, said he, *believe me in all the rest by this Token, have a care of him, he is set on purpose to insnare you*. Saith he, *Tell from me, he shall do him no harm, for he hath promised to say nothing against my Lord Stafford, but what I will have him to say*. I desire Mr. *Bedlow* will answer this upon his Oath: Did I ever know one *Nicholas Jordan* till you acquainted me with him? Had not he some Estate in *Gloucestershire*?

Bedlow.

Bedlow. Yes, my Lord, I did tell Mr. *Reading*, that I would have such an Estate settled upon me, of my Lords, in *Gloucestershire*, and his Words to me were these: That he had Order to draw blank Deeds for the conveying of that Estate, which my Lord would sign in Ten Days after his Discharge.

Reading. He told me, that for the other Witnesses, he would do well enough with them, and desired me to tell my Lord *Stafford*, that he would do so and so, let him have but a Reward; and, believing of it, I went to the *Tower*, I asked my Lord *Stafford* if he knew one *Nicholas Jordan*; he told me he did, he had been a Tenant of some Estate of his. Mr. *Bedlow* bid me ask him, whether he should not have a Provision of Money secured to him out of that Farm. My Lord, I told him I would acquaint his Lordship with it. I did so, and my Lord *Stafford* was pleased to tell me, that he would not give him Six-pence; that he did value himself upon his own Innocency, and the Infamy of his Accusers; that if he should offer to give him any thing, he should look upon it as the greatest part of his Guilt. But, said he to me, Mr. *Reading*, this I must confess, you have been often with me, I am much indebted to you for Fees for coming to me, if you will but write a Letter to me, that you are not able to attend my Business, and neglect other Men's, at this rate of being paid; and that therefore I should not take it ill that you do not come to me any more, unless you may have an Assurance of being satisfied and rewarded for it. And, saith he, thereupon I'll write you this in Answer, That I'll give you the Sum of Two Hundred Pounds, to be paid to you within Ten Days after my Acquittal; and, saith he, I will give you this Assurance too, that you shall have this Two Hundred Pounds secured to you, as soon as ever you shall desire it. My Lord, this being the Sum; But withal remember, saith he at the same time, I do here declare, and pray do not fail of remembering it, that I will not, directly nor indirectly, promise Mr. *Bedlow* Six-pence. I went to my Lord *Powis*, from whom I never saw Six-pence in my Life, and he did declare to me, that he would not for any thing in the World be guilty of the making him a Promise of one Six-pence, (and this is certainly so); nevertheless, if Mr. *Bedlow* will not go on to do me a Mischief, as hitherto he hath done, and shall not go on to charge me unjustly, when I am acquitted, he shall find that I will do what shall be like a Gentleman, but I won't promise one Farthing.

L. C. J. You have said enough, Mr. *Reading*.

Reading. My Lord *Petre* said he would give never a Farthing.

Mr. Just. Wild. This is against your self.

Reading. I can't help it, I did it to save Innocent Blood, God's Will be done with mine, I think I was bound to do this, and I had sinned against God Almighty and my Country if I had not done it. My Lord, I did come back to Mr. *Bedlow*, and he did ask me if I had been with the Lords in the *Tower*; I did tell him, Yes; and I did ask him whether there was any Body in the Bed by him. He asked me, What say the Lords? I think I did tell him in very little different Terms from what I have now told you, be it of what Construction it will. And whereas he says, that there was a Thousand Pounds, and Writings to be drawn, I never opened my Mouth to him of such a Thing.

L. C. J. What say you to the Estate in *Gloucestershire*?

Reading. That was only to secure the Two Hundred Pounds to me, *pro Consilio impenso & impendendo*. My Lord, when that was done, Mr. *Bedlow* was pleased to tell me, for I must confess, he did desire me to give him an Account, and I did come very late, as Mr. *Speke* says. I was in his Chamber about an Hour; it seems it was that time that this Gentleman, as he says, was there, but Mr. *Bedlow* not being at home, I went away; and being to give him an Account next Morning, it seems this Gentleman was there also, for he hath sworn it; when I came I gave him this Account, and God knows it was no other; nor did I ever hear talk of any Deeds drawing.

Speke. Did not you say, that the Deed was to be Signed in Ten Days?

Reading. I did tell him, that my Lord would give me a Letter, wherein he would promise me to secure the Payment of Two Hundred Pounds within Ten Days after his Acquittal.

Speke. I say what you said. You had Orders to draw up a Deed, from my Lord of *Stafford*; which my Lord had promised faithfully to seal within Ten Days after he was discharged.

Reading. It was only a Deed for 200*l.* to be paid to me *pro Consilio impenso & impendendo*; and to be secured upon that Estate in *Gloucestershire*.

Speke. Nay, I don't know; I heard no Latin there.

L. C. J. But what is that to Mr. *Bedlow*?

Mr. Just. Wild. Why should you discourse with Mr. *Bedlow* about your Pension?

Reading. My Lord *Stafford* did say, When you have the Money, the 200*l.* do you dispose of it as you think fit.

L. C. J. This is nothing to the purpose, but an Endeavour, by multiplicity of Words, to make us forget what has been sworn. Answer the Matter of the Paper whereby the Evidence was lessened.

Reading. My Lord, upon this Mr. *Bedlow* was pleased to tell me thus in Answer: That he would take their Lordships Words; and bid me go along with him, and he would go fetch that Evidence that he had, and would put in such and such Evidence I should write, and he should dictate. I went along with him to *York-buildings*, where he said his Mother lay: And there he said he had left his Papers; but when he came there, they were not there, but he told me his Memory should serve; and we went back to the Chamber. And, my Lord, it seems these Gentlemen were there before, and Mr. *Bedlow* sent them away; and when they were gone, we went into a Room together, where he did dictate to me every Syllable I wrote. And when he had dictated, and I had writ it, I read it, and he read it again himself. And having perused it, he said, This is that which, I think, is kind to them; and this is that I can come off with well enough in saying it; for I can make it out afterwards, that it was by Hearsay. And this, saith he, do you take along with you, and carry it to the Lords, and let me have their Answer. And this is that very Paper that I did write in Mr. *Bedlow's* Chamber by his Directions, and dictated from his Mouth.

Mr.

Mr. Just. Atkins. And you did carry it to the Lords?

Reading. Yes, I did. And, my Lord, when I had done this, I did ask him this Question, (I did not direct him any one Syllable; but as he dictated, so I wrote:) What he had to say against my Lord *Bellasis*, and my Lord *Arundel*? He told me, that tho he was resolved to be kind to those Lords, yet he was resolved the other should die. And he told me, That the 4000*l.* and the 1500*l.* that was to be paid to Sir *George Wakeman*, was to be paid by my Lord *Bellasis*. And, my Lord, I began to write, and did write five or six Lines here in this Paper, and then left off. My Lord, when I had done this, I went to the *Tower* the first Opportunity; I did come to my Lord *Stafford*, and I shewed him this. He told me, That he did find that *Mr. Bedlow* would now begin to be an honest Man. My Lord, afterwards I went to my Lord *Petre*, and shewed it to him; and he did, at that Time, my Lord, give me five Guineas; and before that I never saw a Penny of his Money in my Life. I went to my Lord *Powis*, and when I came, I found Sir *Henry Tichburn* in the Chamber; and it being late at Night, and it being Parliament-time, and I having Persons that staid for me, I did desire to be excused: Tho Sir *Henry* was pleased to walk out upon the Leads, leaving my Lord and me together, yet did not I shew him any one Syllable of this Paper, nor did I say any thing to him concerning it. My Lord, I think it was upon the Monday Morning that I came to *Mr. Bedlow's*: He was not within; I then came to the *Painted Chamber*, and I was going up to the House of Lords, and *Mr. Bedlow* met me in the *Court of Requests*, or the *Painted Chamber*, one of them, and this Gentleman was with him. And there he asked me for a Paper: I had writ it out before, and 'tis this very Paper that is now with *Mr. Clare*. He did desire me after I had been with the Lords, to deliver a Copy of this to them to write it out: And I did so; and this is writ in the Third Person, the other was writ in the First Person. And, I think, there is no other Alteration in it. My Lord, that which I did deliver to this Gentleman, *Mr. Bedlow*, before *Mr. Speke*, was in the First Person, the other was in the Third. What they did with it afterwards, I cannot tell. My Lord, after this the 500*l.* was received, and he promised to pay me all, the next Morning, and prayed me that I would come to his Chamber. But when I came, I missed of him. His Clerk told me, he was gone abroad. I came here to *Westminster*; and when I came there, I went up to the *Speaker's Chamber*, to speak with my Clients there: But when I came up, the Door was fastned, and I was Arrested. My Lord, I have done; and, let it be with me, or against me, this is what I said to the Committee of Secrecy; and I speak to your Lordship under the greatest Tie and Obligation to speak Truth, in the World, that this is all I know. And whereas *Mr. Bedlow* did tell your Lordship, that this Writing that I have drawn was not as he directed, but that I had carried it to the Lords, and their Lordships did correct it, and I brought it back again; that I did bring him another Paper: That very Copy which I writ out, in the Chamber, in the Third Person, I have; and this that is produced against me, is in the First Person, and I desire

your Lordships to look upon it, and judge whether there be any Correction, more than the Alteration of the Person.

[Then both the Papers were shewn to *Mr. Bedlow*.]

Bedlow. Your Lordships may see both these Papers are fair written, without interlining: But there were above Forty Interlineations in that Paper that was written in my Chamber.

L. C. J. This agrees with what you said before, that when you did put in any thing that was home, he would correct it, and say, This is Treason, and this will charge them; and so mended it. And it was natural there should be two Papers: That which was to be kept for the Lords, was in the Third Person, importing, That He saith so and so; and the other was in the First Person, which was to be kept by *Mr. Bedlow*, for the helping of his Memory, I heard so and so; that he might know how to observe his Contract. But what say you to this, that the first Paper was, as *Mr. Bedlow* says, corrected, and had many Interlineations, and cannot, therefore, be the same with that you produce?

Reading. My Lord, I hear it; I have but this Thing to answer, let it avail me any thing or nothing. I speak it in the Presence of God, (pray favour me) this Paper is the very Paper that I did write out; there is no other Interlineation in it, than what you see. It never went out of my Hand, from the Time of my writing it in *Mr. Bedlow's Chamber*, till the Time that I shew'd it them in the *Tower*, and I did deliver it to *Mr. Sacheverel*.

Mr. Just. Wild. Ay, but there was another Paper, there was a Paper corrected according to your Intention; and then you caused this Paper to be writ out, and it was never seen since.

Reading. No other, upon my Word.

Mr. Just. Wild. But he swears it, and 'tis obvious to the least Understanding here.

Reading. My Lord, I have only this to say, That 'tis not true.

L. C. J. But it is very probable, and it is sworn to be true.

Reading. I can only say, 'Tis not true.

Mr. Just. Wild. I have one Thing to say to you: With what Colour could you justify what you did, to carry the King's Evidence to the Prisoners, if it were no more than that?

Reading. I have but this to answer for that, I did not know it was a Crime.

Mr. Just. Wild. There is no mean Capacity, but what knows that is a Crime.

Reading. I did look upon it as a Crime if I had not done it, and *Conscientia errans ligat*; it was a Point of Conscience to me to do it. I did think it a Duty I owed to God, to prevent Perjury; and a Duty I owed to my Country, to prevent innocent Blood.

L. C. J. Will you Impeach the Justice of the Kingdom in that manner? You are a Man of the Law, don't you know, that no Man ought to be of Council for a Prisoner in Felony or Treason, till they are assigned? and for you to carry the King's Evidence to the Prisoner, as you your self confess, how can you excuse it? and here are Witnesses that heard you contract with him to lessen his Evidence, and *cui bono*? Was not this out of Favour to the Lords in the *Tower*, to get them off? Now you by multiplying your Discourse, instead of vindicating your self, have spoiled

spoiled the Matter, and confessed that which amounts to the whole Charge.

Mr. Just. Atkins. And you confess you were to have two Hundred Pounds from my Lord *Stafford*, which you were to distribute, as you thought fit.

Mr. Just. Jones. And you have confessed, *Mr. Reading*, that not only you have endeavoured to take off *Mr. Bedlow*, but *Mr. Dugdale* too; for it was you first started that Point.

Reading. My Lord, I have no more. I did never desire him to speak one Word less than the Truth, and the whole Truth; but I did my Endeavour to prevent Perjury, and the shedding of innocent Blood; and this I did as a good Christian. My Lord, I did desire also to shew you this Paper, but you were pleased to over-rule it, that it should not be read.

L. C. J. We think it not material; we over-rule it not, but by way of Admittance that you say true.

Reading. Pray, will you see, is there any Variance between the two Papers?

L. C. J. There is only the Addition of the Words concerning my Lord *Bellasis*, and that was to strike Terror in him, to make him come into the Bargain too.

Reading. I desire *Mr. Bedlow* would look upon this Paper also: Is this your Writing, Sir?

Bedlow. Yes, it is.

Reading. Since your giving me this Paper in your Chamber, have you ever seen it till to Day?

Bedlow. No, I have not.

Reading. Then, my Lord, I pray this; there is one *Prickman* a Merchant in Town, that is broke, he wrote to me for a Protection, and I desired *Mr. Bedlow* that he would help him to a Protection; he said he would, and spoke to the Prince, and others of the Lords, but could not get one, for I call'd upon him to know his Answer; but withal, told me, he had a better Contrivance than any Protection could be given him from a single Lord, and that is this, That he would say, he was one of his Witnesses, and that upon that Account he would get him a Protection from the Committee of Secrecy, and they would believe whatever he said to them. I told him I did not know of what Signification that might be to my Friend; he told me, Yes, for he had given it to several already. I asked him, how he could justify it, if it were questioned? Oh, said he, let him say any thing, That he hath heard some body or other, in a Coffee-house, call me Rogue. My Lord, I never saw *Mr. Prickman* since; but saith he, Here, I'll give you this Business for the protecting of him; and he under-writ this, as from *Mr. Treby*: Pray, do not fail to come to me every Hour, to receive what Orders the Committee shall send to you by me, that we may not neglect his Majesty's special Business; and if you do receive any Lett or Hindrance, by any Person whatsoever, send to me, and I will cause those People to be so severely punished, as so great a Contempt does merit. This was, my Lord, before my Treating with the Lords, in Time, the 25th of March. My Lord, when I did find he had got such Tricks and Ways, I did apprehend and resolve (pray give me your Favour in the Expression) not to do any Prejudice to the King's Evidence; for, my Lord, I do think he is not an Evidence for the King, that does go about, by

any indirect means, to commit a Crime. But, my Lord, I think he is a Servant to the Nation, and does a very good piece of Service to the King, that goes about the taking away the Guilt of Innocent Blood.

L. C. J. Indeed, *Mr. Reading*, we must not suffer this: I told you before, that by such Discourse you impeached the Justice of the Kingdom. If you had suspected *Mr. Bedlow's* Honesty or Truth, you should have gone to the King or Council, or the Secret Committee (they are Men of Honour, and would have been astender of Mens Lives, as you or any other Man) but for you to do it of your self, in this Way, shews it is but for a plausible Excuse to colour your corrupt Dealing.

Bedlow. This Protection was given us by the Secret Committee, for *Mr. Prickman*.

L. C. J. It does not appear but that *Prickman* might be a Witness.

Reading. My Lord, I have but this, and I have done. At the Time when I was taken, I have several Witnesses to prove it, that I was resolved to give His Majesty, or the Secretaries, an Account of it; and I did ask *Mr. Bedlow* for an Account he had given against the Queen; and I had the Paper by me, at the same time when I was taken: and I have several Witnesses by me, to prove that at that Time —

L. C. J. *Mr. Reading*, this is nothing to the Purpose: Will you have done? unless you can speak to the Fact you are charged with. The Court hath had a great deal of Patience with you already.

Reading. I have done, my Lord.

L. C. J. Gentlemen of the Jury, Your Patience hath been very much exercised already, by the long Discourses *Mr. Reading* hath made; I shall therefore be short in my Directions. He stands Indicted for Suborning *Mr. Bedlow*, in the Evidence that he was to give, concerning the Lords in the Tower, that were Impeached of Treason by the House of Commons, and *Sir Henry Tichburn*. This is the Substance of the Indictment. There is an Inducement in it concerning this horrid Conspiracy, and the Persons that have been Executed for it, *Coleman*, *Grove*, and *Ireland*; but as to that, it is admitted by *Mr. Reading*, and it lies so much in every one's Knowledge, that it should hardly need to be proved. So then the Question remains only a Question of Fact, concerning Subornation of Perjury; which hath been fully proved to you, not only by *Mr. Bedlow*, who hath related the whole Transaction, but also by *Mr. Speke*, who tells you that *Mr. Bedlow* did inform him how it went on from Time to Time: And thereupon, to make the Matter plain, and to suppress so abominable a Practice, it was thought there was no better Way to discover this Deed of Darknes, and to catch a Knave, but to bring him into a Secret Place, where he might speak freely, thinking there were no Witnesses to testify against him; which was intended to have been done the Evening of the 28th of March, which was Friday: But *Mr. Reading* and *Mr. Bedlow* not then meeting, the next Morning at Seven a Clock was appointed, when *Mr. Reading* did come, and asked if no Body were there; of which being assured, he thought himself secure and secret. Then *Mr. Bedlow* asked him, What say the Lords in the Tower? What says my Lord *Stafford*?

Mr. Reading

Mr. *Reading* told him, That as to my Lord *Stafford*, he should be sure of the Estate in *Gloucestershire*, for my Lord *Stafford* had ordered him to prepare a Blank Deed, which, within Ten Days after his Discharge, should be perfected. And the rest of the Lords did assure him, That after they were acquitted, in proportion to the Service he did them, in lessening of his Evidence, he should have a very plentiful Reward. Thereupon, there arose farther Discourse. Saith Mr. *Bedlow*, I won't rely upon their Promise, I will have something under their Hands. No, saith Mr. *Reading*, that they think not convenient. Saith Mr. *Bedlow*, I must go and deliver in my Testimony to the Secret Committee immediately, and therefore, Mr. *Reading*, the Writing must be made presently, or nothing can be done. Why, saith Mr. *Reading*, can't you put it off till *Wednesday*? No, I cannot, says he. Well then, saith Mr. *Reading*, I will go speak with the Lords in the *Tower*, and I'll bring you their Answer, and be with you on *Monday* Morning. Afterwards when they went out of the House, Mr. *Speke*, and the other Witness, came from the Places where they were privately put, and they saw Mr. *Reading* going out. Mr. *Reading* and Mr. *Bedlow*, within half an Hour, came back again to the House, and were private together. Upon *Monday* Morning, Mr. *Speke* was to watch, and see the Delivery of this Paper, and he gives you a very rational and distinct Account, (and he is not a Man that the Prisoner can any way impeach in his Credit) he tells you, He saw him deliver the Paper out of his Hand to Mr. *Bedlow*, and Mr. *Bedlow* put it towards his Pocket, but afterwards put it behind him, and he followed him, and took it out of his Hand. And this Paper is here, which contains the Purport of the Evidence to be given against the Lords in the *Tower*; but so minced, that it is all but Hear-say, and nothing will touch them, as to the Matters for which they are charged: Here you have the Paper under his own Hand.

Now he comes to make his Defence; and what hath he done? He hath made a very long Discourse, but no Defence at all to the Matter of the Indictment. He says nothing against the Credit of the Witnesses, but hath confessed, in Effect, the whole Matter that he was charged with; for what had he to do, to carry the Evidence to the Lords in the *Tower*, and to go from one to another, to tell them thus and thus, and to receive Promises from them of Rewards, either in general or particular? He hath made Confession of the whole of his Charge in the Indictment; and without it, there is such undoubted Testimony, nothing impeaching the Witnesses, that I shall need to trouble you no further. Do you go together and consider of it, and we will receive your Verdict.

L. C. *Baron*. Gentlemen of the Jury, It hath been so fully repeated by my Lord, that I shall not need to do any thing of that; but there is one little Piece of the Evidence, which I desire you would take notice of: Mr. *Bedlow* says, the Paper given him upon *Monday*, in the *Painted Chamber*, which he carried behind him, and Mr. *Speke* took away, and which Mr. *Reading* brought him from the Lords, did contain ten times much milder Evidence than the Paper dictated by him on the *Saturday*; and that Paper was forty times less than that which he had given in to the Secret Committee.

Mr. *Just. Wild.* [To Sir John Cutler.] Sir John, What Paper is that you have in your Hand?

Sir John Cutler. 'Tis only the Names of the Jury, my Lord.

L. C. *J.* You do well to take the Names of the Jury with you, if you withdraw, that you may know one another: But I suppose you won't be long out.

Mr. *Just. Wild.* I spoke it, because you are to have no Papers with you, but what are under Seal.

Then the Jury withdrew, and after a short Recess, returned again to the Bar; and being called by their Names, severally answered.

Cl. of the Cr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of the Cr. Who shall say for you?

Omnes. Our Fore-man.

Cl. of the Cr. How say you, Is Nathanael Reading Guilty of the Offence whereof he stands Indicted, or Not Guilty.

Fore-man. Guilty.

Cl. of the Cr. This is your Verdict; you say, that Nathanael Reading is Guilty of the Offence whereof he stands Indicted, and so you say all.

Mr. *Just. Wild.* 'Tis a very good Verdict.

L. C. *J.* It is a very good Verdict, the Matter lay in a small Room, and I wonder how Mr. *Reading* could make it so long.

Mr. *Just. Atkins.* He was the greatest Witness against himself.

L. C. *J.* You of the Jury may take your Ease.

Then the Court adjourned till Two of the Clock, being then half an Hour past One.

About half an Hour after, the Court returned again; and Proclamation being made for Attendance, the Lord Chief Justice spoke to the Prisoner Convicted, then standing at the Bar, thus:

L. C. *J.* Mr. *Reading*, You have been here upon your Trial to-day, and you are Convicted of a very great and heinous Crime; there remains nothing now, but to receive the Judgment of the Law: And the Rule of Law is, That in all Cases the Court should consider *quantitatem delicti*, & *qualitatem personæ*, and accordingly pronounce their Judgment.

As to the Quantity of the Offence, you your self did admit in the Beginning of your Defence, that it was not capable of Aggravation, but looks rather like Treason than a Misdemeanor; and so I shall not speak to that, for any Flourishes would but sound in Diminution of it.

Then we have nothing to consider, but the Quality of the Person; and of that there might be a great deal said, if we consider your Person as a Lawyer, one that should be a Man of Knowledge, to be able to advise, a Minister of Justice, to assist the Court wherein he pleads; and ought to be a Person of untainted Fidelity, that he may keep his Clients Secrets; and for a Lawyer to be convicted for such an Offence, is that which aggravates it beyond all Expression; and I think we can do no less to evidence the Care we have of the King's People, than to shew that there shall be greater Severity used against such Persons offending; and 'tis a great Credit and Benefit

nefit to the Profession, that the Members of it for such Offences shall be dealt with more severely, than we should deal in any other Case: So far will we be from lessening it in this Respect. For I would have no Man of the Profession of the Law, that should do thus, be able afterwards to draw People to him to trust him with their Business; but his Offence should be publickly known to all the World, that Men might know him, and not employ him. In one Sense, 'tis true, he may be trusted with a Secret, by the same Reason that a known Liar may be, because his Word is never to be believed.

There is another Thing that we regard in your Person too; if you were a Man of a great Fortune, or a large Estate, I do not see but we should set that, which might be called a Ransom, rather than a Fine, in this Case; but it not being so, we have taken it into our Consideration to do it with Measure; but we will supply that Defect, by a Punishment of another Nature, according to the Old Saying, *Qui non habet in crumena luat in corpore.*

Therefore the Judgment of the Court is this; *That you be Fined 1000 l. That you be Imprisoned for the Space of one Year; And that upon Monday next, between the Hours of Eleven and Twelve, you be set in the Pillory, for the Space of one Hour, in Palace-Yard in Westminster.*

And I will tell you, Your Offence is so great, and hath such a Relation to that which the whole Nation is concerned in, because it was an Attempt to baffle the Evidence of that Conspiracy, which if it had not been, by the Mercy of God, detected, God knows what might have befallen us all by this Time; and still the Parliament have it under their Consideration, how to prevent any further Mischief by it; and for you, in such a Way as this, to do what you can to suppress the Evidence, is such a Crime, that we have Reason to suspect, that the Rage of the People will be so great against you, that it might endanger your Life. Therefore we have taken Care to give a Charge to the Sheriff, and the Justices, that the Peace might be kept, and that no ill Consequences may happen to you, but only the Shame and Infamy, to which you are condemned; and which you do deserve as well as any Man, that ever was Convinced.

Then the Court adjourned to Hicks's-Hall, upon Wednesday, the 30th of April: And the Keeper went away with his Prisoner.

On the Monday following, the Prisoner was set in the Pillory, according to the Judgment of the Court.



LXXXII. *The Trial of THOMAS WHITE, alias WHITE-BREAD, Provincial of the Jesuits in England, WILLIAM HARCOURT, pretended Rector of London, JOHN FENWICK, Procurator for the Jesuits in England, JOHN GAVAN, alias GAWEN, and ANTHONY TURNER*, all Jesuits and Priests, at the Old-Baily, for High-Treason, June 13, 1679. 31 Car. II.*

ON Friday the 13th of June, 1679, at the Sessions-House in the Old-Baily, the Court being met, at which all the Judges of England were present; Proclamation was made of Silence and Attention, whilst the King's Commission of Oyer and Terminer, and of Goal-Delivery were openly read; and after the usual Proclamation of Attendance upon the Sessions, the Court proceeded to call the Juries impanelled, and to the Trials of the Prisoners, thus:

Clerk of the Crown. Set Thomas Whitebread, John Fenwick, William Harcourt, John Gavan, Anthony Turner, and James Corker, to the Bar.

Capt. Richardson. They are all on.

Cl. of the Cr. Thomas White, alias Whitebread, hold up thy Hand; John Fenwick, hold up thy Hand; William Harcourt, alias Harrison, hold up thy Hand; John Gavan, hold up thy Hand; An-

thony Turner, hold up thy Hand; James Corker, hold up thy Hand. Which they all severally did.

And James Corker presented a Petition to the Court, to this Effect.

'That about Eight Months since, the Petitioner was Committed for refusing to take the Oaths of Allegiance and Supremacy, that he had lately received Notice to prepare himself for his Trial, against this present Day, but that the same was afterwards contradicted; and that Yesterday a Gentleman informed him from the Attorney-General, that a Bill was found against him of High-Treason, and that he was to prepare himself for his Trial thereupon accordingly; and forasmuch as the Petitioner is altogether ignorant of the Matters charged upon him in the same, and by reason thereof is absolutely

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'surprized,

surprized, and unprepared for his Defence, and divers Goal-Deliveries having been held since his first Commitment, and he never called to his Trial; he doth humbly beseech their Honours, that he may not be Tried till the next Sessions, and that in the mean time he may have Copies of such Informations as are given in against him.

Lord Chief Justice *. Mr. Corker, have you really any Witnesses, without whom you cannot make your Defence?

Corker. No, my Lord, I have none.

L. C. J. You do not understand my Question; Do you want any Witnesses now, that you may have another Time?

Corker. I am a Stranger to the Things charged upon me.

L. C. J. Can you not tell, whether you have any Witnesses or no? The Matter is this, both for you and all the rest of you, that there may be no Exception; you are upon the Trial of your Lives, and we upon our Oaths, and therefore I speak it, if so be you have any Witnesses, because you pretend you are surprized, if you have really any, whereby you can make a better Defence for your selves, than now, the Court will incline to your Request; but if you have not, then 'tis in vain to tarry.

Corker. My Lord, I verily believe I shall have Witnesses.

L. C. J. As for the Copy of the Indictment it is never granted to any Persons, and therefore must not be to you.

L. C. J. North. You must give us clear Satisfaction, that you are real in your Pretences; and must give us the Names of your Witnesses, where they live, and let us know what they can say for you, that we may be satisfied; for such a general Allegation as this, any Man living may make.

Mr. Recorder. He was one of the Ten that was appointed by the Council to be tried.

L. C. J. Why, you had Notice a Week ago.

Corker. But it was contradicted the next Day.

Capt. Richardson. I heard Mr. Clare say that he should be tried then.

Mr. Attorney General †. He had Notice together with the rest, but he was not in the first Order of Council for the Trial of these Persons; he sent to the Clerk to know who were to be Tried, and his Name was left out; and so understood he was not to be Tried. On Tuesday last I moved that he might be put into the Order, and so he was, and now there is an Order of Council for it; but he had Notice a Week ago, as well as the rest.

Capt. Richardson. I gave them Notice that all were to prepare for their Trial as this Day, and in order to that, I went to the Council, to see what Order was taken about it, and the Clerk shewed me their Names, amongst which Corker was left out; and I told him Corker had Notice of Trial, and therefore I desired I might have an Order for him too; they told me, that there was no Order taken about him.

Mr. Att. Gen. My Lord, I would have all the Gentlemen have all the fair Play in the World, therefore if he can satisfy your Lordship, that he can have any Witnesses that he hath not now, I am content the Trial should stay to another Time.

L. C. J. You shall hear the Indictment read, and there you will know what sort of Treason it is you are charged with, and after that you will make your Answer, whether you have any Witnesses.

Mr. Recorder ‡. My Lord, it will be necessary that I give your Lordship an Account of one thing. On Saturday Night there came a Gentlewoman to me, on the Behalf of all the Prisoners, and said there were some Witnesses that she was under Apprehension would not appear for the Prisoners, unless they had some Order; her Name, she told me, was Ireland, and she came in the Name of all the Prisoners, she said. I told her, if she would bring me a Note of the Witnesses Names they did desire, they should have all the Assistance the Court could give them for the getting of their Witnesses this Day; but since that Time I never heard of the Gentlewoman, or from the Prisoners.

L. C. J. Mr. Corker, you will do well to take Notice what you are charged withal, and afterwards tell us, if there are any Witnesses that can say any thing for your Defence, at your Trial for those Matters.

Cl. of Cr. You stand Indicted by the Names of Thomas White in the Parish of St. Giles in the Fields in the County of Middlesex, Clerk, otherwise called Thomas Whitebread, of the same Parish and County, Clerk; John Fenwick of the same Parish and County, Clerk; William Harcourt of the same Parish and County, Clerk, otherwise called William Harrison of the same Parish and County, Clerk; John Gavan of the same Parish and County, Clerk; Anthony Turner of the same Parish and County, Clerk; and James Corker of the same Parish and County, Clerk: For that you, as false Traitors against the most Illustrious, most Serene, and most Excellent Prince, Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. your Supream and Natural Lord; not having the Fear of God in your Hearts, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him should, and of right ought to bear, wholly withdrawing; and devising, and with all your Strength, intending the Peace and common Tranquility of this Realm to disturb, and the true Worship of God within this Kingdom of England used, and by the Law Established, to overthrow, and the Government of this Realm to subvert, and Sedition and Rebellion within this Kingdom of England to move, stir up and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him should, and of right ought to bear, utterly to withdraw, put out, and extinguish, and our said Sovereign Lord the King to Death and final Destruction to bring, and put, on the Four and Twentieth Day of April, in the Thirtieth Year of the Reign of our said Sovereign Lord K. Charles the Second, at the Parish of St. Giles in the Fields, in the County of Middlesex aforesaid; You the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt otherwise Harrison, John Gavan, Anthony Turner, and James Corker, with diverse other false Traitors, Subjects of our said Sovereign Lord the King,

* Sir William Scroggs.

† Sir William Jones.

‡ Sir George Jefferies.

King, to the Jurors unknown, falsely, subtilly, advisedly, maliciously, and traiterously, did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of England to move, stir up, and procure, and a miserable Slaughter among the Subjects of our said Sovereign Lord the King to procure and cause, and our said Sovereign Lord the King, of his Kingly State, Title, Power, and Government of his said Kingdom of England, utterly to deprive, depose, cast down and disinheret, and him our said Sovereign Lord the King, to Death and final Destruction to bring and put, and the Government of this Kingdom of England, and the sincere Religion of God within the same, rightly, and by the Laws of the same Established, at your will and pleasure to change and alter, and the State of this whole Kingdom of England, thro all its parts, well instituted and ordained, wholly to subvert and destroy, and War, within this Kingdom of England, against our said Sovereign Lord the King, to levy: And to accomplish and fulfil your said most wicked Treasons and Traiterous Imaginations and Purposes, You the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt otherwise Harrison, John Gavan, Anthony Turner, and James Corker, and other False Traitors against our said Sovereign Lord the King, to the Jurors unknown, the said four and twentieth day of April, with Force and Arms, &c. in the Parish aforesaid, and County aforesaid, falsely, maliciously, subtilly, advisedly, devilishly, and traiterously, did assemble, unite, and gather your selves together, and then and there, falsely, maliciously, subtilly, advisedly, devilishly, and traiterously, did consult, consent, and agree, our said Sovereign Lord the King, to Death and final Destruction to bring and put, and the Religion of this Kingdom of England, rightly, and by the Laws of the same Established, to the Superstition of the Romish Church to change and alter, and the Government of this Kingdom of England, to Subvert; and that one Thomas Pickering, and one John Grove, should kill and murder our said Sovereign Lord the King; and that you the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt otherwise Harrison, John Gavan, Anthony Turner, James Corker, and other False Traitors against our said Sovereign Lord the King, to the Jurors unknown, should therefore say, celebrate, and perform, a certain number of Masses, then and there amongst your selves agreed on, for the Soul of the said Thomas Pickering, and for that Cause should pay to the said John Grove a certain Sum of Money, then and there amongst your selves agreed on; and that you the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt otherwise Harrison, John Gavan, Anthony Turner, and James Corker, and other False Traitors to the Jurors unknown, in further prosecution of the Treasons and Traiterous Consultations and Agreements aforesaid, afterwards the said Four and twentieth day of April, at the Parish aforesaid, in the County aforesaid, falsely, subtilly, advisedly, maliciously, devilishly, and traiterously, did severally each to the other engage your selves, and upon the Sacrament Traiterously swear and promise, to conceal, and not to divulge the said most wicked Treasons, and traiterous Compassings, Consultations, and Purposes, aforesaid amongst your selves had, Traiterously to kill and murder our said Sovereign Lord the King, and to introduce the Romish Religion within this Kingdom of England, and the true Reformed Religion within this Realm, rightly, and by

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the Laws of the same Established, to alter and change: and that you the said Thomas White otherwise Whitebread, John Fenwick, William Harcourt alias Harrison, John Gavan, Anthony Turner, and James Corker, and other False Traitors to the Jurors unknown, in further prosecution of your said Treasons and Traiterous Intentions and Agreements aforesaid, afterwards the said Four and twentieth day of April, at the Parish aforesaid, in the County aforesaid, falsely, subtilly, advisedly, maliciously, devilishly, and traiterously, did prepare, persuade, excite, abett, comfort, and counsel, four other Persons to the Jurors unknown, Subjects of our said Sovereign Lord the King, Traiterously our said Sovereign Lord the King to kill and murder, against the Duty of your Allegiance, against the Peace of our Sovereign Lord the King, His Crown and Dignity, and against the form of the Statute in that Case made and provided.

How say'st thou Thomas White alias Whitebread, art thou Guilty of this High-Treason whereof thou standest indicted, or Not guilty?

Whitebread. My Lord, I desire to speak one word; I am advised by Council, and I may, and ought to represent it to this Court, for not only my own Life, but the Lives of others of His Majesty's Subjects are concerned in it, That upon the 17th of December last I was Tryed upon the same Indictment, the Jury was impannell'd and called, I put my self into the hands of the Jury, and the Evidence was brought in and examin'd, particularly against me, and was found insufficient, so that the Jury was dismissed without any Verdict. I humbly submit my self to your Lordships and this noble Court, whether I may not have Council in this point of Law, to advise me, whether I may and ought to plead again the second time; for according to Law, I am inform'd no Man can be put in jeopardy of his Life the second time, for the same Cause.

L. C. J. You say well, Mr. Whitebread.

Whitebread. I speak it not for my sake only, but the sake of the whole Nation, no Man should be tried twice for the same Cause; by the same Reason, a Man may be tried 20 or 100 times.

L. C. J. You say well, it is observed, Mr. Whitebread; but you must know, that you were not put in jeopardy of your Life for the same thing, for first the Jury were discharged of you; it is true, it was supposed when you were Indicted, that there would be two Witnesses against you, but that fell out otherwise, and the Law of the Land requiring two Witnesses to prove you guilty of Treason, it was thought reasonable, that you should not be put upon the Jury at all, but you were discharged, and then you were in no jeopardy of your Life.

Whitebread. Under favour, my Lord, I was in Jeopardy; for I was given in charge to the Jury; and 'tis the Case of Seyer, in 31 Eliz. he was Indicted for a Burglary committed the first of August, and pleaded to it; and afterwards another Indictment was preferr'd, and all the Judges did declare, that he could not be Indicted a second time for the same Fact, because he was in Jeopardy of his Life again.

L. C. J. Surely, you were not in Jeopardy, and I'll shew you how you were not; suppose you had pleaded, and the Jury were sworn.

Whitebread. They were so in my Case.

L. C. J. 'Tis true they were; but supposing that presently upon that some Accident falls out, a Witness is taken sick, and be feign to be carried away; or for any reasonable Cause, it should be thought fit by the Court to discharge the Jury of it, that they should not pass upon your Life, are you in Jeopardy then?

L. C. J. North. I would have you be satisfied with Reason, and the course of Law, that other Mens Lives are under, as well as yours. The Oath the Jury take, is that they shall *well and truly try, and true deliverance make*, of such Prisoners as they shall have in Charge; the Charge of the Jury is not full, 'till the Court give them a Charge at the last, after Evidence had; and because there was a Mistake in your Case, that the Evidence was not so full as might be, the Jury, before ever they considered concerning you at all, they were discharged, and so you were not in Jeopardy; and I in my experience know it to be often done, and 'tis the course of Law, the Clerks will tell you 'tis frequently done here and at other places; and this is not the same Indictment, and it contains further matter, than that you pleaded to before. And then if you will make this Plea good that you go upon, you must alledge a Record, and shew some Record to make it good, and that cannot be, because there is none, and so it will signifie nothing to you, as you have pleaded it.

Whitebread. I desire the Record may be viewed, it remains with you. I do only present this to your Lordship and the Court, and desire I may have Council.

L. C. J. No, not at all, there is no Entry made of it.

Whitebread. I desire that Council may advise me; for I am advised, that according to the Law of the Land, I ought not to plead again, and I hope your Lordships will be of Council for me.

L. C. J. Look you, Mr. *Whitebread*, there is no Entry made upon it; and the reason is, because there was no Trial; and there was no Trial, because there was no Condemnation or Acquittal; if there had been, then you had said something.

Whitebread. That which I ask is, whether I ought not to be condemned or acquitted.

L. C. J. No, it is only in the discretion of the Court. For if a Man be Indicted for Murder, and some accident should happen, (when the Witness come to prove it) that he should be taken ill, and so be carried away, should the Murtherer escape?

Whitebread. That is not in my Case; you may do as you please.

L. C. J. But we shew, that it is in the discretion of the Court to discharge the Jury upon such Accidents, and then the Party is not in Jeopardy.

Whitebread. I have only pray'd your Lordship's Discretion in this.

L. C. J. You ought to plead, and must plead.

L. C. J. North. I suppose if any of my Brethren are of another Opinion, than what we have expressed, they would say so.

Court. We are all of your Opinion.

L. C. J. All the Judges of *England* are of the same Opinion.

Mr. Record. 'Tis the constant Practice.

L. C. J. 'Tis frequent in all Places, it is no new thing.

Whitebread. My Lord, I am satisfied.

Cl. of Cr. Thomas White alias Whitebread, art thou Guilty of the High-Treason whereof thou standest Indicted, or Not guilty?

Whitebread. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Whitebread. By God and my Country.

Cl. of Cr. God send thee a good deliverance.

John Fenwick, art thou Guilty of the same High-Treason, or Not guilty?

Fenwick. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Fenwick. By God and my Country.

Cl. of Cr. God send thee a good deliverance.

Fenwick. I was tried before with Mr. *Whitebread*, our Case is the same; the only reason why (I presume) we were not proceeded against, was, because the second Witness declared he had nothing to say against us, that was Mr. *Bedlow*, who said, as to Mr. *Whitebread* and Mr. *Fenwick*, I have nothing to say against them; if he had given the same Evidence against us, as he had done against the rest, we had been condemned, and had suffered, and so I suppose we ought to have been discharged.

L. C. J. No, it was not reasonable you should be discharged; it remains in the discretion of the Court, not to let a Man, that is accused of a great and capital Crime escape, if there be one Witness that swears expressly: do you think it reasonable such a Man should go scotfree, tho' there wanted two that the Law requires? You were not in danger, your Lives were not in Jeopardy.

Fenwick. My Lord, we were in the same Danger with those Three that suffered.

L. C. J. No, we never let the Jury go together to consider whether you were Guilty, or Not guilty, we did prevent your making your Defence, because we thought it not a sufficient Charge.

Cl. of Cr. William Harcourt alias Harrison, how say'st thou, art thou Guilty of the High-Treason whereof thou standest Indicted, or Not guilty?

Harcourt. Not guilty.

Cl. of Cr. Culprit, How wilt thou be Tried?

Harcourt. By God and my Country.

Cl. of Cr. God send thee a good deliverance.

How say'st thou *John Gavan alias Gawan*, art thou Guilty of the same High-Treason, or Not guilty?

Gavan. Not guilty.

Cl. of Cr. Culprit, How wilt thou be Tried?

Gavan. By God and my Country.

Cl. of Cr. God send thee a good deliverance.

How say'st thou *Anthony Turner*, art thou Guilty of the same High-Treason, or Not guilty?

Turner. Not guilty.

Cl. of Cr. Culprit, How wilt thou be Tried?

Turner. By God and my Country.

Cl. of Cr. God send thee a good deliverance.

L. C. J. Mr. *Corker*, you have heard the Indictment read, and what it consists of, a Traitorous Endeavour to subvert the Government, to Murder the King, to change the Protestant Religion into Popery; if you have any Witnesses that can be serviceable to you, as to these matters, name who they are, and where they live; if you cannot, you had as good take your Trial now, as at another time.

Corker. I not only have no Witnesses ready, but there are substantial Circumstances, which peradventure may arise, which may induce your Lordship

Lordship to believe me Innocent, and therefore I humbly beg, I may stay some short time to consult with those that are better skill'd in the Law than I am.

L. C. J. What do you mean to have Council assigned you?

Corker. My Friends, my Lord.

L. C. J. Every Man knows his own Case best, you have been bred a Scholar, and so you cannot be so ignorant as other Men are: you can tell whether you have any Witnesses that you think are material for your Defence.

Corker. That Day of the 24th of April, spoken of in the Indictment, I truly and really believe I was not in Town that Day; but I cannot positively prove it, because I heard not of it before.

L. C. J. Is there any body that can testify where you were that Day? Can you name any one?

Corker. Yes, I believe I can name one, and that is one *Alice Gaton*, that is now thirty Miles out of Town at *Tunbridge*, who can prove where I did go about that time.

L. C. J. I'll tell you what, if my Brothers will, this Woman you suppose can say something for you, we will respite your Trial for to-day, send somebody for her, and we will Try you to-morrow.

L. C. J. North. Or any other Witnesses; for as to this 24th Day of April it is known to all the World to have been the Day of the Consult. But because you pretend a Surprise, I must tell you, that Mr. Attorney sent you Notice with the rest; but because you might be led into another Opinion that the Council did not order it, you have the favour to be put off 'till to-morrow: Get your Witnesses ready if you can.

L. C. J. If you have any other Witnesses, or desire any Order for their appearance, let us know it.

Corker. I desire I may have liberty to have my Trial put off till Monday.

L. C. J. North. No, it cannot be. Monday is the Essoign Day, and then the Commission will be out.

L. C. J. Call the Jury.

Cl. of Cr. Thomas White alias *Whitebread*, hold up thy Hand, (and so as to the rest.) You the Prisoners at the Bar, those Men that you shall hear call'd and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; if therefore you or any of you will challenge them, or any of them, your time is to speak unto them as they come to the Book to be sworn, and before they be sworn. Call Sir *Phillip Matthews*.

Whitebread. We Challenge him. My Lord, that there may not be any further trouble, it is our general Petition, that none of those that were for any of the former Trials may be of this Jury, they having already pass'd their Judgment upon the Evidence they have heard.

L. C. J. You may Challenge them. And therefore (speaking to the Clerk of the Crown) don't take any that were upon the last Jury for this Cause.

Gavan. Nor any of the former Juries; we do this that we may avoid giving your Lordship any further trouble, because if we should stay upon particulars we should too much trouble the Court.

L. C. J. North. Look you, I will tell you by the way, you have the Liberty to Challenge pe-

remptorily so many. All we can do, is to give direction to the Clerk, if he do not pursue it, we do not know them, we can't tell, you must look after that.

Mr. Record. You have the Books, wherein are Notes of all their Names, by you.

Then the Jury that were Sworn were these Twelve.

Thomas Harriott.

William Gulston.

Allen Garraway.

Richard Cheyney.

John Roberts.

Thomas Cash.

Rainsford Waterhouse.

Matthew Bateman.

John Kaine.

Richard White.

Richard Bull, and

Thomas Cox.

Cl. of Cr. Cryer, count these: *Thomas Harriot.* *Cryer.* One, &c.

Cl. of Cr. Thomas Cox.

Cryer. Twelve good Men and true, stand together and hear your Evidence.

Then the usual Proclamation for Information was made, and the Jury-Men of Middlesex, Summon'd and not Sworn, were dismiss'd till next Morning Eight of the Clock.

Cl. of Cr. Thomas White, alias *Whitebread*, hold up thy Hand; (and so to the rest.) You Gentlemen that are Sworn, look upon the Prisoners, and hearken to their Cause; they stand Indicted by the Names of *Thomas White*, &c. (put in the Indictment *Mutatis Mutandis*) and against the Form of the Statute in that Case made and provided. Upon this Indictment they have been Arraigned, and thereunto have severally pleaded Not Guilty, and for their Trials have put themselves upon God and their Country, which Country you are. Your Charge is to enquire, whether they or any of them are Guilty of the High-Treason whereof they stand Indicted, or Not Guilty. If you find them, or any of them, Guilty, you are to enquire what Goods or Chattels, Lands or Tenements they had at the time of the High-Treason committed, or at any time since. If you find them, or any of them, Not Guilty, you are to enquire whether they fled for it; if you find that they fled for it, you are to enquire of their Goods and Chattels, as if you had found them Guilty: if you find them Not Guilty, nor that they nor any of them fled for it, say so and no more, and hear your Evidence.

Then *Mr. Belwood*, of Council for the King in this Cause, open'd the Indictment thus:

May it please your Lordship, and you Gentlemen of the Jury;

The Prisoners at the Bar, *Thomas White* alias *Whitebread*, *John Fenwick*, *William Harcourt* alias *Harrison*, *John Gavan*, and *Anthony Turner*, together with *James Corker*, stand Indicted of High-Treason; 'tis charged in the Indictment, That the 24th of April, in the Thirtieth Year of the King that now is, these Persons, with other Traitors unknown, did purpose and conspire to stir up Sedition and Rebellion; to cause a miserable Slaughter of the King's Subjects; to depose the King of his Government, and bring him to Death; and to change the Government and Religion by Laws established, and to Levy War against the King. And 'tis further charged in the Indictment, that pursuant to this Intention of theirs, and the better to bring it to pass, They did Assemble, Consult and Agree, first, to bring

bring his Majesty to death, to murder the King, and thereupon to change the Religion established by Law, to the Superstition of the *Romish* Church, and to subvert the whole Government; and it was agreed, that *Pickering* and *Grove* should murder the King, and that therefore *Whitebread*, and the rest of the Persons Indicted, should say a number of Masses for the Soul of *Pickering*: and *Grove*, for this Piece of Service, was to have a Sum of Money. And the Indictment says further, That these Persons did take the Sacrament, to commit this Treason with more Secrecy; and that they did likewise Prepare, Excite, Abett and Counsel Four other unknown Persons to kill the King at *Windsor*. All these Facts are said to be done Advisedly, Maliciously, Traiterously and Devilishly, and against their Allegiance to the King. To this they have pleaded Not Guilty; if the King's Evidence prove it, you are to find it so.

And then Sir Creswel Levinz, one of the King's Learned Council in the Law, open'd the Charge thus:

May it please your Lordship, and you Gentlemen of the Jury;

These Prisoners at the Bar, are by Persuasion Papists, by Order and Degree they are all Priests. By the Law of the Land, viz. by a Statute made the 27th of *Eliz.* they are all Guilty of Treason, for being Priests, and they might be Tried as such, and ought to die for it; but that is not the Fact they are charged with, nor will they have the satisfaction to say that they suffer for their Religion: No, they are charged with a Treason of a blacker and darker Nature. And tho I must tell you, that it is now almost an hundred Years ago since that Statute was made against Priests coming into *England*, yet Examples have been very rare, that any of this sort of Men have died for their Religion, within that Queen's Time, or any of her Successors; yet they have died upon worse Accounts, and upon such Accounts as they are now brought to this Bar for. Such is the difference between their Religion and Ours, they have been suffered to live here under a Law by which they ought to die. They kill the Protestants by Thousands, without Law or Justice, witness their bloody Doings at *Mirendol*, their Massacre at *Paris*, their barbarous Cruelty in *Ireland*, since the Year 1640, and those in *Piedmont*, since 1650. But these are not the Crimes they are Charged with, they are not accused for their Religion, but for the blackest and darkest Treason that Men can be Charged with. They are Charged with an Endeavour to Murder the King, under whose Protection they lived. This Murder of the King hath been carried on in the Design of it, with all the Malice and Resolution that can be, from the first Time that we can give you an Account of it, which was the 24th of *April*, 1678. when these Persons, and several others, did first assemble about other Matters of their own, and among the rest to Murder the King: There they came to a Resolution that it should be done, and Persons were appointed to do it, these were *Grove* and *Pickering*, who have been Executed for it; they were to kill the King in *St. James's Park*, but it pleased God, that the Flint of the Pistol failed, to which we are more beholden, than to them, that he escaped that time. They were

not satisfied with that, but they send down Four Butchers to murder him at *Windsor*, who being disappointed, they sent down others after that to murder him at *New-Market*; and when all these failed, they had Recourse to that Treacherous and Unmanly Way, of Poysoning him, and hired one so to do; and they did not only intend to murder the King, but to make it good by Force when they had done. They intended to raise an Army; they had got Commissions to several Persons in the Kingdom, to command these Forces. They designed to raise 50000 Men, to maintain the Injustice, when they had done it. And that was not all, they had Recourse to Foreign Assistance, and depended upon Foreign Succours, if they were not made good at home. Gentlemen, they have been disappointed in all these Things; they had an Intention further (as I find it in my Brief,) to make a general Massacre of all Protestants here. A Thing that they have done, and we have heard of Abroad, but Thanks be to God, we never knew it Experimentally at Home. And I hope God that hath preserved us hitherto, will preserve us still.

The Mercy these Men have met with, in being suffered to live under the Danger of the Statute, by which they might have justly died, hath not prevailed upon or bettered them at all, but been turned into monstrous Ingratitude, and made them more desperate than other People would have been. Gentlemen, when all this is opened, I must tell you, if these Persons be Innocent, God forbid they should suffer, but if they be Guilty, surely they are not fit to live among Men: And truly if they be Guilty, they do not only deserve to die, but to die a more cruel and miserable Death, than either the Mercy of our Prince, or the Moderation of our Laws hath provided for such Offenders. I shall detain you no longer, but will call the Witnesses, and then you shall judge whether they be Guilty or not. And we begin with Mr. *Oates*. *Who was Sworn.*

Sir Cr. Levinz. Pray what can you say to these Gentlemen? Begin with Mr. *Whitebread* first.

L. C. J. Mr. *Oates*, apply your Evidence as distinctly as you can to one Person at first, unless where the Matter will take in all, or more than one of them.

Oates. My Lord, I have Evidence I desire may be called in, I shall have Occasion to use them.

Gavan. It may be inconvenient. He may instruct his Witnesses.

L. C. J. *North.* No, he shall not, for we will take care of that: But name your Witnesses.

Oates. There is Sir *Richard Barker*, Mr. *Walter*, a Minister, Mrs. *Mayo*, *Philip Page*, Mr. *William Smith*, and one Mr. *Clay*, Mr. *Butler*, Mrs. *Sarah Ives*.

Mr. *Just. Atkins.* Take a Note of their Names, and send for them.

L. C. J. Now, Mr. *Oates*, go on with your Evidence; and when there is Occasion to make use of these Persons they shall be call'd.

Oates. The Prisoner at the Bar, Mr. *Whitebread*, was made and constituted Provincial, so as it was publickly known to us, in the Month of *December* last was Twelve-month; and he did order, by Vertue of his Authority, one Father *George Conyers* to preach in the Sodality of the *English Seminary*, on the Holy-day which they call

call *St. Thomas of Canterbury*, i. e. *Thomas of Becket's Day*, in which there was Order given that *Mr. Conyers* should preach and assert this Doctrine; That the Oaths of Allegiance and Supremacy were Heretical, Antichristian, and Devilish: Accordingly, this Order was Executed, and the Sermon preached. *Mr. Whitebread*, in the Month of *January*, wrote Letters (or, at leastwise, in the beginning of *February*, I will not be positive as to the Time, because it does not occur to my Memory,) to *St. Omers*, concerning the State of *Ireland*, of which he had an Account from Archbishop *Talbot*, who wrote him Word, that there were several Thousands of *Irish* that were ready to Rise, when the Blow should be given in *England*.

L. C. J. Was that in *Whitebread's* Letter?

Oates. Yes, my Lord, and *Mr. Whitebread* did say, He did hope it would not be long ere it was given. Now, my Lord, by the Word, *Blow*, we did use to understand, and had Instructions to understand, the Death and Murder of the King; and in the Month of *January*, I think it was, that he sent over two Jesuits into *Ireland*, to see how the State of Affairs stood there: In the beginning of *April* they return'd, of which we had an Account from *Mr. Whitebread*, by Letters, wherein there was mention of a Consult to be held in the Month of *April*, Old Stile, and *May*, New Stile; and according to the Order there given, there met at that Consult, the Prisoners at the Bar, *Whitebread*, *Fenwick*, *Harcourt*, and *Turner*, and, if it please your Lordship, all these at that Consult did sign a Resolve, *Mr. Whitebread* at his Chamber, which was at *Wild-House*, *Mr. Fenwick* at his Lodgings in *Drury-Lane*, and *Mr. Harcourt*, who had some at his Chamber in *Duke-Street*. But, my Lord, I am to premise this, before I go any further, That the Consult was begun at the *White-Horse* Tavern in the Strand, and there they did agree to send *Father Cary* to be their Procurator at *Rome*; and after some such Things were done, they adjourned into several Clubs or Colloquies, or what you please to call them. One was at *Mr. Whitebread's* Chamber, another at *Ireland's* Chamber, that is Executed, another at *Harcourt's*, and another at *Fenwick's*; now here was a Resolve Signed by these Prisoners at the Bar, in which—

L. C. J. That is four of them, *Whitebread*, *Fenwick*, *Harcourt* and *Turner*.

Oates. Yes, my Lord.

L. C. J. Was *Gavan* there?

Oates. I dare not, my Lord, affect him with that, because I cannot be positive, but I'll give you my Evidence against him by and by. My Lord, these four Gentlemen, with the rest of their Accomplices, did sign a Resolve, which was this, *That Pickering and Grove should go on in their Attempt to dispatch the King*; and this they did resolve upon, and gave it as their Judgment, as a very excellent Expedient. My Lord, after this Consult we did return, (we were Eight or Ten that came over) and may it please your Lordships, in the Month of *June*, (I think it was *June*) he came to *Flanders*, in order to visit his Colleges, being Provincial of the Jesuits of *England*: He did stay there (as near as I can remember) till the 10th of *June*, and enquiring of the Fathers how Squares went in Town, among other Expressions he used, this was one, *That he hoped to see the black Fool's Head at Whitehall laid fast*

enough; and that if his Brother should appear to follow in his Footsteps, his Passport should be made too, (or to that Purpose) he should be dispatch'd. Upon the 13th of *June*, Old Stile, the 23d New Stile, I had Orders to come for *England*; according to which Order I came, and did take the *Pacquet-Boat*, as near as I can remember, the 24th, which was the 14th Old Stile, and we landed at *Dover* the 25th, very early in the Morning; and when I was at *Dover*, I met with the Prisoner at the Bar, *Mr. Fenwick*, and he, myself, and some others, did take Coach, and come as far as *Canterbury*; after we had eaten and drunk there, we came six Miles further, where there was a Box seized by the Searchers of the Town of *Borton*, and this Box was brought up by *Mr. Fenwick*, and directed to one *Blundel*, and the Superscription was, as near as I can remember, in these Words, *To the Honourable Richard Blundel, Esq; at London*. And this Prisoner at the Bar, *Mr. Fenwick*, did desire that the Searchers would send it to him, (it was full of Beads and Crucifixes, and such Things) to the *Fountain-Tavern* near *Charing-Cross*, and write a Letter to him, by the Name of *Mr. Thompson*, as that was the Name he usually went by, when he came to *Dover*, and he had then brought some Students there, to send over to *St. Omers*.

L. C. J. When went *Fenwick*?

Oates. When I came to *Dover*, I met *Fenwick*, by the Name of *Thompson*, going to send over the Students, and *Fenwick* did say, If they had searched his Pockets, as they had searched his Box, they had found such Letters, as would have cost him his Life; for, saith he, they were about our Concern in hand. Then we came up to *London*, and arrived at *London* the 17th of *June*, Old Stile, for we lay a part of the way at *Sittenburn*, in the Morning, and in the Afternoon we came to *Darford*, and came to *London*, Monday Noon, the 17th, Old Stile. And in the Month of *July*, there was one *Richard Ashby*, whose right Name indeed is *Thimbleby*, but he went by the Name of *Ashby*, and this Gentleman did bring over Instructions from the Prisoner at the Bar, *Mr. Whitebread*, who was abroad in *Flanders*, wherein he was to propose 10000*l.* to *Sir George Wakeman*, to poison the King; and several other Instructions there were, of which I cannot now give you an Account; and withal, that a blank Commission should be fill'd up, and ordered for *Sir John Gage*, to be a Military Officer in the Army, and by that Gentleman's own Order I delivered that Commission into *Sir John Gage's* own Hand, on a Sunday.

L. C. J. Where had you that Commission, from *Whitebread*?

Oates. It was Signed and Sealed by him, but it was a Blank, and was to be fill'd up.

L. C. J. Where?

Oates. It was at *Wild-House*.

L. C. J. How was it fill'd up?

Oates. It was fill'd up by *Mr. Whitebread's* Order, it was Signed and Sealed blank, and he ordered it to be fill'd up, and me to take that Commission, and carry it to *Sir John Gage*.

Whitebread. Did I order you?

Oates. You ordered *Ashby*; I saw the Letter, and knew it to be *Whitebread's* Hand.

L. C. J. Was it before he went to *St. Omers*?

Oates. It was while he was at *St. Omers*.

Whitebread. What Day was it? what Hour?

Oates.

Oates. It was in *July*.

Whitebread. What time of the Month?

Oates. The beginning, or middle.

Whitebread. Are you sure it was in *July*?

Oates. I cannot be positive, but I think it to be in *July*, for *Ashby* went to the *Bath* the latter end of *July*, or the beginning of *August*, and it was before he went.

Whitebread. Who was present at the Signing of this Commission?

Oates. There was present at the filling up of this Commission, Mr. *Harcourt*, Mr. *Ashby*, and Mr. *Ireland*.

Fenwick. Was not I there?

Oates. I think I fill'd it up. I'll tell you when you were there presently. My Lord, when *Ashby* went away, *Fenwick* went out of Town, but returned again presently, to give an Account how Squares went, and really I cannot remember where he had been, but as near as I can, it was in *Essex*, I will not be positive in it; but my Lord, this same Gentleman, Mr. *Fenwick*, with Mr. *Harcourt*, did advise Mr. *Ashby*, that as soon as he had been at the *Bath*, he should go and give an Account to the People in *Somersetshire*, and there-away, his Circuit would be short and very easy, and he did not question, but before he came up to Town again, to have the Gentleman at *Whiteball* dispatch'd, whom they call'd the *Black Bastard*; now I leave that to the Jury, to expound whom they meant by it.

Fenwick. What Time was that, Sir, pray? You must time Things, or you do nothing at all.

Oates. It was the latter end of *July*, or the beginning of *August*, it was about the Time of *Ashby's* going to the *Bath*.

Fenwick. Just now he said, it was in the beginning or middle of *July*.

Oates. I'll tell your Lordship what I said, that this *Ashby*, or *Thimbleby*, came from St. *Omers* with those Orders or Instructions, either the beginning of *July*, or the middle of *July*.

Fenwick. I would not interrupt you, Mr. *Oates*, this was some time before Mr. *Ashby* went to the *Bath*, was it not?

Oates. It was about a Day before.

L. C. J. He says a Thing that is plain enough: *Ashby* came over about the beginning or middle of *July*, with Instructions about the Commission; and about the latter end of *July*, or beginning of *August*, as he remembers, this Advice was given.

Oates. And so we are arrived at the Affairs in *August*, which reflects upon these Gentlemen; but now I must speak a Word to this Gentleman, Mr. *Gavan*, the Prisoner at the Bar, whom when I saw come into the Lobby, he had gotten on a Perriwig; so there was one asked me, whether I knew him? I know him now, but truly then I did not well know him, because he was under that Mask, and I could not say any thing against him then, because he being under an ill-favoured Perriwig, and being a Man that I knew had a good Head of Hair of his own, I did not well understand the Mystery of it, and so spared my Evidence at that Time, from informing the Council against him; but the Prisoner at the Bar came by the Name of *Gavan*, and we used to call him by the Name of Father *Gavan*: And this Gentleman did in the Month of *June* write Letters

Gavan. What Year?

Oates. In the Year 1678, and did give the Fathers at *London* an Account how Affairs stood in *Staffordshire* and *Shropshire*, and how diligent one Father *Evers* was to manage Affairs in those Countries.

Gavan. From whence were those Letters sent?

Oates. There was only the Day of the Month, you know it is not the Custom to date the Place. When I saw the Letter first, I did not know it was his Hand, I took it upon Report; but I will tell the Jury, by and by, how I came to know it was his Hand: As near as I can remember, it was in the Month of *July*, (it was *July* or *August*) this Gentleman came to Town, and I saw this Gentleman at Mr. *Ireland's* Chamber.

Gavan. What Time of the Month?

Oates. It was in *July* 1678, as near as I can guess.

Gavan. Upon my Salvation, I am as innocent as a Child unborn.

L. C. J. North. By this means you may put out any Witness in the World, by interrupting of them. When the Witness hath done his Testimony, you may ask him any Questions, to ascertain the Time, or any thing, but you must not interrupt him till he hath done.

Oates. In the latter part of *July*, I think it was, but it was, as I remember, while Mr. *Ashby* was in Town, I met him at Mr. *Ireland's* Chamber, for he was a saying he would go see Father *Ashby* before he went out of Town, and he gave such an Account to Father *Ireland*, of the Affairs in *Staffordshire* and *Shropshire*, as he had given in the Letters before; but to prove his Hand, he did draw a Bill upon one Sir *William Andrews* in *Essex*, for the Payment of some Money, of some little sucking Priests, that were stroling up and down the Country. I saw him write it, and it was the same Hand with that Letter.

Gavan. What did I write?

L. C. J. You drew a Bill upon such a Person, and he names him.

Oates. We are now come to *August*.

L. C. J. But you say he discoursed about the same Things with *Ireland*, that he had wrote in the Letter.

Oates. Yes, my Lord.

Gavan. And what were those same Things?

Oates. Why, how the Affairs stood in *Staffordshire* and *Shropshire*, how my Lord *Stafford* was very diligent. I desire to be excused as to that, because it will diminish my Evidence in another Part of it: I'll tell you part of what was then discoursed of.

Gavan. My Lord, he is sworn to speak all the Truth.

L. C. J. You must speak the whole Truth, as far as it concerns any of these Persons.

Oates. He gave an Account how prosperous Things were in those Countries, and did say, that there was at least Two or Three Thousand Pounds that would be ready in that Country, for the carrying on the Design, I think it was Three, but it was betwixt Two and Three. Now, my Lord, we are arrived to our Business in *August*; about the 12th of *August*, as near as I remember, but it was between the 8th and the 12th, therein I am positive, *Ireland*, which is Executed, took his Leave of us, as if he were to go to St. *Omers*.

L. C. J.

L. C. J. Where did he take his Leave?

Oates. At his Chamber in *Ruffel-Street*. Ireland went out of Town, and *Fenwick*, by that means, was to be Treasurer and Procurator to the Society altogether. He had that Employ afterward upon him during his Absence, let Mr. Ireland go whither he would. And the 21st of August, which, as near as I remember, fell upon a Wednesday, Mr. *Fenwick* and Mr. *Harcourt* were met together at *Wild-House*, and some other Fathers, as Father *Kaines*, and one Father *Blundell*, and some other Fathers, whom I cannot remember.

Gavan. Was I there, pray, Sir?

Oates. No, no, Sir; I am not to talk to you still, I am to speak to the Court.

L. C. J. North. We would recommend this to you, to name Persons when you speak of them.

Oates. Where I have Occasion I will name them, my Lord. Mr. *Fenwick* and *Harcourt* were together at *Wild-House*, and Mr. *Kaines* and Mr. *Blundell*, and, as near as I remember, Mr. *Langworth* was there, but I won't be positive. And there lay before them at *Wild-House* Four-score Pounds, the most of that Money was Guineas, which was to be paid to the four Irish Ruffians that were to murder the King at *Windsor*. After it was agreed that they should do it, and *Coleman*, who was Executed, came thither, and gave the Messenger a Guinea to expedite the Journey, we drew off from *Wild-House*, and went to Mr. *Harcourt's* Chamber; and because Mr. *Harcourt* had there left his Papers that were to be sent down to *Windsor*, there he paid the Messenger the Money. And that Gentleman was present there, Mr. *Fenwick*, and this is another Part of August's Business. No sooner was this Messenger dispatch'd, but within a Day after, or a Day before; but it was a Day after, as near as I can remember, there was a Consult held at the *Benedictine's* Convent, at which Mr. *Fenwick* was present, and Mr. *Harcourt*, and there they had some more Irish News from the Irish Archbishop *Talbot*, who did give an Account of the Irish Affairs, how they did conspire the Death of the Duke of *Ormond*; and desired to know how Affairs went in *England*, and desired some Commissions might be sent over to some particular Persons, there to raise Forces for the carrying on of the Design, and some Money to be transmitted to them. And Mr. *Fenwick* did bring the Commissions from *Wild-House* (as near as I remember) but he did bring them with him, and sent them down by a special Messenger to *Chester*, and some Letters by the Post. That of the Post I know of my own Knowledge, but that of the special Messenger I had only from his own Mouth. My Lord, from the 24th of August, as near as I remember it fell of a Saturday, *Bartholomew-Day* it was, but whether it fell of a Saturday, I cannot be positive, but if the Court please to inform themselves of it by their Almanacks, they may.

L. C. J. There is no great Matter in that, I suppose.

Oates. But this Gentleman, Mr. *Fenwick*, did deliver me some Money for my necessary incident Charges, but did admonish me to procure some Masses to be said for a prosperous Success upon the Design. Upon the 25th Day, I saw Mr. *Fenwick* in the Afternoon at his Chamber, and he was to go on the 26th Day, the next Day,

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to St. Omers, and to carry Eight or Ten Students to go there to study Humanity: And this is the Account I have to give of Mr. *Fenwick*. For after I took my Leave of him here, I saw him no more till he was apprehended.

L. C. J. This was about the 26th of August, was it not?

Oates. Yes, my Lord, it was the 26th of August.

L. C. J. Well, go on, Sir.

Oates. The 1st or 2d of September, we receiv'd a Letter (in the Beginning it was) from Mr. *Whitebread*, and this Letter they did say was a Foreign Letter, and yet it paid but Two-pence, by which I did conclude that Mr. *Whitebread* was come into *England*, and lay somewhere privately, or was not yet come to Town. On the 3d of September I went to Mr. *Whitebread's* Chamber, at Night, but he being at Supper, was not to be spoken with; but when he saw me the next Morning, he did revile me, and strike me, and asked me with what Face I could look upon him, seeing I had dealt so treacherously with them? Now, after that I had enquired, in what Respect? He answered, In the discovering of the Business, for there was a Gentleman that went to the King in this Business, to whom I had communicated much of my Information by Dr. *Tongue*. This Gentleman had the same coloured Cloaths that I had, and so they not being able to give an Account of the Name of the Person, gave only an Account of the Habit he was in, and therefore they charged me with it. After I had justified my self as well as I could, Mr. *Whitebread* did shew me a Letter, which came from one *Beddingfield*, alias *Benningfield*, which did shew the Plot was discovered, and they were like to be undone, if it had not been for the five Letters that were sent down to *Windsor* and intercepted, which made all to be looked upon as Counterfeit; after that, I justified my self as well as I could. He told me he would be Friends with me, provided I would give an Account of the Party, and of the Minister that went with him. And this is what I have to say against Mr. *Whitebread*, and the Prisoners at the Bar; but only this, because Sir *George Wakeman* did not accept of 10000*l.* that was proposed to him to poyson the King, this Gentleman offered that 5000*l.* more should be added.

L. C. J. Which Gentleman?

Oates. Mr. *Whitebread*. And 15000*l.* was accepted, and when it was accepted, *Whitebread* did greatly rejoice that the Money was accepted to poyson the King.

Whitebread. Did I tell you so?

Oates. No, there was a Letter told me so, but you were in *Flanders* then.

Sir Cr. Levinz. What have you to say against Mr. *Turner*?

Oates. I speak as to his being at the Consult in April, and Signing the Resolve of the Death of the King.

L. C. J. Was Mr. *Gavan* at that Consult the 24th of April?

Oates. Mr. *Gavan* was Summoned to that Consult, but among Forty Men I cannot particularly say he was there, but I saw his Name Signed as to the King's Death, but I cannot say I saw his Person.

L. C. J. Can you say you saw his Hand-writing?

5 O

Oates.

Oates. I do believe it was his.

L. C. J. Did you ever see any Writing of his, but when he Signed the Bill of Exchange?

Oates. My Lord, I never saw him write but that Time. It was an ill Pen, as it seemed, that he writ his Name with to the Consult, and I did not take so particular Notice of the being of his Name there, till we saw the Instructions in July, and then I did look over the Consult particularly.

L. C. J. But I say, Did you ever see his Hand-writing, before he writ the Bill?

Oates. My Lord, I never saw his Hand but that Time.

L. C. J. And That, by your comparing, was like the Hand of the Letter about *Staffordshire*?

Oates. By that I prove the Letter to be written from him. It was like it, and was all as one.

L. C. J. Was it like the Hand that was to the Consult?

Oates. That I cannot say.

L. C. J. I thought you had said he confess'd the Contents of the Letter, when he came out of *Staffordshire*?

Oates. I do say this of Mr. Gavan, that he wrote such a Letter, and when he came to Town, he did give an Account of all the Passages that the Letter did contain, which was concerning the raising of Money in *Staffordshire*, and the Parts he was concerned in: And this was the Account he gave.

L. C. J. Dr. Oates, you positively say, that *Whitebread*, *Fenwick*, and *Harcourt* were there?

Oates. Yes, my Lord, for Mr. *Whitebread* was Provincial and President of the Assembly.

Sir Cr. Levinz. And *Turner* was there?

Oates. Yes, he was.

Sir Cr. Levinz. Dr. Oates, what was that Money rais'd for?

Oates. They said it was for the carrying on of the Design.

L. C. J. And what Design was that?

Oates. Our Design. And that was, the Subversion of the Government, and Destruction of the King.

L. C. J. Now, if you please, you may ask him any Question.

Gavan. Mr. Oates, you say you saw my Name to a Letter for the taking up of Money: To whom was that Letter writ?

Oates. There was a Letter from you, to Mr. *Ireland*. And he did receive it by the Hands of *Grove*.

Gavan. Where was that Money to be taken up?

Oates. My Lord, I say, that Letter was received by *Grove*, who is out of the way, and can't prove it, and was delivered to *Ireland*.

L. C. J. I perceive your Memory is not good.

Gavan. I perceive his Memory is very good.

Oates. This Letter did give an Account of the Business of *Staffordshire*, and the Particulars of that Mr. Gavan did afterwards give an Account of by Word of Mouth, and some other Things not fit to be named.

Gavan. Pray, where was it, Sir, that I gave an Account of it; in *London*, or in the Country?

Oates. In *London*.

Gavan. In what Month?

Oates. In *July* it was.

Gavan. What Part of *July*?

Oates. It was when Mr. *Ashby* was in Town, the Beginning or Middle.

Gavan. Just now, you said it was in the latter End.

Oates. My Lord, I beg this Favour, that if the Prisoners at the Bar ask any Questions, they may be proposed to the Court, for they are nimble in their Questions, and do a little abuse the Evidence. They put Things upon them that they never say.

Mr. Justice Pemberton. Propose your Questions to the Bench, that you would have asked.

Gavan. I will do so, my Lord, in whose Honour I have more Confidence, than in whatsoever Mr. Oates says or swears.

L. C. J. But he tells you who you drew your Bill of Exchange upon, and that was Sir *William Andrews*.

L. C. J. North. Don't give the King's Witnesses ill Words.

L. C. J. Have you any more to ask, any of you?

Whitebread. Yes, my Lord.

L. C. J. See if you can catch him, he gives you a long and exact Account as can be given by any Man in *England*; and pray direct yourself, Mr. *Whitebread*, to the Court.

Whitebread. He says he was here in *April*, and at the Consult; now I desire to know, how long before that Time were you and I acquainted?

Oates. Why, before that Time I never saw Mr. *Whitebread*'s Face.

Whitebread. What Employment were you to have, and what Reward?

Oates. When I came away from *St. Omers*, I was to attend the Motion of the Fathers at your Chamber, and to carry the Resolve from Chamber to Chamber, where the Fathers were respectively met.

Fenwick. Was not you at the *White-Horse-Tavern*?

Oates. Yes, I was there.

Fenwick. Did you dine there?

Oates. No, our Stay was short there.

Fenwick. How long did you stay in Town?

Oates. Truly, I can't tell you exactly, but from the Time I came into *England*, to the Time I went out again, was under Twenty Days.

Fenwick. Who were they that came over with you? Name the Parties.

Oates. I will tell you who they were; but it's so long since, I can't exactly remember.

Fenwick. You need not trouble your Memory, you have them in your Narrative.

Oates. My Lord, there was Father *Williams*, the Rector of *Wotton*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preston*, and some others.

Whitebread. Was not Mr. *Nevil* there?

Oates. I believe he was, it is like he might be there.

Whitebread. Was not Sir *Robert Brett* there?

Oates. I believe he might.

Whitebread. You have said so in your Narrative.

L. C. J. Perhaps a Man will venture to Write more than he will Swear; not that he does Write what he does not believe, but that he knows he ought to be more cautious in his Oath, than in his Affirmation.

Fenwick.

Fenwick. My Lord, with your Lordship's Favour, it is upon Oath.

L. C. J. North. *Fenwick*, you are in a Court of Law, and we must go according to the Law; if you will prove any Contradiction in him to his Oath, you must bring the Persons here that saw him take the Oath; and you must not think to take a Pamphlet for Evidence.

Fenwick. It was sworn before a Justice of Peace, and will not, I suppose, be denied, and therefore he must make his Evidence agree with it, being part of his Narrative.

Gavan. You speak of one Thing in *August*, and of another in *July*; which Month saw you me in?

Oates. I told you, I saw you in Town in *July*, and when Father *Ashby*, or *Thimbleby*, was in Town. And you said you would go and see him.

Just. Pemberton. He says it was in *July*, and that's enough.

Gavan. What Time in *July*?

Oates. It was towards the Middle or latter End.

Gavan. Was it before Mr. *Ashby* went to the Bath?

Oates. It was so.

L. C. J. He says he saw you in Town, when *Ashby* was in Town, which was towards the latter End of *July*, or Beginning of *August*. He cannot tell exactly whether, but positively he says before Mr. *Ashby* went to the Bath.

L. C. J. North. Well, to satisfy you, we will ask Mr. *Oates* the Question again. Can you recollect whether it was the Middle or latter End of *July*?

Oates. My Lord, as near as I can remember, it was about the Middle of *July* that *Ashby* came to Town, and he did not stay in Town above a Fortnight: And it was whilst he was in Town, and designed to go down to the Bath, that this Gentleman came to Town, and gave Account of the Particulars of that Letter.

L. C. J. North. You may ask him any Questions, but I would have you observe what Account he gives, That about the Middle of *July*, *Ashby* came to Town, that he stay'd in Town about a Fortnight, as he believes, that during that Time, you came to Town, and then was this Discourse.

Oates. During that Time I saw him in Town, but I know not exactly when it was.

Gavan. My Lord, I would ask him one Question; the Thing that is brought against me is this; He says, Mr. *Ashby* came to Town in the middle of *July*, that he staid in Town a Fortnight, that while he was there I came to Town, and had such Discourse: Now, my Lord, I desire to know, whether it was the first Week, or last Week that *Ashby* was in Town, that he saw me.

L. C. J. If he can answer it, let him.

Oates. My Lord, I cannot.

L. C. J. He tells you, he cannot charge his Memory with it.

Oates. No, my Lord, nor will not.

L. C. J. Really, I believe there is scarce one in all this Company, able to give an Account of a particular Time of a Passage so long ago.

Gavan. No doubt he hath an excellent Memory.

L. C. J. And if he had not some Memorials of

this, he could not do it. And tho' he hath Memorials of the most eminent Passages, yet we can't suppose he hath of all Circumstances.

Gavan. But this is the Substance; and your Lordship may conceive, that not without Reason I urge it; for if Mr. *Ashby* came to Town the Beginning of *July*, and stay'd but a Fortnight in Town, and I came to Town while he was here, it must be in one of the two last Weeks. Now I would have it ascertain'd, because I may disprove it in one Week or in the other.

L. C. J. 'Tis true, you did not amiss in asking the Question, if he were able to answer it; but if it be either, 'tis enough to prove you Guilty.

Gavan. Pray, was it only one Time, or diverse, that you saw me in *London*?

Oates. It was but one Day, but, as near as I remember, I saw you twice that Day; and I'll tell it you by a particular Circumstance, That I saw you in the Afternoon when you were a little Illish, and there was a Cordial brought to you by an Apothecary, that went by the Name of *Walpoole*.

L. C. J. Here is Memory refresh'd by a Circumstance, you see. Whither was it brought to him?

Oates. To *Ireland's* Chamber.

Gavan. Who brought it, Sir?

L. C. J. An Apothecary, he says, whose Name was *Walpoole*.

Gavan. My Lord, I never saw *Walpoole* in all my Life.

L. C. J. I believe he is known well enough, such an one as *Walpoole* the Apothecary. But ask what Questions you will.

Oates. I cannot say whether it was *Walpoole* himself, or his Man, that brought it.

Gavan. I do as truly believe there is a God, and Heaven, and an Hell, as any one here does, as I hope for Salvation, as I hope to see God in Heaven, I never saw Mr. *Oates* before the Day in *January*, when he says I had the Perriwig on, and he did not know me: And as for *July*, I call God to witness, I never saw him then.

L. C. J. You were in Town in *July*?

Gavan. Upon my Salvation I was not in *London*.

L. C. J. You'll prove that by and by.

Fenwick. I hope, my Lord, we may ask him any Questions in the Court, of our Evidence, to make Things clear?

L. C. J. Yes, you may.

Turner. Did you ever see me in all your Life, before you saw me at *Whitehall*?

Oates. You were then in a disguised Habit, and a nasty Perriwig, and I did not know you so well.

Turner. You, at *Whitehall*, was pleased to tell me, I went by another Name.

Oates. I don't value Names, but your Person: You are the Man.

L. C. J. You are the Man, he says.

Turner. Did you see me at the Consult?

Oates. I saw the Man that speaks to me.

Turner. Who were there? and how many were present?

Oates. There were about Forty or Fifty.

L. C. J. When you have but one Name apiece, then he can hit it right; but when you have so many Names, then you are too hard for him.

Turner. Did you see me at the *White-Horse*?

Oates. That I will not say; for when they were in lesser Clubs or Colloquies, I was sure of better Acquaintance with them.

Turner. Where was it you saw me?

Oates. At Mr. *Fenwick's* Chamber.

Turner. At *Whitehall*, you said it was at *Wild-House*.

Oates. My Lord, because the chiefest part of the Consult sat at *Wild-House*, we call'd it all, *The Consult at Wild-House*.

L. C. J. I see your Defence will be little else but Captiousness, to disprove him in Circumstances of Time, Place, Persons, or Numbers; now all these are but little Matters to the Substance: 'Tis true, Mr. *Whitebread*, if you can prove you were not at that Place at that Time, it will do you great Service. Have you any thing more to say to him?

L. C. J. North. I hope your Witnesses are in readiness, that you were speaking of, to fortifie your Testimony?

Oates. Yes, my Lord, they are, I desire they may be heard.

L. C. J. By and by, when occasion is.

Jury. My Lord, I desire he may be asked one Question.

L. C. J. Mr. *Garraway*, what Question would you ask him?

Jury. Where it was that he saw Mr. *Turner* at the Consult.

Oates. I saw him at *Fenwick's* Chamber, where he was a Member of the Consult; and being so, I saw him Sign the Resolve of the King's Death.

L. C. J. Did you see him?

Oates. Yes, I did.

Sir Cr. Levinz. Then we desire Mr. *Dugdale* may be Sworn, (*which was done*.) Come Mr. *Dugdale*, pray will you tell my Lord and the Jury, what you know concerning *Whitebread*, and *Harcourt*? First about *Whitebread*.

Dugdale. My Lord, I have very little Acquaintance with the Man, I have seen him at *Tixall*, with my old Lady *Aston*.

L. C. J. When?

Dugdale. I dare not speak the time, but appeal to him himself about the truth of it.

L. C. J. Is it Years ago?

Dugdale. It is two or three Years ago.

L. C. J. Well, what can you say against him?

Dugdale. Mr. *Whitebread* did write a Letter that I saw under his own Hand, inclosed in a Letter from Mr. *Groves*, to Mr. *Ewers*, wherein he gave Mr. *Ewers* a caution, to be sure to choose those that were very trusty, it was no matter whether they were Gentlemen or no, so they would be but stout and courageous: This was the purport of the Letter, I cannot say the words exactly, but that he should choose those that were hardy and desperate, or to that purpose.

L. C. J. Pray where was it you saw that Letter?

Dugdale. At *Tixall*.

L. C. J. How came you to see it?

Dugdale. Because all the Letters were directed to me, that came to Mr. *Ewers* inclosed in Mr. *Grove's* Letters: and so I intercepted the Letter, and read it.

L. C. J. What was Mr. *Ewers*?

Dugdale. A Jesuit, my Confessor; for I was entertained by Mr. *Gavan* to be in the Conspiracy of the King's Death, and so I was by several others.

L. C. J. You were not acquainted with Mr. *Whitebread's* Hand, were you?

Dugdale. My Lord, I only came acquainted with Mr. *Whitebread's* Hand, by seeing him write a Letter at *Tixall*, which he delivered to me to send.

L. C. J. I pray let me understand you: You say that Mr. *Whitebread* did write a Letter to Mr. *Ewers*, inclosed in one from Mr. *Grove*, wherein he advised that he should entertain lusty stout Fellows, and no matter whether they were Gentlemen, or to that effect: Now I ask you, how you do know that was *Whitebread's* Hand? or was it his Name only that was to it.

Dugdale. My Lord, I saw his Name at it.

L. C. J. When you saw that Letter, had you seen his Hand before?

Dugdale. Yes, my Lord, I saw it to another Letter which I saw him write.

L. C. J. And that was like the Hand in the Letter to *Ewers*, was it?

Dugdale. Yes, I do almost positively Swear it was the same Hand.

L. C. J. But what say you to *Gavan* and *Ewers*?

Dugdale. There were several Consultations in Mr. *Ewers's* Chamber, my own, and at *Boscobel*, and several other Places. Mr. *Gavan* might be so ingenious to confess it.

* *L. C. Baron.* What were those Consultations for? * *William Montague, Esq.*

Dugdale. For conspiring the King's Death, and introducing of Popery. Mr. *Gavan* was chiefly made use of, as a good Orator and Learned Man, and a good Scholar, to persuade People into the Design; this I speak as to these Persons.

L. C. J. Pray go on Sir, for you shall have a full Scope, for you never were a Witness in any of the Trials before: and you may take your own way, and you shall be heard, you shall not be interrupted; for what you say, is very considerable.

Dugdale. One meeting I think was in September last, it was at *Tixall*, and there was my Lord *Stafford*, and several others.

L. C. J. Was *Gavan* there?

Dugdale. Yes, Mr. *Gavan* was there; I suppose he will not deny it.

Mr. *Just. Pemberton.* Don't rely upon that, he will deny it, you may be sure; go on. You say he was there?

Dugdale. Yes, and that was to carry on the Design: And I was by to hear. I think Mr. *Ireland* was in the Country then, there was you, (speaking to Mr. *Gavan*) Mr. *Peters*, Mr. *Lewson*, and Mr. *Ewers*, at this Consult, and there was another, my Lord *Stafford*, and others that I cannot now name.

Gavan. What time?

Dugdale. It was in September, 1678.

Gavan. What Day?

Dugdale. I think it was the 21st of September.

L. C. J. What was that Consult and Conspiracy about, in short?

Dugdale. It was for the introducing of Popery, and taking away the Life of the King, I being a Person chosen out for that purpose, and was

was to be sent to *London* by Mr. *Harcourt* to be under the Tuition of Mr. *Parsons*.

L. C. J. Pray who mentioned this? was that the first time that ever they discoursed of the Death of the King?

Dugdale. No, my Lord, it was two Years ago, but I speak of a shorter time.

L. C. J. Who began the Discourse?

Dugdale. Mr. *Gavan* often discoursed of it, and encouraged me to it.

L. C. J. Who broke it first to you? who seemed the Principal Man?

Dugdale. *Ewers* and *Gavan*.

L. C. J. By the Oath that you have taken, Repeat it once more, for this is new to us.

Gavan. 'Tis so to me too upon my Soul, for upon my Conscience I never heard of it before.

L. C. J. 'Tis a mighty Confirmation of what was before discovered.

Dugdale. But I speak to Mr. *Gavan*, and appeal to him himself.

Gavan. Look upon me with Confidence, if you can.

Lord Just. *Pemberton*. You must not threaten the King's Witnesses.

Dugdale. Mr. *Gavan*, I desire you to inform the Lords and all here present, whether I was not under your Tuition? And whether you knew any unjust Action by me?

Gavan. You were never under my Tuition.

L. C. J. Did you ever know him?

Gavan. Yes, my Lord, he used to come sometimes where I was, and so we were acquainted: and I lived within 11 Mile of *Tixall*, my Lord *Aston's*, and having Acquaintance in that Family, Mr. *Ewers*, whom I know very well, I used to come there sometimes, but I never was in his Chamber in my Life. In what Room of my Lord *Aston's* House was this Discourse?

Dugdale. Some of it was in the little Parlour, and some in Mr. *Ewers's* Chamber.

Gavan. Were any present there? And who were they?

Dugdale. I have told you there was Mr. *Ewers*, and Mr. *Lewson*, and Mr. *Petres*, and some others; and for a further Confirmation of this, That Mr. *Gavan* may know that I had a great Zeal for him, and that they did love me well, I gave them an Estate, or else I believe they would not have trusted me so well as they did. I gave them 400*l.* to pray for my Soul, and for the carrying on of this Design; and when they told me they doubted they should want Money, I promised them 100*l.* more for the carrying on the Work. Upon which Mr. *Gavan* promised me that I should be Canoniz'd for a Saint.

Mr. Just. *Pemberton*. Mr. *Gavan* himself?

Dugdale. Yes, my Lord.

Mr. *Belwood*. What do you know of any Foreign Assistance?

L. C. J. I would feign have all the World hear this; pray what was discoursed in the Parlour in my Lord *Aston's* House, and in *Ewers's* Chamber?

Dugdale. It was about taking away the King's Life, and Introducing the *Popish* Religion.

L. C. J. By the Oath you have taken, was that their Discourse?

Dugdale. Yes, my Lord, They were contriving how to kill the King and Introduce Popery.

Sir Cr. *Levinz*. Pray, have you heard any

Discourse of an Army, or about making a Massacre?

Dugdale. It was spoken in my hearing, and there was some Discourse why they should expect Forces from *Beyond Sea*, and this Gentleman said (*meaning* Mr. *Gavan*) tho' they *Beyond the Seas* had Troubles enough upon themselves, yet if we could effect it, Men and Money would not be wanting. I will add nothing more than the Truth in what I say.

L. C. J. You deliver your Testimony like a sober modest Man, upon my word.

Sir Cr. *Levinz*. What say you as to a Massacre?

Dugdale. My Lord, I have at some Consultations heard speak of it, but the Chief Thing that they aimed at was first, there was a Letter that came out of *Paris*, and came thro' Mr. *Harcourt's* Hands, and so came down into the Country, to prove that it was the Opinion of them at *Paris*, and *St. Omers*, to fling all this upon the *Presbyterians*, that is, the Death of the King; That if any thing of that nature should happen, they should be ready to give the first Alarm, and give out, That it was those *Still King-killing Presbyterians*, that had done the Fact: And so they thought they should easily have brought in the *Episcopal Party* into their Company, to revenge themselves of the *Presbyterians*.

L. C. J. It was pretty Advice indeed, to have it first laid on the *Presbyterians*, that they might get *Protestants* to join and cut them off, and then their own Throats should be cut.

Dugdale. And then my Lord, there was to be a Massacre; and if any did escape, that they could not be sure of were *Papists*, they were to have an Army to cut them off.

Mr. *Belwood*. Did he ever use any Arguments to you, to prove the Lawfulness of the Design?

Dugdale. Yes, my Lord, he hath, and shewed me several Examples for confirming me in it.

L. C. J. What, for killing the King?

Dugdale. For the killing of any, to introduce their own Religion.

Mr. *Belwood*. Pray, will you name some.

Dugdale. He endeavoured to prove it by Scripture, I can't now call the Text to mind; but it was to shew, how it was lawful and good to destroy any for the Advantage of their Religion, and then he shewed the Example of Father *Garnett*. How several of his Reliques being *Beyond Sea*, Great Miracles had been done by them.

L. C. J. And so now there is by *St. Coleman* too.

Sir Cr. *Levinz*. What Letters have you received from Mr. *Harcourt*?

Dugdale. I have received several Pacquets of Letters from several Persons *Beyond Seas*, which were, by his Instruction, communicated by Mr. *Grove*, to Mr. *Ewers*, which Letters did contain Treason in them, for the introducing of Popery, and killing and destroying the King.

L. C. J. How can you tell that?

Dugdale. Mr. *Harcourt* hath given it under his own Hand, and I have intercepted the Letters, and read them.

L. C. J. You were acquainted with the Hand?

Dugdale. Yes, my Lord.

L. C. J. You read the Letters?

Dugdale. Yes, my Lord, I did.

L. C. J. How many Letters have you intercepted? Have you intercepted Twenty?

Dugdale.

Dugdale. Yes, a hundred, my Lord. Mr. *Harcourt* was the first that gave intelligence into the Country (as I know of) of the Death of Sir *Edmund-bury Godfrey*.

Sir *Cr. Levinz.* Tell when it was given, and how.

Dugdale. I have made it out already upon Oath, and I have Witnesses to prove it.

Sir *Cr. Levinz.* Pray Sir tell it now.

Dugdale. It was directed to Mr. *Ewers*, and it was three Days before he was found, for it was received on the *Monday*, and he, as it is proved, was killed on the *Saturday*. The words were these, *This very Night Sir Edmund-bury Godfrey is dispatched*. And I very much rejected Mr. *Ewers* for this Action, and then told him, This will overthrow the Design, or I will be hanged.

L. C. J. What Day did you receive the Letter?

Dugdale. I have proved I received it on a *Monday*.

L. C. J. But pray what Date did it bear?

Dugdale. That Letter must come by *Saturday* Post, for it said, *This Night Sir Edmund-bury Godfrey is dispatched*.

L. C. J. He did not name any Body, by whom?

Dugdale. No, but it said he was kill'd, and we knew by whom.

Mr. *Just. Pemberton.* And are you sure that was Mr. *Harcourt's* Letter?

Dugdale. Yes; for he did usually sign his Letters with two Letters *W. H.* which stood either for *Harcourt*, or *Harrison*.

Mr. *Belwood.* Did you acquaint any Body with this, or did you conceal it?

Dugdale. I did go to an Alehouse that is hard by my Lord's the next Day, which was *Tuesday*, and there I asked, If they did not hear some News of a Knight's being kill'd at *London*? And I have an Evidence here, if your Lordship please, I will call him, who, I desire, may testify the same thing.

L. C. J. Yes by all means.

Sir *Cr. Levinz.* Mr. *Dugdale*, Pray, will you give us some more account of the Letter that came from Mr. *Whitebread* to Mr. *Ewers*.

Dugdale. I remember one particularly, but I cannot tell what number I have seen.

Sir *Cr. Levinz.* Did you see more than that one?

Dugdale. I particularly remember that.

L. C. J. What was that one particularly?

Harcourt. My Lord, I desire to ask him one Question, When was the last time that you received any Letters from me?

Dugdale. The last I received from you (to my best remembrance) was that about Sir *Edmund-bury Godfrey*, and it was in *October*.

Harcourt. I have not writ to that Person this Year and half.

L. C. J. Let that Man be called, that proves this business of the Death of Sir *Edmund-bury*, and the talk of it.

Dugdale. Mr. *Harcourt*, you know very well, that when Mr. *Ireland* was last in the Country last Year, you were to send him the Answers that came by Letters from St. *Omers*, and those were sent down to my Lord *Aston's*, and I saw them, eight of those Letters, I am sure. And I can prove it by one Circumstance; two of them came relating to Mr. *Edward Aston's* Death, from *Paris*; I intercepted them, and talking of

it, that I could Conjure, and tell of the Death of Mr. *Edward Aston*, before any of his Friends knew of it. And Mr. *Ireland* writ a chiding Letter about it, that he had not heard it sooner, and you sent down word, That you did write those Letters, and yet you say you have not written to me of a Twelve-month, or more.

Harcourt. This Gentleman does pretend to know my Hand, and 'tis true, I have writ several Letters for Mr. *Ewers*, and directed to him; but as to this Time he speaks of, I have left off Writing for divers Years. He pretends to know me, and yet this Gentleman before the Committee of Commons in Parliament, which was Yesterday was five Weeks, as well as he knew my Hand, came and said I was a Gentleman he did not know. He came also to entrap me at the *Gatehouse* before those Gentlemen of the Committee of the House of Commons; but because he said he knew my Hand so very well, and testifies those Expressions in the Letter, I must say this, I never did write any such Letter, nor did I ever in my Life seem to approve of any Man's Death or Murder. But the thing is this, he pretends to know my Hand and to prove it, the Gentlemen desired me to write my own Hand and my Name, and he in the mean time did withdraw, and three of them did write their Names, and afterwards they called him in again, and asked him which was *Harcourt's* Hand, and he was not able to say which it was.

L. C. J. You write more Hands, as well as have more Names, and can counterfeit your Hands as well as change your Names.

Mr. *Just. Pemberton.* You speak before your time, and your bare word goes for nothing.

L. C. J. But, Mr. *Dugdale*, where is your Witness?

Harcourt. I don't know any thing of this.

L. C. J. But if he calls up a Witness, of whom you can have no Suspicion, that can testify, that at this time Mr. *Dugdale* spoke about the Death of Sir *Edmund-bury Godfrey*, what will you say to that?

Harcourt. I believe there is no such thing at all.

Sir *Cr. Levinz.* My Lord, here is Mr. *Chetwin*, pray swear him. (*Which was done.*)

L. C. J. Mr. *Chetwin*, Do you remember that Mr. *Dugdale* came to you any time last Summer, and what time, and what Discourse had you.

Chetwin. My Lord, if your Lordship please, I was most part of the Summer in the Country, I came into *Staffordshire* about the 29th of *August*. My Lord, there is a Gentleman, one Mr. *Sandridge*, that is a Kinsman of my Lord *Aston's*, that was very well acquainted with the Family where I was, which was half a Mile off my Lord's, and used to come and play with me at Tables. My Lord, at that very time in *October* he came to me, and there, says he, Do you hear nothing of a Justice of Peace in *Westminster*, where you live, that is killed? or to that effect. No, said I, and I had Letters yesterday, and heard nothing of it. Saith he, I was this Morning at *Elds*, and there a Girl of the House told me, Mr. *Dugdale* had been there, and reported that there was a Justice of Peace of *Westminster* was killed; but who he should be I never heard named, and on *Saturday* following my Letters brought it down to me.

L. C. J.

L. C. J. When was it that this was spoken?

Chetwin. It was *Tuesday* Morning, (as I remember) and that by a very good circumstance, I went that day for *Litchfield*, and the *Saturday* after the News came to me to *Litchfield*, that *Sir Edmund-bury* was found murdered.

L. C. J. The Jury would do well to observe this in point of Time. *Sir Edmund-bury Godfrey* was kill'd, as it was since proved, on *Saturday*, but on *Monday* he was mis'd, on *Thursday* he was found, and on *Saturday* the News was spread all over the Country. Now, said he, the *Tuesday* before the News came down, which must be the *Tuesday* after the *Saturday* he was kill'd, one comes from the Alehouse and asks, Do you not hear of a Justice of Peace at *Westminster* that is kill'd; for the Wench at yonder Alehouse says, Mr. *Dugdale* was here this Morning and reported such an one was kill'd. So that it is most notorious, as any thing in the World can be, that this thing was known to them, before any of us knew what was become of him.

Mr. Just. *Pemberton.* How do you further know it to be upon *Tuesday*?

Chetwin. I know it to be that *Tuesday*, my Lord, very well, for we all went about such a time to my Cousin's Mother, to stay a Week there, and after I returned back, and on *Tuesday* the 15th of *October* I went to the Race to *Litchfield*, and stay'd till *Saturday* there, and came thence to *London*, and was here the *Wednesday*, being the first Day of the Term. But I remember particularly the first Information Mr. *Dugdale* gave in the Country, came to my Cousin's Hands from the Mayor of *Stafford*, and I happen'd to see him, I think it was *Christmas-Day*. It came inclosed in a Letter. Upon the Apprehension of Mr. *Dugdale*, I remember I met him, and he told me of it, and said he, the Parliament did not sit that Day: So he went to acquaint the Lord Lieutenant of the County, that is, the Duke of *Monmouth* with it, who carried it to the King. But when Mr. *Dugdale* was sent for, my Cousin went down, and writ me a good Character of him. As soon as ever *Dugdale* came to Town, before he went to be examined by the Council, as I remember, I went with some Gentlemen to speak with him, and said I to him, Can you say any thing about *Sir Edmund-bury Godfrey's Death*? Said he, I remember such a Letter came at such a time from *Father Harcourt* to *Father Ewers*, wherein were these words; *This Night Sir Edmund-bury Godfrey is dispatched.* And, said he, I remember I asked the Question of *Ewers*, Is not this likely to spoil all the Design? No, said he, he was a Man that prosecuted Persons that went to debauch'd Houses, and it will be said to be some of them that did revenge themselves of him; or words to the same effect. This made me recollect the Time I had the Discourse with the Gentlemen in the Country. I happened to be out of Town when the Murtherers of *Sir Edmund-bury Godfrey* were Tryed; as soon as I came to Town, and found that the Murtherers of *Sir Edmund-bury Godfrey* were Condemned, I was at a Coffee-house enquiring how it was managed; some I found slighted it, others did not know what to make of it. Was not Mr. *Dugdale* there? said I. No, said they. Then I presume, said I, that a very material Evidence was omitted. Upon this I went to Mr. *Dugdale's* Chamber, and there, said I to

him, What was the Reason you were not produced as an Evidence, at the Trial of *Sir Edmund-bury Godfrey's Murtherers*? Said I, You told such a thing, and I hope you told Truth, for I don't hear that you have ever contradicted it, that you saw a Letter about the *Monday* after he was murdered. In my judgment it is very material, if you have sworn it; if your Deposition be true, or else you did ill to report it. Said I, Pray let me see the Copy of your Deposition sworn before the Council. He shew'd it me, and there was not a Syllable of it, that I could see, but afterwards appear'd to be there.

L. C. J. That is not very material, if the thing it self be true.

Chetwin. But its not being there, made me remember it.

Mr. Recorder. Pray set up Mr. *Dugdale* again. Now pray tell the Contents of Mr. *Whitebread's* Letter.

Dugdale. The Contents of it was, to encourage Mr. *Ewers* to go on to be careful whom he did intrust, that they should be such Fellows as were desperate, hardy, couragious and stout, or to that purpose; it was no matter whether they were Gentlemen or no, so they were but courageous and desperate.

Mr. Just. *Atkins.* What were they to do?

Dugdale. For the killing of the King.

L. C. J. Was that in *Whitebread's* Letter?

Dugdale. Mr. *Whitebread* did write those words, they were in the Letter.

Whitebread. Was that very word in the Letter, for killing the King?

Dugdale. It was, that they should be stout and couragious Persons.

L. C. J. For what End?

Dugdale. It was for taking away the King's Life.

L. C. J. I ask you, recollect your self, was it by way of description of some Design or Plot, that those Persons were to be chosen out? or was it in downright words, for killing the King?

Dugdale. To the best of my remembrance they were those very words.

L. C. J. It was much he would write such words in a Letter.

Dugdale. I was one that was made choice of about it.

Mr. Just. *Pemberton.* Were you to be one?

Dugdale. Yes, I was.

Mr. Just. *Pemberton.* Mr. *Gavan*, you know who it was you entertain'd for this Business, and you could trust them.

L. C. J. How were these Letters conveyed? Were they sent by the Ordinary Post?

Dugdale. Yes, they were, and they trusted me with them, because being directed to me, if they were intercepted, I should be hang'd, and they saved.

Mr. Just. *Pemberton.* Upon these Letters, what were you entertained to do?

Dugdale. My Lord, I was entertained before by my Lord *Stafford*, and Mr. *Ewers*.

Mr. Just. *Pemberton.* What to do?

Dugdale. To kill the King.

Whitebread. Pray, Sir, how came you to see these Letters? Did you intercept them, and read them your self?

Dugdale. I did intercept them, and open them of my own self.

Whitebread. Pray take notice of what he says, Gentlemen. Mr.

Mr. Recorder. The Jury do take notice.

L. C. Baron. Do you know any thing against Mr. Turner and Mr. Fenwick?

Dugdale. Mr. Ewers hath told me by Word of Mouth, that he was to carry on the Design in *Worcestershire*, but I saw him with Mr. Ewers and Lewson, and others, when he was going to his Brother Turner's, then in *Nottinghamshire*, and they did consult and agree there, in my Hearing, to all that I have said before.

Turner. What did I assent to?

Dugdale. Why this Design, you and Mr. Ewers and Lewson, and others, agreed to what I said before.

Turner. Where was this?

Dugdale. At *Tixall* and other Places.

Turner. In what Month?

Dugdale. It was about two Years ago, about the beginning of the Business.

Turner. Where was it?

Dugdale. It was at Mr. Ewers Chamber. You know me very well.

Turner. I have not been in *Staffordshire* these four Years.

L. C. J. Why, don't you know him, Mr. Turner?

Turner. I do know I have been there a matter of three or four times in my whole Life, but have not been there these four Years.

Mr. Just. Windham. Have you any thing to say against Fenwick?

Dugdale. I don't know that I ever saw him before.

Mr. Recorder. But he speaks fully as to the other Four.

Sir Cr. Levinz. Call Mr. Prance, and swear him. Which was done.

Sir Cr. Levinz. Come on, Mr. Prance. What can you say to Mr. Fenwick, or any of the others?

Prance. Mr. Harcourt, I made him an Image of our Lady about a Year ago, and when I was receiving Money for it, (it was to be sent into *Maryland*) you told me then that there was a Design of killing the King.

L. C. J. Who told you?

Prance. Mr. Harcourt, that very time.

Sir Cr. Levinz. When was it?

Prance. It was when it was sent to *Maryland*, in the *Portugal's* Country; you know it well, Mr. Harcourt.

Harcourt. I know nothing of it.

Sir Cr. Levinz. Pray let him alone, till we have done with him.

Harcourt. I desire but to know when it was.

Prance. When I received the Money for the Picture; it was a Year ago.

Sir Cr. Levinz. What say you to Mr. Fenwick?

Prance. I was in Mr. Ireland's Chamber in *Russel-Street*, and there was Ireland, Fenwick, and Grove, and they were talking of 50000 Men that should be raised, and be in readiness to carry on the Catholick Cause, and settle the Catholick Religion. I asked who should govern them? They told me, my Lord Bellasis, my Lord Powis, and my Lord Arundel.

L. C. J. Who told you so?

Prance. Mr. Fenwick.

L. C. J. How long ago?

Prance. About a Fortnight *Michaelmas* last. Mr. Grove came to me two or three Days afterward, to buy two or three Silver Spoons to give away at a Christning, and then I asked him,

What Office he should be in? He told me, He could not tell: But he told me, my Lord Arundel, my Lord Bellasis, my Lord Petre, and my Lord Powis, had Commissions for these Things to give.

L. C. J. This Grove told you?

Prance. Yes, my Lord.

L. C. J. But what did Fenwick tell you?

Prance. He told me who were to govern the Army, my Lord Bellasis, my Lord Powis, and my Lord Arundel of *Wardour*.

Sir Cr. Levinz. Had he any Discourse with you about Trade?

Prance. He said, I should not fear Trade, I should have Church-work enough.

Mr. Belwood. Pray speak that again.

Prance. I asked him, What shall we poor Tradesmen do, if we have Civil Wars in *England*? O, said he, you need not fear having Trade enough, you shall have Church-work enough, to make Images, Chalice, and Crucifixes, and Vases, and such like Things.

Mr. Belwood. If you will ask Mr. Prance any Questions, pray do.

Fenwick. My Lord, I am certain of this, that he never saw me at Mr. Ireland's Chamber, in that Company, nor did I ever speak of any such Thing before him.

Prance. Mr. Ireland and he have been sitting together whole Hours, and consulting about some Concern or other, Mischief, no doubt. My Lord, I went to Mr. Fenwick's Chamber, after my Ghostly Father was dead.

L. C. J. What was his Name?

Prance. Father James. And he importuned me to come to Confession to him; I told him, I was not yet very well satisfied who I should go to, to be my Ghostly Father.

Fenwick. When was this, Mr. Prance?

Prance. Before *Michaelmas*, about a Week or Eight Days.

L. C. J. Did not you know him, Mr. Fenwick?

Fenwick. Who, Father James? yes, very well, and I know Mr. Prance, but not upon that Account.

Prance. And I brought you a Bell home, for the Altar, at the same time.

Mr. Just. Pemberton. Who was it importuned you to have him for your Confessor?

Prance. It was Mr. Fenwick; and I told him, when I did come to Confession, I would come to him. And he enjoined me, once or twice, to say nothing of what I heard said.

L. C. J. If Harcourt have any Questions to ask him, let him.

Harcourt. Can you say that ever I spoke to you about any such Business?

Prance. Yes, as sure as I stand in this Place, and you in that. And one Thompson came with you, when you paid me for four Candlesticks.

L. C. J. Do you know Mr. Thompson?

Harcourt. Yes, I do.

L. C. J. Had you any Candlesticks from Mr. Prance?

Harcourt. I had, a great while ago.

Prance. He paid me 44*l.* that Time for them.

Mr. Recorder. Call Mr. Bedlow. Who was Sworn.

Sir Cr. Levinz. What can you say to any of the Prisoners at the Bar?

L. C. J. What can you say, as to Mr. Whitebread and Mr. Fenwick?

Bedlow.

Bedlow. My Lord, I do not question, but Mr. *Whitebread* and Mr. *Fenwick* will object against me, my refusing to give in Evidence against them at the former Trial; but I think that there are some upon your Honourable Bench, that can make my Apology for not giving in all my Evidence against them then; for it was not convenient, because it would have stopt a Design I was then upon, and could not get off from, that was about Mr. *Reading*, whom I was then treating with, for Mr. *Whitebread* and Mr. *Fenwick*, as well as the Lords in the *Tower*, and he told me, that he would depend upon my Confidence and Justice as to the Lords, according as I did deal with these Men; if I brought them off, he would believe, and the Lords in the *Tower* would believe, that I would bring them off too. So that I did make an Apology then in the Court, that I could not safely say all that I had to say at that Time. Some of the Justices, I believe, do remember it, and in that which I did give in against them, I did not say all, nor half, that I could have said.

Whitebread. Did you say any thing of that at the last Trial?

Bedlow. I will answer that Matter to the Court, but 'tis the measure they always take to intrap the Witnesses; for now I am out of a Country that will give me an Indulgence and Dispensation to speak exactly to a Day, or an Hour, as their St. Omer's Witnesses have.

L. C. J. But what say you now to them?

Bedlow. I did then say, that I did see Mr. *Whitebread*, and he hath been in several Consultations for the carrying on of the Plot; but then I did it with a Caution, that I never heard of Mr. *Whitebread*, that he was so very much concerned; and indeed I had no Reason to say so, because I heard him my self, and could not well speak from the Hear-say of another. And as for Mr. *Fenwick*, I never heard him give in any Answer, but I have seen *Fenwick* at the Consult there.

L. C. J. Have they ever told you any thing concerning the killing of the King?

Bedlow. *Whitebread* told *Coleman*, at Mr. *Harcourt's* Chamber, the manner of sending the four Ruffians to *Windfor*, about September.

Harcourt. I never saw him twice in all my Life, before.

Mr. Belwood. Do you know of any Reward those Ruffians were to have?

Bedlow. Yes, I saw *Harcourt* take the Money out of a Cabinet, I think it was Fourscore, or One Hundred Pounds; the Sum I don't well remember. *Harcourt* paid them the Money, by Mr. *Coleman's* Order, and gave the Messenger a Guinea from Mr. *Coleman*, to drink his Health. Mr. *Coleman* was gone a little before I came in, and so I could not know that *Coleman* gave it, but he said so.

Sir Cr. Levinz. What was *Pickering* and *Grove* to have?

Bedlow. *Grove* was to have 1500*l.* and a Promise of the Favour of the Lords: 1500*l.* was the Sum appointed at Mr. *Harcourt's* Chamber, and doubtless in several other Places, but there I heard it from Mr. *Whitebread*, and *Pritchard*, and *Le Faire*, and *Kaines*; and *Pickering* was to have a Number of Masses, I can't tell exactly how many, but they were so many, as at

12*d.* a Mass would amount to be equal to Mr. *Grove*.

Mr. Belwood. Pray, Sir, what was that for?

Bedlow. For killing the King. But *Pickering* had been disciplined before, and received a Check from the Superiors, because he had been negligent, and slipt many Opportunities. One Time the Flint of his Pistol was loose, another Time there was no Powder in the Pan, another Time, he had Charged with all Bullets, and no Powder.

L. C. J. Did you see *Harcourt* deliver the Guinea, for the Expedition of the *Windfor* Business?

Bedlow. Yes, my Lord, as from *Coleman*, to drink his Health.

Mr. Belwood. Pray, was either *Whitebread* or *Fenwick* knowing of the Agreement, when it was spoken of?

Bedlow. I have seen *Fenwick* at *Harcourt's* and *Whitebread's* Chamber, when it was spoken of; they were all of one Opinion, they had decreed it. I never saw *Whitebread* but twice at *Harcourt's* Chamber, where one Time was *Harcourt* himself, at another Time was *Pritchard*, and *Le Faire*, and others; at which Time Sir *George Wakeman's* Business was spoken of, and because he would not accept the 10000*l.* 15000*l.* was agreed to be given him; and upon Sir *George's* Trial, I shall let you know where he had the Money too, but I desire to be excused at present. I shall speak it to-morrow.

L. C. J. What did they consult there?

Bedlow. They were Consulting how it should be done; and what should be done, if they did not do it. Then *Ireland* proposed, that the most certain way was to do it at his Morning-Walks in *New-Market*; *Fenwick* was to go, and with him went *Conyers*; I heard Seven or Eight of them were to go.

L. C. Baron Montague. What say you to *Turner*?

Bedlow. Of Mr. *Turner*, I know nothing, but what I have heard others say.

L. C. Bar. What say you to *Gavan*?

Bedlow. I know nothing of him, but only I have heard Mr. *Harcourt* say he hath been a great Manager of this Business.

L. C. J. That is nothing to the Purpose, what others say.

Bedlow. Mr. *Harcourt* is no Stranger to my bringing of Pacquets and Portmantles over to him, from *Beyond the Seas*.

Harcourt. He never brought but one in all his Life-time.

Bedlow. What, Did I never bring but one Pacquet? Have not I brought divers, and divers Portmantles?

Harcourt. You never brought a Portmantle in your Life.

Bedlow. I have brought divers.

Harcourt. You know I never saw you but twice in my Life, before to-day, and when I met with you at the Privy-Council.

Bedlow. My Lord, the Trials have been so put off, that I could never get all my Witnesses together, but I have Seven or Eight of my Witnesses that are out of Town, that would make this very clear. My Lord, there was never a Pacquet of Letters that I brought over to Mr. *Harcourt*, but did contain in it a Design of the

Subversion of the Government; and it must be more than two Pacquets that I have brought over; for I have brought Letters from *Watton*, and Letters from *St. Omers*, and Letters from *Bruges*, and from *Paris*, and from *Valledolid* and *Sallamanca*; and all these Letters contained in them the Management of this Plot, how far they had proceeded beyond Sea, and Answers how far they had proceeded in *England*, from him, and to them, to and again, from Time to Time, in carrying on the Design of Subverting the Government, and altering the Religion; wherein was given an Account of the Army and Forces that were to be raised, both Here, and Beyond Sea; what Contributions were made, or expected, at Home, or Abroad, all was lodged in Mr. *Harcourt's* Hands, at leastwise an Account of the greatest Part. And I have been sent to Mr. *Langborne* with Papers from *Harcourt*, about this Affair, to Register them; and of that I shall give you an Account, upon Mr. *Langborne's* Trial.

L. C. J. Well, now ask him what you will.

Whitebread. Sir, I desire to ask you one Question.

Bedlow. I desire it may be asked the Court.

Whitebread. I desire to ask him whether he was a Lieutenant in *Flanders*, or no?

Bedlow. Yes, I was.

Whitebread. Of Horse, or Foot?

Bedlow. Of Foot.

Whitebread. Take Notice, there is no such Officer of Foot in all *Flanders*.

Bedlow. I was then in the Regiment of the Prince of *Freizland*.

Whitebread. There are no Lieutenants in all the *Flanders* Companies, only Captains and Al-fara's.

Bedlow. My Lord, I had a Commission, and I have a Commission to be so, and I desire I may send for it.

L. C. J. It is no very material Thing; as soon as it comes, they shall see your Commission.

Harcourt. You say you have had Papers from me, and been very familiar with me; Pray, how can this be, when, as I did declare before the Lords in Council, that was the third Time I ever saw your Face? The first Time he came to me, he brought Letters from *Dunkirk*, five Years ago; when I opened them, I found them directed to other Persons, and to them I sent them, my Name being only used in the outside Cover; and it seems upon that Confidence that he had in me at that Time, not long after, he came to my Chamber, and told me, He had lately become a *Roman* Catholick, and by that means had lost his Friends, and that he then was in Want, and, unless I did assist him, it would be very hard with him; tho' his Father deserted him, yet he had some Friends, whom he expected would do something for him, and then I will repay you.

L. C. J. When was this?

Harcourt. The second Time that I ever saw him in my Life, and this is four Years since. Then said I, What will serve your Turn? He told me, 20*s.* which I lent to him; and I never saw his Face afterwards, till I met him at the Privy-Council; and therefore, how should a Man believe a Word he says?

L. C. J. But how shall a Man know, that what you say is true?

Bedlow. I will make it appear, at the Trial of the Lords, that I sent to him for 10*l.* and had it. I cannot now prove it, without bringing some Witnesses that I have behind a Curtain, and I will not discover them till then, they shall not know who they are.

Mr. Just. Windham. Will you ask him any Questions?

Bedlow. My Lord, I have not said the One hundredth Part of what I can say, honestly, and like a Christian, of Mr. *Harcourt*.

Harcourt. You may say what you will, but you won't speak Truth.

Bedlow. Mr. *Harcourt* went with me to Mr. *Coleman's*, when I carried over the Consult. There was the greatest Part of the Design, in that which I was to carry over to *St. Omers*, and that Consult did I fetch from Mr. *Coleman*, and Mr. *Harcourt* was with me, and I had Thanks from Mr. *Coleman* for my Fidelity in the Business, and Expedition in bringing and carrying the Pacquets. I was recommended to my Lord *Arundel*, by Mr. *Harcourt*, and was promised, by his Lordship, all the Friendship and Favour imaginable, when the Times were turned.

L. C. J. Why here, you see, he names several Places, and Times, wherein he met with you.

Harcourt. Not one Word of all this is true.

Bedlow. I desire you to ask Mr. *Harcourt*, my Lord, Whether he was not in *August*, or *September* last, in Company with me and *Le Faire*?

Harcourt. *Le Faire*! I know no *Le Faire*.

Bedlow. *Le Fevre*, then.

Harcourt. *Le Fevre*, I believe I did see at that Time, but not since.

Bedlow. *Pritchard* did recommend the Care of me to him.

L. C. J. There, he names another Time, when you and *Pritchard* were there together.

Bedlow. *Pritchard* was my Confident, and my great Friend, and told them, This is a Person whose Fidelity you have tried, in carrying over such and such Letters, and therefore you may very well trust him, and take care of him: And so he recommended me, as one that was really fit to understand the Bottom of the Design. And *Pritchard* did tell me, before them, that the King's Death was intended as a Part of it; and he sent again another time to Mr. *Harcourt*, but it was about no material Business; and *Harcourt* gave a Bill of Exchange to carry to what Citizen I don't know, but to Sir *George Wakeman*, to have 2000*l.* by whose Orders, as they said, your Lordship shall know upon his Trial, but I saw *Harcourt* give him the Bill of Exchange.

Mr. Just. Dolben. Who gave the Bill?

Bedlow. It was *Harcourt*, my Lord.

Harcourt. Who was by, when this Bill was given?

Bedlow. *Kaines*, and Sir *William Anderson*.

Harcourt. How was this Bill drawn?

Bedlow. It was drawn upon a Citizen, and left in your Hands.

Harcourt. I desire he may name the Citizen, and, if he can, make it out; if he do, it will appear upon the Merchant's Books.

Bedlow. Sir *George Wakeman* received a Bill of Exchange from Mr. *Harcourt*, and he was told, Here is a Bill of Exchange for 2000*l.* as part of

of a greater Sum; to which Sir George Wakeman answered, That 15000*l.* was a small Reward for the settling of Religion, and preserving of the Three Kingdoms from Ruin; but if it were not for such a Woman, he would never undertake it, but for her he would do any thing. And after he had given Sir George Wakeman the Bill, Sir George Wakeman opened it, and read it, but I did not read the Name that was to it.

Fenwick. My Lord, it seems not sufficient Proof, that he says, he saw a Bill of Exchange, unless he says from whom, and to whom, that it may be proved by the Books, or otherwise.

L. C. J. You say well, Mr. Fenwick, if so be he had been the Person concerned in the Bill, that he were either one that drew it, or was to receive the Money, then it was strange that he should not know the Parties to it; but I must tell you, where he was not one nor the other, it was a collateral matter. Do People take notice of every particular Bill of Exchange that they see, which they are neither to pay nor receive?

Fenwick. But what Reason does he give your Lordship, or the Jury, to believe that there was such a Bill, unless he does produce either the Bill, or the Person that paid it?

Bedlow. I did only see the Bill out of Mr. Harcourt's Hand, but it was read there only by Sir George Wakeman.

L. C. J. Is it a Pin matter, whether there was such a Bill or no, or whether he had mentioned it or no?

Fenwick. But seeing he hath mentioned it, I say there is nothing of Proof of it, but only his bare Word.

L. C. J. Yes, there is his Oath.

Sir Cr. Levinz. And I desire the Jury to take notice how unreasonable a Thing it is that you ask. You would have Mr. Bedlow produce the Bill of Exchange, that was given to Sir George Wakeman to receive the Money.

Bedlow. I have only one Word more. Sir George Wakeman received the Bill of Exchange from Mr. Harcourt, read it himself, folded it up, and went and received the Money; and that the Court will be pleased to see my Commission, for now I have it here.

Which was read by my Lord Chief Justice North, and several others.

Sir Cr. Levinz. We have only this one Matter to trouble your Lordship and the Jury with. You perceive by the Evidence that hath been given, that the main Matter begins at the Consult of the 24th of April, when the Consult was; now to fortify this Evidence, we are now to produce a Letter, that was written from one Petre, at St. Omers, a Jesuit, wherein is mention made, that he was to give Notice, Mr. Whitebread had appointed a general Meeting, just at that Time, in London, at which they were to consult of very great Matters; and they were to be very private in their coming to, and appearing about the Town. And this Letter was taken amongst Mr. Harcourt's Papers, and to prove it, we call Sir Thomas Doleman. *[Who was Sworn.]*

Sir Cr. Levinz. Pray, what can you say where this Letter was found?

Sir Thomas Doleman. It was found amongst Mr. Harcourt's Papers, in a Bag of his Papers that was committed to my Care to search.

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L. C. J. Can you tell what Day you found it?

Sir Thomas Doleman. It was a matter of six or seven Days after Mr. Oates had given his Information of this Plot to the Council.

Harcourt. What Paper is it?

Mr. Just. Atkins. Hear it first.

L. C. J. It is a Letter found amongst your Papers.

Harcourt. Who is it from?

L. C. J. It is from one Mr. Petre, do you know such a one?

Cl. of the Cr. It is subscribed, E. P.

Harcourt. Yes, my Lord, I do; I will deny nothing of the Truth.

Then the Letter was read, *in hæc verba.*

Honoured Dear Sir,

I Have but Time to convey these following Particulars to you. First I am to give you Notice, that it hath seem'd fitting to our Master Consult, Prov. &c. to fix the 21st of April next, Stilo veteri, for the Meeting, at London, of our Congregation; on which Day, all those that have a Suffrage, are to be present there, that they may be ready to give a Beginning to the same on the 24th, which is the next Day after St. George's Day: You are warned to have jus suffragii, and therefore, if your Occasions should not permit you to be present, you are to signify as much, to the end, others, in their Ranks, be ordered to supply your Absence. Every one is minded also, not to hasten to London long before the Time appointed, nor to appear much about the Town, till the Meeting be over, lest Occasion should be given to suspect the Design. Finally, Secrecy, as to the Time and Place, is much recommended to all those that receive Summons, as it will appear of its own Nature necessary.

Tertio pro Domino Solono Disco.
Benefact. Prov. Lunienfis.

I am straitned for Time, that I can only assure you, I shall be much glad of obliging you any ways.

S I R,

Your Servant,
Edward Petre.

L. C. J. Come, now, Mr. Harcourt, will you expound this Letter to me, that speaks of this Meeting and Privacy?

Harcourt. Yes, my Lord; tho' it was not my Letter, yet I will tell you what the Meaning of it was. That Letter was writ to one, who had Jus Suffragii, a Right to come and Vote in our Congregation, which, according to the Constitution and Orders of our Society, is within the Compass of three Years, where they meet about the particular Affairs of the Society.

L. C. J. What was it about?

Harcourt. It was about choosing an Officer; choosing a Procurator to send to Rome; that was the chief Point: And Secrecy was a Thing that was recommended to every one, as it was fit it should be, we living in a Country where every one's Eye was upon us, and we were an Eye-sore to them, we ought to be cautious of meeting in such Numbers, as might give an Offence; and this was the only Thing, indeed.

L. C. J. Look you, Mr. Harcourt, you say well, but we are not to be altogether Disciples

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of

of yours, so as to have no Sense of our own, and to be impos'd upon so weakly as this. Here is the Thing, says the Letter, *I would not have you come too soon to London, nor appear too much in publick, for fear of discovering a Design, which requires Secrecy in its own Nature.* What, was that your Design, of choosing a Procurator? Tell me but one Thing that can bear the Name of a Design, which must have that Secrecy in it, that People must not appear much about Town, and that in its own Nature requires such a Thing.

Whitebread. My Lord, the Thing it self is evident, what was the Design.

L. C. J. Come, Mr. *Whitebread*, you will do it better.

Whitebread. It is evident it was a Design to chuse an Officer.

L. C. J. Why, good Mr. *Whitebread*, do any write after that manner? Were you to write to any one, or ask the Jury, if they were to chuse some Collector for the Receipt of some charitable Money that should be employed for the Relief of Protestants in France: Do you think any Man would say, *Do not appear much in London before-hand, nor come too soon, for fear of discovering the Design, which in its own Nature requires Secrecy.* Will this endure the Name of a Design?

Whitebread. First, it is a very hard Thing to bring so many Mens Lives in Danger, meerly upon the Interpretation of a Word, which may as properly signify one thing as another. Is it not proper for me to say, I have a Design to Dine with such a Man to-morrow, or the like?

L. C. J. 'Tis true now, but hearken —

Whitebread. But that was the Thing designed, to have a Congregation for the chusing of an Officer, and it was, I think, very properly said, and that it should be kept secret, was as prudential a Thing as possibly could be. Was it not proper here, because our Profession was not publicly permitted in this Kingdom; and therefore that was the Reason why Secrecy was injoin'd? And this, upon my Salvation, was all that ever was intended or thought.

L. C. J. North. This now is the Interpretation you put upon the Letter, but we understand by the Witnesses what was done at that Meeting.

L. C. J. Look you, Mr. *Whitebread*, this Letter, without Question, hath been well studied by you all; and it requires it mightily.

Whitebread. It needs none.

L. C. J. This is not the natural Exposition of the Words of the Letter, that you give, but a forced one; for first, there is a Difference between saying, I do design to Dine to-day, tho' it be a usual matter, but it is another thing, when I call a Thing by the Name of a Design, accompanied with a requiring of Secrecy in its own Nature, and when I give Advice, that they must not appear in Town too soon, nor too much about the Town, for fear of discovering the Design, *which in its own Nature requires Secrecy.* Must all this amount but to the chusing of an Officer? You'll never make one Papist of all this Company, if you make no better Work of it.

Whitebread. My Lord, I humbly desire your Lordship would not strain a Word which may be well enough said, whether it be properly said or no.

L. C. J. 'Tis not one Word alone, but 'tis the whole Sense.

Whitebread. 'Tis evident, there was just Cause of Secrecy, because of our Profession.

L. C. J. Mr. *Whitebread*, 'Tis not one Word that is relied upon, for the Business is pursued. 'Tis not said, *Pray meet at such a Time*, but, *Be careful you do not discover the Design*; if it had been only said so, it would have been a Strain, to have made this Construction of a single Word, to make this that Design; but as it is here, we make no such Construction; it had been hard indeed to put that Meaning upon it as you do, even then, for 'tis seldom so used, for no Man writes after that manner; but when it follows in a continued Sense of so many Lines, *be sure you meet on the 24th of April, the Day after St. George's Day, but come not too soon to Town, nor appear too much about the Town, for fear of discovering the Design, which you know in its own Nature does require Secrecy.* Can we make any such Interpretation of it? If you have no better Arguments than these, you must have People lose their Understandings, or have a very blind Obedience to yours, or it will never down. Ay; Come, Mr. *Gavan*, how do you say is the Meaning of this?

Gavan. For my Part, I'll assure your Lordship, I was not there; but this is known to all the Christian World, that there is such a Meeting in Spain, France, Germany, &c. that wherever the Jesuits are, once in three Years they have a Meeting among themselves, for the settling of their Affairs. Indeed the Words have given your Lordship an Occasion to raise a Difficulty, what the Word *Design* should mean? Which I do give this Answer to: Your Lordship's Difficulty is, That the Word *Design*, here, should not be made use of to send one poor Jesuit to Rome. My Lord, do but mark the End of the Congregation, and you will say to us, that we might well use that Word, because the Word may import some great Business of Concernment; now what Business of greater Concernment for poor religious Men to meet together about, than those Things that may promote their better State in another World, and the Regulation of what is amiss in their Order. My Lord, upon my Conscience and Salvation, this was the End of the Congregation, to meet, and see what is amiss in their Order, who do their Duties, and who not, who are irregular in their Offices, and whose Office is vacant, and to be supplied.

L. C. J. But must no Body come to Town, nor appear too much about the Town, for this?

Gavan. Therefore, my Lord, as to the Word *Design*, it concerning the whole spiritual Good of the whole Body of the *English* Jesuits, it might well be used for the Consultation of that Body, about all their Good, Temporal and Spiritual, which was all concerned in it.

L. C. J. These are a many Words, but to no Purpose.

Gavan. Now, my Lord, for the Second Thing that you object, your Lordship remembers very well, that the Continuation of the Sense in so many Lines, made the Thing the more suspicious, that more was intended by it than so: Now to this I shall be able to answer, if there can be given a particular Reason why we should add that Word of *Secrecy*, to the other of *Design*; having answered to the one Part, we now give an Answer,

swer to the other, and so to the Whole. Now, my Lord, because of the Time, the Parliament was then Sitting, and that we might not offend the King and all Civil Magistrates (whom we honour from our Hearts and Souls) that Word was used that it might be kept secret.

L. C. J. It was not out of Love to the Parliament, it was *the Nature of the Thing required it*, nor was it out of Fear you had of them. I did never find, tho' you are as good at it as ever any I met with (for I never met with a Priest that had much more Understanding) but really you do not answer me. You are so far from Scholars, and Arguing like such, that you do not maintain the Matter with common and rational Understanding, but only heap up so many vain Words (like a Rope of Sand put together) which hath no natural Coherence; for you cannot possibly make this reasonable, that People should have so much Caution, that they should not come too long to Town before-hand.

Gavan. Not to be taken Notice of.

L. C. J. Not to appear in Town when they come.

Gavan. Not to be taken Notice of.

L. C. J. I say so, you cannot tell why all these Cautions should be used, meerly for chusing an Officer.

Gavan. My Lord, our Lives depended upon it, if we were taken, being such Men as we are.

L. C. J. You can make nothing of it, and you will find it an hard Task to answer it; for if half the Evidence that hath been given, were not given, yet this Letter of your own, which cannot be denied, is an unanswerable Proof. It does monstrously confirm Mr. Oates's Testimony to be undeniable, as to the Meeting at the Consult; for he, four or five Days before-hand, comes and tells the Council, the very Day which, five or six Days after, this Letter makes good, which is found in *Harcourt's* Custody. Then there was a Consultation upon the Day, the very Day that Mr. Oates says, and what he calls a Consultation, your own Letter says is a Design.

Gavan. It was a Design of a Congregation.

L. C. J. What Sense is there in that? Will any Man in *England*, or did any Man in *England* ever say, Take heed of discovering our Design of going to Church, or chusing a Collector?

Gavan. There is Reason for the one, and Reason for the other too.

L. C. J. I would appeal to your selves, and all here present, what the natural Import of such a Letter is, whether it does not carry a Matter more than ordinary, whether its natural Intendment doth not look at that? And the next Thing is this; Does any Man write plainer than this, when they write of a Thing that is of such a Nature? Is not the Danger too great to hazard that Fact, which they call the Nature of the Thing, to intrust it in a Letter? Is it not vain to put that in a Letter, in Words at length, which they, to whom it is writ, know what the Thing means? And if it should be further known than they would have it, the Thing could never be done: And if you consider the Person that writes, a Jesuit, or a Priest; Are Priests ever plain? And will you expect Plainness here, when, in Things of ten thousand times less Moment, they don't write plainer? Is it not known, you have not a Profelyte, that you do not keep un-

der Obligations as close as your Confessions are? Have you not taken here, as it is sworn, a Sacrament of Secrecy? Is there a Woman that you convert, but in the Dark? Or a Papist made, out of a Priest's Hole? Are not all your Deeds under-ground? and do you work with any Light, but that of a Dark-Lanthorn? This is plain, unless you give a better Answer to this Letter, the Letter will hang about your Necks.

L. C. J. North. Mr. Oates will tell you what the Design was.

Mr. Just. Ellis. He can tell you what it was.

L. C. J. The Letter speaks it self.

Oates. Mr. Gavan, and they, now, tell your Lordship what this Consult was for, but they deny'd this Consult at first, when there was but one Man to justify it. I justified it before Mr. *Fenwick*, who denied it at the Council-Board, though now they pawn their Salvation upon the Justification of it.

Fenwick. I never denied that there.

L. C. J. Come, have they any thing to say for themselves?

Bedlow. My Lord, whereas, as Mr. Gavan says, that in Obedience to the King and Parliament they would have their Consultations secret, and that they always desired to conceal themselves then; the Time of Sessions of Parliament was the only Time that I and others have been employed to fetch over more Jesuits than at any other particular Time.

Oates. And there are more of them then in the Court of Requests, and in the Lobbies, bare-faced, and threatening the Protestants, than at any other Time.

Bedlow. We used to fetch them against the Parliament always; they were in less Danger then, than at other Times.

L. C. J. You could give a very good Interpretation of the Letter, I suppose, that Mr. *Dugdale* speaks of, that came from *Whitebread*, That he should be sure to entertain such as were hardy, stout Fellows: I suppose you can make all this to signify nothing more than a Design for a Game at Cudgels.

Sir Cr. Levinz. If your Lordship please, we must desire that one Letter more may be read. Your Lordship hath been told of Commissions for raising an Army, here is a Touch of them mentioned in this Letter, found amongst Mr. *Harcourt's* Letters too.

L. C. J. Look you, Mr. *Harcourt*, you had best attend; here is another Letter found amongst your Papers, concerning some Commissions. You look ill to your Letters; you are to blame, indeed, Mr. *Harcourt*.

Sir Cr. Levinz. Pray, Sir *Thomas Doleman*, look upon that Paper, and tell us how you came by it.

Sir Tho. Doleman. This Letter in my Hand I found amongst Mr. *Harcourt's* Papers, about some two Days after I found that other that was read before. Having heard Mr. Oates give in his Information to the Council, That there were several Commissions given out to several Persons, and finding some doubtful Clauses and Expressions in the Letter, I did present this Letter to the Council, and made a Mark upon it, *Enquire what is meant by the Word Patents*.

L. C. J. Pray let it be read, because we shall desire a little more of their Interpretation.

Cl. of the Cr.

Cl. of the Cr. It is Signed Christopher Anderton, Hilton, February the 5th 1677.

Oates. Hilton, that is Rome.

L. C. J. Mr. Harcourt, you understand, that by Hilton, is meant Rome?

Harcourt. Yes, my Lord, I do.

L. C. J. Well, then go on, and read it.

Cl. of the Cr. *Worthy Sir, I know not from whence it proceeds, but I perceive that both your Letters and mine have had Fortune by the way, for my Correspondents with you complain, they hear not from me, whereas I write constantly intire Pacquets; and since the Bills I received from your self, for Sir William Goring, and for Mr. Ireland, from Mr. Shelly, I have not had one Letter, but what I received this Week, which, in part, made recompence for the former, for it brought me three of yours, and one of Mr. Ireland's, for which I render you many humble Thanks, and acknowledge the Fifteen Pounds from my Lord Castlemain, tho Mr. Ireland made no mention of it in his. We are all here very glad of the Promotion of Mr. Thomas Harcourt. When I writ that the Patents were sent, altho I guess for whom they were, yet I knew not for certain, because our Patrons do not use to discover things or resolutions till they know they have effect. And therefore in these kind of Matters I dare not be too hasty, lest some might say, A Fool's Bolt is soon shot.*

L. C. J. What is the meaning of these Patents?

Fenwick. This Gentleman will tell you, my Lord.

Whitebread. My Lord, they were the Patent for my being Provincial.

L. C. J. How many Patents had you?

Whitebread. But one, my Lord.

L. C. J. Is that Patents?

Whitebread. *Literæ Patentes.*

L. C. J. Is it Patent or Patents?

Cl. of Cr. Patents.

L. C. J. Read those Words again.

Cl. of Cr. *We are all here very glad at the promotion of Mr. Tho. Harcourt. When I writ that the Patents were sent, altho I guess for whom they were, yet I knew not for certain, because our Patrons do not use to discover things or resolutions, till they know they have effect.*

L. C. J. Now you have not interpreted well this neither.

Sir Cr. Levinz. It is said, *I knew not for certain who (they) were for; but to make it clear, I would desire Mr. Whitebread to answer me one Question, How long is it, Sir, since you were made Provincial?*

Whitebread. The 14th of January was Twelve-month.

Sir Cr. Levinz. And this was dated the 5th of February, which was after your Commission.

Whitebread. That may be, and they not know till then.

L. C. J. And so you expound those latter words of the Letter, That the Resolution of making you Provincial was not discovered till the Effect was known.

Whitebread. Because it is not known, whether the Person that is nominated might not be expected against: and it is *Literæ Patentes.*

L. C. J. But here is but one Person to answer the word Patents, and there should be more than one Man.

Whitebread. Every Patent is called *Literæ Patentes*, tho it be but for one Person.

Mr. Recorder. They were in great doubt that you would refuse the Place, I warrant.

Oates. He is bound on pain of Damnation not to disobey his Superiors; if they chuse him to a Place, he must take it upon him.

Whitebread. It is not the first, second, or hundredth time that one hath been appointed by the Superior to a Place, and hath refused it; and if I had known the hundredth part of what I do now, of the Trouble of the Place, I would never have accepted it.

Mr. Recorder. Ay, if you had known the difficulty of this Design, you would never have engaged in it, especially if you had known what is come to pass.

Whitebread. No, Sir, I never had a Hand in any such thing in all my Life: this is *coram Deo* that I now speak, and as I am to appear before the great Tribunal at the Day of Judgment, I know nothing of all this Matter.

Oates. My Lord, these Patents, of which this Letter makes mention, a great many of them came down in the Months of April and May before.

L. C. J. Methinks he interprets them plainer than you do.

L. C. Baron. Now what have you to say every one of you for your selves? Make your Defence.

L. C. J. Mr. Whitebread, do you begin.

Oates. While the Prisoner's Evidence is calling in, I desire that my Witnesses may be sworn.

Mr. Just. Pemberton. Mr. Oates, be quiet, there is no need of it yet, till they have made their Defence.

L. C. J. But send for them, that they may be ready.

Whitebread. My Lord, that which I have to say for my self is this: I thank God, my Lord, I am not afraid of Death; but I should be very loth to die unjustly, and I hope your Lordship will consider, that every Man's Blood is dear to him, and is concerned for his own Life to preserve it, he ought to be allowed Liberty and Freedom to preserve himself as much as he can. Life is a thing not to be thrown away, but charily to be lookt after, and that there is such a thing as taking away Mens Lives by Perjury, as well as by a Knife or Pistol, is without contradiction. Now whoever comes against a Man for his Life, I suppose he is to be looked upon not only by the Prisoner, but also by the Jury and the Court, that he ought to be *Probus Testis*, and a Man fit to be admitted to be a Witness. Now I have something to offer, That Mr. Oates is not any such Person. Your Lordship was pleased to say, That he was the Person who proved the Design mentioned in the Letter that was read. Now I hope your Lordship will give me leave (and I hope I may do it without offence to this Court) to say that he is perjured in what he says.

L. C. J. You mean that his Evidence is false, you may do it if you can.

Whitebread. He says he came over hither, and was here present the 24th of April with me, and that I did appoint him to do such and things, and discovered the whole Business to him. Now I desire your Lordship would be pleased to consider whether this were probable, and whether I had not been a very much mistaken Man all this while to trust a Man with such a Business, and whether I ought not rather to be sent to *Bedlam* than *Newgate*, for trusting such a Man as he, whom by his own confession I never saw till that

that time. 'Tis not rational that a Man would trust him; and then, my Lord, that this Business should be discovered to him, a Man that depended wholly upon us to live, and had no Livelihood but what he had from us, who maintained him at St. Omers long, as well as the best Man in the House.

L. C. J. Did you do it?

Whitebread. Yes, my Lord, I did.

L. C. J. You should consider how in that you answer your self.

Whitebread. I, that is, when I came to the Office, and I and my Predecessors. When I was Superiour I found him not a fit Man for that Purpose and Design he pretended to. He was very zealous to be entertained amongst us, and therefore I desired him to absent himself.

L. C. J. Why was he not fit to be employed among you?

Whitebread. For several Reasons of our own: First of all it was doubtful, whether he was a good Catholick: for he had oftentimes maintained several Propositions that were not soundly Catholick: and then, secondly, he led a very idle Life, and he was not found a Man we were obliged to accept of, and therefore we desired him to retire. And to that purpose we furnished him, gave him a good Suit of Cloaths, and a Periwig, and four Pounds in his Purse, and he promised me to pay me again when he had sold his Library, which he said he had a very good one in London; but he never did. But that I should be so strangely overseen and mad, as at the first sight of such a Man as this, to trust him with such a great Intrigue as this was, and to write in such a plain strange manner, and send by Post to Mr. Dugdale, as your Lordship did and justly might wonder at, had been a Madness. It was much that any Man would write so plain of such a thing. But then, my Lord, the chief thing is this, That I hope your Lordship will give us leave to produce our Witnesses to prove, that he was not from St. Omers from the 10th of December till the 23d of June following, and never lay out of the House but one Night from December till June.

L. C. J. Name your Witnesses.

Whitebread. I desire first Mr. Hillsley may be called.

L. C. J. Call him; but I'll tell you what is strange, You say it is wonderful that you should trust a Man you had so little Opinion of his Abilities or Fidelity; but I wonder that you should maintain him after that.

Whitebread. No, my Lord, we did not.

L. C. J. You say you did.

Whitebread. No, my Lord, he pretends he was here in England sent over by us, but we will prove he was not.

L. C. J. But you maintained him abroad?

Whitebread. That was before?

L. C. J. Is it so great a wonder that you should take into your Confidence and Consultation that Man, whom for a considerable time before you had maintained abroad?

Whitebread. But, my Lord, I suppose there is some difference between charitable Acts to a Man in Want and a Scholar, and trusting him with such an Intrigue as this.

Fenwick. Pray my Lord, be pleased to take Notice, that this Man's Evidence all along is, that he saw such and such Letters from such and

such Persons. They have no Evidence but just that they saw such and such Letters, and how is it possible that a Man who was turned away from St. Omers for his Misdemeanors, that I should shew him all my Letters? Now, my Lord, I have had a thousand Letters taken from me, not any of these Letters had any thing of Treason in them, or soliciting of Persons to come into England; let the Letters be produced, and then your Lordship will see what is in them. All the Evidence that is given, comes but to this; there is but saying and swearing. I desire them all to give one probable Reason to satisfy any reasonable uninterested Man's Judgment how this could be.

L. C. Baron. There can be no Reason given why you should sign an Instrument to kill the King.

L. C. J. You say there is nothing but saying and swearing, but you do not consider what you say in that Matter. All the Evidence and all the Testimony in all Trials is by swearing. A Man comes and swears that he saw such a Bond sealed, or heard such Words spoken, this is saying and swearing, but it is that Proof that we go by, and by which all Mens Lives and Fortunes are to be determined. But then say you, 'tis wonderful, that since they say they saw such and such Letters, they should not produce them; why? they did not belong to them: Ay, but then say you, 'tis strange they should not find one Letter in all those numerous Papers that were taken that contains any Traiterous Matter; but, I say, 'tis forty times more a wonder that one should be taken, than for all the rest to be undiscovered. I suppose Mr. Harcourt, amongst those Papers that he let be surprised, did not think that Letter that hath been read to have been of such Consequence, nor the Sense of it to be so bad.

Fenwick. I dreamt no more of my Apprehension, when I was taken, than the Day of my Death, it was so unexpected; nor what I should be accused of: I had no fear of it, no thought of it, so that I took nothing out of the way. They took five or six Thousand Pound Bonds and Bills, besides Letters; methinks something of the Effects of those Letters might be produced, and some of the Design appear. For God's sake, where are the Commissions signed, and Moneys paid?

L. C. J. They talk of a Patent. Mr. Whitebread construes it, that it is his Commission; if so, does it lye in Oates or Bedlow's Power to shew that Commission? (this is just like that of the Bill of Exchange) neither does it in any of the Letters.

Fenwick. Here is Mr. Hillsley, my Lord.

Whitebread. My Lord, we pray we may have the favour that they may be Sworn.

L. C. J. North. By Law they cannot.

L. C. J. In no Capital Case against the King can the Witnesses for the Prisoner be Sworn; but I will say this to the Jury, That they are not Sworn, is, because they cannot, but the Jury is to take great heed of what they say, and to be governed by it according to the Credibility of the Person and of the Matter.

Gavan. My Lord, if you please to give me leave, my Lord Coke in his Institutes says expressly, That there is no positive Law against it, his Words are, there is not so much as *Scintilla Caris* against it.

L. C. J.

L. C. J. North. We know that the constant Usage and Practice is so, and you cannot produce any Man, that in any Capital Case had his Witnesses sworn against the King.

L. C. J. My Lord Coke says otherwise, That the Evidence should be so plain that nothing could be answered to it; and therefore no Evidence should be sworn against the King.

Gavan. My Lord, those are the Words of my Lord Coke.

L. C. J. You argue against the known Practice of all Ages.

L. C. J. North. There was never any Man, in a Capital Cause, sworn against the King. The Common Law is the Custom of the Kingdom, and we are bound to know it, and must be all governed by it.

Whitebread. In Mr. Ireland's Trial, pag. 35, 36. he says, he came over with Sir John Warner, Father Williams, and Mr. Hilsley, from St. Omers.

Mr. Just. Pemberton. Nay, you must not resort to the printed Trials for Evidence.

Fenwick. If we can prove him Perjured at any time, I hope we may.

L. C. J. Suppose upon the taking of those printed Trials they mistake, shall Mr. Oates therefore be thought Guilty of Perjury? If you have any thing to ask of your Witnesses which you can apply to the Evidence given now, you may.

Fenwick. Mr. Oates, did not you your self own then you came over with Mr. Hilsley?

Oates. Ask me any Question about what I have given to-day, and if the Bench think it reasonable, I will answer it.

Fenwick. My Lord, he did then affirm, that he came over with these Persons, in which he is forsworn.

L. C. J. He is not convicted of Perjury, and therefore that must not be urged.

Fenwick. My Lord, we will prove by Witnesses that were at the Trial, that he did affirm so: And I do desire now to know of you, Mr. Oates, whether ever you came over with Mr. Hilsley?

Oates. That which I said then, and that which I say now, is, (because you should not puzzle your selves) that one Mr. Hilsley did come over with us when we did.

Hilsley. My Lord, I did not.

L. C. J. How can you tell?

Hilsley. I left him at St. Omers.

L. C. J. What say you, Mr. Oates?

Oates. 'Tis true, Mr. Hilsley did leave me at St. Omers, because he went out a Sunday Morning, and I came out of the Monday Morning, but I overtook him at Calais.

Hilsley. My Lord, that is false, and I have a great many here that can prove it.

L. C. J. What Religion are you of?

Hilsley. I am only to serve His Majesty.

L. C. J. Are you not to serve God too?

Hilsley. I am first to serve God, and then His Majesty.

Mr. Just. Pemberton. Are you a Catholic?

L. C. J. Are you a Roman Catholic?

Hilsley. Yes, my Lord, I am.

Mr. Just. Pemberton. Be not ashamed of your Religion, do not deny that; your Provincial here can give you a Dispensation for what you say.

Hilsley. I hope a Roman Catholic may be a lawful Witness?

L. C. J. Yes, I deny it not. This is that you say, you left him at St. Omers; you must call more Witnesses to back him: Master Oates says 'tis true, you left him at St. Omers, but he overtook you at Calais.

Oates. This Gentleman lost his Money at Calais, and Father Williams did relieve him by my means.

L. C. J. What say you to that?

Hilsley. Why, my Lord, yes, it is true, I did lose my Money there, but it is nothing to the purpose, for I will affirm, I was never in the Ship with him in all my Life.

Oates. I desire he may be asked, whether he be in the Degree of a Priest, or not?

L. C. J. That would be a hard Question to put to him, to make him accuse himself. It would bring him into danger of Treason.

Mr. Just. Pemberton. He is a Boy very fit to make a Jesuit of.

L. C. J. How could he then come to know this?

Hilsley. I confess 'tis true, that Mr. Oates did never come over with me. And I have Witnesses to prove, that they saw him there next Day at St. Omers, and two or three several Weeks after.

Sir Cr. Levinz. Mr. Oates hath another Circumstance to prove it by.

Oates. He went from us by the way, and did not come up with us to London.

Hilsley. I know how he understood this: There was a Gentleman that the Witnesses will prove he was very familiar with, the second of May, that told him,

L. C. J. Is that Gentleman here?

Hilsley. Here is one here to prove it.

L. C. J. And did he tell him how you lost your Money?

Hilsley. Yes, my Lord, I suppose so.

L. C. J. I speak seriously, I do not understand how he could come by these Things.

Parry. My Lord, I can testify, if it were lawful for us to swear, and prove that he was at St. Omers that Day, when he says he came over.

L. C. J. What is your Name?

Parry. My Name is William Parry.

L. C. J. What Countryman are you?

Parry. I am a Flintshire Man.

L. C. J. When was he at St. Omers?

Parry. He was there that 25th Day, that Day he says he came over.

L. C. J. Was he there all Day?

Parry. He did not stir thence all the Day.

L. C. J. How can you tell that?

Parry. I din'd with him; that Day he went into the Infirmary, he did not go out of the College, he was sick.

Fenwick. Mr. Parry, How long did Mr. Oates stay there at St. Omers?

Parry. He staid till after the 20th of June, I am sure; for on the 20th of June I know he was present, by a very good Circumstance, he was at an Action of ours, a Latin Play.

Oates. My Lord, as to this going into the Infirmary at that time, I deny it. My Lord, (if your Lordship please) I will shew that this Gentleman is not only a Votary of the Jesuits, but hath been one of the Sodality several Years. And they have Dispensations, and are bound by an implicit Obedience to say what the Jesuits bid them, who are their Superiors.

L. C. J.

L. C. J. What say you to the 20th of June, the time he says you were there at the seeing of the Play?

Oates. My Lord, as to that twentieth of June, I was there, and there was an Action at that time, for I was then returned thither from London.

Parry. I deny all that, for he never stirr'd out of the College.

L. C. J. Young Man, in what Quality were you there?

Parry. I was a Student there, a Poet.

L. C. J. How can you say he did not stir thence all the while?

Parry. I know by a particular thing; I din'd and supp'd with him there, but when he was in the Infirmary; but the particular passage was this, He did there fall out with a Gentleman that was in the Infirmary too.

L. C. J. When was that?

Parry. It was at the time that he says he came away.

L. C. J. When went he in?

Parry. The 25th of April, Old Stile, and staid a matter of three or four Days.

Oates. Will you be pleased to take Notice of this? he says that *Hilsley* left me at St. Omers when he came away, and that the next Day he dined with me, and that I went into the Infirmary, which, he says, was the 25th of April, Old Stile. Now we will run to argue *ad hominem*; If this were the 25th of April, Old Stile, how did Mr. Williams meet with Mr. Hilsley at Calais, and restore him his Money, when the 24th Old Stile Mr. Williams was at the Consult in London?

L. C. J. When was it that you say Mr. Hilsley was at St. Omers?

Fenwick. Answer my Lord's Question.

Parry. He went away the 24th of April, as I remember.

L. C. J. What, Old Stile?

Parry. Yes, Old Stile, according to the reckoning there.

Oates. But, my Lord, upon the Oath that I have taken; if he mean New Stile, all that this Gentleman hath said about this is false, except that I was there the 20th of June.

L. C. J. Was it New Stile or Old Stile that you say Mr. Hilsley went away?

Mr. Recorder. He does not know New Stile from Old Stile.

Parry. He went the 24th, that is the Old Stile beyond Sea.

Whitebread. I do desire he may answer, whether he does know that Mr. Oates was ever out of the House from the time he came in December till June, but one Night.

Parry. No, he never was out but one Night at Watton.

L. C. J. From what time to what time?

Parry. It was but two Days and one Night.

L. C. J. What time was it that he was there first?

Parry. He came thither in December.

L. C. J. And he did stay there all the while?

Parry. He did not stir from the College till the end of June; and never went out but a Day or two, as I know of.

L. C. J. Not as you know of; but might not he go, and you not know of it?

Parry. I am sure of it.

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L. C. J. How can you tell?

Parry. Not a Scholar goes from thence to England, but the whole College rings of it.

Gavan. And then, my Lord, when they go out they go in secular Cloaths, that none but must know when any Person leaves the College.

Oates. My Lord, in such cases, tho' 'tis true in a general Sense, yet it is but a general Rule, and every general Rule admits of its Exceptions, and my Case was a particular Exception. I put on the Habit of the House as soon as I did return from London, and did not appear as if I had gone out of the House, nor did I know that it was known that I had been out; for I did never appear in the College in a secular Habit.

Whitebread. What his Cloaths were, does not change the Place he sate in; he being Ancienter than the Boys, had a privilege to sit in a particular Place, which must be known to all the House at Dinner and Supper. He was visible every Day there.

L. C. J. I do believe it; and therefore he says, not only that he was reported to be there, but that he saw him there almost every Day.

Then another Witness for the Prisoner stood up.

L. C. J. What say you, Young Lad?

Doddington. I say, my Lord—

L. C. J. What is your Name.

Doddington. Doddington.

Oates. Pray, my Lord, ask him if he went by that Name at St. Omers.

Mr. Just. Pemberton. What was your Name at St. Omers?

Doddington. My Name was Hollis there.

L. C. J. How old are you?

Doddington. Eighteen Years and an half.

L. C. J. What can you say? Where was Mr. Oates?

Doddington. He never went out of the College, but one Night to Watton, till the end of June.

L. C. J. When came he into the College?

Doddington. A fortnight before Christmas, I did not mind the Day, he says himself it was the 10th of December.

L. C. J. Was he there till June?

Doddington. Yes, he never went out till June but one Night.

L. C. J. Where was that? At Watton?

Doddington. Yes, my Lord.

L. C. J. How do you know that?

Doddington. I only know that by what all the House said.

L. C. J. Did you see him every Day, except that Day?

Doddington. I cannot say I saw him every Day, because he was in the Infirmary once, and he was there that very Day after Mr. Hilsley went away.

L. C. J. What Day was it that Mr. Hilsley went away?

Doddington. The 24th of April New Stile; and that Day he fell Sick, and went into the Infirmary the next.

L. C. J. What Day of the Week was that?

Doddington. It was of a Sunday.

L. C. J. And when did you see Mr. Oates?

Doddington. On Monday or Tuesday, I am not certain.

L. C. J. How often did you see him from the 24th of April to June? Did you see him every other Day?

5 Q

Doddington.

Doddington. Yes, that I am sure of for every other Day, I am not certain every Day.

L. C. J. Are you positive?

Jury. We desire to know what time of the Year he was in the Infirmary.

Doddington. I discoursed with him in the Infirmary two or three Days after Mr. *Hilsley* went away.

L. C. J. But what time of the Year was it?

Doddington. He was there first in Winter, and then afterwards he was in at this time, which was in *April*.

L. C. J. Have you any more to say?

Doddington. I can say more, that I saw Mr. *Oates* the second of *May* with one *Blood* or *Burnaby*, and I am sure I saw him in his Company.

L. C. J. Where did you see him?

Doddington. I saw him walking in the Garden with Mr. *Burnaby*.

Mr. Just. Pemberton. When did you come into England?

Doddington. I came over the 24th of *April*.

L. C. J. How long have you been in England?

Doddington. About two Months.

Mr. Just. Pemberton. Why did you come over? were you sent for over upon this occasion?

Doddington. No, I was not.

Mr. Just. Pemberton. Why did you come over?

Doddington. I came over partly upon the King's Proclamation.

L. C. J. What Proclamation was that?

L. C. J. North. That those that were in the Seminaries should come over again.

Doddington. And partly because I had not my Health.

Fenwick. Mr. *Gifford*, what do you know about Mr. *Oates*'s coming from St. *Omers*?

L. C. J. When came you from St. *Omers*?

Gifford. I came over about a Month ago.

L. C. J. Upon what occasion?

Gifford. To justify that Mr. *Oates* was there all the while that he says he was here.

L. C. J. You speak like an honest Man, there is no hurt in that.

Fenwick. We did send for him over.

L. C. J. When did you see Mr. *Oates* there?

Gifford. I saw him the first of *May* was Twelve-month with us, and the 21st of *April*.

L. C. J. And how long after that?

Gifford. I was in his Company for a whole Week after, I am sure.

L. C. J. You say the first of *May* he was there, how can you tell?

Gifford. The first of *May* there came one Mr. *Burnaby* to the College, and he fell into Acquaintance with him, and I saw him with him: He was with us an whole Week at least every Day after Dinner: We have an hour always after Dinner to recreate in, and this Gentleman was there with us, and Mr. *Burnaby*; for Mr. *Oates* seeing us in the Garden at first, put himself into our Company, and kept with us.

L. C. J. Was he not in the Infirmary?

Gifford. Not at that time, my Lord.

L. C. J. When was he in the Infirmary?

Gifford. The Day after *Hilsley* went away.

L. C. J. Do you remember that?

Gifford. Yes, I do.

L. C. J. North. How long did he stay in the Infirmary?

Parry. About three Days.

L. C. J. And for how long together did you see him after Mr. *Hilsley*'s Departure?

Gifford. I can swear that I saw him at least till *June*, if I can believe my own Eyes.

L. C. J. Your Religion does not allow you to believe your own Eyes.

Gifford. I can in my Conscience say, I believe I did see him every Day, or every other Day.

L. C. J. Which do you say, Did you see him every other Day, or every Day?

Gifford. If I say I saw him every other Day, that is sufficient.

L. C. J. Do you know that he went out of the College at any time?

Gifford. Yes, he went for one Night.

L. C. J. Whither?

Gifford. To a place called *Watton*.

L. C. J. What did he go thither for?

Gifford. For his Relaxation.

L. C. J. How came you to take such particular notice of him, that he was there?

Gifford. It is impossible but we should see him, and take notice of him, for we Dine all together in one Room, and we could not but take notice of him, for he was at a distinct Table by himself.

L. C. J. How many are there that Dine in one Room?

Gifford. One hundred and fifty.

L. C. J. How could you know him, when there were so many?

Gifford. He was at a distinct Table by himself, between the Boys and the Religious.

Then stood up another, one Palmer.

L. C. J. Well, what do you ask him?

Fenwick. The same Question as the rest.

L. C. J. When came you from St. *Omers*?

Palmer. I came two or three Months ago.

L. C. J. Why did you come over?

Palmer. I had no mind to stay any longer.

L. C. J. Where does your Father live?

Palmer. By *Windsor*.

L. C. J. When did you see Master *Oates*?

Palmer. I saw him the first Day of *May*, New Stile, and I know it for a particular Reason; there were Strangers dined at the College that Day, whereupon Master *Oates*, and several other Boys played at Nine-Pins, in the Afternoon, I saw them.

L. C. J. Why, you do not count all Boys there, do you?

Palmer. All but those that are the Religious.

L. C. J. Why, you did not count Master *Oates* a Boy, did you?

Palmer. He was none of the Religious: He sat indeed at a Table by himself, but he went to School with the Boys, and we called all the Scholars Boys.

L. C. J. How often did you see him?

Palmer. I'll tell your Lordship, I saw him the first of *May*, for that Reason; the second of *May* I saw him with Master *Burnaby*, a Man that he had never seen in all his Life before, and we wondred that he had so much impudence to insinuate himself into his Company.

L. C. J. What is he?

Palmer. He is a Gentleman that is now in *Flanders*.

L. C. J. How do you know that Mr. *Oates* had no Acquaintance with him before?

Palmer.

Palmer. Because I know he was in *England*, and came over while Master Oates was actually at *St. Omers*.

L. C. J. But he might be of his Acquaintance in *England*.

Palmer. I heard Master Burnaby say, he never saw Master Oates in all his life before. The second of *May* I saw him at the Action, the fifth of *May* Master Killinbeck went away, and I saw Master Oates actually there then, and one Master Poole went away; and I remember Oates was there for a particular Reason; he was a kind of a weak Man, something soft, not over-wise, and we were asking him, why he would go away by himself; and talking of it afterwards, says Master Oates, (I will not say positively those were the words, but that was the sense) *He does not go alone, for there goes Esquire Poole and Esquire Fool together.* The eleventh Day we had an Action, a Play also, whereupon there was a particular place for the Musicians to play in, where no one else was to sit; Master Oates would sit there, and thereupon there was one Master Watson quarrell'd with him, and they had like to have fought.

L. C. J. This was the 11th of *May*?

Palmer. Yes, my Lord, New Stile, and the other was the 5th.

L. C. J. But you saw him betwixt that Time?

Palmer. Yes, my Lord, I did.

L. C. J. And so for how long?

Palmer. I saw him at four a Clock in a Morning, reading Father *Worsley's* Controversies, and so for several Days together.

Fenwick. Did he go away before *June*?

Palmer. No, he did never stir till *June*.

Sir Cr. Levinz. Did not you go sometime by the Name of *Sanders* or *Hill*?

Palmer. No, only by the Name of *Thomas Palmer*.

Sir Cr. Levinz. Hark you, Sir, who maintained you at *St. Omers*? Do not you know one Mr. *Caryl*?

Palmer. No, my Father maintained me.

L. C. J. Who is your Father?

Palmer. Sir Philip Palmer.

L. C. J. What Country Gentleman is he?

Palmer. *Buckinghamshire*.

Mr. Just. Pemberton. He is Cup-bearer to the King.

Then stood up one Master Cox.

L. C. J. How long have you been from Saint Omers?

Cox. Two Months.

L. C. J. What Country-man are you?

Cox. I was born at *Brussels*, to serve you.

L. C. J. Do you know Master Oates?

Cox. Yes, I did, very well.

L. C. J. Where?

Cox. At *St. Omers*.

L. C. J. When?

Cox. I left *St. Omers* Seven Months ago, and I came away in the Month of *November*, after Master Oates. My Lord, I can prove that he was there in *April* and *May*. I went from *St. Omers* to *Brussels*, and from *Brussels* I came strait to *London*.

L. C. J. But when did you see Master Oates there?

Cox. I can prove I saw him at *St. Omers*, when he says he was in *England*, and that by this Circumstance; Master *Pool*, who was my Musick

Master, was sick there, and Master Oates was often with him.

L. C. J. Were you there all the Time he was there?

Cox. Yes, I was, till he went away.

L. C. J. When did he go away?

Cox. Master Oates went away in the Month of *July*.

L. C. J. Are you sure of that?

Cox. Yes, my Lord, I am.

L. C. J. Not in *June*?

Cox. No, my Lord, *July*.

L. C. J. Why he differs from all the rest.

Cox. My Lord, I can prove he was at *St. Omers* when he says he was in *England*.

L. C. J. Why, what Month did he go away?

Cox. My Lord, I can prove that Mr. Oates was never absent from *St. Omers*, till he went away for good and all.

L. C. J. When was that?

Cox. He went after the Consult of the Jesuits, which he says was in *England* in *April*.

L. C. J. Come, come, answer me plainly, if you can, in what Month Mr. Oates left *St. Omers*?

Cox. I say, Mr. Oates was never absent from *St. Omers*, till the Consult of the Jesuits was over, which he hath confessed himself to be at.

L. C. J. When was that?

Cox. Why it was after *May*, 'tis no matter what the Month was, whether *June* or *July*. (At which the People laughed.)

Cox. What do you laugh at, Sirs? why, suppose I mistake the Month, it is no matter.

L. C. J. Look you, we are now upon a Question of Time, and you cannot tell that a Man is there at a certain Time, unless you can prove the certain Time when he came away.

Cox. I can prove, that he was there till after the Consult of the Jesuits. (And then the People laughed again.)

L. C. J. Ay, I believe you there, 'tis enough for you, but you have done a very great Prejudice to those Persons that you came for, for you come to prove the Conclusion, but do not take Notice of what Mediums you are to use. Say you, if I can but prove that he was there till after the Consult of the Jesuits, that is the Thing in Question, and I need no more; but this is serving a Turn only: Pray can you tell me what Month he came to *St. Omers*?

Cox. Yes, he came thither in the Month of *December*.

L. C. J. And when did he go away again?

Cox. He was never absent from *St. Omers*, out of the View of the Scholars, except one Night, that he wet to *Watton*, and one Day, when he was in the Infirmary, but even at that Time he was seen by some of the Scholars.

L. C. J. Yet you cannot tell the Time that he went away?

Cox. He was never absent all the while.

Mr. Just. Windham. Do you know when the Consult of the Jesuits was? upon what Day?

Cox. He says he went away with Mr. *Hillsley*, but he did not, I can prove the contrary.

L. C. J. No, no, he says he followed him, and overtook him at *Calais*.

Cox. That is false, and I can prove it by this Circumstance: One Mr. *Conquest* was to go for *England* that Day, and he came into the Refectory, and told us a Story of this Mr. *Conquest's*

being unwilling to rise in the Morning to go for England.

L. C. J. When did he tell that Story?

Cox. That Day that he was to go for England.

L. C. J. How long was that after Mr. Hilsley went away?

Cox. The Day after.

Gavan. When was the Time that Mr. Conquest went for England?

Cox. In the Month of May, as we count.

L. C. J. What time in the Month of May.

Cox. It was the 5th: And he says, that Mr. Pool and Mr. Nevil were in England with him, but I can testify that they were not absent, for one of them was my Musick-master.

L. C. J. Was he there all May?

Cox. Yes, that I can testify upon my Oath.

L. C. J. And all June?

Cox. Yes, my Lord, but if I prove he was not in May in England it is sufficient.

L. C. J. Upon my word, you deserve a sharp Penance, for running into that Fault two or three times: You have done them no Kindness in this matter.

Gavan. If your Lordship will take Advantage of every Circumstance, young Men may not remember the particular Day of his going away.

L. C. J. But you hear how he delivers his Evidence, 'tis as if he had been instructed, You must come and prove that Oates was not in England in April and May, and that will do our Business; for he tells you, it is sufficient; but we will have it proved to satisfy us.

Cox. But why should I say more than I know?

L. C. J. You mean, more than you are instructed about. I only ask you one short Question, Do you know when Mr. Oates left St. Omers? Name the Month.

Gavan. If you don't remember the Time, say so.

Cox. My Lord, I cannot remember it.

L. C. J. Then call another. *Who stood up.*

Oates. My Lord, I desire they may be examined apart.

L. C. J. You need not trouble your self about that. *What is your Name?*

Billing. My Name is Thomas Billing.

L. C. J. When came you from St. Omers?

Billing. I came there Months ago, I think, my Lord.

L. C. J. Do you know Mr. Oates?

Billing. Yes, my Lord, very well.

L. C. J. When did you see him at St. Omers?

Billing. My Lord, I saw him when he came, the same Day, or the Day after.

L. C. J. When was that?

Billing. In December, my Lord, the 10th of December.

L. C. J. And he staid there, how long?

Billing. Till the latter end of June.

L. C. J. Was he never absent?

Billing. I can very well remember that he went to Watton in the Christmas. I was then in the Infirmary my self, and he and his Companion came in there to see us, and said he had been at Watton.

L. C. J. But he was twice in the Infirmary, was he not?

Billing. Yes, my Lord.

L. C. J. When was the second time?

Billing. The second time was in April, I went in the Week before Christmas: On St. Thomas of Canterbury's Day I came out again.

L. C. J. But you say the second Time was in April?

Billing. Yes.

L. C. J. How long was he there then?

Billing. Truly I was not with him then, but I think three or four Days.

L. C. J. Were you in the College then?

Billing. Yes, my Lord, I was.

L. C. J. Did you see him in the College from Time to Time?

Billing. Yes, I did.

L. C. J. How long?

Billing. For all the Time that he staid.

L. C. J. How long was that?

Billing. That was from December, till the latter end of June.

L. C. J. Was he there all May?

Billing. Yes, my Lord. He says he was eight Days in England, but he could not be so, for he entred himself into the Sodality the 25th of March, and not long after his Admission, he was put to read every Sunday morning at Six a Clock. And after that he began once to read, he never was absent from that Time till the Time he went away.

L. C. J. Why, did he read when he was sick?

Billing. He was not sick upon the Sunday.

L. C. J. You say he was sick in April?

Billing. Yes, my Lord.

L. C. J. But was he not sick of a Sunday, in April?

Billing. He was only a little indisposed, and frequented the Infirmary in the Day-time for a matter of three or four Days.

L. C. J. Did he read, at the Time he was sick in the Infirmary?

Billing. He was not sick a whole Week.

L. C. J. Did it reach to a Sunday?

Billing. No, my Lord, that I remember.

L. C. J. How long did he continue there?

Billing. Till towards the latter end of June.

L. C. J. Did you see him once in two or three Days?

Billing. Yes, my Lord, I did, constantly. And upon the 2d of May, I very particularly remember, looking out into the Garden, I saw Mr. Blunt walking in the Garden, and Mr. Oates with him: And observing him to be very intimately familiar with him, I asked some that were with me, Does this Sampson, for he went by that Name in the College, says I, does Sampson know Dick Blunt? No, said they; and we wondered at his Confidence, having no greater Acquaintance; I saw him that Day, walking in the Garden with that Blunt.

L. C. J. That was the 2d of May?

Billing. Yes, my Lord.

L. C. J. And he was constantly in this Gentleman's Company that Day?

Billing. Yes; and moreover the same Day this Sampson was walking with one John Rushton in the Garden, and seeing me walk alone, Thomas, says he, have you never a Companion? No, Sampson, said I: Well, said he, pr'ythee come to us. So I was with him walking a little while, and then this Blunt, and one Henry Howard, were playing one with another, throwing Stones at one another's Shins. At which he was displeased, and said, if they would not be quiet, he would go tell the Rector. Howard was hasty, and spoke angrily to him, and said, if he would not be quiet, he would beat him: But Mr. Oates persisting, and daring of him, says he, What, do you dare me? and comes up to him, and throws up

up Mr. Oates his Heels. With that Mr. Oates look'd very fretfully upon him, and withdrew himself into the Infirmary, as we thought to speak to the Rector. And by these Particulars, and such as these, I remember to have seen him every Day, one Day with another, or every other Day, at St. Omers, till he went away, which was in June.

Then stood up another, one Townley.

L. C. J. Come, Mr. Townley, do you know Mr. Oates.

Townley. Yes, my Lord.

L. C. J. When came you from St. Omers?

Townley. I came a Week before Easter.

L. C. J. When saw you this same Mr. Oates at St. Omers?

Townley. I saw him in June.

L. C. J. When else?

Townley. In May.

L. C. J. When else?

Townley. In April.

L. C. J. Was he there in all April, all May, and all June?

Townley. No, not all June. He went away, as I take it, about the 10th of June.

L. C. J. Pray, how often did you see him? Did you see him every Day?

Townley. I conversed with him every Day. He was partly a Scholar, and partly a Father; and sat at a Table by himself. He went to School as a Scholar; 'tis true, indeed, he did not learn, as the rest of the Boys did, but he went to School, as the Boys did, and was at a Table from the Fathers, as the Boys were, but apart and alone.

L. C. J. But how often did you see him? was it every other Day?

Townley. Yes, I believe I did.

L. C. J. What, for all April, and all May?

Townley. Yes.

L. C. J. How came you to take such particular Notice of it, that you can say, you saw him every other Day?

Townley. If I constantly dine with one, or if he be at a single Table alone, he cannot be absent, but I must take notice of it: And he was neither as a Father, nor as a Scholar, but betwixt both, and therefore the more to be taken notice of.

L. C. J. This then you say, He sitting by himself, and being distinct from all the others, you might more easily observe his Absence, than any others. This is that you say?

Townley. Yes, my Lord.

L. C. J. You say well. Call another.

Then stood up one Fall.

L. C. J. When came you from St. Omers?

Fall. About Two Months ago.

L. C. J. When did you see Mr. Oates?

Fall. I saw him when I was in my Syntax, and now I am in Poetry.

L. C. J. What Month did you see him in?

Fall. When he came first, as I remember, it was at Christmas.

L. C. J. Christmas last?

Fall. No, it was Christmas was Twelve-month, Christmas 1677.

L. C. J. How long did you see him there?

Fall. I saw him there from that Time till June, only when he was at Watton.

L. C. J. Was he never sick?

Fall. I saw him in the Infirmary my self.

L. C. J. How can you tell when a Man is sick?

Fall. I do not pretend to that, but he was in the Infirmary as a sick Man.

L. C. J. How came you to take particular notice of it?

Fall. I took no particular notice, but I have recollected my Memory.

L. C. J. Upon what Occasion?

Fall. Upon this Occasion.

L. C. J. How often did you see him?

Fall. I saw him every Day.

L. C. J. How long have you been in the Convent?

Fall. My Lord, I have been there two Years and an half.

Then stood up John Hall.

L. C. J. When came you from St. Omers?

Hall. In July, my Lord.

L. C. J. How long have you been there?

Hall. Seven Years, and upwards.

L. C. J. How long is it since you came from thence?

Hall. In July in the Year 1678.

L. C. J. And did you see Mr. Oates there then?

Hall. No, my Lord.

L. C. J. When did you see him there, then?

Hall. I saw him there in April, May, and June.

L. C. J. What, all June?

Hall. No, my Lord.

L. C. J. How long in June?

Hall. He went away about the 23d of June.

L. C. J. How came you to take such particular notice Mr. Oates was there all this while?

Hall. I was a Servant there.

L. C. J. In what Way?

Hall. A Refectorian, a Butler.

L. C. J. Did you keep Books of what Meat and Drink they had?

Hall. No, I laid their Table, drew their Beer, and laid the Bread.

L. C. J. And did you serve Mr. Oates with Bread and Beer every Day?

Hall. Yes, my Lord, most Days.

L. C. J. Did you serve the Infirmary?

Hall. No, my Lord.

L. C. J. But you say you served him every Day?

Hall. Yes, my Lord, the most of the Time he remained there: I acknowledge he was in the Infirmary.

L. C. J. How long?

Hall. Four or five Days, or thereabouts.

L. C. J. Was he in the College in April?

Hall. Yes, my Lord, all along.

L. C. J. And all May?

Hall. Yes, my Lord, I saw him all May, I laid his Table near the Door, at a particular Place where he always sat.

Jury. My Lord, we desire to know what Employment he is of now?

L. C. J. Hall, what made you come into England?

Hall. My Lord, I had not my Health there.

L. C. J. How long had you lived there?

Hall. Seven Years, and upwards.

L. C. J. And when began you to be sick?

Hall. I had not my Health at Christmas, in December 1677.

L. C. J.

L. C. J. What Employment have you here, for you had a good Place there?

Hall. I live at home, with my Father and my Friends.

L. C. J. What is your Father, where lives he?

Hall. He is a Gentleman; he lives in Radnorshire.

L. C. J. When came you to London?

Hall. I came to England in July, 1678.

L. C. J. But you say your Father is in Radnorshire, when came you here to London?

Hall. I have been here about a Month. I was summoned up as a Witness.

Then one Dallison was called, who did not appear; and one Maushel appearing, but speaking French, and no English, and an Interpreter not being ready, he was for the present, by the Consent of the Prisoners, set aside. And then stood up one Cooke.

L. C. J. When came you from St. Omers?

Cooke. In January last.

L. C. J. And where have you been ever since?

Cooke. Here in Town, my Lord.

L. C. J. Does your Father live here in Town?

Cooke. No, my Lord.

L. C. J. Do your Friends live here?

Cooke. No, my Lord.

L. C. J. You came over upon this Occasion, did you?

Cooke. Yes, my Lord.

L. C. J. When did you see Mr. Oates there?

Cooke. I saw him in last June.

L. C. J. And was he there in July?

Cooke. No, my Lord.

L. C. J. What Time did he go away?

Cooke. The 23d, the Eve of the Feast of St. John Baptist.

L. C. J. How do you know?

Cooke. I made him some Cloaths.

L. C. J. Are you a Taylor?

Cooke. Yes.

L. C. J. How often did you see him?

Cooke. Every Day.

L. C. J. How came he to keep you Company?

Cooke. I could not chuse but see him, sometimes I saw him twenty times a Day.

L. C. J. Where was he in April?

Cooke. He was there all April.

L. C. J. He might be absent one Day, or so, and you see him not.

Cooke. He used to come twice a Week to my Shop for things.

L. C. J. Was he there all May?

Cooke. Yes.

L. C. J. You say you saw him every other Day?

Cooke. Yes, my Lord.

Sir Cr. Levinz. Why Sir there are 150 Scholars there, how can you tell he was there so well?

Mr. Just. Pemberton. Can you tell every one that was there all that time?

Cooke. No, I can't tell every one that was there, but he was particular enough.

L. C. J. Did you live in Town as a Taylor, or in the College?

Cooke. In the College.

Mr. Belwood. Was Mr. Oates at Watton any part of the time?

Cooke. Yes, he was.

Mr. Belwood. What Day? what Month?

Cooke. I cannot justly say the Day, but it was in April.

L. C. J. How long was he absent?

Cooke. Only one Night, as it shall please you.

Mr. Just. Pemberton. Hark you, how came you to take notice that he was at Watton one Night?

Cooke. It was talked of among all the Scholars.

L. C. J. How can you remember what was said a Year ago of one Man?

Cooke. It was reported all over the House.

Gavan. In one Place of his Narrative, he says he came over with Sir John Warner, and Sir Thomas Preston.

L. C. J. North. That is nothing to the Purpose. If you can contradict him in any thing that hath been sworn here, do.

Gavan. If we can prove him a Perjured Man at any time, we do our business.

L. C. J. You should have proved him a Perjur'd Man before. How can we prove one Cause in another? and then too he had been provided to make his Defence. Can he come prepared to make good every thing that he hath said in his Life?

Oates. Can I come to make good my Evidence against all I have done in my Life?

L. C. J. Look you, if so be he hath forsworn himself in any former Trial, if that would appear, you have all the Reason to make use of it; but you have not taken the right way, you should have Indicted him and Tried him for Perjury in the former Trial, and then he could not have been heard at all in this.

Whitebread. We were all Prisoners close shut up.

L. C. J. We know you have a Party strong enough, and willing enough to convict him of Perjury, if they could; but look you Gentlemen here is the thing, if you can give such Evidence as will satisfy the Jury that he was absent all April and all May, you have said a great thing. His Evidence will be quite contradicted.

Whitebread. He says he came over with Sir Thomas Preston and Sir John Warner and others.

L. C. J. He says nothing of it now.

Oates. May it please you, my Lord, I will answer it, if you please.

L. C. J. They desire to know who came over with you when you came over in April.

Oates. I will tell you, and to convince the Court, that in neither of the Trials I did contradict my self, I say, I did name some Persons at one time that I did not name at another, because some Mens Names did occur to my mind at one time that did not at another. There came over with me the Rector of Liege, Sir John Warner, Father Williams, Father Marsh, Father Warner, Sir Tho. Preston and others.

L. C. J. This is dealing plainly with you.

Then stood up one Bartlett.

L. C. J. What Country-Man are you?

Bartlett. I am a Dutch Man.

L. C. J. Can you speak English?

Bartlett. Yes, a little.

L. C. J. When came you from St. Omers?

Bartlett. I came from St. Omers the 23d of May in the Year 1678. New Stile.

Gavan. My Lord, this Man is come over to testify, that Oates is Perjured in a Circumstance about Sir John Warner.

L. C. J.

L. C. J. He is to contradict Mr. Oates's Testimony, for he says he came over with Sir John Warner, and you say Sir John did not come at that Time.

Gavan. Yes.

L. C. J. Well, when did Sir John Warner come over from St. Omers?

Bartlett. Whither?

L. C. J. Into England.

Bartlett. Sir John Warner hath not been in England all May, and all the Month of April.

L. C. J. Where was he?

Bartlett. He was at Watton. I did see him there.

L. C. J. Were you there all that time?

Bartlett. Yes, I was.

L. C. J. North. Were you there all May?

Bartlett. Yes, I was.

L. C. J. When did you come over into England last?

Bartlett. The 23d of May.

L. C. J. How long have you been in England?

Bartlett. About five or six Weeks.

L. C. J. What is your Name?

Bartlett. My Name is Bartlett.

L. C. J. But you say that you came over the 23d of May.

Bartlett. I did not come over till the latter end of June.

L. C. J. Just now you said, you came over the 23d of May.

Bartlett. No, my Lord, I thought you had asked the Question when Mr. Oates came over.

Mr. Just. Pemberton. He says so, as your Lordship says before.

L. C. J. How do you know when Mr. Oates came over.

Bartlett. I heard so beyond Sea.

Then one Carrier, a Foreigner, appearing, and not being able to speak English, Mr. Tisser the Under-Sheriff of Middlesex was Sworn truly to interpret his Testimony.

L. C. J. Mr. Tisser, you are only to tell us what he says: Ask him when he came into England last.

Tisser. He says, my Lord, it was between seven and eight Weeks ago.

L. C. J. Ask him if he knows where Sir John Warner was, last Summer was a Year ago.

Tisser. He says, my Lord, he was in Watton for two Years last past.

L. C. J. Ask him where he was all April was Twelvemonth, and all May.

Tisser. My Lord, he says, that the last Sunday in April Sir John Warner was at his House at Watton.

L. C. J. And where was he all May?

Tisser. In the same House.

L. C. J. Ask him how he does know.

Tisser. My Lord, he saith, that he was a Gardener there.

L. C. J. It seems he says to the same Effect as the last Witness did. Call another. Who did stand up.

L. C. J. What is this Man's Name?

Gavan. His Name is Charles Verron.

L. C. J. Does he speak any English?

Gavan. No, he does not.

L. C. J. Then, Mr. Tisser, ask him if he knows

Sir John Warner, and where he was April and May was Twelvemonth.

Tisser. He says, my Lord, that he was at Watton all April and May, and continued there till September.

L. C. J. Pray ask this Man what Quality he is of there.

Tisser. He goes along with a Vessel between St. Omers and Watton, and that he knows it to be true.

L. C. J. Ask him if he did see him every Day.

Tisser. He says, generally, my Lord, daily.

L. C. J. Ask him what Religion he is of.

Tisser. He says he is of the Roman Religion.

Then stood up one Baillee.

L. C. J. Ask him, Mr. Tisser, if he knows Sir John Warner; and where he was all April and May was Twelvemonth.

Tisser. He says the same, that he was at Watton all April and May.

L. C. J. Ask him, how he can tell.

Tisser. He says he is a Servant of the House.

L. C. J. And did he see him there daily?

Tisser. My Lord, he says that he gave him Directions to make a Bastiment, that he is a Mason, and that he did give him Directions daily about it, and that he saw him every Day.

L. C. J. Look you, Gentlemen of the Jury, he speaks to the same purpose that the three Witnesses before spoke to; he says he is a Mason, and that he built a Bastiment there by direction from Sir John Warner, and that Sir John Warner came daily to give Directions about it.

Then stood up John Joseph.

L. C. J. Do you know Sir Thomas Preston?

Joseph. Yes, my Lord.

L. C. J. When did you see him?

Joseph. In the Months of April, May, and June.

L. C. J. Where was he then?

Joseph. He was at the English House at Liege.

L. C. J. Did you see him there? How often did you see him there?

Joseph. I saw him there every Day almost.

L. C. J. What Occasion had you to see him? What were you there?

Joseph. I was Porter of the Gate.

L. C. J. And did you see him all the Month of April?

Joseph. Every Day, most commonly.

L. C. J. Did you see him once in a Day or two?

Joseph. I did see him in April, May, and June.

L. C. J. That you might do; but did you see him every Day?

Joseph. Every Day, most commonly, I cannot absolutely say, but two or three Days in a Week.

Sir Cr. Levinz. Pray do you know of any Time that Sir Tho. Preston was absent from Liege?

Joseph. He was in the Time of Vacancy.

Sir Cr. Levinz. Was he not absent in April or May?

Joseph. No, my Lord.

L. C. J. When are the Vacancies?

Joseph. In August, my Lord.

Then stood up one Peter Carpenter.

L. C. J. Do you know Sir Tho. Preston?

Carpenter.

Carpenteer. Yes, my Lord, very well.

L. C. J. Where did you know him?

Carpenteer. I knew him at *Liege*.

L. C. J. How often did you see him there in *April* and *May*?

Carpenteer. Every Day I saw him there, all *April* and *May*.

L. C. J. What Office had you there?

Carpenteer. I was *Caterer*.

Gavan. My Lord, we have no more Witnesses as to this Point. But, my Lord, my Case is different from the others: *Mr. Oates* says he did not see me in the Congregation, but he says, he afterwards saw my Hand to the Consult: Now, my Lord, I have a Witness to prove that I was at that Time at *Wolverhampton* in *Staffordshire*. No Body hath a Right to sit in the Congregation till he become a profess'd Jesuit, which at that time I was not.

L. C. J. He does not charge you to have been there, tho' he says he saw your Hand to it.

Gavan. My Lord, I was then in the Country.

L. C. J. North. That will do you some, and yet but little Service, if you can prove your self at *Wolverhampton* at that time: but call your Witnesses.

L. C. J. *Mr. Gavan*, he says he saw a Letter of yours, giving an Account how Affairs stood in *Staffordshire* and *Shropshire*, and that afterwards in *July*, and before that Gentleman, *Mr. Ashby*, went to the *Bath*, he heard you discourse of the same Matter: And tho' he cannot charge his Memory to say he saw you the 24th of *April*, yet, says he, I did see his Hand to the Consult; and being asked how he knew your Hand, he says he knew it by your writing a Bill of Exchange in his Presence.

Gavan. I could not sign the Consult at *London*, and not be at *London*.

L. C. J. North. I believe in such a Business you care not how many Hands you have; but we will not prevent you calling your Witnesses: You are upon your Life, don't spend the Time, call them quickly.

L. C. J. What do you call them to prove?

Gavan. To prove that I was at *Wolverhampton* the 24th and 25th of *April*.

L. C. J. Pray hear what he says himself. You say, Sir, you saw his Hand to the Consult that was in *April*; pray, when was it that you saw it?

Oates. It was in *June*, or *July*.

L. C. J. North. You might set your Hand afterwards to it, if you were not there then.

L. C. J. You say you were then in *Staffordshire*, and might not you set your Hand afterwards when you came to Town? I will tell you, *Mr. Gavan*, in *April* they met, and had such a Resolution; you were then in *Staffordshire*; might not you come to Town in *July* following, and set your Hand to what was agreed in *April* before? And you cannot contradict him, but by shewing that all *June* and *July* you were not here: For if you prove your self never so much to have been at *Wolverhampton* in *April*, that will not serve the Turn. You seem to make a very great Defence of this: All that *Mr. Oates* says is, that the 24th of *April* he was present where there was a Consult had about the Death of the King, and divers Persons set their Hands to the Resolve. *Mr. Gavan* afterwards was in Town, and then, says he, I saw his Hand set to the Consult: I

will not charge my Memory to say he was present, but I will tell you why I believe it was his Hand, because I saw him draw a Bill of Exchange, and that was just like the same Hand.

Gavan. Ay but, my Lord, I was not here in *April*.

L. C. J. But this proves, in effect, that you set your Hand to the thing afterwards. And now if you should prove your self never so plainly not to have been there in *April*, you do not come to the thing: it is still a *Non liquet*, whether you were here *July*, or no. And *Mr. Oates* does not positively charge you as to *April*. Well, call your Witnesses, and prove what you will.

Catharine Winford was called, and appeared.

Gavan. I desire you would be pleased to ask her, where I was the 23d of *July*.

Winford. My Lord, I am very sure he was a Sojourner at our House the most part of the Summer, in *June* and *July* both: In *July* the 23d he went away from my House, and took another Lodging more convenient for that which he had to do.

L. C. J. Where? In what Town was this?

Winford. At *Wolverhampton* in *Staffordshire*.

L. C. J. Was he never away from you all that Time?

Winford. No; and then he went to another Lodging in the Town.

L. C. J. Do you say that he sojourned with you all *June* and *July* till the 23d?

Winford. He sojourned with me longer; but I only name those Months, because they are only in Question.

L. C. J. Where did he go when he went from you?

Winford. He took another Lodging in the Town.

L. C. J. And did you see him then?

Winford. I saw him then every Day, or every other Day.

L. C. J. Are you a *Roman Catholick*?

Winford. Yes, my Lord, I am so.

L. C. J. Call another.

Gavan. Call *Mary Poole*. [Who stood up.]

L. C. J. Do you know *Mr. Gavan*?

Poole. Yes, my Lord.

L. C. J. How long have you known him?

Poole. This Six or Seven Years.

L. C. J. Pray do you know where he was this time Twelvemonth?

Poole. He was at *Mrs. Winford's* House at *Wolverhampton*.

L. C. J. How do you know?

Poole. I was a Servant there in the House.

L. C. J. And where was he in *April*?

Poole. He was at my Mistress's House.

L. C. J. And where was he in *May*?

Poole. My Lord, I believe he was there.

L. C. J. And why do you believe he was there?

Poole. Because I do not remember his going forth, till the latter end of *July*, and he was there in *June* too.

L. C. J. You answer readily, as to *June* and *July*, why did you stick at the Month of *May*, more than the other Months? for you know, when I asked you where he was in *April*, then you said he was at home; why do you doubt whether he was there in *May*, or no? pray tell us why it is not as certain to you that he was not

not there in *May*, as that he was there in *June*?
Why do you doubt more of it?

Poole. I do not doubt but that he was there.

L. C. J. But why did you not answer then as readily to the one, as to the other?

Poole. My Lord, any one may mistake.

L. C. J. This you were not prepared for, and it was a Question you did not come ready to answer: Are you a *Roman Catholick*?

Poole. Yes, my Lord. [*Here the People laugh'd.*]

L. C. J. Look you, you must know there is no other Use to be made of it, but only to shew, that Protestants are so averse to Popery in *England*, that they will not endure a *Roman Catholick* in *England*: But they are good Evidence, and competent Witnesses, I must tell you that, and no Man must deny it; for tho' you deny Heaven to us, yet we will not deny Heaven to you, nor Witnesses; tho' you say Hereticks will be damn'd, yet we hope they will never, while they do not follow your Practices. [*At which the People gave a great Shout.*]

L. C. J. You must pardon the People's Shouting; for you have turned their Hearts so, that there is no Living for a Papist in *England*, I will maintain it. [*And then the People shouted again.*] You shall have all the Justice that can be, and all the Favour the Law will allow.

Gavan. If there be but a Place for us in Heaven, I am contented: My Lord, I desire you will be pleased to ask this Mrs. Catharine Winford, whether she does not remember that I came from my Lord Aston's the Monday before.

L. C. J. Mrs. Winford, what say you? do you remember any Passages about the Time he left your House?

Winford. My Lord, I did not know directly and positively what I should come to answer, and therefore I cannot recollect my self.

L. C. J. Do you know that he went to any Gentleman's House some time before he left your House?

Winford. Yes, my Lord, he went often abroad.

L. C. J. To whose?

Winford. To my Lord Aston's.

L. C. J. How long before?

Winford. I cannot tell.

L. C. J. How long did he stay at my Lord's? Did he ever stay Five or Six Days?

Winford. I cannot tell.

L. C. J. My Meaning is this, in plain *English*, to ask you plainly, and you ought in Conscience to speak the Truth as much as if you were upon your Oath; for you are in the Presence of God, who will judge you as severely for a Falshood in this Case, as in the other: I would ask you whether he could not possibly be absent, and make a Step to *London*, and you be never the wiser?

Winford. My Lord, I am as confident as I can be of any thing in the World, of the contrary.

L. C. J. Might not he be in *London* the latter end of *June* or *July*, and you not know it, when he pretended to go to my Lord Aston's?

Winford. I do not know, but I am very confident he did not.

L. C. J. But was he absent long enough to have done it? Can you charge your Memory with that?

Winford. It was possible it might be so, but I am confident it was not, because I used to order

my Maid to get him his Linnen ready upon any Journey, and he had none now.

Oates. My Lord, he took a Chamber to go into the Exercise; now, my Lord, he taking a Chamber on purpose for this very thing, he might pretend that, and come to *London* the while, and they not know it, because he was shut up; for none are to come at them.

Winford. My Lord, I know not any such Thing of him; but this is a Rule amongst them, that when they are so shut up, if there be a necessary Occasion to come to them about any particular Business, as sending them Linnen, or so; they have Admittance to them.

L. C. J. Were you employ'd upon any such extraordinary Matter?

Winford. My Lord, I used to go and see him, and carry him his Linnen.

L. C. J. And can you charge your Memory with that?

Winford. Yes, my Lord, I can.

L. C. J. When? the latter end of *July*?

Winford. Yes, my Lord, I often went to see him then, when he was gone from my House.

L. C. J. Where was he for all the former part of *July*, till those eight Days?

Winford. He was at my own House.

L. C. J. When went he first into this recluse Way?

Winford. He went from my House the 23d of *July*.

L. C. J. Was he not close, when he was with you?

Winford. No, my Lord.

L. C. J. And the last eight Days you had Access to him?

Winford. Yes, I had.

L. C. J. I ask you, Are these People shut up at a certain Time, and there is no coming to them, upon any Occasion?

Winford. My Lord, most of those Days I did see him, indeed he was shut up, but upon any kind of Business, as the carrying of Linnen, and sometimes a pair of Gloves, and other Things of his own, or sometimes to speak with him about Business, we were admitted.

L. C. J. I see your Confinements are not so great as you would make them to be, or he would have us think: I ask you once more, whether you can say, that during the Months of *June* and *July* it was not possible for him to make a Step to *London*, and you never the wiser?

Winford. I am very confident he did not, he was not absent long enough to do it.

Sir Cr. Levinz. You said just now, you could not say positively, but he might be absent for five or six Days.

Winford. I do not believe he did; for he had no Linnen with him, which he used to have, when he went to *London*.

L. C. J. But, supposing he had no Linnen, might he not go to *London*, and you not know it?

Winford. I can't tell whether he was absent, or no, long enough to do it.

Gavan. Pray, my Lord, let me speak; as I live, an innocent Man will be lost else. He says expressly, I was in Town in *July*; and gives this Argument for it, That Mr. Ashby was in Town, and he met me with him.

L. C. J. No, no; Mr. Oates was not so positive: He says, it was either in *June* or *July*; but

he rather thinks it was *July*. But, *Mistress*, might not he, in the beginning of *July*, be absent so long, as a Man might go to *London*, and return again; in the first three Weeks of *July*, I mean?

Winford. My Lord, I cannot charge my Memory, because I did not know what I should be asked, and so could not recollect my self. I only say I am confident of it, because he always told me, when he went such a Journey, that I might make Provision of Linnen to fit him for it.

L. C. J. Your Reasons are weak; Because he used to tell you, that you might get him Linnen: Men, upon extraordinary Occasions, do extraordinary things; so that you are not to govern your self by what he used to do, in his acquainting you, or you in providing his Linnen. This was no ordinary Errand, and therefore I don't ask you whether he had Linnen from you, or no; but you are only to charge your self with remembering whether he could not be absent long enough out of your Sight, to have been such a Journey?

Gavan. Pray, my Lord, give me fair Play. He does charge it expressly, and is precise to a Day: He saith, I was here in *July*, after that *Ashby* was come to Town, and before that he went out of Town: And he says, That *Ashby* came to Town in the middle of *July*, and went out of Town about the latter end of *July*, or beginning of *August*. Now, my Lord, I say this, he saying that *Ashby* came to Town the middle of *July*, and staid there a Fortnight, and then went to the *Bath*, and that I came to Town while that he was there; if I prove that I was in *Staffordshire* from the 15th or 16th of *July*, to the end of the Month, then I shall clear my self evidently; for he does, in effect, charge me to be here, some Time in that Fortnight's Time, and I prove, that all the latter Part of *July* I was in the Country.

L. C. J. He does not charge it to a Day, but he says it was about a Fortnight.

Oates. Mr. *Ashby* came to Town in the beginning or middle of *July*; I rather think it was the middle, but I dare not, upon my Oath, be positive, as to the Time; and in that Time that Mr. *Ashby* staid in Town, Mr. *Gavan* came to *London*: For I remember, he said he would go and see Father *Ashby*, who was then at *Wild-House*.

L. C. J. Prove where you were now, all *July*. Call your Witnesses.

Gavan. I prove that I was at *Wolverhampton*, from the 23d, to the end of the Month.

L. C. J. Call your Witnesses to prove where you were the beginning, that can speak expressly to it.

Gavan. My Lord, I have them not here.

L. C. J. Why then would you make us lose all this Time?

Gavan. My Lord, I will tell you; hear the Words of an ingenuous Man: Being as I was, innocent, not knowing what they intended to charge me with, I, in my Mind, run over all that I could imagine I had at any time done, that they could lay hold on. If I had been guilty of any Thing, my own Conscience would have told me of it; and I should have provided to have given some Answer to it: But being innocent, I was to ransack my Memory, to sum up all the Passages of my Life; where I had

been, what I had said, what I had done, that would give them any Occasion of accusing me. And because I did imagine they might think I was here the 24th of *April*, I brought Witnesses for that; and because I did imagine that they might speak of some Consults in *April*, I sent up for such Witnesses, at my own Charge, as could testify where I was then.

L. C. J. But you have not one Protestant, that testifies for you.

Gavan. And now, my Lord, I humbly cast my self upon the Honour and Justice of this Honourable and Just Court; to which I submit my self, with all my Heart and Soul, having used all the Remedies I can. I have cleared my self, as to the main Day, the 24th of *April*, whereon all the pretended Plot lies: And I'll bring Witnesses that shall swear, I was not in *London* in *August*; and if my eternal Salvation lay upon it, I could avert, I was not in *London*: And I wish I may be made an Example of Justice before all the World (in the Sight of God I speak it) if I be not the most innocent Person in the World. And, my Lord, seeing there is only his Oath for it, and my Denial, I have only one Demand; I don't know, whether it be an extravagant one or no; if it be, I don't desire to have it granted.

L. C. J. What is that Demand?

Gavan. You know, that in the beginning of the Church (this learned and just Court must needs know that) that for One Thousand Years together, it was a Custom, and grew to a constant Law, for the Trial of Persons accused of any Capital Offence, where there was only the Accuser's Oath, and the Accused's Denial, for the Prisoner to put himself upon the Trial of *Ordeal*, to evidence his own Innocency.

L. C. J. North. We have no such Law now.

L. C. J. You are very fanciful, Mr. *Gavan*; you believe that your Cunning in asking such a Thing, will take much with the Auditory; but this is only an artificial Varnish: You may do this with Hopes of having it take with those that are *Roman Catholicks*, who are so superstitious as to believe Innocency upon such Desires; but we have a plain Way of understanding here in *England*, and that help'd very much by the Protestant Religion: So that there is scarce any Artifice big enough to impose upon us. You ask a Thing that sounds much of a Pretence to Innocency, and that it would be a mighty Suffering, if you should miscarry, because you ask that you know you can't have. Our Eyes and our Understandings are left us, tho' you do not leave their Understandings to your Proselytes: But you are mistaken, if you think to impose that upon us that you do upon them; and you do so impose upon them. But I'll tell you, there is scarce any Man with us that can be a Papist: For you cannot deceive and gull us, as you have done all that you have perverted to your Way.

Gavan. Is it any Harm, my Lord, to ask, whether I might not be so Tried?

L. C. J. North. Look you here, Mr. *Gavan*, the Time is far spent; if you have any thing to say, we will hear you; if you have any Witnesses, call them, and we will examine them: But if not, the other Prisoners must be admitted to make their Defence, as well as you.

Gavan.

Gavan. All these Six can prove, that I was at *Wolverhampton* the last Week in *July*.

Then another Witness stood up for him.

Gavan. Where was I in *July*?

Witness. I cannot speak to all *July*; but, my Lord, I can declare, that Mr. *Gavan* was in *Staffordshire* the last Week of *July*, every Day, I am confident.

L. C. J. Where was he, the first three Weeks in *July*?

Witness. I cannot speak as to that; but in the last Week in *July*, he came to an Apartment of an House that I lived in.

L. C. J. Look you, Mr. *Gavan*, you see what this Evidence is; she says, that you were in *Staffordshire* the last Week in *July*, for you had an Apartment in the House she lived in. Call another. [*Who stood up.*]

L. C. J. Where was Mr. *Gavan* in *July* last?

2 Witness. My Lord, I saw him my self, at the latter end of *July*, for very many Days; for he was in a Room of the House that I lived in, I am sure, most of the last Week.

L. C. J. Where was he the last Fortnight?

2 Witness. I am confident I saw him all the last Fortnight, but I cannot be positive.

L. C. J. Call another. [*Who stood up.*]

L. C. J. Where was Mr. *Gavan* in *July*?

3 Witness. My Lord, I lived in the same Town with him, and I don't remember that he was out all *July*, but the last Week he was in our House.

L. C. J. Well, call another. [*Who stood up.*]

L. C. J. Where was Mr. *Gavan* in *July* last?

4 Witness. He was, in *July* last, the last Week, in a part of our House.

L. C. J. So then he came home, from *London*, the 23d or 24th of *July*. Well, Mr. *Gavan*, have you any more Witnesses, to any other Purpose? For here are enough to this.

Gavan. No, my Lord.

L. C. J. Mr. *Whitebread*, have you any Witnesses to call?

Whitebread. My Lord, I have only this, and I desire to be heard in this Point, to prove that Mr. *Oates* was mistaken in his Evidence that he gave at the last Trial, against Mr. *Ireland*.

L. C. J. Look you, I must break in upon you; you have been told so often, all of you have been told it, and yet you are upon the former Trials again. You are now upon your Trial for your Life, if you could have disproved any thing that he said at a former Trial, you should have taken a Legal Way, and convicted him of Perjury; but now to charge him with a Printed Paper, is not fair. You must speak to what he says now.

Whitebread. He says the same now. But all that I say is this, If he be not honest, he can be Witness in no Case. I suppose if any one can prove him not *Probus Testis*, his Testimony is not to be receiv'd in any Case.

L. C. J. But how will you prove that? Come on, I'll teach you a little Logick; if you will come to contradict a Witness, you ought to do it in a Matter which is the present Debate here; for if you would convict him of any thing that he said in *Ireland's* Trial, we must Try *Ireland's* Cause over again. But if you will say any thing against what he says now, do.

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Whitebread. That which I would alledge is this, If he be convicted of Perjury in one Case, he is not to be believed in another.

L. C. J. You say right, if he be convicted.

Whitebread. He is not only then an incompetent Witness, for he cannot be said to be *probus testis*, but he is *improbus*. Now this is that I can prove.

Mr. Just. Pemberton. Nay, you must shew it by a Record.

L. C. J. You cannot have so little Understanding; you that have been, and were to be, so great a Man among them; had been Provincial, and was to have been somewhat else. I have told you already, that to prove him to be a Man that hath no Faith in him, he must be Convicted. You must have Indicted him, and Convicted him, of the Thing wherein he did commit Perjury, and then he had been prepared to justify himself. But shall you come now, and at this your Trial, and prove what he said at *Staley's* Trial, and *Coleman's* Trial, and *Ireland's* Trial? And must We examine what Matters have receiv'd a Verdict and a Judgment there? For, consider what will be the Consequence of it; if it should be false, you there Arraign a Verdict. You should have convicted him of the Falshood first.

Whitebread. I desire the Jury to take Notice, that he does not stick to the Testimony that he gave then, for if he does, it was false.

L. C. J. They must not take notice of any thing that was done at a former Trial, unless it be spoken of now.

L. C. J. North. Do not call any Witnesses to prove what he said then, but to disprove what he hath said now.

L. C. J. 'Tis a pretty hard matter to make a Priest understand one, for what I see. If the Witness shall not gain Credit with the Jury, that he came over with Sir *Thomas Preston*, Sir *John Warner*; if they are satisfied by those many Witnesses, Ten or Twelve, at least, that it is false, they ought not to believe him; but as to that Testimony, they ought to believe your Witnesses; but he is not presently guilty of Perjury: For if they should not give Credit to Mr. *Oates*, you must indict him, and another Jury must pass upon him, before he is convicted: For it is one Thing to be Forsworn and Perjured, and another Thing to be proved so; and he is not proved to be so, but by a Record for that Purpose.

Harcourt. If so be our Witnesses can't be look'd upon as good Witnesses, then there can be no Commerce abroad in any other Country.

L. C. J. They are, no doubt, good Witnesses, till they be proved otherwise; and they are left to the Jury to believe as they think fit.

Harcourt. Now here are divers Things that are brought against my self, by Mr. *Bedlow*, Mr. *Prance*, Mr. *Oates*, and Mr. *Dugdale*; if the Witnesses that I bring, because they are *Roman* Catholicks, are not good Witnesses, then I am in a hard Case.

L. C. J. North. Look then, you mistake the Thing; those that are not Witnesses, we don't hear at all; but our hearing them at all, proves that we look upon them as good Witnesses. But when a Man is a Witness, he is either of more Credit, or of less Credit, according to the Circumstances; and 'tis a proper Question to ask them,

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whether

whether they are *Roman Catholicks*? But they are Witnesses, without all Question.

Harcourt. I say, my Lord, these Persons are known to be every one of them very bad and flacious Persons, and that every one of them have undertaken this Course, meerly to get a Livelihood: They are Men of desperate Fortunes, they get a Living by swearing fast, they find that the best Trade.

L. C. J. North. If you have any other Witnesses, we will hear them: If you have no other Witnesses, then we must hear what the King's Council reply, and then it will be your Turn to say what you can in your Defence.

Gavan. I have Witnesses here: It is not indeed a Positive Evidence, but a Negative Evidence; and I have a Brother and a Sister in Town, and upon my Salvation I never came to Town, but I came to their House.

L. C. J. That will signify nothing. Mr. *Harcourt*, have you any more Witnesses? If you have them, pray call them.

Harcourt. 'Tis in vain to call them, if they be not to be believed, because they are *Roman Catholicks*.

Sir Cr. Levinz. 'Tis a Mistake, we do not refuse any Witnesses, because they are *Roman Catholicks*.

L. C. J. No, we have not refused any one Point yet.

L. C. J. North. If you have any more, pray call them, and don't spend the Time.

L. C. J. Call a Priest or two, if you will, we will hear them.

Harcourt. Mr. *Oates* did accuse me of paying Fourscore Pounds at my Chamber, and he did say afterwards it was at *Wild-House*. I have Persons to justify what was done at my own Chamber; and he says Mr. *Ireland* was by, now here are Witnesses to prove, that Mr. *Ireland* was in *Staffordshire* all the Month of *August*, therefore he could not be present.

L. C. J. Does he say any such thing now?

Mr. Just. Pemberton. That was urged before; pray do not insist upon that, it hath receiv'd a Trial.

L. C. J. I'll tell you what he says, and I'll ask him the Question: Dr. *Oates*, it is supposed by your Testimony, that Mr. *Ireland* and Mr. *Harcourt* were together, when this Fourscore Pounds was paid, for the Villains that went to *Windfor* to murder the King?

Oates. I never said such a Word.

Harcourt. Here it is in the Trial.

L. C. J. I stand not by the printed Trial, it is no Record in Law. In short, Were Mr. *Ireland* and Mr. *Harcourt* together at that Time?

Oates. No, they were not.

Gavan. He did then say, that he did receive of Mr. *Ireland*, the 2d of *September*, 20s. that he borrowed of him; now the 2d of *September* he was at *Boscobel*.

Oates. My Lord, I was not positive as to the Day; but as near as I remember, (those were the Words I said) it was the 2d of *September*; but whether it was the 1st, 2d, 7th, 8th or 9th, I would not be positive in it.

Then the Prisoners called *Pendrel* and his Wife, and *Gifford* and his Wife; and *Gifford* stood up.

Gifford. My Lord, I was here the last Sessions,

where I did testify the seeing of Mr. *Ireland* in *Staffordshire*, on the 24th of *August*, *Bartholomew-Day*, and the next Day after; at which Time Mr. *Oates* said that he saw him here in Town. But Mr. *Oates* could not be particular in every Thing; but at last he came to a Circumstance, and averred, that the 1st or 2d of *September* he did receive 20s. of Mr. *Ireland*, in *Harcourt's* Chamber; he said it was about the Fast-Day.

Oates. That was as near as I remembered.

Gifford. Here is in Court at least six People that know it; I saw him several other of those Days there; but these six People conversed with him every Day.

Mr. Just. Pemberton. How do you know all that?

L. C. J. North. Come, come, you must not speak, as to what he said in *Ireland's* Trial.

L. C. J. What Time was it that Mr. *Harcourt* and Mr. *Ireland* conferred together about this same Business?

Oates. My Lord, I do not charge *Ireland*, but I charge *Harcourt* with being at *Wild-House*, and that there *Coleman* met him, and that there was the greatest Part of the Money, which was carried back to *Harcourt's* Chamber, and given to the Person that was to carry it down to *Windfor*; but Mr. *Coleman* was gone away before, and had left a Guinea behind him, which was given to the Messenger for Expedition.

L. C. J. I am mistaken, if you have not testified that *Ireland* was in Town in *August* and *September* with *Harcourt*.

Oates. *Ireland* took his Leave of *London* betwixt the 8th and the 12th of *August*, as to go to *St. Omers*.

L. C. J. Here is the Matter, they must have Right, tho' there be never so much Time lost, and Patience spent. Say they, We must prove and contradict Men by such Matters as we can; People may swear downright Things, and 'tis impossible to contradict them; but we will call Witnesses to prove those Particulars that can be proved: Say where Mr. *Ireland* was in *August*.

Oates. He took his Leave of us in Town in *August*, and that was between the 8th and 12th, at *Harcourt's* Chamber.

L. C. J. What do you infer from *Ireland's* being there then?

Oates. I'll tell you what I design in it: Your Lordship may perceive that I did methodize my Evidence according to the Time; for I said, this was our Business in *April*, this in *July*, and now we come to the Business of *August*, said I, we took our Leaves of Mr. *Ireland* between the 8th and 12th. I said, in *July* Mr. *Fenwick* was out of Town, but then, if your Lordship remembers, I said, he was in Town, and took his Leave of Mr. *Ireland*, between the 8th and the 12th of *August*.

L. C. J. Was Mr. *Ireland* in *Fenwick's* Company at that Time in *August*?

Oates. Yes, my Lord, he was, when he took his Leave.

L. C. J. Did they talk then of this Business?

Oates. They took their Leaves of one another, but as to what particular Things of the Plot they spoke about, I don't remember.

L. C. J. Look you now, mind what he says, *Ireland* and *Fenwick* were together in *August*, between the 8th and the 12th; but being asked, Whether

Whether they were met on purpose to talk of the Plot? He says, he does not remember the Particulars.

Here the Lady Southcott, her Son, and her Daughter, were call'd.

L. C. J. Did you say, that *Fenwick*, there at the Bar, had Converse with *Ireland* in *August*, for the carrying on of the Plot?

Oates. Yes, my Lord.

L. C. J. My Rule is this, in doubtful Cases, when Men are upon their Lives, I had rather hear what is impertinent, than not let them make a full Defence.

L. C. J. *North*. I had rather hear Things at a Venture, than forbid Things at a Venture.

Lady Southcott stood up.

L. C. J. How long were you in Mr. *Ireland*'s Company?

Lady Southcott. From the 5th of *August* to the 16th.

L. C. J. What, every Day?

Lady Southcott. Yes, every Day.

Oates. My Lord, here is *Sarah Pain*, who before hath testified what she hath known in this Matter. If your Lordship please, I desire she may be call'd, in readiness to speak to it.

L. C. J. Are you sure it was the 5th?

Lady Southcott. Yes, as sure as I can be of any Thing.

Mr. Recorder. Dr. Oates, you had best keep your Evidence entire till the last.

Then Sir John Southcott was called, and appeared.

L. C. J. Did you know Mr. *Ireland*?

Sir John Southcott. Yes, I did know him by Face.

L. C. J. Where did you see him?

Sir John Southcott. I saw him, the 5th of *August*, at *St. Albans*.

L. C. J. And did he travel along with you?

Sir John Southcott. Yes, he did travel along with us the 6th, 7th, 8th and 9th.

L. C. J. How many Days did he travel along with you?

Sir John Southcott. He travell'd along with us four Days together, I am sure.

L. C. J. What, from the 5th to the 9th?

Sir John Southcott. Yes, Sir.

L. C. J. Is this all that you can say?

Sir John Southcott. Yes, my Lord.

L. C. J. But we would know where he was afterwards. Did you see him after the 9th?

Sir John Southcott. My Lord, I saw him at *St. Albans*, and we went from thence to *Northampton*, and from thence to *Coventry*, and from thence to my Lord *Aston*'s, that is four Days; and I saw him *Thursday*, I saw him *Friday*, *Saturday*, and *Monday* following. *Tuesday* I had occasion to go further into the Country, and he went along with us; so I saw him *Tuesday*, *Wednesday*, *Thursday* and *Friday* afterwards.

L. C. J. Why then you saw him at least twelve Days?

Sir John Southcott. Yes.

L. C. J. Have you any more?

Then Mr. Edward Southcott stood up.

L. C. J. Were you here when *Ireland* was Tried?

Sir John Southcott. No.

L. C. J. Did you see Mr. *Ireland* in *August* last?

Mr. Southcott. The 3d of *August* he came down to my Lord *Aston*'s at *Stanmore*, they said so; but I cannot swear he came that Night, but I saw him very early the next Morning; the 5th we went to *St. Albans*, and we kept on till we came to *Tixall*; and I was in his Company from the 4th to the 16th.

L. C. J. Why, you hear what he says, He was in company with him every Day from the 4th to the 16th.

Gavan. Call Mrs. *Harewell*, and her Daughter, Mrs. *Gifford*, and Mrs. *Pendrel*.

Then Mrs. Harewell stood up.

L. C. J. Did you see Mr. *Ireland* in *August* last?

Harewell. I saw *Ireland* in *August* last, the 17th Day: He came then to my House at *Wolverhampton*, and there he continued every Day, and lay in my House every Night, till the 26th Day.

Then young Mrs. Harewell stood up.

Harewell. Mr. *Ireland* came to our House in *Staffordshire* the 17th of *August*, and stay'd there till the 26th; I saw him every Day, unless it was *Friday*, the Day before *Bartholomew-Day*, when he went to *Litchfield* and returned again.

Gavan. My Lord, there is a Prisoner now in *Newgate* that can testify the same.

L. C. J. *North*. Would you ask your Fellow if you be a Thief? he is in for the same Offence.

Gavan. My Lord, I desire to know, if a Man be not convicted of the same Offence, whether he be not a good Witness?

L. C. J. *North*. If he stand charged of the same Plot, his Evidence is of little weight.

Then Elizabeth Keiling stood up.

L. C. J. Did you see Mr. *Ireland* in *August*?

Keiling. Yes, my Lord, I did.

L. C. J. Where did you see him?

Keiling. I saw him at *Wolverhampton*, there he was from *Saturday* the 17th, to *Monday*, and then I went to see my Mother, and came back again on *Thursday*, and found him there, and there he was till the 26th.

Gavan. Call Mr. *Pendrell* and his Wife.

Then Pendrell stood up.

L. C. J. When did you see Mr. *Ireland*?

Pendrell. I saw him the Second and Third of *September*.

L. C. J. Where did you see him?

Pendrell. At *Boscobel*.

L. C. J. And what, did you see him in *August*?

Pendrell. No, my Lord.

L. C. J. How do you know you saw him then?

Pendrell. My Wife being paid for his Diet, set down the Day.

L. C. J. What, he came to sojourn with you, did he?

Pendrell. They were with me for their Meals, and so my Wife set it down.

L. C. J. Why, do you set down the Day of the Month when any one comes to you?

Pendrell.

Pendrell. Yes, my Lord, when we are paid for their Diet, we do.

L. C. J. What, do you keep a publick House?

Pendrell. I keep the *Royal Oak*.

L. C. J. Methinks, you should have a great deal of Company, if you live there; and 'tis hard you should charge your self to remember a particular Person you did not know before.

Pendrell. My Lord, he told me his Name was *Ireland*, and several others did so too.

L. C. J. You had as good have let such trivial Evidences as this alone. But go on.

Then Mrs. Pendrell stood up.

L. C. J. Do you know Mr. *Ireland*?

Mrs. Pendrell. I did know by Report it was he.

L. C. J. Where did you see him in *August* or *September*?

Mrs. Pendrell. At *Boscobel*, my Lord.

L. C. J. Did you ever see him before that time?

Mrs. Pendrell. No, my Lord.

L. C. J. Do you know it was the same Man that suffered?

Mrs. Pendrell. I will take my Oath of it.

L. C. J. How! when you never saw him before that time?

Mrs. Pendrell. I was in Town when he died.

Then stood up Mrs. Gifford.

L. C. J. When did you see Mr. *Ireland*?

Gifford. My Lord, Mr. *Ireland* came to *Wolverhampton* the 17th of *August*, and he stayed there till the 26th, it was of a *Monday*, I remember it by several Circumstances.

L. C. J. Did you know Mr. *Ireland*?

Gifford. I never saw him before.

L. C. J. Do you know it was the same that died?

Gifford. My Lord, here was my Brother in Town, who saw him executed, and he did assure me he was the same: And I saw him again the second of *September*, and the seventh of *September* again, and the tenth and eleventh: My Lord, he was the same Man, I believe, because my Brother told me so.

Mr. Gifford. I saw him in the Country, and I saw him executed.

Then another Mrs. Gifford stood up.

Mrs. Gifford. I saw him at *Pancrass* Fair in *Staffordshire*.

L. C. J. Was it the same Man that was Executed?

Mrs. Gifford. My Lord, I cannot say that, I did not see him suffer; but my Sister and I were at the Window, and she shew'd him to me, and said that was Mr. *Ireland*, and told me how long he had been in *England*.

L. C. J. How do you know that was the Man that was Executed? did you see him tried here?

Mrs. Gifford. Yes, my Lord, I did.

L. C. J. And that was the same Man?

Mrs. Gifford. Yes it was, my Lord.

L. C. J. When was it your Sister shew'd you him?

Mrs. Gifford. I saw him upon the seventh of *September*.

Then stood up one Mr. Bedle.

L. C. J. When did you see Mr. *Ireland*?

Bedle. I saw him at a Place called *Millage* in *Staffordshire*, the second of *September*.

L. C. J. Are you a *Roman Catholick*?

Bedle. If I must make a confession of my Faith, I will. But I saw him there, and they said it was Mr. *Ireland* the Jesuit.

L. C. J. Had you no Acquaintance with him before?

Bedle. No.

L. C. J. How do you know it is the same Man that suffered?

Bedle. I do not know that, but I suppose it was the same.

Turner. I am accused for being at *Tixall* at a Consult in *September*, I desire to know who saw me there, for I have not been there these Four Years.

L. C. J. Mr. *Dugdale* saw you there.

Turner. What Witnesses besides?

L. C. J. None but he for that.

Mr. Recorder. Hath Mr. *Fenwick* any more Witnesses to call?

Fenwick. My Lord, I have not any.

Then was Captain Hill called.

Fenwick. My Lord, he can prove something against Mr. *Bedlow*: He says, he lived in good repute; but the Captain will tell you, he was in the *Marshalsea*, and lived a poor mean Life, and all the time fed upon the Basket.

L. C. J. North. He was Guilty of the same Treasons that you are Guilty of, there is his fault.

L. C. J. No doubt he was a Naughty Man, he was with you in this Plot.

Fenwick. I can prove by Sir *James Butler's* Clerk, that he cheated a Cutler of a Silver hilted Sword.

Then Sir James Butler's Clerk was called; but he having more than one, and the Person meant not being there, there could nothing be examined about that.

L. C. J. North. He hath had the King's Pardon for all that.

Fenwick. He was forced to run the Country for a many Cheats, and was forced to borrow 4 or 5 s. to redeem his Boots. My Lord, does his Pardon make him a good Witness? Then we will prove something since his Pardon.

L. C. J. No doubt he was bad enough while he was with you.

Whitebread. My Lord, I think I have a plain Demonstration against Mr. *Bedlow* since his Pardon; he did at my last Trial say, that he had nothing to say against me, and now he comes and gives fresh Evidence against me.

L. C. J. North. That is an Objection that will not take away his Evidence, but only goes to the lessening of the credit of it. He says he was in Treaty with Mr. *Reading* about you, and the Lords in the *Tower*; and to beget a Confidence in him that the Lords in the *Tower* should receive favour from him, and come off by his means, he was to be easie to you too, which made him lessen his Evidence at that time. This is that he says, the weight of it must be left to the Jury. And he said at that time he had more to say at Time and Place convenient.

Whitebread. There is no such thing in the Trial. He hath alledged great Matters against me, therefore it is Evident he did falsifie his Oath;

Oath; for if he were to swear the truth, the whole truth, and nothing but the truth, and he did not say the whole truth, he is perjured; if he did, he can say nothing against me now.

L. C. J. North. Mr. *Whitebread*, you have your Objection, and it must be observed to the Jury. Your repeating of things signifies nothing.

Then Captain Hill stood up.

Fenwick. Pray Sir, what do you know of Mr. *Bedlow*?

Mr. Just. Pemberton. But don't ask any thing before the Pardon.

Hill. I knew him in the *Marshalsea*.

Fenwick. In what condition was he there, Sir?

Hill. He was a poor Man, as I be, and lived upon the Basket.

Harcourt. How long ago is it since you knew him there?

Hill. In May was Twelve-month.

L. C. J. That was long before his Pardon. But he might be an honest Man for all that, tho he were as poor as you. Are you an honest Man?

Hill. Yes, I think so.

L. C. J. And so might he be. Well, have you any more?

Prisoners. No.

Sir Cr. Levinz. Gentlemen of the Jury, you have heard the Prisoners, and they have had a great deal of time to make their Defence; but the greatest part of their Defence hath been to invalidate the Testimony of Mr. *Oates*; and what is the Evidence they have brought against him? they tell you first, That he did not come over in that Company that he says he came over with. And whereas he hath sworn he was here the 24th of April, they have taken a great deal of Pains by fifteen or sixteen Witnesses to prove that he was all the time at St. *Omers*; and that Sir *John Warner*, and Sir *Thomas Preston*, whom he tells you came over in Company with him, never stir'd from the Places of their Residence, that is *Liege* and *Watton*, all that time: But this, Gentlemen, you must observe, that if Mr. *Oates* were out of the Case, all these Persons, except Mr. *Turner*, are proved Guilty of the Treason they are charged with; and yet I shall set up his Testimony, and make him clear, notwithstanding whatsoever hath been alledged against him. Gentlemen, to take them in order, Mr. *Whitebread* hath Mr. *Dugdale*, Mr. *Bedlow*, and Mr. *Prance*, to prove him Guilty, let what will come of Mr. *Oates*, all of them speak to him.

L. C. J. Prance, do you speak any thing against Mr. *Whitebread*?

Mr. Prance. No.

Mr. Recorder. It was *Fenwick* and *Harcourt*.

Sir Cr. Levinz. But there is *Bedlow* and *Dugdale* against Mr. *Whitebread*, and therefore, Gentlemen, there are two have sworn against him, besides *Oates*; and there is two against Mr. *Fenwick* at least; nay, there are three; for besides *Oates* there is *Bedlow* and *Prance*; as to Mr. *Harcourt*, there is *Bedlow*, *Dugdale*, and *Prance*, besides Mr. *Oates*; as to Mr. *Gavan*, there is *Oates* and *Dugdale*; indeed there is none but *Oates* and *Dugdale* against *Turner*; so that as to the three first however there are two Witnesses besides Mr. *Oates*, that is, against Mr. *Whitebread*, Mr. *Fenwick*, and Mr. *Harcourt*. Now as for Mr. *Oates*'s Testimony, and what they have to say to him; in the first Place, they have

brought a young Gentleman, Mr. *Hilley*, and he says he did not come over with him, and there 'tis one against one, but Dr. *Oates* hath sworn it, and hath given you such convincing Circumstances how he lost his Money, &c. so that I leave it to you which of the two is in the Right, and ought to be believed. But then, my Lord, as to the rest of the Witnesses, here are a great many brought over to prove that Mr. *Oates* was all the while at St. *Omers*; but I shall bring you a considerable number of Witnesses to prove that Dr. *Oates* was then in London, and that all these Persons are mistaken. They do all pitch upon the first of May, to fix it upon a time wherein he says he was here in Town: But Gentlemen, I hope you did observe, that as to other Things and Time that were not so necessary as to this Matter, there they were pleased to mistake, and to differ one from another, to contradict one another; for some of them said he went away and left St. *Omers* the 10th Day of June, others the 23d, others, which was the same *Flemish* Gardiner, that he staid till July. Truly half that variance in the time which is necessary would serve our Turn, we are but for eight Days time, that is, he was not above eight or ten Days here, truly these Gentlemen will be sure to speak punctually to all those eight Days that hurt the Prisoners, but they will vary thirty Days at another time that hurts them not. Why may they not be mistaken as well with that portion of Time, as they were in the other, wherein they so much differed one from another?

But I shall give you most infallible proof by and by, that Mr. *Oates* was in England at that time that he said he was in England. My Lord, as to that of Sir *John Warner*, truly we have sent for a Witness, but we did not know of the Objection before; they have now brought you the Gardiner, and he did say positively at first that Sir *John Warner* was there all that while, but being asked again how he knew it, he said it was the talk of the Country, and so some of the Witnesses did speak to Sir *Tho. Preston*. But then I did desire to know of these Witnesses, whether these Persons were never absent from these Places or not, they told me they were absent for some time in the Vacancy.

Gavan. That was in August.

Sir Cr. Levinz. You are very good at expounding I know, but what those Vacancies were I am not certain; but being apt to mistake a little, they might mistake the Time too, and they might extend their Journey beyond their Vacancy. Mr. *Gavan* he hath made a mighty Defence I must confess, endeavouring to prove that he was out of Town all June and July, and in April and May before, and truly he hath brought some Witnesses that have spoken very far for him as to those Months, but I will desire you to observe, as I know you did, that the three last Witnesses that knew him very well did affirm positively that he was there the last Week in July, but being asked to the Week before that, and the Week before that, they could not be positive. And, under favour, by that Evidence you will believe rather that he was not there, for if so be they could so positively Remember for the last Week, why should they not be as positive for the two Weeks before? why these two Weeks were enough to serve our Turn, for it was towards the latter end of July that which Mr. *Oates* hath sworn upon

upon Mr. Gavan, that he was in Town, and talked of the same Matters which he had written the Letter about. And therefore it is much to be presumed, that because the Witnesses will take upon them as to the last Week, they are sure he was at *Wolverhampton*, but as to the two other Weeks they could not be sure, that they speak with some Conscience, and therefore it may be true that he was here. And the Woman said she could not say but possibly he might make such a Journey and she never the wiser. So that under favour, Gentlemen, all that which Mr. Gavan hath so industriously endeavoured to lay upon Mr. Oates, does shrink into a very slender Evidence, and that it might well be he was at *London* at the Time that Oates says, the three last Witnesses speaking positively only to the last Week in *July*.

Then truly, my Lord, they are fixed upon another great Matter to blemish Mr. Oates as to Mr. Ireland, a Person that is dead and out of the way. Mr. Ireland hath been hanged upon that Evidence, so far it was believed; but now after all this, will these Gentlemen come to question the Evidence that was given against Mr. Ireland. They have likewise, my Lord, brought my Lady *Southcott*, and some other Persons, who give you an Evidence concerning Mr. Ireland, that he should not be here at this Time; but, Gentlemen, under favour, Mr. Oates hath sworn before, and he hath now sworn it again, that Mr. Ireland was at that Time in *London*, and, Gentlemen, I will confirm him in that by another Witness that did see him here in Town at that Time. And when you have two Witnesses for the King upon their Oaths come and testify it, I hope you will believe them, rather than other Persons that testify only by hearsay. It was the Matter then in Issue, and had saved his Life if it had been true; but tho it be now settled, and none could think it would be again started, they would make that an Objection, but by chance we have a Witness still to give you Satisfaction, that Mr. Ireland was in *London* at that Time that Mr. Oates did swear him to be. We will begin with that Witness about Ireland. And then we will call our Witnesses to prove that Mr. Oates was in *England*, and did come over when he said he did. Call *Sarah Paine*. Who was sworn.

Sir Cr. Levinz. What time did you see Mr. Ireland in *London*? did you see him in *August* last?

S. Paine. I saw him about seven or eight Days before I came to my Lord Chamberlain, and that was about a Week before the King went to *Windsor*.

L. C. J. Where did you see him?

S. Paine. At his own Door in *Russel-Street*.

L. C. J. Did you speak to him?

S. Paine. No, I knew him very well, and saw him as I came by.

Sir Cr. Levinz. Had not you carried many Letters to him?

S. Paine. Yes, several Letters.

Sir Cr. Levinz. But where did you live before?

S. Paine. I lived at Mr. Grove's.

Sir Cr. Levinz. Did not Mr. Ireland use to come there too?

S. Paine. Yes, he did often.

L. C. J. Was any one talking with Ireland then?

S. Paine. No.

Sir Cr. Levinz. How long did you look upon him? Did you see him go in? did you see his Face or his Back?

S. Paine. I saw his Face, and made him a Curtesie.

L. C. J. This she said to Ireland's Face.

Mr. Just. Dolben. Your Evidence is, that Mr. Ireland went out of Town the 5th of *August*, and she says she saw him about that time which must be the 12th or 14th of *August*.

Gavan. How does she prove it? she does not say she spoke with him.

Mr. Just. Dolben. She swears it.

Sir Cr. Levinz. Now we must prove what time the King went to *Windsor*.

L. C. J. *Sir Tho. Doleman*, what time in *August* did the King go to *Windsor* last Summer?

Sir Tho. Doleman. I believe (I cannot charge my Memory so well) it was the 13th, it was about the 12th or 13th.

L. C. J. Was my Lord Chamberlain there then?

S. Paine. My Lord Chamberlain went after the King.

L. C. J. And when do you say you saw Ireland?

S. Paine. I saw him seven or eight Days before I went to my Lord Chamberlain's, which was before my Lord went to *Windsor*, and that was a Week after the King went thither.

Sir Cr. Levinz. Now I'll tell you what she says; she says she saw Ireland a Week before she went to my Lord Chamberlain's, and she saw him go into Grove's House, where he did usually go for Letters; she says she saw his Face, and made him a Curtesie; and that this was a Week before she went to my Lord Chamberlain's, and that was a Week after the King went to *Windsor*. Now the time that Mr. Oates pitches upon is between the eighth and the twelfth of *August*, which by computation is the time she speaks of.

Gavan. And our Witnesses go from the third of *August* to the fourteenth of *September*.

Sir Cr. Levinz. Call Sir Richard Barker, William Walker, Sarah Ives, &c.

William Walker was first Sworn, and bid to stand up.

Sir Cr. Levinz. Pray, Sir, do you know that Mr. Oates was in *England* the beginning of last Summer? Pray tell your whole knowledge.

Walker. Yes my Lord, I will. I have known Mr. Titus Oates these seven Years, and had not seen him above five Years; but about two Years ago I did meet him in *Newgate-market*, and then again in the latter end of the Month of *March* 1678, or the beginning of *April*, I did see Mr. Oates in a disguise in a gray Searge Coat, and I think a gray Hat, but I did not understand it, nor did I know him to be the Man; and I was very much troubled that I could not recollect my self who he was, and I went to Bed, and could not recollect who he was; but before I rose in the Morning I did draw him within the Scheme of my knowledge, that it was Titus Oates, and to confirm my Judgment in that, I did go to a Gentlewoman, whose name I did not know, but I went thither because it was the same place that I had seen him at a Year before, to enquire what became of Mr. Oates, and how he did: And when I came to her (in the Morning early, it was the next Day after I had seen him in Disguise)

guise) I enquired of the Gentlewoman how Mr. Oates did, and she clapped her Hand upon her Counter, being a Tradeswoman, O, said she, *he is an undone Man! Why so?* said I. *Said she, He is turned to the Church of Rome, and he absconds and hides himself, I know not where he is. Then, in plain Terms, said I, I saw him later than you, for I saw him Yesterday, between Nine and Ten of the Clock, it was at the upper-end of St. Martin's-Lane, near Leicester-House.*

Sir Cr. Levinz. What time was this?

Walker. This was in April or March last was a Twelve-month.

L. C. J. Did you never see him more than then?

Walker. No, I knew his Face so well, as I looked back upon him, and he looked back upon me, but it was with some kind of Terror, and he did seem to abscond and hide himself.

L. C. J. When was this?

Walker. It was some time from the latter end of March to the middle of April.

L. C. J. Why did you skip the beginning of April?

Walker. I am not able to remember exactly the Time; for why, I did never think to be called as a Witness about it.

L. C. J. Did you speak to him?

Walker. No, my Lord, I did not.

L. C. J. How long before had you spoke to him?

Walker. A Year before, but in his Canonical Habit, and not before of five Years.

L. C. J. North. You will not sure catch him upon a Day.

L. C. J. But I'll tell you what it does, it contradicts all that your Boys, all your Witnesses say: Tho it does not go home exactly to the 24th of April, yet, if it be true, and we have no Reason to believe it otherwise, it disproves all their Evidence; for they charge him to have been at St. Omers all March, April, and May.

Sir Cr. Levinz. Swear Sarah Ives. [Which was done.]

Oates. My Lord, we bring Sarah Ives to prove that this same Gentleman went to her to enquire of her about me.

L. C. J. Pray Mrs. what did that Minister say to you, and when, concerning Mr. Oates?

Ives. Mr. Walker came to my Shop, and asked me when I saw Mr. Oates; said I, *I have not seen him since he went beyond Sea. Then, said he, I have seen him later than you, for I was going to Leicester Fields, and at the end of St. Martin's Lane I saw him in a Disguise, and he looked wistly back upon me, and I upon him, and, said he, I am certain it was the Man.*

L. C. J. What time was this?

Ives. It was April was a Twelve-month.

L. C. J. What time in April do you think?

Ives. I cannot say the Day.

L. C. J. But what time of the Month was it?

Ives. I don't justly know, I think it was the middle of April, or thereabouts.

L. C. J. Call another Witness.

Sir Cr. Levinz. Call Mrs. Mayo. [Who was sworn.]

Sir Cr. Levinz. Well, what say you, when did you see Dr. Oates in England?

Mayo. I never saw his Face till a Week before Whitsonide, or a little after; there was a Young Man, a Servant of Sir Richard Barker's, that knew him a long time before; he came to me and said, *Yonder is Mr. Oates hath changed his*

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Coat from a black to a white; what is he! said I, *he was a Minister, but he is either turned Quaker or Catholick; but, said I, he is not turned Quaker, for he wears a Perriwig, and he fell a laughing and jeering at him; said I, Why do you deride this Gentleman, when he is a Friend of Sir Richard Barker's.*

L. C. J. Where was Mr. Oates then?

Mayo. He was in the Court-yard, and I was in the Kitchen.

L. C. J. When was this?

Mayo. The Week before Whitsonide.

L. C. J. In what Month?

Mayo. It was in May.

L. C. J. Did you know him before then?

Mayo. No, I did not, but I had heard much of him in the Family.

L. C. J. How soon did you see him again after that?

Mayo. About a Week after he came and brought another with him, and walked into the Garden, and seemed to be discontented that they did not shew such a Countenance to him as they used to do in the House, for the Gentlewomen had heard he was turned Jesuit, and therefore were very shy; that is, Sir Richard's Kinswomen, my Lady's Sisters Daughters.

L. C. J. Do you know Dr. Oates now?

Mayo. Very well, Sir. Afterwards he came again and walked into the Garden, and the Young Man I spoke of before, that is now dead, came again and took notice of him, of the strange Garb he was in; he was in a Room that looked into the Garden, I saw him walking there, and said he, *Yonder is Oates again, and hath brought another with him; he looked out of the Window, and said he, Pr'ythee look here, does not he look like a Jesuit?* and he that was with him looked back, and if it had not been for that, and the Young Man's Importunity, I had never taken notice of Mr. Oates. After, when I heard he was come over and gave in his Testimony about the Plot, I would needs go see him; but he spoke very flightingly to me, and seemed to be offended with the Family because they did scorn him. Said I, *They had no reason to countenance you, because we all understood you were turned Catholick. They did, said he, look very shy upon me. Why, said I, you must not be offended, for you know all the Family are no Friends to Jesuits, and I hope never will be so; but I hope, Mr. Oates, you will not forget eaten Bread, because he used to be made very much of at Sir Richard Barker's.*

Sir Cr. Levinz. Is that the Man that you saw there?

Mayo. This is the Man, if you will put me to my Oath again I will swear it.

Sir Cr. Levinz. When was this?

Mayo. It was the Week before Whitsonide, it was in May, for Whitsonide fell in May.

Sir Cr. Levinz. Then call Philip Page. Who was sworn.

Sir Cr. Levinz. Do you know Dr. Oates?

Page. Yes, Sir.

Sir Cr. Levinz. How long have you known him?

Page. I have known him four or five Years.

L. C. J. Pray did you see him in the Year 1678, last Year?

Page. Yes, I did.

L. C. J. At what Time?

Page. About the beginning of May.

L. C. J. Where?

Page. At Sir Richard Barker's.

L. C. J. Were you acquainted with him before?

Page. I had spoke with him before.

L. C. J. How do you know it was he? did you speak with him then?

Page. Yes, I did.

L. C. J. What Habit was he in?

Page. He had a light-coloured Campaign Coat. I ask'd him, where he had been so long a Time, that we had not seen him, but he turned away from me, and gave me no Account, but, after he had been in the House, made back again, and away he went, after he enquired for Sir Richard.

L. C. J. How do you know it was in May? why might it not be in April?

Page. It was in the beginning of May, to the best of my Knowledge.

L. C. J. By what material Circumstances do you remember it was in the beginning of May? Is there any thing that puts it into your Mind more particularly?

Page. My Master had a Patient at that Time, that was sick of a Fever.

L. C. J. Where? at Sir Richard Barker's House.

Page. At Islington it was.

Jury. We desire to know what the Patient's Name was, for some of us know Islington very well.

Page. I have forgot the Name.

Sir Rich. Barker. It was Aldram Milver's Daughter.

L. C. J. It was about that Time in May that you saw him?

Page. I did upon my Oath, and I spoke with him, and took much Notice of him, he had an old black Hat on that flapp'd, and a pair of Spanish-Leather Shoes.

Sir Cr. Levinz. Call Sir Richard Barker. Who was sworn.

L. C. J. Do you know Dr. Oates?

Sir Richard Barker. Yes, my Lord, I have known his Father and him ever since he hath been a Child; I saw him the last Summer.

L. C. J. About what time?

Sir Richard Barker. At that Time that they have given in Evidence, I have only this to say, I was abroad, as my Business leads me often abroad into the Country, but they told me, Mr. Oates came to my House in a Disguise, and that they believed he was turned either Quaker or Papist.

L. C. J. When was this?

Sir Richard Barker. It was, my Lord, to the best of my Remembrance, after *Whitsontide* that they told me, but they told me a Story of him, how that he was in two several Disguises, the one was a short Hair, and then they thought he was turned Quaker, another Time he had a long Perriwig, and then they thought he was turned Papist; and the first that told me, was this Fellow here, that is a Coachman of mine, who was mending something of his Coach. It happen'd, my Lord, upon the visiting of a Gentleman, that I was very ill, in which Time Mr. Oates was gone, and afterwards, when I was recovered again, he came to my House, to enquire concerning Dr. Tongue.

L. C. J. When did you see him first?

Sir Richard Barker. It was, my Lord, to the best of my Remembrance, the latter end of

June, or beginning of July, upon my Recovery.

L. C. J. By the Oath that you have taken, I would ask you one Question, Did not you see him till June?

Sir Richard Barker. No, my Lord; but my Servants told me, they had seen him in May, before *Whitsontide*.

L. C. J. Did you see him in June?

Sir Richard Barker. To the best of my Remembrance, 'twas in June.

Then one Butler was sworn.

L. C. J. Come, do you know Dr. Oates?

Butler. Yes, very well.

L. C. J. How long have you known him?

Butler. I have known him these three Years, before he went beyond Sea.

L. C. J. Come, you are upon your Oath, when did you see Dr. Oates, and where, the beginning of last Summer?

Butler. I saw him the beginning of last May, at my Master's House in Barbican.

L. C. J. Upon what Occasion? what are you?

Butler. I am Sir Richard Barker's Coachman. And I was making clean my Coach in the Gatehouse, and in comes Dr. Oates, in May last was a Twelvemonth, the beginning of May; with his Hair cut off close cropt to his Ears, in Gray Cloaths, a Gray Coat like a Shepherd's Coat, a Yorkshire-Gray, he asked me, whether Dr. Tongue was within? I told him, No: Nevertheless he went into the House, and immediately came out again, and seemed to be very much discontented; but said nothing at all to me, but passed by me, and went away.

L. C. J. And did you know him at that Time he spoke to you first?

Butler. Yes, my Lord, because I knew him three Years before.

L. C. J. Could you have then call'd him by his Name?

Butler. Yes, my Lord, I could.

L. C. J. You say he came to inquire for Dr. Tongue, and was discontented that he could not see him?

Butler. He said nothing to me when he came out, but pass'd away as one that was troubled.

L. C. J. Did you see him afterwards?

Butler. Six Weeks after I saw him; and then he had a long black Coat and a Perriwig on.

L. C. J. But are you sure it was the same Man?

Butler. I am, upon my Oath.

Mr. Just. Dolben. Did you tell your Master of his being there the first time?

Butler. I did tell Sir Richard Barker of him, as soon as I saw him.

L. C. J. Sir Richard, how soon did he tell you Oates was first there?

Sir Richard Barker. It was soon after, my Lord.

L. C. J. Was it in May that he told you he had seen him?

Sir Richard Barker. He told me as soon as ever I came home, in May, as I remember.

L. C. J. Did he tell you, Mr. Oates was there by Name?

Sir Richard Barker. Yes, my Lord, he did: And when he told me what Habit he was in, I wondered at it.

Oates.

Oates. There are several, my Lord, that did see me at that Time; but they are gone into the Country, and I cannot have them now ready: If you please now to call Mr. Smith the School-master of Islington. *Who was sworn.*

Sir Cr. Levinz. Do you know Dr. Oates?

Smith. Yes, very well.

Sir Cr. Levinz. Pray, Sir, how long have you known him?

Smith. He was my Scholar at Merchant-Taylors-School, where I was Usher.

Sir Cr. Levinz. When did you see him, the beginning of last Summer?

Smith. I saw him in the beginning of last May, that is, 1678.

L. C. J. Where did you see him?

Smith. He dined with me, at my House in Islington.

Mr. Just. Dolben. What, the Boys at St. Omers now are gone?

L. C. J. Recollect your self well: By the Oath you have taken, did Dr. Oates, in May was Twelve-month, dine with you?

Smith. Yes, my Lord, he did; and it was the first Monday in May, as I remember.

Mr. Just. Dolben. And this you swear, directly and positively?

Smith. Yes, my Lord, I do.

L. C. J. How long did he stay there?

Smith. He staid three or four Hours after: And, may it please you, my Lord, he was in a Summer-suit, and a coloured Ribbon, a green Knot upon his Shoulder.

L. C. J. What did you discourse about?

Smith. About his being in Spain and Flanders, and his Travels.

L. C. J. Had you a long Discourse with him?

Smith. Yes, I had.

L. C. J. Had you nothing about the Times?

Smith. No, my Lord, not a Word.

L. C. J. Did you understand he had been turned Roman Catholick?

Smith. I did know it.

Jury. My Lord, did Mr. Smith see him any other Time after that?

Smith. No, my Lord, not in two Months, to my Remembrance, about the middle of August.

Sir Cr. Levinz. Call one Clay. *Who was sworn.*

L. C. J. Do you know Dr. Oates?

Clay. Yes, my Lord, I do.

L. C. J. How long have you known him?

Clay. Ever since April last was Twelve-month.

L. C. J. Was that the first Time of your Acquaintance with him?

Clay. Yes, at Mr. Charles Howard's.

L. C. J. Where were you there with him?

Clay. He lived in one Corner of old Arundel-House.

L. C. J. How came you acquainted with him?

Clay. Truly I met him accidentally, at Mr. Howard's House.

L. C. J. How came you to come there?

Clay. I was there to visit Mr. Howard, as a Friend.

L. C. J. Were you acquainted with him?

Clay. Yes, I was with Mr. Howard, and there I saw Dr. Oates.

L. C. J. When did you see him the second Time?

Clay. The second Time I think I saw him there too.

L. C. J. When was that?

Clay. That was in May.

L. C. J. North. How long was that after?

Clay. I think the other was in April.

L. C. J. And did you see him in May?

Clay. I saw him in May too.

L. C. J. What Time of the Month was it?

Clay. I cannot exactly speak to that, but it was in that Month as I remember, I am morally certain of it.

L. C. J. And when did you see him after May?

Clay. I can't tell whether I saw him after May or not.

L. C. J. Is that the same Man that you saw at Mr. Howard's, either in April or May?

Clay. Yes, my Lord, it is the same Man.

Sir Cr. Levinz. Then we have done with our Evidence.

L. C. J. Come Gentlemen, now what can you say to this? They have given you now their full Charge.

Oates. My Lord, I have one Thing more, I desire your Lordship to take Notice, this Gentleman, Mr. Clay, is a Priest in Orders, as they say.

L. C. J. I will not ask him that Question, but Mr. Clay, are you a Papist?

Clay. Yes, my Lord, I am so.

L. C. J. North. Come, what say you now, Mr. Whitebread, to this?

Whitebread. I have this to say; first, That at my last Trial, when I press'd him to declare who had seen him, when he said he was here in Town, he could name no Body, not one. I know afterwards he was examined at the Committee, and then he could name no Body neither. He said he was there privately at Mr. Grove's, and we can prove, that he never did lie there in his Life. And then he said absolutely, he had not seen much Company, he stay'd but six Days. Now this good Dr. that does say he saw him here in the latter end of March, or the middle of April, whereas he himself says he came over with Hilsley, the 24th of April.

L. C. J. He was Landed here the 17th of April, and the Witnesses say, it was the latter end of April, or beginning of May.

Whitebread. Mr. Oates expressly said, he staid here but six Days, when he came over to the Consult.

L. C. J. Why, does not all this stand together?

Whitebread. No, my Lord, how could this stand together? his coming over the 17th, and his being here a great part in May, whereas he says he was but six Days?

L. C. J. Perchance Dr. Oates may not be precise enough; but look you here, these Witnesses do not speak so exactly to a Day or two, or three, or four, or five, but to the latter end of April: Now, why might they not see him the latter end of April, and the beginning of May, and yet stand very well with Mr. Oates's Testimony, who says he was Landed here about the 17th of April, and staid here about six or seven Days? How nice would you have them be in that Case? which, because they are honest, they will not be.

L. C. J. North. You make your Defences to depend upon an Uncertainty of Time, which no mortal Man can ever remember; besides, pray

observe this, That Mr. Oates stands a good Witness, till you impeach him by a Fry out of your own Schools, and they go to the whole Months of *June*, and *April*, and *May*, now these all speak in Contradiction to other Witnesses, and so Mr. Oates is still an upright and good Witness.

Whitebread. They say they did see him there every Day, or every other Day.

L. C. J. But sure I can as well tell, who saw him but once in such a Month, and dined with him then, as any that saw him never so often: but here are five Witnesses upon you in this Point.

Whitebread. The one was told by his Man, the other by his Boy.

L. C. J. The Coachman, and the Boy, and the Maid, and Mr. *Smith* did see him.

Mr. Just. *Pemberton*. The Divine did see him, and went and told the Woman that he had seen him, pray remember that.

L. C. J. *North*. Now the Evidence is concluded, say what you will for your selves; and then we will observe what you object, upon our Direction to the Jury, according to our Consciences.

Gavan. My Lord, then I say this for my self. We commit our selves to God Almighty. We must compare the Number, tho ours were not sworn, yet there were sixteen of them, Boys, Young-men, that conversed with him every Day, and these Witnesses speak but of one or two particular Days: One says he dined with him, and another saw him in a Disguise; but, my Lord, in these very Witnesses there is an apparent Contradiction, because out of his own Mouth (*ex ore tuo te judico*) they are contradicted. He says he came over upon *Sunday*, with *Hilsley*, which was the 20th of *April*, as I think, and staid here only a matter of six Days. One of the Witnesses says he saw him the first *Monday* in *May*. What signifie the Witnesses, tho upon Oath, that say they saw him in *May*? How can he come over the 20th of *April*, and stay but six Days, and be seen here in *May*? Before these can be reconciled, one of them must be false; and then, my Lord, besides that which I first said, there is the Number of Witnesses, they are nothing in Comparison with the Number of ours. And then, my Lord, Secondly, if we should grant, that a lesser Number should serve the Turn, because they are sworn for the King, because they swear for the Safety of the King, (whom God preserve, whatsoever becomes of me) and the other speak not upon their Oaths, yet, my Lord, this does not destroy nor touch at all that Evidence that is brought against him, about the Rector of *Liege*, Sir *John Warner*, and Sir *Tho. Preston*. And tho' it be granted, that all the others that spoke about Mr. Oates being at *St. Omers* be mistaken, and must not be believed, yet we have him still, by those six others, who have proved that he hath sworn false; and I hope we shall have fair play in the Law, to make the best Defence we can for our Lives; and I humbly conceive, no Body must be convicted of High-Treason by the Law, but upon the Evidence of two sufficient Witnesses. Now I leave it to the Conscience and Honour of the Court, whether he shall be believed, and counted a sufficient Witness, when there are so many that have proved him false in that one Point? And then, besides all this, my Lord, we have here sixteen, at least, *Staffordshire* Witnesses, who give you an Account of Mr. *Ireland's* being

out of *London*, from the 3d of *August* till the 14th of *September*; so that in these two Things he hath been contradicted without any Answer, for he says, the 12th of *August* he was with him, when they say he was in *Staffordshire*.

L. C. J. You have forgot the Maid that saw him in *London*, the 12th or 13th.

Gavan. No, my Lord, I have not. And this is it I answer to it, She is a Witness that only says, she just saw him, but did not speak to him.

L. C. J. She made a Courtesie to him.

Gavan. We are talking now of seeing *Ireland* in *August*, and we prove by Sir *John Southcott*, and all his Family, who say they began their Journey with him the 5th of *August*, and stay'd with him till the 19th, after the particular Day that she speaks of, you find seven or eight of them swear that they saw him all the Time. And therefore I would fain know, whether poor Mens Lives shall be cast away upon such Evidence as this? And then, my Lord, for the other Thing, I hope I have made a very good Plea for my self concerning the Matter of *July*, my Witnesses could be positive as to the last Week, but for the other Weeks, tho they could not be positive, they rather believed I was there, than not: But when it is urged, Why might not they give as good a Testimony for the former Weeks as for that? To this I answer fully, that there is a great and predominant Reason why they should have a particular Reason to swear, why I should be there the last Week, rather than the other Weeks, because I was then shut up in the Spiritual Exercise, and they had a particular Reason to take notice of that. Then, my Lord, I hope you will be pleased to mind this, by which I have made my Plea good, that is, my Lord, that Mr. Oates's Testimony against me is this, Mr. *Ashby* came to Town about the middle of *July*, and that he staid there about a Fortnight, and that in the Time of that Fortnight I came to Town, and said I would go see Father *Ashby*, and had that Discourse he speaks of, and so much for that. And then, my Lord, I beseech you still to bear it in your Mind, that I have been proved not to be in Town at the Time of the great Consult about the Plot; and indeed I was not capable of it, for I was not then Professed, and there could none be of that Congregation about the Plot, but those that were Professed. I could not be there in the Congregation, by reason of my Age, Mr. *Harcourt* here, and the rest, if you will ask them, will tell you it, they were there, but, upon the Word of a dying Man, I was not there.

L. C. J. 'Tis not positively said by Mr. Oates that you were.

Gavan. But then, my Lord, he says, my Name was to it, which he saw in *July*; now I prove, that I was in *Staffordshire*, the last Week of *July*, and seeing I have Witnesses to prove, that I was there till the 14th, and the last Week, and it was after the 14th that he saw me, I hope my Plea is good. Then, my Lord, I ground my Plea upon this, I have studied Philosophy, and other Things, but I never studied the Law, and so am very ignorant of it; but this is my Case, I am accused by one Witness, concerning one Fact, and by another, concerning another; the one committed here at *London*, the other in *Staffordshire*; I desire, therefore, to know, whether the Witness that swears the Thing done in *Staffordshire*,

Staffordshire, in another County, being joined to the other Witness, that swears what was done in *London*, can be esteemed two Witnesses, according to the Law, to convict me of Treason?

L. C. J. North. Yes, I'll tell you, if it were a Matter of Doubt, it might be found specially, and be argued, but it is a Matter that hath been already resolved in the Case of Sir *Henry Vane* at the *King's-Bench-Bar*, who was Indicted for levying of War against the King, and there one Witness proved the levying of War in one County, and the other proved the levying of War in another County, and so, tho they were but single Witnesses of single Facts, yet being both came up to the Indictment, they were adjudged sufficient to maintain it. So it is in your Case, here is one Witness for the proving your hand to the Paper, which was for the Murder of the King, and there is another Witness of your Discourse to the same purpose; the Fact is your joining and conspiring to destroy the King, and to levy War against him, and both these are proved to the full of the Indictment by these Witnesses; and tho they are to several particular Facts, yet they are all Overt Acts of the same Treason.

Gavan. My Lord, I have a contrary Opinion to that in *Serjeant Rolls*.

L. C. J. North. But this is a known Case, and the Law is settled therein.

L. C. J. I'll tell you what you mistake in what you say, for there are two Witnesses, *Oates* and *Dugdale*, who swear to the same Fact, which is killing the King, altering the Government, and bringing in Popery: *Oates* says he saw your Hand to the Consult, for the Murder of the King, for the raising the Army, and for the introducing of Popery, which is a necessary consequence of change of Government; *Dugdale* says he was with you in the Parlour of my Lord *Affon's* where the Discourse was between him and you, and others, about killing the King, and altering Religion. Are not these two Witnesses to one and the same Treason?

Gavan. No, my Lord, I conceive not.

L. C. J. If I consult a way to kill the King here, and then I go into the Country, and there I consult of it with another Person, are not these two Witnesses to the same Treason? sure they are.

Gavan. Then, my Lord, my second Plea is this, If there be two Witnesses, you will grant me this Ground, that no Man must be convicted but upon the Evidence of two Legal and Credible Witnesses, and upon clear Evidence, as the Statute since His Majesty's happy Restauration does declare. Now two things are required certainly to make a credible Witness, and a clear Evidence; as the Witness must be credible, so it is as agreeable to Reason that the Evidence must be plain and clear, yea as clear as the Light of the Sun at Mid-day. Now therefore if I prove, that neither the Witness is credible, such as the Law requires, nor the Evidence clear, such as the Law looks upon as such, then I ought not to be convicted by this Witness upon this Evidence.

L. C. J. The Jury are Judges of that, and therefore there I leave it.

L. C. J. North. You argue mighty subtilly, but I'll give you this Answer; there must be two lawful Witnesses, that is the Law; a Man can-

not be impeached of Treason but by two lawful Witnesses; now if they be not convicted of Perjury, and their Testimony be not taken away, but they may be heard in a Court of Justice, they are lawful Witnesses; now for the being credible Witnesses, that is a matter that is left to the Jury, but we must receive them as lawful Witnesses till they be convicted of a Crime that takes away their Testimony.

Gavan. Therefore because they are left to the Jury, I am satisfied, and I turn my self to you Gentlemen. You are to sit upon my Life and my Death, as for my own part I can truly profess I am as innocent as the Child unborn, and this Gentleman Mr. *Whitebread* knows I was not capable of being at the Consult, being not of Age. Now I must leave my self to the Jury, and will leave it to their Judgments whether these two Witnesses can be esteemed credible Witnesses; for to make credible Witnesses there is required Honesty of Life, and Truth in their Testimony, for no Man can be a good Witness that is not an honest Man, nor that hath carried himself so that he is not to be believed. As to the Honesty of Mr. *Oates* his Life, you have heard that he was disgusted by the Jesuits, esteemed not a Person of that diligence or fidelity to be intrusted by them; he was turned out of *St. Omers*.

L. C. J. Does that prove any Dishonesty in Mr. *Oates*?

Gavan. No, but I speak to his Credibility.

L. C. J. Speak plain, how does it impeach Mr. *Oates* his Evidence, that the Jesuits did not like him?

Gavan. It might be a ground of Hatred and Malice in him against them; and then, Gentlemen, I desire you to consider that other thing, That we have proved him to speak false in his Testimony about Sir *John Warner* and Sir *Thomas Preston*; and all the business of the 12th of *August*, concerning Mr. *Ireland's* being here the 12th of *August*, who, by sixteen Witnesses, is proved to have been all the while in *Staffordshire*: And tho he was not convicted of Perjury before, which might have easily been done, as I have shewn to the whole World now, I appeal to the Honour and Conscience of the Jury, whether all these Proofs ought not to make this Witness to be deem'd an incredible Witness. And pray, Gentlemen, hear me this, and carry this away with you, as to the business of *Ireland*, between the 8th and 12th of *August*, how many do swear that he was in *Staffordshire*, I desire you but to compare that one Woman that only saw him, and made a Courtesie to him, as she says, with those sixteen Witnesses that conversed with him daily. Then as for the second Testimony of the *St. Omers* Witnesses, which you see is thwarted by some that do swear in the King's Name to the contrary: Still I desire you to compare Number with Number: The others, tho they do not swear, are ready to swear, and there are only three or four against sixteen of them, and there is an evident Contradiction in what they say, and that proved out of his own Mouth; for he says he came over the 20th of *April* with Mr. *Hilsley*, and stay'd only six Days; they say he was here in *May*, and I desire these may be compared: for how could it be that he should be here in *May*, if he stay'd but six Days? And then to make your Verdict, and take their Credit away,

I would desire you to consider those Witnesses that I have brought for my self, not being here, but in *Wolverhampton*; for being in *Staffordshire* as long as till the last Week of *July*, it must fall within the time of his Testimony. I have brought Witnesses to prove upon Oath, that from the 22d upward, they saw me in *Wolverhampton*, and they do remember the particular instance, that I was then at my Spiritual Exercise: And this is that I have to say as to Mr. *Oates*. As for Mr. *Dugdale*, I would desire you to reflect upon the whole Story of his coming to discover this Plot, and his being an Informer about it. The truth is, I confess I have known him five or six Years, whilst he lived at my Lord *Aston's*, and I have divers times discoursed with him there in Mr. *Ewers's* Chamber; but, as I hope to be saved, never any thing of Treason in all my Life. Now, 'tis well known, and there are those that can testify it, that in truth *Dugdale* run away from my Lord *Aston's* after he had lost 300*l.* of my Lord's Money.

L. C. J. If you can say any thing against Mr. *Dugdale* by Witnesses that you can prove it, then you say well; but if you will tell a Story out of one Lord's Mouth, and another Lord's Mouth, that is never to be endured; you shall never take away a Man's Testimony by hear-say, you must prove it.

Gavan. 'Tis well known, if I prove *Dugdale* no credible Witness I play my own Game. You know I have been a Prisoner twenty Weeks, and could not seek out Witnesses, I asked it as soon as I knew of my Trial, but it was denied me to send for Witness to prove that *Dugdale* was in Goal for Debt. If I had the Recorder's Warrant, or the Authority of this Bench, I could send for them.

L. C. J. You must not fall upon Persons without Evidence, if you have Witnesses to prove any thing, whom the Jury will believe, call them.

Gavan. I do assure your Lordship, as I hope to see the Face of God, I am innocent of what is charged upon me. And God bless the King and this Honourable Court.

L. C. J. Tho you do an hundred times bless the King and Court and all, you must prove things if you will be believed. What say you, Mr. *Whitebread*?

Whitebread. My Lord, I have but one thing to say, and 'tis but a word: Your Lordship was pleased to make an Observation, and a good one it was, a Letter which Mr. *Dugdale* says was written by me to Mr. *Ewers*, which he says he intercepted; he was, in the mean time, a trusty Correspondent for his Friend. In that Letter he swears, there was expressly contain'd positive words of entertaining Persons to kill the King, that only such as were hardy, desperate and stout; but as your Lordship well observed, that it was an improbable thing that a Man who had his Wits about him should write such plain Expressions about such a Matter; and upon that Improbability I leave it to the Jury.

Mr. Justice *Pemberton.* Have you any thing to say, Mr. *Fenwick*?

Fenwick. I desire, my Lord, your Lordship and the Jury to consider and observe the nature both of our Witnesses, and of them that are brought against us. The one speak for the whole Time, that they saw him every Day, or every

other Day; they daily conversed with him, and eat and drank with him in the same House; the others, they say only, they saw him one particular Day, another, another; and one of them says he saw him but in a Disguise. Now, my Lord, whether it be likely that so many innocent Children, brought up in a good virtuous Life, should come here to forswear themselves, to contradict People that we know not what they are; and then, besides, we know that these People are of a poor, mean, beggarly Condition, that intend to mend that Condition by such a pretence of Discovery, and hope thereby to advance themselves. It is probable such People might be drawn in. Then also we shall prove, that Sir *John Warner* did not come over with him, nor Mr. *Williams*, nor Sir *Thomas Preston*: Then all his Witness, as to them is false, and he does not say he went back with these People; and this for the Witnesses. Now suppose the Witnesses were all equal, what does he prove against us Three? Or what Reason doth he give of his Evidence? He says he saw such and such Letters from Mr. *Whitebread*. Now is it possible that a Man that had no Credit at all with us, that we should be such Fools to trust him with such Letters as those, then your Lordships must hang us twice, once for Fools, and then for Knaves. Or is it possible that we should be such egregious Fools that we should trust a Man that was never esteemed of, was expell'd the College. And for all his talk of Commissions and Letters, there is not one of those found, let him shew any one Commission, any Money paid, or any Order brought him, or any Arms that were found; there are three Quarters of a Year now passed since the first discovery; certainly all this time could produce something: Thousands of Letters have been taken from us, some of those Letters would have discovered this thing: certainly therefore we have better Evidence than he hath, supposing them to be equal as to Credibility in their Original. Is it credible we should be so great Rogues to contrive the King's Death? tho he speaks of the Writing being carried from Chamber to Chamber concerning this Matter, he can never produce one Paper, signed by any one Man's Hand, nor can he produce any thing to attest his Testimony. I leave this to your Lordship's Judgment, whether this Evidence be good, there is nothing appears in so much Time, of any Effect that is produced: Where were the Armies? Where were the Monies paid? Where the Commissions? Is it possible such a thing should be, and no sign of it for a whole Year almost? there is no Reason brought, amongst them all, but Saying and Swearing, and that I will stand by.

Whitebread. I thank God I don't look like a fighting Man, nor I never did; but who can think that I should be so mad, when I had committed such a Secret to him, to beat him, as he says? 'Tis strange that such a Plot should be discovered wherein so many Persons of Quality, Honour and Reputation are said to be concerned, and yet no Foot-steps of it appear; and none of them, as my Lord *Arundel*, my Lord *Bellasis*, should never divulge such a Plot; I would feign know whether such a thing be probable, but I commend my self to God Almighty, and the Jury.

Harcourt. My Lord, I have only this to say, I have lived to this Age, which is 70 Years, and I never

never knew any Man that could say I was accused of the thing in the World, for which I should be brought before any Magistrate; and 'tis strange that after so many Years I should come to be Arraigned and Condemned for a Crime of the highest Nature; and there's no Reason brought against me, nor any of the rest, for the Proof of what is alledged, nor do they, who are the Witnesses against us, deserve at all any Credit: They only affirm such and such things without any Reason, to perswade you to believe them, and 'tis easy to say, and so 'tis to swear it. So that all I have to say is this, since a Negative cannot be proved, I hope Innocency will find some that shall defend it. I leave my self to the Bench, for the Law is the Defence of Innocency. If they did bring any Evidence besides that, which is downright positive Swearing without any Reason or concurrent Reason to confirm it, it were something.

Fenwick. And besides all this, to think how these Men have lived before time is worth Reflection and Considering. As for *Bedlow*, he hath been a very ill Man, the World knows it.

L. C. J. Have you proved it? Can you shew any Record of it?

Mr. Just. Pemberton. *Turner*, have you any thing to say? You have had your Time.

Fenwick. You will find that *Nemo repente fit nequissimus*, No Man arrives at the highest Degrees of Impiety at first: Men grow extremely wicked by Degrees. But let us see if they can blame our Lives, or any thing that we have done at any time before; we prove, and all the World knows what they have been, and how scandalously they have lived.

Gavan. Our Witnesses are to be regarded for their Number and for their Innocency, especially since they give no Reason nor convincing Arguments for what they do affirm.

L. C. J. We would hear you, and we have heard you very long, but it must not be permitted you to go over the same things again and again.

L. C. Baron. Hath *Turner* any thing to say?

Turner. All that I have to say, my Lord, is this, to ask whether it be reasonable that *Bedlow* and *Oates* should be looked upon as good Witnesses, that these Persons who have been such scandalous People should be admitted to an Oath, who are debarred from the Sacrament; for according to the Church of *England*, no Man that is publickly scandalous can be admitted to the Sacrament.

L. C. J. But you prove nothing.

Turner. I can prove it first by Evidence of one *Hastins*.

L. C. J. Call him. [But he appeared not.]

L. C. J. Gentlemen of the Jury; Here hath been a very long Evidence, and a very confused one; and you cannot expect, that it should be wholly repeated to you: For it is almost impossible for any one to remember it; neither would I if I could, because a great deal of it is impertinent, and vainly to be repeated: And besides, many things have been said over and over again, to no purpose. But I will observe to you, as well as I can, what Testimonies there are against each particular Man of them; and that I do look upon, to be very material. And I leave it to you, to judge and consider, how far the Evidence is Credible, and how far it is Substantial.

Against *Mr. Whitebread*, you have the Testimony of three, *Oates*, *Dugdale*, and *Bedlow*: Against *Mr. Fenwick*, you have the Testimony of *Oates*, *Bedlow* and *Prance*: Against *Harcourt*, you have *Oates*, *Dugdale*, *Bedlow*, and *Prance*. You have against *Gavan*, *Dugdale* and *Oates*; and against *Turner*, *Dugdale* and *Oates*: So that, to the two last, you have two, three to the two first, and four to *Harcourt*.

Now, the Matter that they have sworn, hath been all tending to one thing; the Murder of the King, the Advancing of *Popery*, and Suppression of the *Protestant Religion*: That is the Thing, that all the Evidence does drive at.

For *Dugdale*, for ought we can perceive, he hath been upon the matter a Stranger to *Oates* and *Bedlow*; and I do not find, that he had any Correspondence with, or Knowledge of them, at the time he charges *Mr. Harcourt* and *Mr. Gavan*. And he charges them with the very self-same Things, viz. the Consulting the Death of the King, and Advancement of *Popery*. And they have several Instances of the Facts, as their several Consultations; how they met together, and where, or at what Place. And *Dugdale* tells you of a Letter, that he found; wherein *Whitebread* gave Charge, for the Entertainment of good stout Fellows; No matter for Gentlemen, so they were Resolute. And so they have several *Mediums* to prove one and the same Thing.

Mr. Fenwick says to all this, Here is nothing against us, but talking and swearing: But for that, he hath been told, (if it were possible for him to learn) that all Testimony is but talking and swearing: For all Things, all Mens Lives and Fortunes, are determined by an Oath; and an Oath is by talking, by kissing the Book, and calling God to witness to the Truth of what is said. That is the Essence of an Oath, and those are the Ceremonies: The Kissing the Book, and Speaking, is the accidental Form; the Substance is, calling God to Witness. Therefore, what a vain thing is it in *Mr. Fenwick*, to seem to triumph, by saying, There is nothing against us, but talking and swearing. There is nothing against them, but Evidence and Proof of Men upon Oath: And their Reasons, the Truth is, are very Trifles. They defend their Lives as they do their Religion, with weak Arguments, and fallacious Reasons.

For that long Business, that *Mr. Gavan* hath undertaken to say against *Mr. Oates*, and what they all insist upon, viz. the Number of their Witnesses, which were Sixteen, amounts to this, to disprove *Mr. Oates* that it could not be true what he says, That he should be present here at a Consult, the Twenty-fourth of *April*, because they have brought Sixteen from *St. Omers* to prove, That he was there all *April* and *May*.

'Tis very true now, if that be so, it is impossible *Oates* can swear any Truth: But whether that is to be believ'd, or no, is the Question. Methinks they did not do well for themselves, when they bid you remember the Nature of the Evidence. They did well enough, to bid you remember the Number: For the Number is more than what *Oates* is back'd with on t'other Side; but the Nature is of much less Weight: Not only because they are not upon their Oaths, for by Law they may not be upon their Oaths; (and that must not be charged on them as a Defect, seeing they would swear, I doubt not, if they might)

might) but because their Testimony is really to be believed much alike without an Oath, as with one; because they are of a Religion than can dispense with Oaths, tho' false, for the sake of a good Cause.

But, seeing they desire the *Nature* of the Men may be considered, you are to observe, that they are Profelytes, and Young Striplings of their Church; which does indeed, in one Respect or other, abuse all her Disciples, and keeps them in a blind Obedience, to pursue and effect all Her Commands.

If the Doctrines of that Church were better; if such which are allowed by their Chief Authors, were but less bloody and inhumane; If they had ever put those that are so, into an *Index Expurgatorius*, that they might have been publicly disowned and declared as the particular Opinions of some ill Men, which they did disavow; these Men might have been then more worthy to be regarded. But when none of their Popes have done this (who must have very strange Fore-heads, if they say they have) and such Doctrines are still owned, there is much indeed to be observed from the *Nature* of the Evidence, the *Nature* of the Men, and their Profession.

I must confess, I believe that they would deny their Principles to be bloody, or to be defended and allowed by any of their best Authors, if at this Time, the Fear of apparent Falshood did not deter them: But if to Murder KINGS, or to Depose them, and Absolve their Subjects from their Allegiance, for the Advancement of Religion, be a Thing most impious, and void of Religion, and makes Religion worse than none; which Doctrine yet they have owned, and their Councils have owned, and we have proved it upon them, and out of them: I cannot tell what to say to these Men, or their Testimony; the *Nature* of whom they desire to be considered.

But they were Young Boys, sent for hither on purpose to give this Testimony; and it was not, indeed, a Fault in the Prisoners at the Bar, to send for what Evidence they could, for themselves: But it is very doubtful and suspicious, to have such green and flexible Minds thus imploy'd, and I must leave it to you, to consider how far these Young Men, train'd in such Principles, may be prevail'd on to speak what is not True.

And now, if the King's Evidence, after this, stood alone, it were yet something: But when you have Mr. Oates's Testimony, as to this great Matter of his appearing in *April*, confirmed by Seven or Eight Witnesses, that speak so expressly to it, how will they answer it! Do they make Sir Richard Barker a Person of no Value? Do they so little esteem the Minister, that says, I knew him tho' he was in Disguise; and went and said it presently to a Woman, that he knew was acquainted with Oates. And asking her, when she saw Mr. Oates? And she saying, Not a great while; he said, I saw him later than you; and says, he did know him: And this is confirm'd still by Sir Richard Barker, who tells you, That his Men told him that he had been there. What should make them to acquaint their Master so, if it were not so? Or do you think it a thing maliciously prepared or invented, to take away the Lives of these Men, that his Men should tell him a Story so long ago? If it be not true, to what Purpose should they tell him so? and if it be true, it confirms the Matter sworn against them.

There is he that was his Companion, the School-master, that says, in the beginning of *May* was Twelvemonth, Mr. Oates dined with him at his House, sate with him four Hours, discoursed of his Travels into *Spain* and *St. Omers*: And there is the Man that is a *Papist*, if not a *Priest*, that swears he saw him twice, about the middle of *April*, at Mr. Charles Howard's Lodgings in *Arundel House*; so that here are Seven Witnesses, direct or circumstantial, to prove Mr. Oates to have been in *London*, in *April* and *May*, 1678.

But say they, This is but *Talking* and *Swearing*. Very fine! and the *St. Omers* Youths is *Talking*, but not *Swearing*. Ay! but then their *Numbers* are not so many. That, Gentlemen, I leave to you, for both cannot be true. The Testimony of Mr. Oates, and the Witnesses that he had to back himself withal, and to prove himself to be here, is inconsistent with what the young Men say, that he was at *St. Omers*.

Now, if you observe, all these Men's Defence is in the Circumstantial Part of the Evidence, in watching and catching at what Day, what Hour, and what Month? how Mr. Oates reckoned false, so and so: If he came here about the 20th of *April*, how could they see him the 1st of *May*? and they think then, they have got such a mighty Victory, but it is not so weighty an Argument with Protestants, after all their Conceit, that it is unanswerable; for here is the Point, The Matter of Time is a Thing that no Man can so precisely charge his Memory with, as that it should be too strictly the Measure of your Judgments about Truth or Falshood, by the mistake of seven or eight Days. Examine your selves, how often every Day you do mistake things that have been transacted half a Year ago, and err in Point of Time, taking one Week for another, and one Month for another; and tho I must say, it is considerable, yet too great Weight is not to be laid upon that.

As for that they insist upon so much, the coming over of Sir Thomas Preston, and Sir John Warner, with Mr. Oates; it is true, three or four Witnesses speak, as to Sir John Warner, and some to Sir Thomas Preston; and they say, they were both beyond Sea when Mr. Oates came over; but if the Sixteen be not to be believed in the first Matter, and if Mr. Oates does say true, notwithstanding all their Evidence, that he was here such a Time in *April* and *May*, then I'll tell you what Inference may naturally be; to wit, That they can't want a Witness to prove what they please: For I believe there is none of them all will make any Bones of it.

I say, Gentlemen, if you are satisfied in your Consciences, that the Evidence on Mr. Oates his Part, to that Point, (that is to say, seven Witnesses) ought to prevail with you, to believe he was here in those Months, (notwithstanding the sixteen Witnesses, who say they saw him every Day beyond Sea, in *April* and *May*;) their other Evidence about his coming over with Preston and Warner, will have no great Weight; because the other is the Great Matter, by which they make the Substance of their Defence.

I am glad indeed to see a Gentleman here, whose Face I never saw before, and that is Mr. Dugdale. Upon my Word, he hath escaped well, for I find little said against him, very little, either as to the Matter or the Manner of his Evidence.

vidence. They would have made Reflection on him for his Poverty, but I hope that they, whose Religion is to vow Poverty, will never insist on that for any great Objection against any.

L. C. J. North. Your Lordship hath forgot that he said he gave away Three or Four Hundred Pounds to them.

L. C. J. But I will challenge all the Papists in England, to satisfy any Man that hears me this Day, of one piece of Evidence, which will turn every Protestant's Heart against the Papists. If so be they murdered Sir *Edmund-bury Godfrey*, the Plot, even by that, is in a great measure proved upon them, by that base Murder. And what can be a plainer Proof of it, than the Evidence of this Day, which Mr. *Dugdale* produces? We had Notice, saith he, on Monday Night, that on the Saturday before it, Sir *Edmund-bury Godfrey* was kill'd; (which falls out to be that very Saturday he was first missing;) which Notice was given in a Letter writ by *Harcourt* to *Ewers*, another Priest, that same Saturday Night, wherein were these Words, *This Night Sir Edmund-bury Godfrey is dispatch'd*; and I am sure, if this be true, then no Man can say, but *They* murdered him.

Whitebread. It is not alledged against any of us.

L. C. J. It is an Evidence of the Plot in general, and to *Harcourt* in particular.

Harcourt. He never shews the Letter that he says I writ.

L. C. J. He says that he used to peruse the Letters, and that *Ewers* had this again, after he had perused it; he says also, he has received, at Times, a hundred Letters from you, and this among the rest. Now the Question is, Whether it be true, or no? To make it out, he produces Mr. *Chetwynd*, whom I hope you will not deny to be a Gentleman of one of the best Families of his Country, and of honest Reputation; who says, That on the Tuesday following that Saturday Sir *Edmund-bury Godfrey* was miss'd, he and another were talking together in *Staffordshire*, and that the other Person asked him, if he knew of the Death of any Justice of the Peace at *Westminster*, and when he told him, he had heard of no such thing; No! said he, that is strange, you living sometimes about *Westminster*; for, said he, The Wench at the Alehouse says, That this Morning Mr. *Dugdale* said to two other Gentlemen, There was a Justice of Peace of *Westminster* kill'd; and Mr. *Dugdale* swears, that was Sir *Edmund-bury Godfrey*. Now, if *Dugdale* be fit to be believed, that he saw such a Letter, as he must be if he be not a very great Prophet, to be able to foretel this; or if the Maid that said this, did not invent it (a Thing then impossible to be done); or Mr. *Chetwynd* feigned, that he heard the Man make his Report from the Maid; this Thing could not come to pass, but by these Men. Nay, if Mr. *Dugdale* could not do as great a Miracle as any are in the *Popish Legends*, how could he tell, that it was done on the same Night when it was done at London? Or speak of it, on the Monday Night after, when it was not known in London till the Thursday following? This will stick, I assure you, Sirs, upon all your Party.

For my own part, this Evidence of Mr. *Dugdale's* gives me the greatest Satisfaction of any thing in the World in this Matter; and whilst

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we rest satisfied in the Murder of that Man, and are morally certain you must do it, knowing of what Principles you are, you cannot blame us, if, upon such manifest Reasons, we lay it upon you.

And this is Occasional Evidence, which I, for my part, never heard before this Day; nor can I ever be more, or better satisfied, than I am upon this Point, viz. The Testimony that I have received this Afternoon, concerning the Murder of Sir *Edmund-bury Godfrey*. As to the Defences they have made, they are Exceptions in Point of Time, but do not affect Mr. *Dugdale*; for they have hardly the Confidence to deny the Things he says, to be true against them.

They fall foul, indeed, upon Mr. *Oates*: He appears to have been their Agent; and whilst so, bad enough: But if he had not had a Mind to have become a good Man, he would not likely have done us that Good that he hath done, in discovering the Design you had engaged him in. Let any Man judge, by your Principles and Practices, what you will not do, for the promoting of the same.

For while this Gentleman's Blood lies upon you (and some have been Executed for it,) it must be yet farther told you, that in what you Did do, you have given us a Specimen of what you Would do. We have a Testimony, that for promoting your Cause, you would not stick at the Protestants Blood. You Began with Sir *Edmund-bury Godfrey*, but who knows where you would have made an End! It was this One Man you kill'd in his Person, but in Effigy the Whole Nation. It was in one Man's Blood your Hands are Embrewed; but your Souls were Dipt in the Blood of us all. This was a Handsel only of what was to follow; and so long as we are convinced you kill'd him, we cannot but believe you would also kill the King. We cannot but believe, you would make All of Us away, that stand in the Way of your Religion: A Religion, which, according to what it is, you would bring in upon us; by a Conversion of us with Blood; and by a Baptism with Fire. God keep our Land from the one, and our City from the other!

To return: The Letter that is found in *Harcourt's* Papers, does further confirm Mr. *Oates* in all the great and considerable Matters that he says; That there was a Plot; That that Plot was called by the Name of a DESIGN, which was to be kept Close and Secret: And this is an Evidence that cannot lye. For that Letter will never be got off, no more than the other Letter, that Mr. *Dugdale* speaks of about Sir *Edmund-bury Godfrey*.

And thus I leave it to you, Gentlemen: You have heard how many Witnesses they have had for them, about Twenty-four or Twenty-five, of one sort or another. You have heard what they apply their Testimony unto, to convict Mr. *Oates* of Falshood in matter of Time; which was their principal Defence: That he was not here in April and May, and that he came not over with Sir *Thomas Preston*, and Sir *John Warner*, and that Ireland was not here all August. You have heard what Witnesses *Oates* is back'd withal, as to the Time of his being here: And the Maid says, she saw Ireland here in August.

However, tho' their Defence depends but upon a Point of Time, I must tell you, it ought to be well considered, for 'tis indeed very consider-

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able towards their Defence; and God forbid but we should be equal to all Men.

And so I have remembred, as well as I can, in this long and perplexed Evidence, that which seems to me most material, as to their Charge or Discharge; and that which they have made their greatest Defence by the Youths from *St. Omers*, to disprove Mr. Oates his being here, and Mr. Ireland's not being in *London* in *August*, which in Truth is not the proper Business of this Day; but hath received a former Verdict before; for if so be the Jury before had not been satisfied of the Truth of that, they could never have found *Ireland* Guilty. So I leave it to you, upon the whole Matter. I can remember nothing besides. Go together, and consider of your Verdict, according to your Evidence.

L. C. J. North. Gentlemen, my Lord hath repeated it so fully to you, that I shall not need to add any thing to it.

Then an Officer was sworn to keep the Jury, who withdrew; and the Judges also went off from the Bench, leaving Mr. Recorder, and a competent Number of Commissioners there, to take the Verdict; and about the space of a Quarter of an Hour, the Jury returned, and answered to their Names, and gave in their Verdict thus.

Cl. of the Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of the Cr. Who shall say for you?

Omnes. Fore-man.

Cl. of the Cr. Thomas White, alias Whitebread, hold up thy Hand. You of the Jury look upon the Prisoner: How say you? Is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Fore-man. Guilty.

Cl. of the Cr. What Goods or Chattels?

Fore-man. None, to our Knowledge. [*And so severally of the rest.*]

Which Verdict being Recorded, in usual Form, Mr. Recorder spoke to the Jury thus:

Gentlemen, you of the Jury, There hath been a long Evidence given against the Prisoners at the Bar: They were all Indicted, Arraigned, fairly Tried, and fully Heard, for High-Treason, depending upon several Circumstances. They can none of them pretend to say, (and I take the Liberty to take notice of it, for the Satisfaction of them, and all that are here present, and all the World,) That not a Person among the Prisoners at the Bar, were either wanting to themselves to Offer, or the Court to them, to Hear any thing that they could say for themselves. But, upon a long Evidence, a full discussing the Objections made against it, and a patient hearing of the Defence they made, they are found Guilty: And I do think, that every honest Man will say, That they are unexceptionably found so; and that 'tis a just Verdict you have given.

And then the Prisoners were carried back to Newgate, and the Court Adjourned till Eight next Morning: When the Court proceeded to the Trial of Richard Langhorn.

LXXXIII. *The Trial of RICHARD * LANGHORN, Esq;* *at the Old-Baily, for High-Treason, June 14, 1679.* 31 Car. II.

UPON Saturday the 14th of June, 1679, at the Sessions-House in the Old-Baily, London, the Court (according to their Adjournment the preceeding Day) met, and proceeded to the Trial of *Richard Langhorn, Esq;* in this manner:

Clerk of the Crown. Set *Richard Langhorn* to the Bar. *Richard Langhorn*, hold up thy Hand. [*Which he did.*]

Thou standest Indicted in *London*, by the Name of *Richard Langhorn*, late of *London*, Esq;

For that you *Rich. Langhorn the Elder*, as a false Traitor of the most Illustrious, Serene, and Excellent Prince, *Charles the Second*, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, your Supream and Natural Lord, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance,

but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him do and ought to bear, altogether withdrawing, and devising, and with all your Strength, intending the Peace and common Tranquility of this Kingdom to disturb, and the true Worship of God within this Kingdom used, and by Law Established, to overthrow, and Sedition and Rebellion within this Kingdom to stir up and procure, and the true Love, Duty and Obedience, which true and faithful Subjects of our said Lord the King, towards him do and of right ought to bear, to withdraw, relinquish and extinguish, on the 30th Day of September, in the 30th Year of His Majesty's Reign, at *London*, in the Parish of *St. Dunstan's in the West*, in the Ward of *Farringdon without London*, aforesaid, falsely, maliciously, subtilly, and traitorously, with many other false Traitors of our Sovereign Lord the King unknown, did purpose, compass, imagine, intend, consult and agree,

to stir up Sedition and Rebellion within this Kingdom of England, against our said Sovereign Lord the King, and a miserable Slaughter amongst the Subjects of our said Lord the King, of his Kingdoms of England, to procure and cause, and our said Sovereign Lord the King, from his Kingly State, Title, Power, and Government of his Kingdom of England, totally to deprive, depose, and disinherit, and our said Sovereign Lord the King to Death and final Destruction to bring and put, and the Government of this Kingdom to subvert and change, and the true Worship of God in this Kingdom by Law established and used to alter, and the State of this Kingdom in all the Parts thereof well instituted, totally to subvert and destroy, and War within this Kingdom of England to procure and levy, and the same most wicked Treasons, traiterous Imaginations, Purposes, Compassings, and Agreements aforesaid, and to perfect and fulfil: You the said Richard Langhorn afterwards, to wit, the 30th Day of September in the 30th Year aforesaid, and diverse other Times before at London, &c. falsely, advisedly, maliciously, subtilly, and traiterously, did compass, contrive, and write two Letters, to be sent to certain Persons unknown at Rome, and at St. Omers, in Parts beyond the Seas, to procure the Adherence, Aid and Assistance of the Pope, and of the French King, and others, to you the said Richard Langhorn, and other false Traitors unknown, the true Worship of God within this Kingdom of England, by Law established and used, to the Superstition of the Church of Rome to alter, and the Government of this Kingdom of England to subvert, and our said Sovereign Lord the King to Death and final Destruction to bring and put; and that you the said Richard Langhorn, in further Prosecution of the said Treason, traiterous Imaginations, Intentions, and Agreements aforesaid, on the Day and Year aforesaid, and the said other Days and Times before at London, &c. did compass, contrive, and write two other Letters to be sent to Rome, in Parts beyond the Seas, to one Christopher Anderton, then Rector of the English Colledge at Rome aforesaid, and two other Letters to be sent to St. Omers, in Parts beyond the Seas, to diverse Persons unknown there residing, and by the said respective Letters traiterously you did advise the said Pope, and Christopher Anderton, and other Persons unknown residing beyond the Seas, of the ways and manner to be taken for accomplishing the said most wicked Treasons, for altering the true Worship of God in this Kingdom established and used, to the Superstition of the Church of Rome, and for subverting the Government of this Kingdom, and for the Death and Destruction of our said Lord the King, and to the Intent that the said Christopher Anderton, and others unknown, should give their Aid, Assistance, and Adherence, and should procure other Aid, Assistance, and Adherence, to you the said Richard Langhorn, and other false Traitors unknown, to alter the true Worship of God aforesaid, to the Superstition of the Church of Rome, and to subvert the Government of this Kingdom of England, and to put our said Sovereign Lord the King to Death, and that you the said Richard Langhorn afterwards, to wit, the Day and Year aforesaid at London, &c. Traiterously did deliver the Letters aforesaid, to be sent to the said Christopher Anderton, and others, Persons beyond the Seas, to perfect the Traiterous Purposes aforesaid, and that you the said Richard Langhorn, further to fulfil and accomplish the same most wicked Treasons, traiterous Imaginations, Purposes, and Compassings aforesaid, afterwards the said 30th

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Day of September, in the Thirtieth Year aforesaid, at London, &c. five Commissions in Writing, made by Authority derived from the See of Rome, for constituting Military Officers, for leading the Forces to be levied in this Kingdom against our said Sovereign Lord the King, for the altering the Protestant Reformed Religion, to the Use and Superstition of the Church of Rome, and for subverting the Government of this Kingdom of England, Traiterously you did receive, and five other Commissions in Writing, made by Authority derived from the See of Rome, for constituting Civil Officers for Governing this Kingdom after the most wicked Treasons and traiterous Imaginations, Purposes and Compassings aforesaid were fulfilled and accomplished, then and there Traiterously you did receive. And that you the said Richard Langhorn, afterwards, to wit, the Day and Year aforesaid, at London, &c. the said several Commissions so received, to divers false Traitors of our Sovereign Lord the King unknown, falsely, knowingly, and traiterously did distribute, give and dispose for constituting Officers, as well Military as Civil, to the traiterous Purposes aforesaid. And that you the said Richard Langhorn, afterwards on the Day and Year aforesaid, at London, &c. a Commission to constitute and authorize you to be Advocate-General of the Army, to be levied in this Kingdom, to War against our said Sovereign Lord the King, falsely, traiterously, and against the Duty of your Allegiance, from a certain Person unknown, did receive and had; and the same Commission then and there falsely, advisedly, and traiterously, did inspect and read, and in your Custody keep; and to the same Commission traiterously did give your Consent, to the Intent that you the said Richard Langhorn should have and execute the Place and Office of Advocate-General of the Army aforesaid, after the Army aforesaid should be rais'd against our said Sovereign Lord the King, by you the said Richard Langhorn, and other false Traitors unknown, in Execution of the said traiterous Compassings, Imaginations, and Agreements aforesaid. And that whereas William Ireland, John Grove, and Thomas Pickering, and other false Traitors of our Sovereign Lord the King, unknown, on the 24th Day of April, in the 30th Year aforesaid, in the County of Middlesex, did consult to bring and put our said Sovereign Lord the King to Death and final Destruction, and to change and alter Religion in this Kingdom of England, rightly and by Law established, to the Superstition of the Church of Rome, at London, &c. had Notice of that Consultation; and the same Consultation for the Destruction of the King, and for the Alteration of Religion in this Kingdom, rightly Established, to the Superstition of the Church of Rome, and the Treasonable Agreements had in that Consultation, on the said 30th Day of September, in the 30th Year aforesaid, from our said Sovereign Lord the King, advisedly and traiterously did conceal, and to that Consultation traiterously you did consent. And the said William Ireland, John Grove, and Thomas Pickering, on the Day and Year last aforesaid, at London, the Treasons aforesaid to perpetrate and perfect, maliciously, subtilly, and traiterously, you did abet, counsel, maintain and comfort; and that you the said Richard Langhorn, afterwards (to wit) the said 30th Day of September, in the 30th Year aforesaid, at London, &c. falsely, subtilly, and traiterously, you did move and solicit the Benedictine Monks, (unknown) to expend and pay the Sum of Six Thousand Pounds, to procure a Person traiterously to kill and murder our said Sovereign Lord the King. And

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And whereas Edward Coleman, and other false Traitors of our said Sovereign Lord the King, unknown, on the 29th of September, in the 30th Year aforesaid, in the County of Middlesex, traiterously had conspired and consulted to procure Rebellion and Sedition, within this Kingdom of England, against our said Sovereign Lord the King, and him from his Kingly State and Government of this his Kingdom of England to deprive and disinherit, and to bring and put him to final Death and Destruction, and the Government of this Kingdom of England to alter, and the true Religion in this Kingdom of England, by Law Established, to alter and change. And whereas he the said Edward Coleman had traiterously written four Letters to Monsieur Le Cheefe, then Counsellor of the French King, to procure the Aid, Assistance, and Adherence of the French King, to perfect and accomplish the traiterous Imaginations aforesaid, you the said Richard Langhorn afterwards, to wit, the said Thirtieth Day of September, in the Thirtieth Year aforesaid, at London, &c. well knowing the treasonable Matters in the same Letters contained, to the same Letters did consent, and then and there falsely, subtilly, advisedly, maliciously, and traiterously did abet, counsel, maintain, and comfort the said Edward Coleman, to perpetrate and accomplish the Treason aforesaid, against the Duty of your Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in this Case made and provided.

Clerk of the Crown. How say'st thou, Richard Langhorn, art thou Guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Langhorn. Not Guilty.

Cl. of the Cr. Culprit, how wilt thou be Tried?

Langhorn. By God and my Country.

Cl. of the Cr. God send thee a good Deliverance.

Then the Petty Jury impannelled for this Trial was called, the Prisoner put to his Challenges, but challenging none, the Twelve sworn were these.

*Arthur Yong.
Edward Beeker.
Robert Twyford.
William Yapp.
John Kirkham.
Peter Pickering.*

*Thomas Barnes.
Francis Neeve.
John Hall.
George Sitwell.
James Wood, and
Richard Cawthorne.*

After which, Proclamation for Information was made in the usual manner.

Cl. of the Cr. Richard Langhorn, hold up thy Hand. [Which he did.] You of the Jury, look upon the Prisoner, and hearken to his Cause: He stands Indicted in London by the Name of Richard Langhorn, late of London, Esq; for that as a false Traitor, &c. [put in the Indictment Mutatis Mutandis] and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; your Charge is to enquire whether he be Guilty of the High-Treason whereof he stands Indicted, or Not Guilty; if you find him Guilty, then you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-

Treason committed, or at any Time since; if you find him Not Guilty, you shall enquire whether he fled for it, if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty: If you find him Not Guilty, nor that he did fly for it, say so and no more, and hear your Evidence.

Then Roger Belwood, Esq; of Council for the King in this Cause, open'd the Indictment thus:

May it please your Lordship, and you Gentlemen of the Jury,

The Prisoner at the Bar, Mr. Langhorn, stands Indicted of High-Treason, and it is for conspiring the Murder of the King, and endeavouring an Alteration in the Government in Church and State. And the Indictment sets forth, that the 30th of August, in the 30th Year of the King, he and other false Traitors did agree to stir up Sedition and Rebellion in the Kingdom, and to cause a great Slaughter of his Majesty's Subjects; To introduce the Superstition of the Church of Rome, and depose and murder the King, and to alter the Government in Church and State. And 'tis there said, that to accomplish these evil Designs, he writ two Letters to be sent to Rome, and St. Omers, the Effect of which Letters was to procure the Assistance of the Pope and the French King, to alter the Religion Established by Law in this Kingdom, to Romish Superstition, to subvert the Government, and to put the King to Death; and that in further Prosecution of these traiterous Designs, he writ two other Letters to be sent to Rome to one Christopher Anderton, Rector of the English College, and a Jesuit; and two others to be sent to St. Omers; and in these Letters he took upon him to advise the Way and Means by which these Treasons might be effected, and that these several Letters were sent and delivered by him, and received. The Indictment further sets forth, that in further Prosecution of these traiterous Imaginations of his, he did receive five several Commissions in Writing, by Authority derived from the See of Rome; and those were for the making of Military Officers, to execute these Treasons by Force of Arms, and that he did likewise receive five other Commissions for constituting Civil Officers in this Realm, after the Treason was committed. And that amongst the rest he did receive for himself one Commission to be Advocate-General of the Army that was to be rais'd. And the Indictment further charges upon the Prisoner, that to accomplish these Treasons, whereas Ireland, Pickering, and Grove, and other false Traitors, had consulted these Treasons, which I before mentioned, Mr. Langhorn had Notice of the Treasons, and did content to them, and abet them, and that he did solicit the Benedictine Monks to advance 6000*l.* for the Murder of the King, for the Alteration of Religion, and for the Subversion of the Government in Church and State. And further, whereas Mr. Coleman, (who was executed for Treason) had (with others) conspired the Death of the King, and the introducing of Popery, and has writ a Letter to the French Confesser Le Cheefe, for Aid and Assistance, that the Prisoner at the Bar had Notice of this, and that he did consent to it, and did abet it. This, Gentlemen, is charged to be Traiterously and Devilishly done, against the Prisoner's Allegiance, and the form of the

the Statute. To this he hath pleaded Not guilty, but if we prove these Treasons, or any of them, you are to find him Guilty.

Then Sir Creswel Levinz, one of His Majesty's Learned Council in the Law, opened the Charge thus: Prout—

May it please your Lordship, and you Gentlemen of the Jury;

Mr. *Langborn* is Indicted for Treason, for having a part in that general Treason that you have heard several times before of, and some Persons there were Indicted, Tried, and Convicted Yesterday, for that Treason that Mr. *Langborn* had an Hand in: for the Indictment does set forth, that there were Letters written by him to *Rome* to the same Purpose, of which, Gentlemen, you have heard so often, and will hear again.

This Treason was no less than to Murder the King, to alter the Religion, to overturn the Law, to raise an Army by force to effect all this, and in short to do all the Mischief that Men (if it be lawful to call such Creatures Men) could do. That there was, in order to this, Consultations held the 24th of *April* among the Jesuits; and there it was resolved that the King should be killed, there were Persons appointed to do it, that was *Pickering* and *Grove*, but they failed therein, and they prosecuted it at *Windsor*, but happening to fail there also, they followed him to *Newmarket*, and ordered that it should be done there: And when all this failed, they took another Course, His Majesty was to be Poisoned; and as I said before, to make all this good, an Army was to be raised of 50000 Men in *England*, to perfect this Work; but if that would not do, they were to have Forces from beyond Sea to join with them: and Mr. *Langborn* he writ Letters to procure these Forces, and he not only did so, but he found the effect of his Letters, and received Commissions from beyond Sea, whereof one was for himself, to be Advocate General of the Army. All these things are laid to Mr. *Langborn's* Charge.

But I'll begin first, and shew you, before I come to the particular Evidence against Mr. *Langborn*, some Evidence of the general Design; and therefore we will call some Witnesses to do that in the first Place, and then bring it down to Mr. *Langborn* himself.

Call Mr. *Dugdale*, and Mr. *Prance*, (who were both sworn, and Mr. *Dugdale* first stood up.)

Sir Cr. *Levinz*. Come Sir, what do you know of any Design to Murder the King? speak what you know concerning the Plot and Conspiracy.

Dugdale. I was in several Consultations for Alteration of this present Government, and for the introducing of Popery, and for the Murder of the King. I was a Person in most of the Consultations to the same purpose, and heard the very Words used, and was hired to be instrumental in it, and was to have a Sum of Money to be one of them that should do it. I was to be an Actor in it, and was to have a Place appointed to do it.

Mr. *Just. Atkins*. What were you hired to do?

Dugdale. I was to kill the King.

Sir Cr. *Levinz*. And who were the Persons that put you upon it?

Dugdale. There was Mr. *Ewers*, Mr. *Gavan*, Mr. *Luson*, and Mr. *Vavasor*.

Sir Cr. *Levinz*. What were these Men?

Dugdale. They are all Jesuits.

Sir Cr. *Levinz*. Do you know any thing of an Army that was to be raised to effect it?

Dugdale. They always did speak of an Army that was to be raised, but it was not actually to be done, till the King was killed; that was the last Conclusion: It was indeed at first concluded on to raise an Army, but the last Consultation was, that there should no Arms appear, till the King was killed.

Sir Cr. *Levinz*. You do not know any thing of Mr. *Langborn* in particular, do you?

Dugdale. No, I do not know any thing in particular of him, I have heard of him.

L. C. J. *North*. Why, you brought him only to prove the general Design.

Dugdale. There was a Massacre to be, and then there should be an Army, a pretty good considerable Army, there was no certain Number that I could hear of; but those that did escape the Massacre, should be cut off by the Army.

L. C. J. *North*. Where were these Consultations?

Dugdale. One was at *Tixall*, another was at *Boscobel*, at my Lord *Aston's*, and Mr. *Gerard's*.

L. C. J. *North*. Where were these Places?

Dugdale. In *Staffordshire*.

Mr. *Just. Atkins*. Pray, who were to be massacred, in the first place?

Dugdale. All Protestants, and those we could not be sure to be Papists.

Mr. *Belwood*. Pray, Sir, what do you know of any Letter to be writ to Mr. *Ewers*, concerning Sir *Edmund-bury Godfrey's* Death?

Dugdale. I do remember a Letter that came to Mr. *Ewers*, from Mr. *Harcourt*, which did express, and begin thus, *This very Night Sir Edmund-bury Godfrey is dispatched*; with some other Words of like Import; and then I sent to Mr. *Ewers* about it: And do you think this will carry on the Design? I will be hang'd if it don't spoil it: No, said he, he was a Person that used to be very severe against debauch'd lewd Persons, and so it will be laid, as if they had done it out of Revenge.

L. C. J. *North*. What Day of the Week was that Letter dated?

Dugdale. It was, as I can very well make it out, on *Saturday*.

L. C. J. *North*. And when was it received?

Dugdale. It was received on *Monday Night*.

L. C. J. *North*. What were the Contents of it, do you say?

Dugdale. I began thus, *This very Night Sir Edmund-bury Godfrey is dispatched*.

L. C. J. *North*. Who did it come from?

Dugdale. It came from Mr. *Harcourt*.

Sir Cr. *Levinz*. They themselves know that he was not found here in *London*, till *Thursday*.

Dugdale. I could not hold, it run so much in my Mind, but the next Morning, going to an Alehouse hard by, I there spoke of it, and immediately it was carried to Mr. *Chetwin*, and he was here Yesterday to make it out, that I so did.

L. C. J. *North*. But why did they kill him? was it expressed why?

Dugdale. I had several Times heard, he was too much privy to their Consultations.

L. C. J.

L. C. J. North. That is, you mean, he had too much discovered to him.

Dugdale. And so they were afraid of Mr. Coleman too, that he carried Things too high; and he was out of their Favour for two Years.

Sir Cr. Levinz. Then call Mr. Prance. Pray, Sir, what can you say.

Prance. There was one Mr. Messenger, a Gentleman of the Horse to my Lord Arundel of Wardour, who was employed by my Lord Arundel of Wardour, and my Lord Powis, and he was to kill the King, and to have a very good Reward for the doing of it; and I was told so by my Lord Butler: I afterwards met with this Messenger, and asked him, what his Reason was that he would kill the King. He told me, he was off of it now.

Sir Cr. Levinz. But what was to be done after they should kill the King?

Prance. Presently there should be an Army of 50000 Men raised, to be governed by my Lord Arundel, and my Lord Powis, and them: I have heard Mr. Fenwick, and Mr. Ireland, and Grove, to speak of this at the same time together.

Sir Cr. Levinz. What was that Army to be raised for?

Prance. To settle the Catholick Religion.

L. C. J. What was to become of other Persons?

Prance. They were to be killed and ruined all: So Fenwick told me.

L. C. J. North. Look you, Mr. Langhorn, these Witnesses speak nothing to you in particular, but only that there was a Conspiracy in general, to kill the King, and introduce Popery: If you will ask them any Question, you may.

Langhorn. No, my Lord, they not accusing me, I have nothing to say to them.

Prance. I heard one Mr. Harcourt say, that the King was to be killed by several, before one Mr. Thompson, twice in his own Chamber in Duke-Street. And I heard Fenwick say, that Mr. Langhorn was to have a great Hand in it.

Langhorn. Is that all you have to say, as to me?

Prance. It is all that I know of.

Then the Lord Chief Justice Scroggs came in.

Sir Cr. Levinz. Now, my Lord, we will call the Evidence, that shall prove the particular Matters of the Indictment, as of writing the Letters beyond Sea, of his receiving Commissions, of his distributing them here to the several Persons to whom they were directed; of his soliciting for the Money, the 6000 *l.* to be raised by the Benedictine Monks, which was either for a particular Purpose to poison the King, or to carry on the Design in general. And first we call Dr. Oates. *Who was sworn and stood up.*

Sir Cr. Levinz. Sir, you hear what the Matter is, as to Mr. Langhorn, be pleased to tell the Court, whether you knew he writ any Letters, and received any Commissions; speak your whole Knowledge.

Oates. I hope your Lordship will be pleased to give me Leave to use my own Method?

L. C. J. Ay, ay, take your own Way, Mr. Oates.

Oates. Then I begin thus. In the Month of April 1677, I went into the Kingdom of Spain: In the Month of September following, the Sons of Mr. Langhorn came into the Kingdom of Spain; it was September, or sooner, but I will not be

positive as to the Time of their coming; the one was a Scholar of the *English* College at *Madrid*, the other was a Scholar of the *English* College at *Valledolid*. They came there to study Philosophy, in order to their receiving of the Priesthood. My Lord, my Occasions called me into *England*, in the Month of *November* following; and coming into *England*, Mr. Langhorn's Sons did give me some Letters, to Mr. Langhorn their Father; and as soon as I had rested my self for a Day or two, after my Journey, I came to Mr. Langhorn's House in *Sheer-lane*. Now, Mr. Langhorn's Wife being a zealous Protestant, I did whisper his Foot-Boy, or his Servant-Boy, in the Ear, that he should go and whisper his Master, Mr. Langhorn, and tell him, there was one would speak with him, from his Sons. Mr. Langhorn, by his Son, did desire me to meet him at his Chamber in the *Temple*, (in the *Inner-Temple-lane*, it was, I think) I know the Chamber, however; and accordingly I did meet Mr. Langhorn that Night, by the means of his Half Brother, who is Brother, I think, by the Mother, and not by the Father, his Name is *Smithson*; and when I came into Mr. Langhorn's Chamber, their Chambers being directly opposite one to another, I was treated by Mr. Langhorn with a great deal of Civility, and I delivered Mr. Langhorn the Letters from his Sons, and I told him, that I thought his Sons would enter into the Society: Mr. Langhorn was mightily pleased with the News, being himself a great Votary for the Society, that his Sons would enter into it. Now may it please your Lordship, Mr. Langhorn did say, He thought if they did continue in the World, that is secular Priests, they would suddenly have very great Promotion in *England*; for he said, Things would not last long in this Posture; that is, at that Time he then spoke; I speak the Words now, that he said then. And now, my Lord, I was with Mr. Langhorn another Time, while I was in *England*; but in the latter end of *November* Old Stile, in the beginning of *December* New-Stile, I went to *St. Omers*, and there were Letters that He delivered me (looking upon the Prisoner,) a Pacquet to carry to *St. Omers*. And when the Pacquet was opened, there was a Letter, Signed, *Richard Langhorn*, in which he gave the Fathers at *St. Omers* great Thanks, for the great Care had of, and Kindness they shew'd to, his Sons, and that what they had been out of Pocket for their *Viaticum*, in order to their Journey into *Spain*, which was 20 *l.* he promised them they should be repaid it; and in this Letter he did expressly say, that he had written to Father *Le Cheese* in order to our Concerns; those were his Words. Now, my Lord, the Letter that he writ to Father *Le Cheese* I saw not, but only this Letter I saw, which gave an Account of that Letter he had writ to Father *Le Cheese*; and he said, Mr. Coleman had been very large with him, and therefore it would not be necessary for him to trouble his Reverence with any large Epistles at that Time. My Lord, there was another Letter, and I think that was in the Month of *March*, or *April*, I cannot be positive as to the particular Time, but it was upon this remarkable Circumstance: Mr. Langhorn had a Son, that had been in Rebellion, and had turned Soldier, or some such Thing in *France*, and this Young Gentleman came to *St. Omers*, being the Place where he had been

been Educated; and Mr. *Langhorn*, by the Intercession of the Fathers there, did order him Five Pounds, to bring him over into *England*, upon Promise of his Son's Submission, who had been very extravagant in several respects. In this Letter, my Lord, Mr. *Langhorn* did express his great Care for the carrying on of the Design of the Catholics, and several other Expressions there were in it bad enough, which I cannot now call to Mind, but they were to this Effect; The Parliament began to flag in promoting the Protestant Religion, and now they had a fair Opportunity to begin and give the Blow; what that Blow was, I leave to the Court and to the Jury to expound.

L. C. J. But was that an Expression in the Letter?

Oates. It was, my Lord: But it was a very large Letter, I can't give a particular Account of every Thing in it. My Lord, in the Month of *April*, or the beginning of *May*, your Lordship remembers there was a Consult that hath been sworn here in this Court, to which Consult—

L. C. J. Pray speak it out.

Oates. There were several of us came over from *St. Omers*, and from other Parts beyond the Seas, to this Consult, at which Consult Mr. *Langhorn* was not present; but I had Orders from the Provincial, to give Mr. *Langhorn* an Account of what Resolutions, and Passages, and Minutes pass'd at this Consult; and this I did as well as I could, and when I did so, Mr. *Langhorn* lift up his Hands and his Eyes, and pray'd to God to give it good Success. My Lord, while I was at Mr. *Langhorn's* Chamber, giving this Account, I saw several Parchments lying upon the Table in his Study.

L. C. J. You had best tell the Effect of the Account you gave Mr. *Langhorn* in his Chamber, that you speak of.

Oates. My Lord, I told him who went Procurator to *Rome*, that was one Father *Cary*, I told him what was the Resolve of the Consult concerning the Death of the King.

L. C. J. Did you so?

Oates. Yes, my Lord, I did: I told Mr. *Langhorn* that several of the Fathers were to be admonished for their irregular Living, as they termed it: And to this Mr. *Langhorn* did reply, as near as I can remember, that he found some of them did not live up to the Rules of the Society.

L. C. J. Pray tell us more particularly, what you told him. And tell us as near as you can, as you told it him then, the Business of the Plot upon the King.

Oates. I told him the Resolve of the Society, and of that Consult, and what was that which was resolved, that *Pickering* and *Grove* should go on to attempt to assassinate the King's Person, and what was to be their Reward, the one was to have, that is *Grove*, 1500*l.* and the other, that is *Pickering*, was to have 30000 Masses: He lift up his Hands and Eyes when I told him this (and I told him more particularly than I can now remember) and he lift up his Hands and Eyes, and prayed God that it might have good Success.

L. C. J. Did you tell him they had Signed to this Agreement?

Oates. Yes, my Lord, I told him, that they had all Signed it.

Langhorn. When was this?

Oates. It was the latter end of *April*, or beginning of *May*.

Langhorn. How long after they had Signed the Consult?

Oates. A Day or two after.

Langhorn. Dr. *Oates*, Do you know the Day of the Month? You have asserted the Day of the Month formerly, pray do it now.

Mr. Just. *Pemberton.* Let him go on; you shall ask him what Questions you will, by and by.

Oates. My Lord, I saw there a Commission for my Lord *Arundel* of *Wardour*, and another to my Lord *Powis*; the one was to be Lord High Chancellor, and the other to be Lord High Treasurer; there was a Commission for my Lord *Bellasis*, to be General, another for my Lord *Petre*, to be Lieutenant-General, and there were other Commissions, of which I cannot remember the particular Names, but there was a Commission for *Coleman* to be Secretary of State, and there was a Commission for the Prisoner at the Bar to be Advocate of the Army.

L. C. J. By what Authority were those Commissions?

Oates. They were by Authority derived from the See of *Rome*, by Vertue of a Breve from the Pope, directed to the General of the Society, and they were Signed IHS, and with the Mark of the

Cross thro the IHS, and they were Signed *Johannes Paulus de Oliva*.

L. C. J. North. That is the Jesuits Mark?

Oates. Yes, my Lord.

L. C. J. North. Where did you see those Commissions?

Oates. In Mr. *Langhorn's* Study of his Chamber, in the Temple.

L. C. J. Where? Did they lie open, that any one might see them?

Oates. They lay upon a Corner of his Desk, folded up.

L. C. J. How came you to see them?

Oates. My Lord, if your Lordship please, I will tell your Lordship how I came to see them. We had Notice they were come, by a Letter from one Father *Anderton*, and he called these Commissions Patents, and, if it please your Lordship, I did ask Mr. *Langhorn*, whether he had received them? He told me, Yes: Then I asked him, whether he would do me the Favour to let me see them? and because I had been privy to the Consults, and came to wait upon him by Order of the Provincial, he did let me see them.

L. C. J. And you saw them in his Study, upon his Desk?

Oates. Yes, my Lord, I did. And particularly one more I can tell of, which his Son was to deliver to a Son of my Lord *Arundel* of *Wardour*.

L. C. J. How many Commissions were there?

Oates. I cannot say, about Seven or Eight, I think, I did see, and looked over.

Mr. Just. *Atkins.* And you knew what they were?

Oates. Yes, for those that I saw, that I can remember.

L. C. J. What was my Lord *Powis* to be?

Oates. Lord High Treasurer.

L. C. J. And what my Lord *Arundel*?

Oates. Lord High Chancellor of *England*.

L. C. J. And what my Lord *Stafford*?

Oates.

Oates. As to my Lord *Stafford*, I cannot give so good an Account; but as I remember, he was to be a Pay-master in the Army, or some such Office relating to the Army.

L. C. J. North. What was the Prisoner at the Bar to be?

Oates. A Judge in the Army, or an Advocate-General, so they called him.

L. C. J. You saw most of these?

Oates. I saw several of them, most of them in his Custody, I cannot say all: There was more than for these Lords, for other inferior Officers.

L. C. J. How many might there be of them, as near as you can guess?

Oates. I think he told me they were about Fifty.

L. C. J. What Number did you see?

Oates. I saw about Half a dozen or Eight.

L. C. J. Well, Sir, go on.

Oates. My Lord, I am now to speak to your Lordship concerning some Letters that he wrote to *Rome*, and there was —

L. C. J. Had you any Discourse with him concerning the Matters of any of the Commissions of my Lord *Bellasis* and my Lord *Powis*?

Oates. No, my Lord; I had but little Skill in Military Affairs, and therefore I said but little, and I cannot give you an Account, Word for Word, what the Discourse was, for it was out of my Way. My Lord, there were several Letters which Mr. *Langhorn* writ to Father *Le Cheefe*, the Answers to which I saw in *April* and *May*; whereupon the Fathers did desire they might have the Originals of those Copies: He gave me the Originals to carry to the Fathers, I think it was that very Day I had been with him in the Afternoon; for I was with him in the Morning; the Fathers did read the Letters.

L. C. J. From whom came they?

Oates. From Father *Le Cheefe*, and from Father *Anderton*. And *Le Cheefe*, in his Letter, did assure him of his Stedfastness and Constancy, to assist the Society for the carrying on the Cause: And that they should not need doubt, but the *French King* would stand by them, or to that Purpose. I cannot remember exactly the Words, but it was to that Effect.

L. C. J. But they were directed to Mr. *Langhorn*?

Oates. I cannot swear that directly, but he gave them me.

L. C. J. Who were *Le Cheefe* and *Anderton*?

Oates. The one was Confessor to the *French King*, and the other Rector of the College at *Rome*.

Mr. *Just. Atkins.* But you saw those in the Prisoner's Custody, you say?

Oates. Yes, my Lord, I did.

L. C. J. He gave them you to deliver to the Fathers, to *Whitebread* and the rest of them?

Oates. Yes, my Lord, but I cannot say who they were directed to.

L. C. J. But pray repeat what was the Substance of that Letter?

Oates. My Lord, as to the Words of them, I dare not charge my Memory, but it was to this Purpose, that *Le Cheefe* would stand by the *English Society*, and assist them, and that they should not need to doubt the *French King*, or to that Effect.

Mr. *Belwood.* Do you remember any Letters that were writ by Mr. *Coleman* to *Le Cheefe*?

Oates. Yes, my Lord, I remember several Let-

ters that *Coleman* writ, but Mr. *Langhorn* was not affected in them.

Mr. *Belwood.* Did he know of them?

Oates. He gave an Account, in his Letter to the Society, That *Coleman* had writ Letters to *Le Cheefe*, and was very large, and therefore he should not trouble his Reverence with any long Epistles.

Sir *Cr. Levinz.* What do you know of any Money that was to be raised by the *Benedictine Monks*?

Oates. I had forgot that.

L. C. J. You say, that he said, they should not need to doubt the *French*, but he would stand by them with Men and Money; For what Purpose, pray?

Oates. I'll tell you for what Purpose it was, the Words of the Letter did alledge it to be for carrying on of the Cause.

Mr. *Just. Pemberton.* You mean the Catholick Cause?

Oates. So it was generally understood.

L. C. J. But for the other Money, what say you?

Oates. Mr. *Langhorn* was employed as Solicitor for the Jesuits, and did accompany some of the Society, Father *Harcourt*, Father *Fenwick*, Father *Kaines*, and Father *Langworth*, and they went and did communicate the Secret to the *Benedictine Monks*, desiring them to stand by them with a Summ of Money for the carrying on the Design: Now, upon Mr. *Langhorn's* soliciting them, and appearing for them, as I have heard, 6000 *l.* was promised and paid.

L. C. J. By whom promised and paid?

Oates. By the *Benedictine Monks*.

L. C. J. To whom?

Oates. To the Society.

L. C. J. To what Person?

Oates. That I cannot say; but it was said, Mr. *Langhorn* was to receive it.

L. C. J. Did you see the Money paid?

Oates. No, I did not.

L. C. J. Did you hear Mr. *Langhorn* confess it was paid?

Oates. Mr. *Langhorn* did say in the Month of *July* or *August*, I cannot be positive which, but thereabouts, when he was spoke to about it, that he would stir in it, and do to the utmost of his Power for the procuring of it. And another Thing, I am sure Mr. *Langhorn* was very much disgusted, that Sir *George Wakeman* was not contented with the 10000 *l.*

Sir *Cr. Levinz.* What was the 6000 *l.* for?

Oates. It was for the general Cause.

Sir *Cr. Levinz.* For the Murder of the King?

Oates. Yes, and the Alteration of Religion.

L. C. J. North. How did it appear that Mr. *Langhorn* was disgusted, that Sir *George Wakeman* would not take the 10000 *l.*? And, What was it for?

Oates. It was to poison the King. And he said, He was a covetous Man; that was in a publick Concern; and that, being it was to carry on the Cause, it was no matter if he did it for nothing: But he said he was a Narrow-Spirited, and a Narrow-Soul'd Physician.

L. C. J. When was it that he said he would stir for the Money?

Oates. It was in *July*, or in *August*.

Langhorn. My Lord, may I ask him any Questions?

Mr.

Mr. Just. Pemberton. Yes, yes, Mr. Langborn, you may.

L. C. J. North. Pray Mr. Oates, you saw such and such Commissions from the Superior of the Jesuits, that were Signed *Johannes Paulus de Oliva*; pray will you look upon this, and see whether you know it? (*And a Writing under the Jesuits Seal was shew'd him.*)

Oates. This is the Hand, the very Hand, that was to the others, and they had put such a Seal; and that is for Mr. Stapleton, to be Rector of St. Omers.

Sir Cr. Levinz. Now, my Lord, if you please, this was not one of those Commissions that Mr. Langborn did distribute to the Persons that were to have them, no, he would let us have none of those, but it is a Commission of another Nature, 'tis neither for an Office Civil nor Military, but Ecclesiastical, yet it is under the same Hand and Seal.

Langborn. You say, you came to me, the first Time, in November; and you went to St. Omers, when, Sir?

Oates. The latter end of November.

Langborn. When arrived you at St. Omers?

Oates. I think it was the 10th of December, New Stile, I will not be positive.

L. C. J. All their Defence lyes in Catches upon a Point of Time, in which no Man living is able to be positive.

Oates. My Lord, if the 26th of November fell upon a Monday, then it was on the 26th Day that I set out for Dover in the Coach, as near as I can remember, and I got to St. Omers a Friday Morning following.

Langborn. A Friday after, you say, you got to St. Omers?

Oates. About that Time.

Langborn. How long did you stay there?

Oates. 'Till April following, I stay'd.

Langborn. Without any moving from thence?

Oates. Only went to Paris, and after that, a Night or two at Watton, and then came away in April. My Lord, I desire, if your Lordship please, that Mr. Langborn may ask the Court, and the Court ask me; for I know the Court will be so kind, as to ask me such Questions as are reasonable, and proper for me to answer.

Mr. Just. Atkins. That indeed is the regular Way, for Prisoners should not ask the Question, but the Court.

Langborn. Very well, I shall observe the Method, if your Lordship please. I desire to know, what Time in April he came back for England.

Oates. I came about the middle of April, or latter end, I will not be so positive in that, and I was in England under twenty Days.

Langborn. Can you tell what Day you came into England?

Oates. No, I cannot exactly, but I came in April, the middle or the latter End.

Langborn. I desire to know, who came with him?

Oates. My Lord, there came a matter of Nine or Ten of us in all.

L. C. J. Name them.

Oates. There was Father Williams, and Father March, the Rector of Liege, and Sir John Warner.

Langborn. What is the Rector of Liege's Name?

Oates. Warren, I think; I cannot tell Names so exactly.

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Langborn. Go on, Sir, pray.

Oates. I cannot name any more.

Langborn. You have named them all in the Records of the Lords House.

Oates. 'Tis like I have. I refer you to that.

Langborn. Did Sir Thomas Preston come over with you?

Oates. Yes, he did.

Langborn. Did Poole come over with you?

Oates. Yes.

L. C. J. Look you Mr. Langborn, we had all this Matter spoken of Yesterday, and there were Witnesses that prove that Sir John Warner, and Sir Thomas Preston, were there.

Langborn. I humbly conceive, that was upon an Issue tried in another County, by another Jury, and therefore I hope I do not amiss in urging what I can say for my self to this Jury.

L. C. J. You are not debarred, I only told you of it. Was Sir Robert Brett there?

Oates. Yes, I think he was, I am not confident of that. My Lord, I own what Mr. Langborn can bring to the Court upon Record.

Langborn. I only ask it, because he says so in the House of Lords.

Oates. If you can shew the Record of what I said there, do.

Langborn. I do not desire him to name them now, but to know whether he does now affirm the truth of what he Swore in the House of Lords?

L. C. J. If you can produce, as you may, if you have been diligent, a Copy of the Record in the House of Lords, and have it Sworn to be a true Copy of the Records, it will be Evidence for you, and shall be read; but to put him to remember a Record without Book, must not be, it would be hard for him to undertake that.

Langborn. I desire to know how he came from Dover; whether in a Coach, or on Horseback, to London?

Oates. Indeed the Question is so sudden, that I cannot be positive, but as near as I remember, I came by Coach.

Langborn. I will give my Reason why I ask this; because he hath formerly upon a Trial in the King's-Bench, affirmed he came by Coach, in the company of Mr. Hilsley.

Oates. No, I did never say so; but I came over in the Pacquet Boat, in the company of Mr. Hilsley; but when we were come over, Mr. Hilsley went out of the way from us.

Langborn. I desire to know where he Lodged, when he came to Town?

L. C. J. Where did you Lodge the first Night?

Oates. I did lye at Mr. Groves's House, when I came to London in April.

L. C. J. But the first Night when you came from Dover, when you came into London in April?

Oates. My Lord, I cannot say, I lay there the first Night; but my Lodging was provided for me there.

L. C. J. You are to answer as well as you can; if you cannot remember it, say so. Do you say the first absolutely, or not?

Oates. My Lord, I cannot remember the first Night, but I lay several Nights at Mr. Groves's.

Langborn. Then I ask, whether he did generally lye there, during his Stay?

Oates. I did lye there some Nights.

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L. C. J.

L. C. J. How many times did you lye there?

Oates. I believe three or four Nights. I won't be positive as to the Number.

Langhorn. What Day was the Consult?

Oates. It was the 24th of April.

Langhorn. What Day did you acquaint me with it?

Oates. A Day or two after.

Langhorn. When did he return back to St. Omers?

L. C. J. When did you go back? about what time?

Oates. My Lord, I think it was a Week in May, I cannot be positive, but I think that was the outside.

L. C. J. They said, Yesterday you affirmed you stay'd but Six Days.

Oates. I do not say so, but I say under 20.

Mr. Just. Dolben. Come, have you any thing else to ask him?

Langhorn. Those Letters that he speaks of, I desire to know whether he saw me write them?

L. C. J. Those Letters you speak of, did you see him write them?

Oates. I did not see him write them, but I am sure they were his Letters, because I know his Hand.

L. C. J. How did you come to know his Hand, since you did not see him write them?

Oates. I saw the Letter whereby he ordered Money to be paid, 5*l.* to his Son. And I saw the Money paid to his Son, by that Order.

Langhorn. Do you know that *le Cheefe*, and *Anderton*, writ to me?

Oates. I do not say that they writ to him, but he had Letters Subscribed by their Names, and they were said by him to come from them, and they were to be communicated to the Priests and Jesuits; and he delivered them to me to that end.

Langhorn. When you returned to St. Omers, how long did you stay there?

Oates. Till 23d June, New Stile, which is the 13th Old Stile.

Langhorn. I remember he professed himself a Roman Catholick, I see he is a Minister: I desire to know of him when he left the Protestant Religion, and became a Convert, as he called himself; call it what you will, when he left being a Protestant, and became a Papist, that is it I mean?

Oates. He does it for nothing but to quarrel.

L. C. J. When did you leave the Church of England?

Oates. My Lord, if it be the pleasure of the Bench to ask me that Question——

L. C. J. You ought to answer it, tho it be nothing to the purpose.

Oates. Then I answer, it was either in February or March 1677.

Langhorn. My Lord, I desire to know whether he had any Benefice?

Oates. Yes, I was sometime Vicar of *Bobbing*——in *Kent*: But I suppose this is to make me accuse my self of something, whereby I might forfeit my Living: for, my Lord, I have a Right in a point of Equity still to that Living, but only for going beyond Sea without leave of my Ordinary, I am not now Vicar of——

Langhorn. When did you come to your Vicaridge?

Oates. In 1672.

Langhorn. You became a Papist in 1677. I ask this Question, Whether he did leave his Living before he turned Papist?

Oates. My Lord, I am not willing to answer that Question.

L. C. J. When did you leave your Living? Did you leave it before you went away?

Oates. It was not very long before; but the Reason why I am not willing to tell, is, When I left the Parish, I left it in the Charge of Mr. *Thomas Turner*, Vicar of *Milton*, and I did go near about *Chichester*, and served a Sequestration there. The Air was not a good Air in that part of *Kent*, and I had not my Health; and that was one Reason, and for other Reasons best known to my self.

Langhorn. After he became a Papist, I desire to know, whether he became a Jesuit? Were you in any Order there?

L. C. J. Mr. *Langhorn*, it is not a proper Question, we ought not to ask it him: You are a Man of the Law, and therefore you know it is not fair to ask any Person a Question about a criminal Matter that may bring himself in danger.

Langhorn. I take him to be out of danger, he hath his Pardon.

L. C. J. I don't know what his Pardon is, nor how far it reaches, nor whether this be contained in it; but if Mr. *Oates* pleases to answer that Question, he may.

Mr. Just. Dolben. Tho he hath his Pardon, he may be in danger of Ecclesiastical Censure.

L. C. J. He says, he will not.

Langhorn. I'll give you another Reason why I ask it, because in one of his Narratives he seems to call himself so; he says, *There came over Nine of us, all Jesuits*, I suppose him to be one of that Order; this I took to be a ground, why I might properly call him so.

L. C. J. Narratives are no Evidence at all.

Langhorn. But that gave me an occasion to ask the Question.

Oates. I cannot answer it, because it tends rather to raise a Debate in the Court, than conduces to the Question, to acquit or condemn the Prisoner.

Mr. Just. Pemberton. You are not bound to answer it.

L. C. J. He tells you, he is not bound by Law to answer, and he refuses to answer.

Langhorn. I desire to know, whether he ever saw me, or conversed with me, from the time he acquainted me with the Consult, and saw the Commissions in my Chamber?

L. C. J. How often did you converse with Mr. *Langhorn*?

Oates. After I returned again in July and August, once or twice.

L. C. J. How often in April and May?

Oates. Twice, I think, about the time of the Consult.

L. C. J. And when you came over again, how often?

Oates. Twice more, I think; twice or thrice.

L. C. J. So then, he hath been four or five times in your Company.

Oates. He would not let me come to his House, for he used to say, his Wife was but *Aums-ace* turned from a Devil; and therefore he would not have me come thither.

Langhorn. I hope he will not go out of the Court?

L. C. J.

L. C. J. No, he will stay here, but you have done with him at present, have you not?

Langborn. Yes, my Lord, I have.

Sir Cr. Levinz. Swear Mr. Bedlow. [*Which was done.*]

L. C. J. Mr. Bedlow, I ask you but one short Question, because I would not interrupt you afterwards, That Paper that you saw Signed by the Superior of the Jesuits, where had you it?

Bedlow. I had it at Mr. Daniel Arthur's.

Langborn. What is that?

L. C. J. It is an Instrument Signed and Sealed, just as the things were, which Mr. Oates says he saw in your Chamber.

L. C. J. North. And besides you must take Notice, that this was found a long time after Mr. Oates had given his Testimony publicly, for his Closet was not searched till a great while after.

L. C. J. It is to shew you what Seals they used to have to their Commissions. Mr. Oates describes several Commissions that he saw in your Study, so Sealed and Subscribed; and after the searching Mr. Arthur's Study, being a Papist, that Commission is found there. Now tho it be a thing of a private Concern, a Church matter, not relating to the Matters in Question, yet this very Commission is so subscribed, and so signed and sealed, as Mr. Oates had described those to be before in your Chamber.

Bedlow. Because it was exactly the Hand and Seal that I saw to the Commissions in Paris, I did take particular notice of the Paper, and brought it to the Council.

L. C. J. Well Sir, now go on with your Evidence.

Bedlow. First, my Lord, I'll only ask this Question of the Court, whether a known Roman Catholick may take Notes of the Evidence in such a Cause?

L. C. J. Truly no, I think not.

Bedlow. There is an Honourable Lady in that Gallery, the Lady Marchioness of Winchester, that hath took Notes all this Trial.

L. C. J. She will do her self, nor no body else any great hurt, by what she writes.

Bedlow. I only speak it for the Information of the Court.

L. C. J. A Woman's Notes will not signifie much truly, no more than her Tongue.

Bedlow. My Lord, about three Years since, I was sent by Mr. Harcourt, and Mr. Coleman, to *le Cheefe*, with some Letters for the carrying on of this Design. With these Letters, Mr. Coleman asked me, if I could go with him as far as the Temple. I have no particular Acquaintance with Mr. Langborn, I was but twice at his Chamber, once with Mr. Harcourt, and once with Mr. Coleman. I waited upon Mr. Coleman to Mr. Langborn's Chamber in the Temple: There did he Register such Letters as Mr. Coleman brought to him, and afterwards Mr. Coleman sealed them up, and gave them me to carry to *le Cheefe*.

L. C. J. How do you say? when you went with Mr. Coleman to Mr. Langborn's Chamber, were the Letters there?

Bedlow. The Letters were writ first at Coleman's House, and brought open by Coleman to Mr. Langborn, and he read them and Registered them, and then Coleman sealed them up, and gave them me to carry away.

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Langborn. What Letters were these?

L. C. J. Do you know what the Effect of those Letters were?

Bedlow. The Letters were read some of them at the King's Bench Bar, at Coleman's Trial: There was one of them writ by Mr. Harcourt, another by Mr. Coleman, to *le Cheefe*.

Mr. Just. Pemberton. What was the Effect of them?

Bedlow. Only to let *le Cheefe* know, that they waited only now for his Answer, how far he had proceeded with the French King, for the sending of Money; for they only wanted Money, all other things were in readiness. That the Catholicks of England were in safety, had made all Places, and all Offices, to be disposed of to Catholicks, or such as they thought would be so; that all Garrisons were either in their own Hands, or ready to be put into them; that they had so fair an Opportunity, (as I remember that was one of the Expressions in the Letter to Father Stapleton) that they had so fair an Opportunity, having a King so easy to believe what is dictated to him by our Party, that if we slip this Opportunity, we must despair of ever introducing Popery into England; for having a King of England so easy, and the French King so powerful, they must not miss such an Opportunity.

L. C. J. For what?

Bedlow. To send over Money for the carrying on of the Cause, for they only wanted that, all else was in readiness: And the other Letters were to the same Effect, tho in other Words. That Letter was in English, but the Letters to *le Cheefe*, and the Nuncio, were both in French.

L. C. J. But you understand French, don't you?

Bedlow. Yes, my Lord, I do.

L. C. J. Did he Copy them out, while you were there by?

Bedlow. He Registered them before me.

L. C. J. Did he write them into a Book? and were you there all that time?

Bedlow. Yes, my Lord, I and Coleman walked in the Chamber, whilst he went in and writ, as he did other things; for he Registered all their Accompts: There was not a penny of Money either received or laid out, nor any thing done almost in relation to this Concern, but he did keep a Register of it: I cannot say, that ever he did talk any thing before me of the King's Death particularly, but talked of the whole Design. About a Year and a half since, Mr. Harcourt sent another Pacquet of Letters by me to Mr. Langborn to be Registered; he looked strangely upon me, and received the Letter, and sent an Answer to Mr. Harcourt, that Mr. Williams (for I went then under the Name of Captain Williams) had delivered him such Letters, and that he should have them again to-morrow, after he had Copied them, and Registered them. Mr. Harcourt read the Letter of Answer to me, and in the Letter it was Mr. Williams. Said I to Mr. Harcourt, I thought I might have been Registered by my right Name, because when any thing should take effect and occasion serve, I resolved to bear my own Name. Alas, says he, this does not signifie any thing at all, for as for this Register, it is not so considerable: there shall be a New Register made, of things of weight and moment, this is only a blind Register amongst ourselves. The two Letters that I brought from

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Harcourt,

Harcourt, there was one of them from Sir *William Godolphin*, that I had brought before from *Spain*.

L. C. J. Who was that directed to?

Bedlow. To my Lord *Bellasis*; and about three Weeks after it was that I was sent to Mr. *Langhorn* to have it Registered; the other was from the *Irish* College of *Jesuits* in *Salamanca*. The Letter from the Rector did specify, that they would have my Lord *Bellasis*, and the rest of the Lords that were concerned, and the rest of the Party in *England*, to be in Readiness, and to have this communicated with all Expedition; for now they had provided in *Spain*, under the Notion of Pilgrims for St. *Jago*, some *Irish* cashier'd Soldiers, that had left their Country, some for Religion, and some for their Crimes, and a great many Lay-Brothers, whom they procured and gathered together under the Notion of Pilgrims, to be ready to take Shipping at the *Groine*, to land at *Milford-Haven*, there to meet my Lord *Powis*, and an Army that he was to raise in *Wales* to further this Design. And these Letters said they had almost brought it to a Period, that they did only expect a Return from *England*, to shew in what Readiness they were here, that accordingly they might proceed.

L. C. J. Did Mr. *Langhorn* see these Letters?

Bedlow. He took these Letters from me, and told me Mr. *Harcourt* should have them again, when he had transcribed them; and writ a Letter to Mr. *Harcourt*, that Mr. *Williams* had brought him such Letters.

L. C. J. And he did transcribe them?

Bedlow. I suppose so, for he afterwards sent them back to Mr. *Harcourt*.

Mr. Just. Atkins. Was it a good large Book that he registered them in?

Bedlow. I know not what Book he registered them in, not those Letters.

Langh. It is a proper Question, because he said I registered those Letters before him.

Bedlow. I say, I saw him in his Study transcribe *Coleman's* Letter, whilst *Coleman* and I walked in his Chamber.

L. C. J. Into what kind of Book did he Register that? Had he more Books than one, pray?

Bedlow. My Lord, I cannot tell that, I judge it might be the same Book. I saw the Book then, it was a large Parchment Book; but I did not see it when *Harcourt's* Letters were Registered. When *Coleman* and I came thither, he went into his Study, and left us in the Chamber, I saw him transcribing the Papers that lay before him: but when I brought those Letters from Mr. *Harcourt*, I only delivered them sealed up, and his Answer to Father *Harcourt* was, that Mr. *Williams* had brought him so many Letters, and he should have them again as soon as he had transcribed them.

L. C. J. Mr. *Langhorn*, you would do well to shew us the Book, and that would make the Matter plain.

L. C. J. North. Could you see how far he had gone in the Book, and what Room there was left to write other Letters.

Bedlow. It was a Book at least three Inches thick, and as near as I could guess, he had gotten through two Thirds of the Book.

L. C. J. But you should shew us your Book, Mr. *Langhorn*.

Langhorn. I say, my Lord, if I had such a Book, it must needs be found in my Study; if I had it, it must be there, for I never removed it.

L. C. J. That was not a Book fit to be left there.

Bedlow. My Lord, *Pritchard* did tell me, that the Commissions were come, and that Mr. *Langhorn* had them, and things, says he, are now in a Readiness. Then said I, When shall I have my Commission? Said he, those that Mr. *Langhorn* hath are only for the General Officers; you must have yours, said he, from my Lord *Bellasis*.

Sir Cr. Levinz. Do you know any thing of any Money that was to be raised by the *Benedictine* Monks; 6000 *l.* or what other Sum?

Bedlow. My Lord, in May 1676, among the Letters I carried to *Le Cheefe*, one of them was directed to *Stapleton* a *Benedictine* Monk, to raise the Money for *England*.

L. C. J. The Money, what Money?

Bedlow. The Money they had promised to remit into *England*.

L. C. J. But did they name no Sum?

Bedlow. No, my Lord, for they had no particular Promise, but only that they did make it their Business to raise what they could.

L. C. J. And what was it? Do you know of any Sum of Money that was raised, and by whom?

Bedlow. *Le Cheefe* told me himself, that they had no Reason to suspect him or his Interest with the *French* King, for he had laid that sure enough. And that when he found a fit Opportunity, the Money was ready to be remitted into *England*, and that he had remitted some of it already to Mr. *Coleman* and *Ireland*.

L. C. J. You know not but by what *Le Cheefe* told you?

Bedlow. No.

L. C. J. He speaks what *Le Cheefe* told him, that he would raise Money, and that he had sent some to Mr. *Coleman* and *Ireland*.

Bedlow. Yes, and that the rest should follow when he found there was absolute Occasion; but he would not part with his Money till they had Assurance of their being in readiness here, and likely to further and carry on the Design.

Mr. Just. Atkins. Mr. *Bedlow*, had you any Discourse with the Prisoner about any Commissions?

Bedlow. No, my Lord, 'tis at least a Year and a Half since I saw him.

L. C. J. Did he ever own any Commissions he had?

Bedlow. No, *Pritchard* told me he had some.

L. C. J. You have seen the Commissions, have you not?

Bedlow. No, I never saw any in Mr. *Langhorn's* Hand.

L. C. J. Where did you see them then?

Bedlow. Sir *Henry Tichbourn* did shew me three Commissions in *Paris*, Signed by the General of the Order, and Sealed with the *Jesuits* Seal, which made me take up this Paper, which hath been shewn, tho' it were a thing indifferent, yet because it was written with the same Hand, and Sealed with the same Seal that the Commissions were that I saw at *Paris*.

Mr. Belwood. Did Mr. *Langhorn* know any thing of the Treason to murder the King, by *Pickering* and *Grove*?

Bedlow.

Bedlow. That I do know only by Report; but when *Grove*, *Pickering* and *Conyers* were going to *New-Market*, I was at *Harcourt's* Chamber, and I had a Design to go to *Windsor*, to observe what they did; and I did ask *Father Harcourt* to give me leave to go see a Friend of mine take Shipping at *Plymouth*, to send some Commendations by him to my Friends in *Italy*; then says *Father Harcourt* you cannot be spared, you must not go now, for we don't know what Return these Gentlemen will make of their Journey, and what Occasion there may be for you, if there should be any good Effect of it: Then, said I, I will go and write, and send it by a Friend down to be sent into *Italy*: But, said he, you must stay a while till I come back again; I am going to *Mr. Langhorn's* Chamber in the Temple, to take the Minutes of what they have done this Morning. That was the Contrivance of sending down those People to *New-Market* to Assassinate the King.

Mr. Just. Atkins. That is no Evidence against the Prisoner, because it is by Hear-say.

L. C. J. It is right, and the Jury ought to take notice, That what another Man said is no Evidence against the Prisoner, for nothing will be Evidence against him, but what is of his own Knowledge. But I desire, *Mr. Bedlow*, as well as you can, you would repeat the Effect of one of the most material Letters *Mr. Langhorn* did transcribe.

Bedlow. Tho' I was not so exact a *Frenchman*, in the Nicety of the Tongue, yet I understood enough to learn the Sense of those Letters. The *English* Letter from *Stapleton*, which he transcribed, was to this Effect; That *Coleman* and *Harcourt*, naming themselves *We*, (that is, *We* and the *Jesuits*, and it was to the Rector of the *English* Monks in particular, but I missed of the Rector, and *Mr. Stapleton* receiv'd it;) I say, the Effect of that Letter was, they would have a certain Answer from them——

Langhorn. When was it?

Bedlow. It was in 76.

L. C. J. What was the Effect, say you?

Bedlow. The Effect was, that they would have a final Answer from those Religious at *Doway* and *Paris*, to know how far they had proceeded with the *English* Religious, and all their Friends beyond Sea, in making Collections, and remitting of Money, for there was only Money wanting; for the Arms of the Catholics were all ready, and they had all a good Mind to the Business, their Arms and Hearts were ready, and the Easiness of the King of *England*, and the Strength of the Power of *France*, made it an Opportunity not to be neglected: That the Garrisons were ready to be put into such Hands as they could trust.

L. C. J. Was there such an Expression in the Letter, upon your Oath, that they had such Arms, and that the Garrisons were ready to be put into their Hands, and whose Hands they were ready to be put into?

Bedlow. Yes, my Lord, there were such Expressions, and they would have the Garrisons only in such Hands as they could trust.

L. C. J. And did he transcribe those Letters?

Bedlow. He did transcribe those three while we were in his Chamber.

Mr. Just. Pemberton. Was there any mention of exciting the *French* King, by Power, to Invade this Kingdom?

Bedlow. There was in the *French* Letter to *Monfieur Le Cheefe*, which he transcribed too.

Langhorn. That was in *French*, he says.

L. C. J. I suppose you understand *French* too, or else you could not do what you did.

Langhorn. I understand *Law French*.

L. C. J. *Mr. Bedlow*, did you never hear him discourse in *French*?

Bedlow. No, my Lord.

Oates. I cannot write nor read *French*, but I can translate it.

Mr. Recorder. If you have any Questions to ask him, you may ask him.

Langhorn. How many were the Letters that then I transcribed?

Bedlow. There were three, my Lord; one was to the *English* Monks at *Paris*, another was to *Monfieur Le Cheefe*, another to the Pope's Nuncio.

Langhorn. Were they long or short ones? I ask for this Reason, because I observe that in the Narrative, *Coleman's* Letters are very long; of what Length might they be?

Bedlow. They were the best part of Half a Sheet of Paper, for *Mr. Coleman* writ a curious fine small Hand, and would put a great deal of Business into a little Paper; the Pope's Nuncio's Letter was very short.

L. C. J. Did he transcribe them all before you went away?

Bedlow. Whilst we walked in his Chamber, he Registered them: We took a great many Turns about in the Chamber, and I saw the Papers before him, and his Book.

Langhorn. Did those Letters express what the Money was to be raised for, or did they leave it to be understood? My Meaning, my Lord, of my Question, is this, whether *Mr. Coleman* writ to him to hasten the Money, and said it was for such a particular Use, or only in general.

L. C. J. He hath answered it already, but he will do it again.

Bedlow. My Lord, tho it was not expressed in the Letter, but only we want nothing else from beyond Sea, but your Assistance; tho it was not expressed in the Letter to destroy the King and the Protestant Religion, yet the full of the Discourse betwixt *Mr. Coleman* and *Mr. Langhorn*, was to this effect: We only stay for Money, when we have got that, we will put our selves into a Posture.

L. C. J. If you observed it, he said so before, when we asked him what the Effect of those Letters was, that all Things were ready, it is a good Opportunity now for the effecting of our Design, having so easy a King to deal with, and your King having so powerful a Treasury; do you but get the Money of him, and we shall do well enough.

Bedlow. Tho it was not specified in the Letters, what the Money was for, yet in the Discourse between *Mr. Coleman* and *Mr. Langhorn*, it was Worded so, that it was plain it was to destroy the Government, and introduce Popery.

Langhorn. My Lord, ask whether this be all that he charges upon me?

Bedlow. I cannot say that, my Lord, that this is all I have to say against him; Things may occur to my Memory hereafter, which do not now.

L. C. J. But at this Time you remember no more, do you?

Bedlow. No.

Mr. Just. Atkins. But, to my Apprehension, what you said last was most material, that is, the Discourse between him and Mr. Coleman, for that rivets the whole. When he said, that if we had but a Return of this Money, then we have made our selves safe, or Words to that Effect; but it was to the full meaning of this, that the Protestant Religion could not stand any longer here, having Assistance from France.

L. C. J. So they consulted together after the Letters were transcribed, did they?

Bedlow. Yes my Lord.

Oates. My Lord, I omitted one Thing that was very material in my Evidence, which comes in my Mind since. The Congregation at Rome did contribute 800000 Crowns, to be sent into England, and Mr. Langhorn did enquire concerning that Money, and had Knowledge of the Receipt of it in France, as Mr. Langhorn did say, in the Month of July, or August.

L. C. J. Did he say it to you?

Oates. He did to Father Harcourt, Father Kaines, and Father Fenwick, that were there, 800000 Crowns come to France.

L. C. J. What said he then, concerning the 800000 Crowns?

Oates. He gave an Account of the Money's being lodg'd at Paris.

L. C. J. You hear what he says, that you gave an Account of 800000 Crowns that were raised abroad, that it was lodg'd and receiv'd at Paris.

Bedlow. I recollect something more now, tho' I was not in Mr. Langhorn's Chamber. I met with Father Kaines, one Day, and said he, I must go and speak with one Mr. Langhorn, presently; and when he came out again, he brought a Letter in his Hand, and afterwards we went to a Tobacco-Shop in Wild-Street, and there Father Kaines told me the Effect of the Letter. He told me, it was a Chiding Letter from the Secretary *de propaganda fide*, Cardinal Barbarino, who had sent a Chiding Letter to Mr. Langhorn, and the rest of the Conspirators, for going on no faster, when they had so fair an Opportunity.

L. C. J. Did you see the Letter directed to Mr. Langhorn?

Bedlow. Father Kaines told me the Effects of it, and he had the Letter from Mr. Langhorn.

L. C. J. He told you so; well, but this Evidence is as to the Plot in general, but not to Mr. Langhorn in particular. But that which he charges you particularly with, is this, Your Transcribing the Letters, wherein there was an Expression made, of your being all in Readiness, as for Arms and the Garrisons; and your Discourse afterwards with Mr. Coleman, in what a Posture all Things were for the Destruction of the Government, and the bringing in Popery, and there wanted nothing but Money, for the effecting the whole Design. This is that he says.

Langhorn. My Lord, I suppose he won't go out of the Court neither?

L. C. J. No, no, he will stay here.

Sir Cr. Levinz. My Lord, there is one Witness that he had not ready here, when we began to give some Account of the General Plot, I

pray he may be Examined; his Name is *Busf.* [*Who was Sworn.*]

L. C. J. What can you say of any Design upon the King's Life? What is your Name?

Busf. My Name is *Thomas Busf.*

L. C. J. What Profession are you of?

Busf. I serve the Duke of Monmouth.

L. C. J. In what Capacity do you serve him?

Busf. I am his Cook.

L. C. J. How long have you served him?

Busf. Thirteen Years I have lived with him.

L. C. J. Well, what is it you have to say?

Busf. Being at Windsor, my Lord, with an old Acquaintance of mine, one *Handkinson* that was then newly come from Italy —

L. C. J. When was this?

Busf. In September last, within a Week after the Duke came from Flanders, and we were drinking together, for I had not seen him for many Years before, and there was one *Anthony* was in the Company, and said he, I am newly come from Italy, and I am going again, and I am come to take my Leave of my Friends. When do you go away, said I? I believe I go to-morrow, said he; but pray, said he to *Anthony*, have a special Care of those four worthy Gentlemen. What Gentlemen, said I? Four worthy Gentlemen, said he, that I brought over with me. What, said I, from Italy? No, said he, they are four worth *Irish* Gentlemen: They are very worthy Persons, said he, have a special Care of them, for they will do our Business.

L. C. J. What said you to that?

Busf. Nothing; for I knew nothing of it, till I saw *Coleman's* Trial, where it speaks of the four *Irish* Men that were to kill the King at Windsor, then I bethought me of it.

L. C. J. Would you not ask him what that Business was, or so?

Busf. No, I did not know at that Time.

L. C. J. But no Man in England but would have asked such a Question.

Busf. No, he said they were four Strangers: But said I, did you bring them out of Italy? No, said he, they are four *Irish* Gentlemen, that I brought over with me, worthy Persons.

L. C. J. North. And what Religion was he of that said so?

Busf. He was a Catholick, one that bought all into a College, that did so here before he went.

Prance. He belonged to the *Benedictine* Monks, my Lord, in the Savoy.

L. C. J. And what was he that he spoke to?

Busf. He was a Catholick too, he was Servant to one that belongs to the Queen's Chappel.

L. C. J. North. Did you understand what the Business was, they said they were to do?

Busf. Not till I read Mr. Coleman's Trial, and then I did guess these were the Persons that were to have killed the King at Windsor.

L. C. J. You saw them not, did you?

Busf. No; they were in charge of this *Anthony*, that is now in some Place in the Queen's Chappel.

Mr. Just. Atkins. Did he speak to *Anthony* to have a Care of them, or to you?

Busf. To *Anthony*, he was the Person that was to take care of them.

L. C. J. Is *Anthony* a Papist?

Busf. Yes, a very strong Papist, and we used to be often together; but now he is jealous, and will

will not come near me, to talk with me, as we used to do.

L. C. J. Now I understand the Reason of it, why he did not ask the Question; it was not likely he should, for it was not spoken to him, but he stood by, all the while the Discourse was to *Anthony*, another Man, and it was to him that he spoke, to have a care of the four *Irish* Men, for they would do their Business. What did *Anthony* say?

Buss. He promised he would have as much care of them, as of his own Life.

L. C. J. Where is this *Anthony* to be found?

Bedlow. My Lord, *Anthony* is a *Portuguese*, and the Queen's Confessor's Man.

L. C. J. When did you see him?

Bedlow. He was seen this Morning, they call him Signior *Antonio*.

L. C. J. North. You should have an Order to take this same *Anthony* into Custody, but in order to the finding of him, let him go to my Lord *Ossory*.

L. C. J. Mr. *Tisser*, we give you an Order for the taking of this Signior *Antonio*, you will find him at *Somerset-House*; for the doing of this, we do advise you to wait upon my Lord *Ossory*, and tell him, that you have such an Order, but that out of Reverence to the Queen, we have also ordered you to wait upon him, to desire him to send him.

L. C. J. North. What is become of this *Hankinson*?

Buss. He is abroad, beyond the Seas, my Lord, for he said he was come thither to take leave of his Friends, and was to go the next Morning into *Surrey*, and so away.

L. C. J. Well, what have you now to say, Mr. *Langborn*?

Langborn. I conceive this last Witness says nothing to me.

L. C. J. North. He speaks only to the Plot in general, as the first Witnesses did; but that which is upon you, is as to Mr. *Oates*, who speaks to every Article of the Indictment expressly; and Mr. *Bedlow* says, he did not only see you Transcribe and Copy out that Treasonable Letter, but he carried other Letters to you, which you promised to Transcribe; and these are Overt-acts, that make you a Party to the Treason.

L. C. J. Besides your Discourse with *Coleman*, after the Letters were Transcribed.

Langborn. These two Gentlemen were Parties in this supposed Crime; the two Witnesses which do concern me, are Mr. *Oates* and Mr. *Bedlow*, and they both of them clearly appear to have been in the same Treason that I suppose they charge me with; I desire to know whether they have had their Pardon, or no?

L. C. J. I believe they have. Mr. *Oates*, and Mr. *Bedlow*, have you your Pardons?

Bedlow. Yes, my Lord, I have three.

Oates. I have two Pardons under the Broad-Seal, but I don't know what is in them.

L. C. J. North. But make your Objection how you will; whether they had, or whether they had not, they are Witnesses.

Bedlow. I never gave any Evidence, till I had my Pardon.

Langborn. I ask for this Reason; I look upon your Lordship and the Court as my Council, to advise me in Matters of Law, whether these be good Witnesses, or not?

L. C. J. We do tell you, That if we had not judged them to be Witnesses, we would not have heard them.

Langborn. They come under the same Reason of Law with an Approver, having had their Pardon; I don't say they are directly Approvers, but I conceive they come under the same Reason of Law with them; and then if the Approver be pardoned, by the Law the Appellee ought to be discharged; and methinks by the same Reason, these Men having been *participes Criminis*, and having got their Pardons, ought not to be such substantial Witnesses against the Prisoner at the Bar. But, my Lord, I have one Thing yet further to ask, I desire to know whether they have not received any Rewards or Gratifications, for the Discovery they have made, and the Service they have done? And whether they do not expect further Rewards?

L. C. J. Is there any Allowance to be made to you?

Oates. I have received a Reward, by disbursing 6 or 700*l.* out of my Pocket, and I don't know when I shall see it again.

Mr. Just. Pemberton. Mr. *Langborn* does suppose that the Witnesses are corrupted and bribed; Do you think, Mr. *Langborn*, that the King will Bribe his Witnesses?

Langborn. My Lord, I only propose it as a Question.

L. C. J. Would you answer that Question yourself?

L. C. J. North. If you can suppose there was any Subornation or Corruption, call your Witnesses, and prove it; but for their receiving Sustenance and Maintenance from the King, that is but reasonable, and can be no Objection. And you your self know, that an Approver, while he is in that Service, hath a Penny a Day, which in ancient Times was a great Matter for Livelihood and Sustenance; so that any Reward that they have, if you can prove it by Contract or Subornation, you cannot make an Objection.

Langborn. My Lord, I am informed, by a Prisoner in the Goal, that Mr. *Bedlow* hath received 500*l.*

L. C. J. If you can prove any thing do, prove what you can.

Mr. Recorder. That 500*l.* was about a particular Fact.

L. C. J. But pray, what is his Name?

Langborn. His Name is Mr. *Reading*.

L. C. J. North. He is an infamous Person, he hath stood in the Pillory, we can't take him for a Witness; but now I'll tell you, for the 500*l.* 'tis a Thing we all know of. It was a Reward for a particular Business, not relating to the Plot, but it was for the Discovery of the Murtherers of Sir *Edmund-bury Godfrey*.

Mr. Just. Atkins. I think Mr. *Prance* is here, that will give an Account of that, for *Bedlow* discovered him.

Bedlow. I am so far from having any Benefit by this Discovery, that I am 700*l.* out of Pocket.

Mr. Just. Ellys. You shall have the Liberty to make what good Defence you can for your self, and prove what you can; you must not go this way to work.

L. C. J. 'Tis pretty reasonable for us to give a publick Satisfaction to all the World, that we do

do nothing under-hand, but that we do in this Case, as in all other Cases; any thing that is fit to be answered, they shall answer, and perchance in this Case something more than can be strictly required of us. 'Tis notorious enough, that Mr. Oates and Mr. Bedlow have been fed at the King's Charge, and it cannot be objected against them, and need not be wink'd at, for they were Parties in the Plot. And when they come to make the Discovery, without which we should never have known the Plot, for you know 'tis hard to discover any Crime, Forgery, or the like, but by one that hath been privy to it, and a guilty Person; yet these Men always have been, and are in Law, Witnesses, and 'tis just they should have a Competency to maintain them, since they came for the Publick Good to make such Discoveries.

L. C. J. North. And that particular Sum of Money was paid to Mr. Bedlow, in pursuance of the King's Proclamation, which we all know, which was all publickly done.

Langhorn. The Reason why I press this, was, because of the Proclamation, which was to invite Persons to come, touching the Discovery of this Plot; and to encourage them to it by a Promise of Reward. I think it may be reasonable enough, where any Person that is charged with a Crime doth absent, to propose a Reward for the bringing him in. But I think it is hard, that when a Prisoner is in Custody, Witnesses should be brought in against him by such Means.

L. C. J. North. You do artificially go off from the Point: Answer the Evidence that hath been given against you, and you shall be heard; but you labour very much, and trouble your self to make Answer to another Matter that is not pertinent.

L. C. J. Does your Defence consist wholly of this sort of Matter, objecting the Incompetency of the Witnesses? Can you make no Answer to the Fact?

Langhorn. I must tell your Lordship, My whole Defence must run to disable the Witnesses; for, my Lord, I was committed to *Newgate* the 17th of *October*, and I have been kept there a close Prisoner till this Day was Sennight, or *Friday* the last Week; I never conversed with any Friend, or any Relation, nor knew any thing of News, but only with some few Persons, sent by Authority of the House of Commons, or the Council. And I was never examined by any since I was committed. I never heard what was charged against me, and I could not foresee what these Men could testify, because I was not confident whereupon they would proceed; therefore I can have no Defence, unless it be by lessening their Credit; 'tis impossible I should.

L. C. J. Do, lessen it, if you can. If you have any Witnesses to take off their Credit, or contradict them, call them.

Mr. Just. Atkins. But I would say one Thing to you, Mr. Langhorn; You seem to put a very ill Construction upon the King's Proclamation, as if it were to invite and encourage Persons to come and swear about a Plot, where there was none; it was to invite People to make a further Discovery of a Plot that lay close, and we could not fully discover, for the Preservation of the King and Kingdom, without such a Means.

Langhorn. He did propose a Reward.

Mr. Just. Atkins. Ay, in order to a further Discovery of that Plot which we had Evidence of before.

Mr. Just. Pemberton. And so you would be close in all your Accounts, and none should be rewarded that could make us any Discovery of them, but presently their Testimony must be gone. 'Tis very fine! but the Court over-rules it.

L. C. J. Mr. Langhorn, whatsoever you object of this Kind, does fly in the Face, and reflect upon the Integrity and Wisdom, of King, Lords and Commons.

L. C. J. North. For it was done by the Advice of all Three.

L. C. J. If you'll go on, and prove any thing, but pray don't spend our Time to no purpose.

Langhorn. Call *Parrey*, and *Townley*, and *Doddington*, and the rest.

Oates. My Lord, here are Papists come into the Court with their Swords on.

L. C. J. They will not draw them here.

Lord Mayor. 'Tis well enough, 'tis well enough, Dr. Oates, you are safe enough here.

L. C. J. Who will you have first?

Langhorn. I would have *Hilsley* set up. [*Which was done.*]

L. C. J. What would you ask him?

Langhorn. Your Lordship hath heard Dr. Oates affirm he came over, such a Time, in the *Pacquet-Boat* with Mr. *Hilsley*; I desire to know whether that be true, or no?

L. C. J. I can help you in that, for we had him and his Companions here Yesterday; but however we will hear them again, if you will have them. Do you know Mr. Oates?

Hilsley. I do, my Lord, very well.

L. C. J. When did you come over from *St. Omers*?

Hilsley. I came over the 24th of *April*, New Stile.

L. C. J. Did Mr. Oates come with you?

Hilsley. No, he did not.

Oates. No, my Lord, he did leave me there, but I overtook him at *Calais*.

L. C. J. Look you there now, you did leave him there, but he overtook you at *Calais*. Did you leave him there?

Hilsley. I did leave him there.

L. C. J. Ay, but he overtook you then, did he not?

Hilsley. No, he did not.

L. C. J. He answers as he did Yesterday, that he did not come over with him. You lost your Money, did you not?

Hilsley. Yes, I did.

L. C. J. How did you lose it? Did you lose it at Play?

Hilsley. 'Tis no matter how I lost it; I did not lose it at Play.

Oates. I'll tell the Court, if your Lordship please, how he lost it; he lent a great deal of Money to a Gentleman, who went away with his Money, and left him to pay the Reckoning.

L. C. J. What say you to that?

Hilsley. That is very true, and I confess it; but what is all this? nothing to the Matter. He was told this by some Body else. I never saw him, nor ever any Man in the Ship saw him come over with me.

L. C. J. I'll tell you what then; first, here is something

something now that you would not confess Yesterday, nor indeed would you confess it now. I asked you how you lost your Money; you see Mr. Oates can tell you how it was, tho you won't tell us; so that, tho this be a Secret, he knows it; and how could he know this Secret, unless he were there?

Hilsley. There is one that I met by the Way, that did tell him this Story.

Then one Gifford stood up.

L. C. J. Did you see Mr. Oates?

Gifford. Yes, my Lord.

L. C. J. What Discourse had you with him concerning *Hilsley*?

Gifford. Why he told us of his Departure.

L. C. J. When?

Gifford. After he was gone away.

L. C. J. How long after?

Gifford. Three or four Days.

L. C. J. What said he to you?

Gifford. He only told us he was gone.

L. C. J. What else said you of him?

Gifford. He only said he departed out of the College then.

L. C. J. What did you say to Mr. Oates about it?

Gifford. I don't remember what I said in particular.

L. C. J. *Hilsley*, Call up the other Person that you say told Mr. Oates.

Hilsley. He is not here, my Lord, but here is one that was in the Company when he told it.

L. C. J. Who was by?

Gifford. Mr. *Burnaby*, who came thither the 1st of May.

L. C. J. Hearken to me; When you talked with Mr. Oates, concerning Mr. *Hilsley*'s being gone from the College, was there any body by?

Gifford. I cannot tell.

L. C. J. Was Mr. *Burnaby* by, when Mr. Oates and you talked about Mr. *Hilsley*?

Then another Witness started up.

Third Witness. Yes, my Lord, there was Mr. Oates with me, and Mr. *Burnaby* put himself into our Company in the Garden, and he acquainted me with this Story.

L. C. J. What said he?

Third Witness. He said he met this Gentleman, and that this Gentleman was cheated of his Money.

L. C. J. How did he tell you he was cheated?

Third Witness. I don't know the Occasion, but he said a Fellow cheated him of the Money.

L. C. J. Was that all he said?

Third Witness. Yes, my Lord, but I do not remember upon what Occasion; he said he was cheated by a shirking Fellow.

L. C. J. Did he name the Place he met him at?

Third Witness. I don't know, my Lord, whether he mentioned it or no.

L. C. J. So that Mr. Oates names the Place, which he was never told; and unless he was there, how could he then tell it?

Third Witness. But this does not prove that I speak against my Conscience, that does not argue.

L. C. J. Look you, the Answer is this, Mr.

Langhorn. You would charge Mr. Oates with Falsity in saying he came over in the Packet-

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Boat with *Hilsley*, and you call up him, and he says, he did not come, but he left him at St. Omers; Mr. Oates comes and says, 'tis true, he left me there, but I overtook him at Calais, by this very Token, said he, you were cheated of your Money, by a Person that you lent it to, who went away, and left you to pay the Reckoning. When I asked Mr. *Hilsley*, how he could tell if it were true that he was not with him, he answered, he was told it by another; but when I come to know what that other Person said, it was no more than this, he said, in Mr. Oates's Hearing, Mr. *Hilsley* was Cozened of his Money, but did not say how, nor by whom, nor where.

Langhorn. Now, to prove that what Mr. *Hilsley* said is true, and that therefore Mr. Oates his Knowledge must come by another Hand, I desire that the Witnesses may be asked, how long Mr. Oates was at St. Omers?

L. C. J. How long was Mr. Oates at St. Omers?

Third Witness. From December till June, he was there, except one particular Day that he went to Watton.

L. C. J. And you saw him almost every Day?

Third Witness. Yes, I did.

L. C. J. You have fifteen or sixteen Witnesses that will say all this; but yet, if you will, we will call them.

L. C. J. When went he away, do you know that?

Third Witness. He went in June, I can't certainly say the Day.

L. C. J. Well, call another.

Third Witness. Pray, my Lord, let me speak, if your Lordship please to let me give you my Reason, why I might see him; I saw him in the Refectory; he had a little Table by himself, distinct from the rest, and dining together in a publick Place, it was impossible but we should see his Place empty, if he were gone; and I know the Number of my own School, and can tell whether any one be absent.

L. C. J. What, because he sat at a Table by himself, therefore you think he was there all the while?

Third Witness. Certainly, if I may believe mine own Eyes, I saw him there every Day.

L. C. Baron. Were you there every Day yourself?

Third Witness. Yes, my Lord, I was, I did not miss one Day, I had no Infirmary.

Langhorn. My Lord, Mr. Oates hath affirmed that there was with him, when he came over in April, Sir Robert Brett.

L. C. J. He says only he believes so; he says positively, he came over in the Company of Sir John Warner, Sir Thomas Preston, and he thinks also Sir Robert Brett, but is not positive.

Langhorn. This he affirmed, both in his Narrative, and upon Oath in the Lords House.

L. C. J. Shew any thing that he was sworn to here.

Mr. Just. *Atkins.* But what says this Lad more? let him speak, for he is very full of it.

Third Witness. The 1st Day of May I saw him in the Garden, with a Lay-Brother, at Kittlepins, in the View of all the College.

Langhorn. Let us examine him as to Persons, and then refer it to the Lords Register.

L. C. J. Why, if you will prove something Mr. Oates hath sworn there, that you can contradict, first prove what he swore, and then contradict it.

Mr. Just. Pemberton. Pray take notice, you must not go to oppose him in any thing of that Oath, unless he hath sworn it here; whatsoever there be there, except he hath sworn the same here, 'tis in vain to object it, for he cannot be intended to have Witness to make good what he swore there.

Sir Cr. Levinz. Let us hear what he does offer.

Langhorn. Under Favour, Mr. Oates hath acknowledged what he swore there was true.

L. C. J. You are mistaken, Mr. Langhorn; indeed when you asked him that Question, he said as far as what concerned what he swore here, was true, and he is bound at this Time to answer no more.

Langhorn. Then as to Sir John Warner, I desire my Witnesses may be examined.

L. C. J. I suppose they may be here, and say the same they did Yesterday; that he did not stir from his House at Watton, all April and May.

Fourth Witness. Yes, my Lord, he lived there all that while.

L. C. J. What Year?

Fourth Witness. In Year 1678.

L. C. J. That is the Time that Mr. Oates says he came over with him. You saw him almost every Day, did not you?

Fourth Witness. Yes, I did, only four Days that I was absent, being sent by him to St. Omers, at a great Feast.

L. C. J. And when you came back, you found him there?

Fourth Witness. Yes, I did.

L. C. J. You are his Gard'ner, are you not?

Fourth Witness. Yes, I am.

L. C. J. Did you stay all those four Days at St. Omers?

Fourth Witness. I was sent to the high Kirk, and carried some Instruments for the Musick, and there I stayed four Days, and the last Day of April, and the first, and second, and third of May. And I saw Mr. Oates there in the House, and I saw him going into the Refectory to Dinner.

L. C. J. He says, that Sir John Warner was at home all April and May, that he himself was absent but four Days, that he left him there, and when he came back found him there; and that in the four Days he was at St. Omers, he saw Mr. Oates, which was the last of April, the first, second and third of May. You don't know when Mr. Oates went away?

Fourth Witness. No, my Lord, not I.

Mr. Just. Pemberton. Was Sir John Warner there all June?

Fourth Witness. My Lord, I can't tell that, I only speak to April and May.

L. C. J. Those are the two Months that fit him.

Mr. Just. Pemberton. Why how come you not to remember that, as well as the other two, for that is since?

Fourth Witness. Because I took not so much Notice of him in those Times.

L. C. J. How came you to take more special Notice of them two Months, than of the other?

Fourth Witness. Because our Rector did then

come into England, and he took the Charge of the House upon him in the Rector's Absence.

L. C. J. When did he come?

Fourth Witness. He came the 24th of April.

Mr. Just. Dolben. Pray who is your Rector? What is his Name?

Fourth Witness. Sir Francis Williams.

L. C. J. Where was Sir John Warner in June and July?

Fourth Witness. I cannot tell.

Mr. Just. Pemberton. And where was he in August and September?

Fourth Witness. He went out of Town, but where I am not certain.

L. C. J. You were Gard'ner there then?

Fourth Witness. Yes, I was.

L. C. J. Why can't you as well tell me then, where he was in June and July, as in April and May? Answer me plainly.

Fourth Witness. I think he was there all that Time, but I can't be certain.

L. C. J. Why not so certain, for those two Months, as you are for the other?

Fourth Witness. Because I did not take so much Notice.

L. C. J. How come you to take more Notice of the one, than the other? that he was there in April and May, rather than that he was there in July?

Fourth Witness. Because the Question, my Lord, that I came for, did not fall upon that Time.

L. C. J. Now he hath answered plainly; when I asked the Question, Why he did not take so much Notice of those Months, as he did of April and May? he answered me, Because the Question did not fall upon those Months; and that, without all Question, is a plain and an honest Answer.

Mr. Just. Dolben. Indeed he hath forgot his Lesson; you should have given him better Instructions.

L. C. J. Look you, Mr. Langhorn, if he be to be believed, and that he doth not speak falsely, or more than he knows, it is impossible that Oates's Testimony and his can stand together; for he directly affirms, he saw Mr. Oates the last of April, the 1st, 2d, and 3d of May. Now Mr. Oates says he was here then; so that these two cannot stand together. The Question then is, Whether he be to be believed? and, Whether he does not come wilfully, or prepared? The Jury have heard what a kind of Testimony he gives, when the Question was asked him, How he came to take Notice of the Months of April and May, more than of June and July? and why he was more sure Sir John Warner was there at the one Time, than at the other? Why, said he, because the Question falls upon those former Months, and not upon those of June or July. Now that does shake all that was said before, and looks as if he came on purpose, and prepared for those Months; and now this, I am afraid, will go thro' all your St. Omers Men.

L. C. J. North. Indeed I doubt it will go a great way, to shake all their Testimony.

Sir Cr. Levinz. You, Gard'ner, what do you say was your Rector's Name?

Fourth Witness. Sir Francis Williams.

Sir Cr. Levinz. And he came over in April or May, did he?

Fourth

Fourth Witness. He came over the 24th of April.

Sir Cr. Levinz. Why, that is the Time that Mr. Oates came over, and he was one of the Persons that he said came over with him.

Fourth Witness. No, he came alone, only with a certain Officer of the College.

Langborn. Pray let Gifford be asked the same Question about Sir John Warner; for if he did come, as he saith, from Watton to St. Omers, at that Time, he must see him at St. Omers, for he was at St. Omers then. The Question is about Sir John Warner, if he were at Watton, or St. Omers, then he could not come over with Mr. Oates.

L. C. J. When did you see Sir John Warner?

Gifford. I saw him about June, or thereabouts.

L. C. J. Where did you see him?

Gifford. I saw him there in St. Omers House.

L. C. J. When?

Gifford. In June or July, when he invited me over to Watton.

L. C. J. This Man does not serve the Turn, he does not know the Month upon which the Question runs.

Fifth Witness. The 1st Day of May there was a great Feast, St. Fortunatus and Gordianus, and then I saw Mr. Oates four Days, and he was there all the Month of May.

L. C. J. Where was Sir John Warner then?

Fifth Witness. I cannot tell; but at St. Omers I saw Mr. Poole, and Sir Robert Brett at that Time.

L. C. J. Did Mr. Poole come over with you?

Oates. Yes, my Lord, he did.

L. C. J. Witness, when did Mr. Poole come from St. Omers?

Fifth Witness. He came first to St. Omers with Mr. Whitebread, he was my Master of Musick, and he taught me, and it was impossible he should be missing without my Knowledge.

L. C. J. But he was gone to England long before that; and he could not be at England and at St. Omers at the same time.

Fifth Witness. You say right, he could not.

L. C. J. When came he from St. Omers?

Fifth Witness. In the Month of June, or May.

L. C. J. Or April.

Fifth Witness. No, it was the Month of June.

L. C. J. These are but Collateral Matters, Mr. Langborn, for you to stand upon this, it spends Time to no purpose; but the great Question is, Friend, Whether you don't mistake the Month?

Fifth Witness. Yes, yes, (at which the People laugh'd,) no, no, I don't mistake the Month, I only speak the Truth according to my Knowledge.

L. C. J. How can you so precisely remember, the Month of May he was there; for when I asked you when he went away, you could hardly tell the Month.

Fifth Witness. Yes, my Lord, Mr. Oates says, in the Month of May he was in England, but I say I saw Mr. Poole then at St. Omers.

L. C. J. But the great Question is, Whether you are to be believed? We know you answer the Question positively, but my Reason why I fear you are not to be believed, is, because you are so precise, that Mr. Poole taught you all May; but I ask you once more, Was it in June, or was it in May?

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Fifth Witness. It was about June.

L. C. J. May is about June. Why then you cannot tell. Was it in June?

Fifth Witness. Yes, my Lord, it was; it was about June. And this is nothing but what I know, for I actually saw Mr. Oates there at that Time.

L. C. J. I'll tell you what, Mr. Langborn, use your Discretion, call whom you will, and we will hear them as long as you will; but we had Sixteen of them Yesterday, that did all speak to the same Purpose; but in Answer to these Sixteen Witnesses, Mr. Oates did produce, and he will produce again, six or seven Witnesses, and one of them a Papist, if not a Priest, who do swear, that Mr. Oates was here in April and May; I'll tell you beforehand, do you as you will.

Then one Bailie stood up, and being a Foreigner, an Interpreter was called.

L. C. J. Where did you see Sir John Warner in April and May?

Interpreter. He says he saw him actually at St. Omers.

L. C. J. What, all the Month of May?

Interpreter. Yes, he says he conversed with him all the Month of May.

L. C. J. And was he there all April, and conversed with him then?

Interpreter. Yes, he says every Day, of both Months. He says he saw him from the first Sunday in April, to the 14th of May, and conversed with him.

L. C. J. Where did Sir John Warner go the 14th of May?

Interpreter. My Lord, he says he went for one Day only to St. Omers, and came back again.

L. C. J. Ask him, how he knows this?

Interpreter. He says he was employed about a Building, by Sir John Warner.

Then Carpentier stood up.

L. C. J. When did you see Mr. Oates? and where?

Carpentier. I speak as to Sir Thomas Preston.

L. C. J. What say you as to Sir Thomas Preston?

Carpentier. I saw him at Liege.

L. C. J. When?

Carpentier. All the Months of March, April, May, and June, he was still there.

L. C. J. When went he away?

Carpentier. In the time of the Vacancies.

L. C. J. When is that?

Carpentier. That is from the beginning of August, till the end of September.

L. C. J. When came he again?

Carpentier. When they came to School again, and that was on the second or third of October.

Mr. Just. Dolben. Were you with him all that time?

Carpentier. Yes, I was: He hath not been in England these three Years.

L. C. J. How long have you been there?

Carpentier. I have been there four Years, and I never knew that he was absent, but in the time of the Vacancies.

Mr. Just. Pemberton. Call another Witness.

Then stood up another Witness, who being a Dutch Man, and not speaking English, an Interpreter was called for him also.

L. C. J. Well, what comes he for?

Interpreter. He says he comes to testify, That Sir John Warner was at Watton in April; and he says he saw him there from the 14th of April, to the 25th of April?

L. C. J. And then to what time?

Interpreter. He says he was there till the 16th of May.

Mr. Just. Pemberton. Ask him where he was the beginning of April?

Interpreter. He says he was Superior there in the House, and did Govern.

L. C. J. Ask him where he was the latter end of May?

Interpreter. He says he was likewise in the House, save only one Day, when he went to St. Omers?

L. C. J. Then he might have said, in short, he was there all April and May.

Mr. Just. Pemberton. Call another Witness.

Langhorn. Call John Joseph. Who stood up.

Mr. Just. Pemberton. What do you ask him, Mr. Langhorn.

Joseph. That which I say is this, That Sir Thomas Preston was at Liege in March, April, May and June, in the Year 1678.

L. C. J. Did you see him every Day in those Months?

Joseph. That I cannot well tell.

L. C. J. Did you see him every other Day?

Joseph. Yes, my Lord, I believe I did once in two or three Days.

L. C. J. Where was he in July?

Joseph. He was at Liege too: He was obliged to be so; but in the time of the Vacancies in August, he was absent.

L. C. J. Then you say he was all those months, March, April, May, June and July there.

Joseph. Yes, my Lord, those four months I am sure of it.

L. C. J. What became of him in August, when he went, during the Vacancies, abroad? Do you know whither he went?

Sir Cr. Levinz. Do you know whether he went into England?

Joseph. I never heard that he was in England.

L. C. J. When did he return again?

Joseph. When they began School, and that is in the beginning of October.

Then another Witness stood up.

L. C. J. Well, what say you?

Tenth Witness. I can say that Mr. Oates never stirred out of the College at that time when he says he came to England, that is, he says he came upon Monday the 25th of April, but he did not, for that Day he went into the Infirmary, and he stayed at St. Omers all April and May.

L. C. J. And how much longer?

Tenth Witness. A great part of June.

L. C. J. Was he there the 20th of June?

Tenth Witness. I am sure he was, but how much longer I cannot tell.

L. C. J. Where was he in February and March?

Tenth Witness. He was there too; in January he lay out one Night, and that was at Watton, but I am sure he did not come over the 24th of April, New Stile, as he says.

Mr. Recorder. Now he says, it is New Stile, not Old Stile, as he said Yesterday.

Then another Witness stood up.

L. C. J. Well, what do you say?

Eleventh Witness. Mr. Poole was sick, and I can remember when his Nephew went to him into the Infirmary before he went away from the College, and he gave him good Counsel, as he said, and I remember that Mr. Brett was sick at Watton, and did come home again on Horseback, and I believe he did not stir out; and Mr. Poole was at St. Omers, I am sure I saw him once in two or three Days all April and May. He went by the Name of Killingbeck.

L. C. J. But he does not positively say he saw Sir Robert Brett every Day there, he says he believes he did.

Eleventh Witness. He came into the School and gave the Boys Questions to dispute of.

Mr. Recorder. Call the rest of your Witnesses.

Then another Witness was called and stood up.

L. C. J. North. When did you see Mr. Oates at St. Omers?

Twelfth Witness. I saw him almost every other Day from the time he came till he went away.

L. C. J. When was the first time you saw him?

Twelfth Witness. The beginning of December.

L. C. J. Did you see him in April there?

Twelfth Witness. Yes, I saw him in April there at an Action.

L. C. J. And did you see him in May there?

Twelfth Witness. Yes, I can testify I saw him the first Day of May in the Garden.

L. C. J. How long staid he there?

Twelfth Witness. Till June.

L. C. J. How came you to take such precise Notice?

Twelfth Witness. By his very Place I could not but take Notice if he were missing.

L. C. J. How can you say you saw him in the Garden the first of May?

Twelfth Witness. I'll tell your Lordship why, because there was a great Feast, and he play'd at Nine-pins in the Garden, and I can tell what they play'd for.

L. C. J. What say you as to Mr. Nevil, and Sir Robert Brett's being at St. Omers?

Twelfth Witness. I did not take so much Notice of Sir Robert Brett; as for Nevil, I think I saw him once in three Days.

Mr. Just. Pemberton. And there is nothing said of him here.

Then another Witness stood up.

L. C. J. When did you see Mr. Oates first at St. Omers?

Thirteenth Witness. I first saw him in the Month of December.

L. C. J. Did you see him in April and May?

Thirteenth Witness. Yes, my Lord, I did.

L. C. J. Was he there all those Months?

Thirteenth Witness. Yes, my Lord, he was.

L. C. J. North. Was he there all the Month of June?

Thirteenth Witness. He went away towards the latter end of June.

L. C. J. North. Yesterday you said the latter end of July. Call another Witness.

Then another Witness stood up.

L. C. J. North. Come, you hear the Question, Did

Did you see Mr. Oates at St. Omers, in the Month of April?

Fourteenth Witness. Yes, my Lord, he was there all the Month of April.

L. C. J. Was he there all the Month of May?

Fourteenth Witness. Yes, my Lord he was.

Mr. Just. Pemberton. And a good part of June?

Fourteenth Witness. Yes, my Lord.

Langhorn. What do you say as to Mr. Poole?

Fourteenth Witness. I saw Mr. Poole in the Infirmary the third Day of May.

L. C. J. North. How came you to take notice of it, so well as to remember it, that it was the third of May?

Fourteenth Witness. It was a Festival Day. And the Feast we kept was the Invention of the Holy Cross. We had the Action the Day before, and some that were in the Infirmary would have it Acted over again to them, and we did so. My Lord, within one or two Days after, Mr. Hilsley went away, I discoursed with Mr. Oates about half an Hour; he came out within a Day or two after out of the Infirmary, and I saw him walking in the Gallery. And again, the 2d of May I saw him walking with one Mr. Burnaby, who arrived the Day before, the first of May, and then I saw him the 3d, 4th and 5th, in this Burnaby's Company; I saw him again the 26th of May, with a Band about his Head in order to Confirmation, for they always have a Linen Cloth bound about their Head at such a time.

L. C. J. Call another. Who stood up, his Name was ****.

L. C. J. What can you say?

**** All that I can say is this, that between the said Month of December, 1677. and June, 1678. which is the time in Question, Mr. Oates was never out of the College above one Night, when he went to Watton in January; and this is certain, that from the time that I saw him first, till the time he went away for altogether, there were not two Days that passed away wherein I did not see him, except in the Month of March, and when he was in the Infirmary the 24th of April, but then I heard that he was there —

L. C. J. Who did tell you so?

**** The Man that keeps that part of the House; and coming into my Office after my Recovery out of a Fit of Sickness a Week before Christmas or thereabouts, I saw Mr. Oates by this Circumstance, The Servitors of the House said they were glad to see me, and Mr. Oates being in the Place at the Refectory that was assigned to him, I asked who he was, and they told me such an one, but I had heard of his admission a few Days before. Likewise Mr. Oates was there when Mr. Hilsley came for England, which was about the 24th of April, by this Circumstance, that he was present in the Refectory with some of the Scholars. Mr. Richard Burnaby came to the College about a Week after Mr. Hilsley went away, and Mr. Oates was actually there then, and we did very much wonder that he became acquainted with him so quickly after his Arrival. I say Mr. Oates was actually there when Mr. Killenbeck and Mr. Conquest came for England about the 3d of May, by this Circumstance, that I had some Discourse with Mr. Oates, and some others of the Scholars, that Mr. Conquest would by no means get out of his Bed betimes that Day

he was to go away, being unwilling to leave the College. He was there the 26th of May by this Circumstance, that the Bishop dined there that Day, and Mr. Oates was there Confirmed that Day. Mr. Oates was there also in June, my Lord.

L. C. J. Yes, he was there in June, he does not deny it.

Mr. Just. Pemberton. And was he there all May?

**** Yes, my Lord, he was, and all April, except the time he was in the Infirmary, which was three or four Days.

Langhorn. What do you say as to Poole and Nevil?

**** They were there all the whole time in question, and they were never absent any competent time to come to England, as he says.

L. C. J. North. We must not allow that, you must tell us what time they were there, that we may know it.

**** They were there in March, April, May, June and July.

L. C. J. But did you see him every Day from the beginning of Christmas, to the time he went away in June?

**** Yes, except the time he was at Watton, and when he was in the Infirmary.

Mr. Recorder. But was not Mr. Oates twice in the Infirmary?

**** He was I remember there on St. Thomas of Canterbury's Day, and I remember he was there in April.

Sir Cr. Levinz. I did hear you say something of somebody that was absent five or six Days, was it you?

**** I was sick in the Month of March, and I was in the Infirmary till about the twelfth or fourteenth Day.

Sir Cr. Levinz. And did you see him there all that time?

**** I excepted that time, but I heard his Voice once in that time, in the next Room to the Infirmary, where I was, by this Circumstance; he used to come to a Table by himself, and it was near the Door, and Nevil and Poole were there, as I said before.

Mr. Recorder. He speaks much more to the purpose to-day, Mr. Langhorn, than he did Yesterday.

L. C. J. North. And much louder.

Langhorn. I hope your Lordship will take notice that he speaks likewise of the Residence of Mr. Poole, Sir Robert Brett, and Mr. Nevil.

L. C. J. Yes, I do. Call another Witness.

Who stood up, and being a Foreigner, his Evidence was likewise Interpreted.

L. C. J. Ask him what he says.

Interpreter. He says he saw Mr. Oates, he was there, and he remembers it till about the 25th of June.

L. C. J. Where did he see him?

Interpreter. He says it was either in the House, or in the Garden.

L. C. J. North. When was that, that he was in the Infirmary?

Interpreter. He says, he was in the Infirmary towards the latter end of December or the beginning of January.

L. C. J. Ask him what he says about Nevil and Poole.

Interpreter. He says they were there all June, and that Mr. Poole went away in the Month of July;

July; and he further says, that he being a Waterman, he carried this same *Williams* and *March* in his Boat the last Sunday in *April*.

L. C. J. North. Who is your next, Mr. *Langhorn*? let him stand up: (*Which he did.*) When did you see Mr. *Oates* at St. Omers?

Sixteenth Witness. In the Month of *April*, 1678.

L. C. J. And in *May* too was he?

Sixteenth Witness. Yes, he was.

L. C. J. Was Mr. *Poole* there all that time?

Sixteenth Witness. Yes, he was; and so was Mr. *Nevil* and Mr. *Brett*.

L. C. J. Where is *Nevil* now?

Sixteenth Witness. I believe I left him there.

L. C. J. What are these Persons?

Sixteenth Witness. The one is a Prefect, and I believe he is there still. In the Month of *May* I made Mr. *Killinbeck* a Sute of Clothes, and Mr. *Oates* came into the Shop, and asked me whose Clothes they were? I said Mr. *Killinbeck*'s: said he, how can that be? they are black: said I, they must be black, for he is in Mourning.

Langhorn. Here is Mr. *Grove*'s Wife and his Maid.

Then Mrs. Grove stood up.

L. C. J. What Question would you ask of her?

Langhorn. Mr. *Oates* hath sworn, and given us several Circumstances of his coming over, and being here at that which he calls the Consult, and that he lay at Mr. *Grove*'s three or four Nights; I desire she may be asked that Question, whether he did so or no?

L. C. J. Do you know Mr. *Oates*, Mrs. *Grove*?

Grove. No, I never saw him.

L. C. J. Were there any Lodgers lay at your House in *April* was Twelve-month?

Grove. Yes, my Lord, there were.

L. C. J. Do you use to have Lodgers that you do not know?

Grove. My House was full of Lodgers at that time. I did not know them till they lay there.

Sir Cr. Levinz. Why then, Mr. *Oates* might be there, and you not know him.

Grove. If he lay there, I must needs know him.

L. C. J. Why might not a Man lye with any of your Lodgers three or four Nights, and you not know him?

Grove. Who should he lye withal, my Lord?

Oates. I had a Bed to my self when I lay there.

L. C. J. Mr. *Oates*, describe the Chamber as well as you can.

Oates. It was a place taken out of another Room, where two Men were taken out that were committed to Prison.

L. C. J. Were there any Persons taken out of your House, and sent to Prison?

Grove. Yes, my Lord, there were.

L. C. J. In that very Room he lay out of which those Persons were taken.

Grove. He did not.

Oates. Upon my Oath I did lye there three or four Nights, more or less.

Sir Cr. Levinz. You were in a Disguise, Sir, at that time, were you not, and went by another Name, and so the Woman might not know you?

Oates. Yes, I did so.

L. C. J. You cannot make any great matter of this; she had some Lodgers and she knew them, but he went by a wrong Name, and was in a Disguise.

Langhorn. Mrs. *Grove* says, she knew all the Lodgers that then lay there; pray ask her if she did not?

L. C. J. Do you remember who lodged in your House in *April* was a Twelve-month?

Grove. Yes, I do.

L. C. J. Name them.

Grove. Why, there was one Pair of Stairs, one Mr. *Strange* by Name, and one Mrs. *Fitzberbert*, and above there lay my Sister.

L. C. J. What, all the Month of *May* and *April*?

Grove. Yes.

L. C. J. And not in *June*?

Grove. I am not demanded of *June*.

L. C. J. She answers exactly to them two Months, what say you to *March*?

Grove. They were there in *March*.

L. C. J. Who lay in the Room from whence the Men were taken that were carried to Prison?

Grove. There was one Master *Crupper*, and another Young-man that lay with him.

L. C. J. Why might not that be Mr. *Oates*?

Grove. He was one that was a Prisoner by Mr. *Oates*'s Order. And Mrs. *Fitzberbert* lay there.

L. C. J. What, in that Room whence the Young-men were taken out in *April* or *May*?

Grove. Yes, my Lord.

L. C. J. Well, what say you to the other Months, *March*, and *June* and *July*?

Grove. I was not to be examined further than the two Months I spoke of before.

L. C. J. Look you, she says, that for *April* and *May* two Gentlemen had the Lodging that Mr. *Oates* says he lay in; but for any other Time she was not to be Examined: Well, have you any more Witnesses?

Langhorn. Here is Mrs. *Grove*'s Maid. [*Who stood up.*]

L. C. J. Maid, Can you tell who lay in *Grove*'s House, in *April* and *May* was Twelve-month?

Maid. Yes, my Lord, I can.

L. C. J. Who were they?

Maid. There was my Mistress's Brother and Sister lay there.

Mr. Just. Pemberton. Do you know them all? What Men lay there?

Maid. None but Master *Strange*, my Lord.

L. C. J. Mistress *Grove* said, that her House was full.

Maid. Indeed, my Lord there was her Brother, Mr. *York*, and his Wife.

L. C. J. But who is that *Fitzberbert*?

Maid. She is a Gentlewoman.

L. C. J. Who lay there in *March*? and who lay there in *July*?

Maid. Master *Strange*, and Mrs. *Fitzberbert*.

L. C. J. How long did they lye there?

Maid. In *April*, *May*, *June*, *July* and *August*.

L. C. J. She says, they lay there in *March*, *April*, *May*, *June*, *July* and *August*, and her Mistress said, they were there but a Quarter of a Year, only she said she was to be Examined no further.

Langhorn. My Lord, I desire to prove a Copy of the Record in the Lords House.

L. C. J. That is not to be given in Evidence here.

Mr.

Mr. Recorder. You know how far such a Thing will be Evidence, manage your own Evidence well.

Langborn. It is an Extract out of the Journal of the House of Lords.

L. C. J. What Particular do you pitch upon?

Langborn. About those Persons who, he says, came over with him from St. Omers.

L. C. J. North. Do you think it reasonable, that any Man should come to answer now, all that ever he hath sworn in his Life? If you can shew any Record to contradict what he hath sworn here, shew it. Do you think he can come prepared to justify all he hath sworn in any other place?

Langborn. He referred to that himself.

L. C. J. No, he does not.

Langborn. But he hath said over and over, that Sir John Warner came over with him, Sir Thomas Preston, and Poole.

L. C. J. What should you urge that Book for? Can you make any other Proof?

Langborn. I would have the Persons called that took the Narrative of Ireland's Trial.

L. C. J. If you have any more Witnesses, call them.

Langborn. Won't your Lordship allow me to prove by Witnesses, what he affirmed, in relation to me, at another Trial.

L. C. J. By no means, you must not meddle with that.

Langborn. Pray, my Lord, why not? I will prove the Words spoken by a Witness.

L. C. J. North. You must not; that is no Evidence against you, nor can it be an Evidence for you.

Langborn. Then you take off the Defence that I have, and make it as if I had never any.

Mr. Just. Atkins. That is not Evidence in a civil Cause, and therefore must not be Evidence here.

Then came in my Lord of Castlemain.

L. C. J. What do you come for, Sir? What is your Name?

E. Castlemain. My Name is Castlemain.

L. C. J. Are you my Lord of Castlemain?

E. Castlemain. Yes, my Lord, I am.

L. C. J. Does your Lordship come as a Witness for Mr. Langborn? Mr. Langborn, do you call my Lord of Castlemain?

Langborn. My Lord, I don't know what he comes for, whether he comes as a Witness for me, or not; perhaps he may.

E. Castlemain. My Lord, I come to wait upon your Lordship and the Court, to give you an Account, that some of the Witnesses that were summoned here for the Prisoners, are so beaten and abused without, that they dare not come to give their Evidence, for fear of being killed.

L. C. J. That is a Thing that is not to be suffered; let us but see any Person that dares but offer to meddle with them, and I'll assure you we will take care to see them punished, according as they do deserve.

L. C. J. North. 'Tis a very unjustifiable Thing, a Thing that we will very severely punish, if they be hindred of free Ingress and Regress.

Mr. Just. Atkins. Indeed 'tis a very horrid Thing that they should be so abused; they ought to have their Liberty of coming and giving their Evidence here, without any Molestation.

E. Castlemain. I can assure your Lordship, that one of them was so beaten and bruised, that we can't tell but it may cost him his Life.

L. C. J. Nay, we must look to such a Thing as that; for it is by no means to be allowed of. If your Lordship will but tell us who they are; let us but know them, and we will take Care for the Punishment of them; for we will shew our selves just and fair, and give them all the fair Play that can be.

Mr. Just. Pemberton. Mr. Langborn, have you any more Witnesses?

Langborn. Call the Woman that kept the White-Horse Tavern. [*Who stood up.*]

L. C. J. To what Purpose do you call this Woman?

Langborn. I desire, my Lord, to ask one Question of Mr. Oates, touching the Consult at the White-Horse Tavern in the Strand; How many Persons met there?

Oates. Before that Question be asked, I pray your Lordship would ask her, When she came to the White-Horse Tavern, to keep it.

Witness. I don't keep it now.

L. C. J. When did you keep it?

Witness. I kept it in June, and I left it the beginning of July.

Oates. She does not come to the Time.

L. C. J. Did you keep it all the Year before that?

Witness. I kept it Seven Years before, till July last.

Langborn. I would know of him, how many might be there at that Time.

L. C. J. What Number of Persons do you say met at that Consult?

Oates. That Question, if it please your Lordship, hath no Reference to this Trial, neither is it at all material; but because I have given the Prisoners so much Freedom, they impose upon me with Questions.

L. C. J. 'Tis a Question they can't expect a precise Answer to from you; but yet I would have you give them as satisfactory an Answer as you can, what Number there might be there at a Time.

Oates. My Lord, I think there might be at the White-Horse Tavern, at a Time, about Eighteen or Twenty.

L. C. J. Were they in one Room, or in several Rooms?

Oates. They were in two or three Rooms.

Witness. Is this Mr. Oates, my Lord?

L. C. J. Yes, that he is.

Witness. I never saw him in my House in my Life.

L. C. J. Was there no body never in your Tavern, but who you knew? What! can you tell all the People that were ever in your Tavern?

Witness. The most of my Company were People that I knew.

L. C. J. What is your Company?

Witness. Those that frequented my House.

L. C. J. Can you say who was in your House, April 24, 1678?

Witness. No, my Lord, I will not undertake that, but I will give you as true an Account as I can.

Langborn. I'll tell you why I ask this Question. Mr. Oates did say, in his Depositions before the Lords, there met fifty.

L. C. J. At several Times in the Day.

Langborn.

Langhorn. But this must all be in the Morning.

L. C. J. Why so? suppose there met, of that Company, Twenty, in the Morning, and then some went away, and others came in their room, and so they did for divers Times in the Day, is not this properly said of me, that there might be about Fifty at that Consult?

Langhorn. He saith, in *Coleman's Trial*, there met Fifty, upon the 24th of *April*, and afterwards they adjourned into lesser Colloquies.

Oates. I say, they met there the 24th Day, but the Consult was not dissolved till the 26th Day at Night.

L. C. J. North. You must go only upon what is sworn now. And we ask the Question, upon your Proposal, How many were there at a time? and he says about Eighteen or Twenty at a Time. Now if he proves there were Eighteen at one Time, Twenty at another Time, and Ten at another, that makes about Fifty.

L. C. J. Good Woman, is your House a little House?

Witness. 'Tis a small inconsiderable House, there is not a Room in it that will hold above a dozen, I never remembred so great a Company was in my House at one Time, but once, in all my Seven Years, and that was a Jury of the Parish, and they could not be together, but were divided into three Rooms.

Then there stood up a Stranger; who was sworn.

L. C. J. Well, Sir, do you know the *White-Horse Tavern* in the *Strand*?

First Witness. Yes, my Lord, I do, very well.

L. C. J. Do you know the biggest Room in the House?

First Witness. Yes, I do, my Lord.

L. C. J. How many may Dine there?

First Witness. It may be Twenty People. I have seen a Dozen, or Sixteen there often.

L. C. J. Did you know the Tavern a Year ago?

First Witness. Yes, my Lord, this was a Year ago.

Then a Second Witness stood up in the Court, and said, That Twenty-five, or Thirty, might Dine in one Room that was backward, and another that was forward. And a Third attested, That he was at a Wedding, and there did Dine above Twenty, in one Room next the Street.

Mr. Recorder. If she make a Jury to be in three Rooms, that is but four in a Room.

Mr. Just. Pemberton. Those Juries are Sixteen, generally, or more.

Langhorn. My Lord, I don't know this Tavern my self; but I thought it very considerable, if they had not a Room that would hold such a Number as he spoke of, Fifty.

L. C. J. But you see how unfortunately it happens. The matter had not been much, if it had been proved; but it's very unluckly, that these Persons should be here in Court, by whom the other is contradicted. It had been better it were never medled with. That she should be so peremptory, in what Standers-by know to be false, makes this Contradiction in one Thing to give a Suspicion that all your Witnesses may be false in in all the rest.

Sir Cr. Levinz. Here is a Gentleman of good

Quality, that saith, there have been Fifty in a Room.

Langhorn. My Lord, I hope neither the Court nor the Jury will reflect upon me for this.

L. C. J. No, it can't do that; but it reflects upon your Evidence, especially this Woman.

Langhorn. I have been a Prisoner so long, and I know nothing but what Friends and Relations inform me.

L. C. J. The Thing was reasonably offered, but it proves so unfortunate it will not hold. Have you any more Witnesses to call?

Langhorn. Yes, my Lord.

L. C. J. I pray call them.

Langhorn. My Lord, I desire I may examine them after the King's Counsel have done.

Mr. Just. Pemberton. You may say what you will, for your Defence, but you must examine no new Witnesses then, *Mr. Langhorn.*

Langhorn. I must ask this Gentleman a Question or two, if the Court think fit.

L. C. J. Propose them to the Court; what is it you would have?

Langhorn. My Lord, it is in relation to a Matter that happened at *Ireland's Trial*, I know not whether it be proper, but the Question I would ask is, Whether *Ireland* were here in *August*, or no?

L. C. J. He hath given you no Occasion to ask this Question at this Trial: And is there any Reason that we should examine him to such a Thing? Do you think it reasonable, or according to Law, that *Mr. Oates* should be examined, in your Trial, concerning what he then said, of *Ireland's* being here in *August*, or not being here, when 'tis no part of his Accusation that he brings against you? Can he be imagined to be prepared for such a Justification, since he does not at all give any Evidence of it here?

L. C. J. North. Since he gave not any Occasion or Use for such a Proof now at this Time, 'tis not fit he should be examined about it: Indeed Yesterday he gave it in Evidence, because it concerned a Circumstance of Time that related to the Prisoners then to be Tried.

L. C. J. 'Tis true, as my Lord says, that it was Yesterday proper, because he gave Evidence that *Fenwick* and *Ireland* were here in *August* together. Now that did some way concern him, but you have no Concern at all in it.

Mr. Just. Pemberton. That brought it in at that Time, but this is a foreign Matter, it cannot be here.

L. C. J. Have you any more Witnesses, Master *Langhorn*?

Langhorn. My Lord, *Mr. Oates* hath affirmed, when I asked him touching his receiving a Reward, he said, he had his Reward, for he had been out of Purse Six or Seven Hundred Pounds; and it is my Desire to examine a couple of Witnesses, touching the Probability of that; for he was so very poor, before this happened, that it is impossible, without a Purse being made for him, to lay out Six or Seven Hundred Pounds.

L. C. J. Look you, here is the Thing, he gives you an Answer, to which he was not in the least bound, nor is it to be charged by you; he says he is out Seven Hundred Pounds, but that is not any Evidence, nor is the Jury to take Notice of it, nor is it to affect him. And would you have him give us an Account how he came by that Money?

Langhorn

Langhorn. My Lord, I'll tell you how far it concerns me; the proving of his Indigency before this Thing happened, will concern me thus far —

L. C. J. If you should prove this Man in an indigent Condition, what is that to the present Purpose? it goes to no part of the Evidence.

Langhorn. My Lord, I ask the Question for this Reason, for certainly if he were so very indigent, it cannot be imagined in probability that any Man would trust him with such a great Sum, unless it were to give this Evidence.

L. C. J. If you have any more Witnesses, call them, and make an end of them; if not, then you may observe what you will to the Court and Jury, after the King's Counsel hath done.

Mr. Just. Pemberton. But all your Witnesses you must call now!

Langhorn. Doth your Lordship debar me from using this Copy of the Record of the House of Lords?

L. C. J. To what purpose would you have it read?

Langhorn. Because *Bedlow* therein says, that he had no Person more to charge, either in the House or out of the House, than what he then charged.

L. C. J. What then?

Langhorn. I was not one of those Persons, then he knew nothing against me.

L. C. J. 'Tis but a Memorial taken by a Clerk, and do you think that his Omission shall be conclusive to us?

Langhorn. 'Tis the Journal of the Lords House, my Lord.

L. C. J. North. But can you think that can be used as Evidence here? If you had an Affidavit signed by the Party, and had Witnesses to prove that he did make such an Oath, you say something.

Mr. Just. Pemberton. You can't read that against his Testimony, you understand that, being a Lawyer. If you have any Witnesses, call them, but you pick out collateral Matters, and spend our Time to no Purpose.

L. C. J. Really, if it were a Thing conducing to the Point, I would very much stretch; but it being such a kind of Thing as this is, he says he had nothing to say against any Body else, and I was not named then: What is this to the Fact you are charged with?

Mr. Just. Pemberton. Why, it may be, he did not remember it then, will you conclude him, that he should never remember it, or speak of it?

L. C. J. You see that now at these Trials, he says sometimes, this is all I can remember at present, but by and by he recollects himself; would you hinder him from saying then what he remembers?

L. C. J. North. Besides, upon an Affidavit, or an Answer in Chancery, we never allow it, unless we have the Party to prove that he took the Oath.

Langhorn. I desire to know of Mr. Oates, whether he did distribute any of these Commissions, and to whom? for he hath said I did.

Oates. That which I say, is this, those Commissions that I named, they were distributed, but the Persons I do not know; I know the Commissions were for those five Persons, and in July or August he did say he had distributed them, but he said not to whom, only one, indeed, he sent

by his Son, to the eldest Son of my Lord *Arundel* of *Wardour*, to be Commissary General; and he came back, and said, it was delivered.

Langhorn. You do not speak of any other?

Oates. I do not recollect that I know of any other.

Langhorn. I ask for this Reason, because, in the Lords House, he hath charged me, that I sent my Lord *Arundel's* Commission, and that I sent it by my Son, and that he saw a Letter in my Chamber, of the receipt of it.

Oates. My Lord, there is some part of the Evidence, that does reflect upon the Lords, which I charge not upon Mr. *Langhorn*, because I would not discover my Evidence against the Lords. He goes now to expatiate upon the Informations, but I hope the Court will excuse me, because I reserve it for another Trial.

Langhorn. I desire Mr. *Lydcot* may be asked, whether he did not hear Master *Oates*, at a former Trial, say, (for so I find it in the Narrative) (it was at *Coleman's* Trial) that he came to me the next Day after the Consult, and communicated it to me, and that he never saw me afterwards.

L. C. J. Do you know any Testimony, Master *Oates* gave concerning Master *Langhorn*?

Langhorn. You are not the Person that took the Trial, are you?

Lydcot. I know nothing of the Business, at all. I was at the Trial, but I cannot particularly speak what was said there.

Langhorn. The Persons that took the Trial were summoned to be here. Call Mrs. *Sylliard*. (But she appeared not.) Call Mr. *Blayney*.

L. C. J. Here is Mr. *Blayney*, what would you ask him?

Langhorn. I would know of him, what Mr. *Oates* hath testified concerning me?

L. C. J. Do you know what Mr. *Oates* said concerning Mr. *Langhorn*?

Blayney. When, my Lord?

L. C. J. Nay, I can't tell.

Langhorn. At *Coleman's* Trial, Sir.

Blayney. My Lord, I was present at *Coleman's* Trial, and I remember Mr. *Oates* did say something about Mr. *Langhorn*, but I have not my Book here, I can't tell what it was.

Langhorn. Here is the Book, Sir, here is the Narrative.

Blayney. That was not printed by my Copy, Sir.

Langhorn. Who were they that did take it?

Blayney. Of my own Knowledge I don't know whose Copy it was, but by hearsay.

L. C. J. It was taken as well as it could be taken, but you must not urge that which is but an Historical Narrative against him.

Mr. Just. Pemberton. Mr. *Langhorn*, do you think to convict a Man by an History? To say a Man is forsworn because he does not swear as that History says he did swear?

L. C. J. We will do you all the Right, and give you all the fair Play we can; but we are of Opinion that it signifies nothing, that you can make no use of it.

Langhorn. If I can have no Light, how can I imagine what they will charge me with?

L. C. J. Have you in any other Case observed it? If a Man be indicted of Felony or Treason, any Capital Crime, he is clap'd up, and is not permitted to have a Copy of the Indictment, nor he cannot by Law.

Langhorn. They know something of what they are accused for, they are confronted before a Justice of Peace.

Mr. Just. Pemberton. Why, I'll suppose you had been examined, do you think your Examination would have been Evidence for you here?

Then one Elizabeth Sylliard was called, but affirming, That she durst not speak unless the Court would promise her Protection against the Rabble, because some of the Witnesses had been abused; which the Court not being able to do, otherwise than by promising to punish those that offered to meddle with her, if she brought them before them, she was, by Mr. Langhorn's consent, set aside, and not examined.

Langhorn. She comes in relation to a Point that happened at *Reading's Trial*, where *Mr. Bedlow* did depose, That he did not say all he could have said against *Mr. Whitebread* and *Mr. Fenwick*, but that he knew more against them than he gave in Evidence at their first Trial.

Mr. Just. Pemberton. What is that to you?

Langhorn. That I take to be a kind of Perjury in him; for they are sworn, *To speak the Truth, the whole Truth, and nothing but the Truth.*

L. C. J. Is this material in your Case what he said about *Whitebread* and *Fenwick*?

Langhorn. It makes it material to make him uncreditable.

L. C. J. *Mr. Whitebread* made that Objection, but he was answered; for he was told, That he could not tell all that he knew at that time, because he was in treaty with *Mr. Reading* about the lessening of his Evidence against them, and the Lords in the *Tower*, and the Lords were to judge what measure they should have from him, by his kindness to *Whitebread* and *Fenwick*. If you have no more, the King's Counsel will go on.

Sir Cr. Levinz. My Lord and Gentlemen of the Jury, you have heard the Evidence that *Mr. Langhorn* hath given for the making of his Defence, which hath been principally to reflect upon *Mr. Oates*; and he first calls *Mr. Hilsley* to prove, that whereas *Mr. Oates* did swear he came over with him, he affirms he did not; but it falls out, that *Mr. Oates* hath counterproved him by such a Circumstance as does contradict him in what he says; for speaking of the loss of his Money, *Hilsley* said some Body else had told him of it; but producing his Witness for that, he only affirms, that *Mr. Oates*, in his Company was told, that *Mr. Hilsley* had lost his Money, but not how nor where; but *Mr. Oates* gives you a particular Circumstance, that he was cheated by a Person he lent his Money to, and that left him to pay the Reckoning, which *Mr. Hilsley* does confess was true, and which he could not hear from the others, for the others did never know it. Gentlemen, they have brought you a great many other Witnesses to prove, that *Mr. Oates* was not in *England* on the 24th of *April*, the time he says he was, and they all agree as to that time, tho as to other times they are not so exact; but we shall give you as plain and as full an Evidence that he was here at that time, as that you are there now, and shall very fully satisfy you in it. For that of *Sir John Warner*, and *Sir Thomas Preston*, they are Matters that were transacted beyond Sea, to

be sure they did not come over by those Names, no more did *Mr. Oates* himself; therefore it would be hard to find out these Persons, or to give you so particular an account of them that were thus in Disguises, and had changed their Names; but truly if that were a matter done in *England*, it were far more easy for us to confront their Testimony in that; for Matters that are done here lye more ready for our proof, than those that are done beyond Sea; for the last Woman that he called, which was the Woman about the *White-Horse Tavern*, her Evidence would have gone as punctually for truth, if it had been a Matter done in *Flanders*, as any thing could be in the World; but it happening to be near Home, it hath the ill fortune to meet with a very sudden Answer, which is a manifest proof how they stretch to help themselves, and in my Opinion this Contradiction overthrows all their Evidence. Gentlemen, we will call our Witnesses, and prove it as plainly as any thing can be in the World, that *Mr. Oates* was here at that time. First swear *William Walker*. [*Which was done.*]

L. C. J. Do you know *Mr. Oates*?

Walker. Yes, Sir, I have known him Seven or Eight Years.

L. C. J. When did you see him in *England* last Year?

Walker. I saw him the latter end of *March* 1678, or towards the middle of *April* following, I saw him then in a Disguise, insomuch as that I knowing what he was, and what he had been, I could not a great while recollect the Face of the Man, and it was a great Trouble to me, that having known him so many Years, I should not then know him. I went home, but could not recollect my self that Night; but before I rose again the next Morning, I did recollect my self that it was *Titus Oates*, and I presently turned my self out of my Bed, and went to a Gentlewoman whose Name I did not then well know, to inquire of her about it. After the Salutation, said I, How does *Mr. Oates*? said she, knocking her Hand upon the Counter, He is an undone Man; Why, what is the Matter, said I? He is turned, said she, to the Church of *Rome*: Do you know where he is, said I? No, said she, but he is lurking up and down the Town, and only dares appear in the Evenings. Well then, said I, I saw him later than you did; for I saw him between *St. Martin's-Lane* and *Leicester House* Yesterday, but he was in a Disguise: and I told her what Habit he was in.

L. C. J. What time was that?

Walker. It was about Ten of the Clock in the Morning.

L. C. J. But what time of the Year was it?

Walker. It was the latter end of *March*, or the middle of *April*.

Mr. Just. Pemberton. It was before the end of *April*?

Walker. Ay, ay, my Lord.

L. C. J. And that contradicts all your Witnesses; for they say, that he was there all *March*, and all *April*, and all *May*, nay from *December* to *June*.

Langhorn. He hath said, the latter end of *March*, or the middle of *April*. I would have him be as certain as he can.

L. C. J. He cannot be certain; for those things in point of time, you know, and all Mankind must

must agree, that a thing done a Year ago that was of no greater importance at that time, cannot so easily be remembred, or that he should take such special notice of the critical Day. What Man in the World does remember or take notice so as to charge himself in what Week or what Month such an accidental thing as this happened? but to satisfie Mr. *Langborn* I ask you, Can you speak any more particularly than you have done?

Walker. Because I would not be mistaken, or do any one any wrong, I do rather take an uncertain time than a certain, but I do think it was in the Month of *April*, and towards the middle of the Month; that is all I can say.

Langborn. But how is he sure, since he is so uncertain in his Memory, that this was 1678, and not 1677?

Walker. Because, my Lord, it was but a little more than a Year since, and I am able to judge of the Year as well as another.

L. C. J. Do you remember what you went about?

Walker. I was wont, about that time of the Year, to receive Money of my Lord *Thomas Howard*, and upon that Errand I came to Town then.

L. C. J. But are you sure it was Mr. *Oates* that you saw?

Walker. Yes, my Lord; for according to my apprehension I did know the Face when I first saw it, but I could not recollect who it was till I had refreshed my Memory, and the next Morning I did so, and then concluded it was he.

Mr. Just. Dolben. How came you hither?

Walker. I was brought here for a Witness.

Mr. Just. Dolben. Did you discover this to Mr. *Oates*, or did Mr. *Oates* first come to you, to put you in mind of it?

Walker. I had discoursed with some Persons about it a while after the Plot was discovered, and so I suppose it came by accident to him.

Then Mrs. *Ives* was sworn and stood up.

L. C. J. Well, Mistress, what say you?

Ives. This is the Gentleman that told me this Business.

L. C. J. What did he tell you?

Ives. He asked me when I saw *Titus Oates*? I told him I had not seen him a long time, that he was gone beyond Sea: he asked me, if I never saw nor heard from him since? I told him, No; but of late some of his Friends had told me, that he was about the Town, and that they had seen him, but they did not know the place where he lodged. Then said he, I have seen him since you; for I was Yesterday going in *Leicester-Fields*, and going along I saw him, for he was in coloured Cloaths, and very much altered from what he had been.

L. C. J. When was this? How long was this ago?

Ives. It was about the middle of *April* was Twelve-month, and I remember it by a very good Token; for his Father Mr. *Oates* came then to my House to see me, and that is the first Month that our new thin Cheeses come in, and I did then ask him, if he would not come in and eat some new thin Cheese; and when he was come in and sat down eating of Cheese, and drinking a draught of Drink, I was a saying to him, Pray, Sir, when did you see your Son?

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Said he, I have not seen him of late, I heard from him a little while ago, but I have not seen him: Then, said I, I can tell you News of him. Here was such a Gentleman in my Shop, that says he met him in *Leicester-Fields*, but in a Disguise, and he told me what Habit he was in.

Sir Cr. Levinz. Set up *Butler*. [*Who was Sworn.*]

L. C. J. How long have you known Mr. *Oates*?

Butler. I have known him two or three Years before he went to Sea.

L. C. J. When did you see him last Year?

Butler. When he came back, he came to my Master's House the beginning of *May* last was Twelve-month.

L. C. J. Who is your Master?

Butler. Sir *Richard Barker*, my Lord.

L. C. J. What did he come there for?

Butler. He came to enquire for Doctor *Tongue*.

L. C. J. Did you know him?

Butler. Yes, I did.

L. C. J. Are you sure that's he?

Butler. This is the Gentleman.

L. C. J. And what said he?

Butler. I was in the Gate about my Coach, and he comes in and asked me if Dr. *Tongue* was within. I told him, No: At present I did not know him, because he was in such a disguised Habit; I knew him very well before, because he went in such a Habit as he does now: But this is the Man, and *Titus Oates* is his Name. Said I, Mr. *Oates*, you are welcome into England again: But he took no Notice but went forward into the House, but he made but a little stay there, and came out again; it seems some body had affronted him, and laughed at him, because he was more like a Shepherd than a Minister: His Hair was cut, and he had a gray Coat on, and plain Shooes, and a flopping Hat; and so he went out of the Gate, and would not take any Notice of me, or what I said.

Langborn. How does he know it was in 1678, and not in 1677? He says it was in the Month of *May* was Twelve-month.

Butler. I know it by this Circumstance: In *February* I went down into *Lincolnshire*, and I came up again the same Month: Sir *Richard Barker* was then sick and in the Country, and there he was a great while; and when he came to Town I did acquaint my Master that Dr. *Oates* was there to enquire for Dr. *Tongue*, in the strangest Habit that ever I saw Man in in my Life.

L. C. J. How long after he had been there was it that you did tell your Master?

Butler. It was as soon as my Master came back, as soon as I saw him, it might be a Week.

L. C. J. Was it about a Week or a Fortnight?

Butler. I do not know exactly.

Mr. Belwood. Then swear *Cicily Mayo*. [*Which was done.*]

L. C. J. Do you know Master *Oates*?

Mayo. I never saw his Face before that time, nor had I taken notice of him then, but that there was a young Man that lived with Sir *Richard Barker*, who had a great acquaintance with him, and seeing him in that Garb he called me to the Window, and said, Mr. *Oates* is surely turn'd Quaker or Jesuit by the change of his Habit: No, said I, he is no Quaker, for he hath got a Perriwig on.

L. C. J. Maid, when was this?

5 Y 2

Mayo.

Mayo. This was before *Whitsuntide*.

L. C. J. Which *Whitsuntide*?

Mayo. *Whitsuntide* was Twelvemonth.

L. C. J. How long before that was it?

Mayo. It was a matter of a Fortnight before, as I remember.

L. C. J. Are you sure you know him now?

Mayo. Yes, this is the Man.

L. C. J. North. Did you tell your Master of it?

Mayo. I was not so well acquainted with him as to speak to Sir Richard Barker about it, but the other Servants they told him.

Mr. Belwood. Set up Philip Page. [*Who was Sworn.*] Do you know Mr. Oates?

Page. Yes, my Lord, I have known him these five Years.

L. C. J. When did you see him?

Page. About May was Twelvemonth.

L. C. J. Where?

Page. In Sir Richard Barker's House.

L. C. J. Are you sure this was the Man?

Page. Yes, I am sure it was he.

Langhorn. What time in May was it?

Page. About the beginning of May.

L. C. J. And you take it upon your Oath that you saw Mr. Oates the beginning of May was Twelvemonth in Sir Richard Barker's House?

Page. Yes, my Lord, I do.

Mr. Just. Atkins. What is become of the Boy that spoke to the Woman about him?

Mayo. He is dead, my Lord.

Sir Cr. Levinz. Then swear Sir Richard Barker. [*Which was done.*]

L. C. J. Do you know Dr. Oates, Sir?

Sir Rich. Barker. I have known him these many Years, I have known him from a Child.

L. C. J. Did you see him about a Year ago?

Sir Rich. Barker. My Lord, I did not see him then; I was out of Town, but as the Servants tell your Lordship, so they told me, when I came Home, that Mr. Oates had been there in a strange kind of Habit, that he was either turned Quaker, or Jesuit. I did very much admire at it, for I had seen his Father but a little while before, and he told me nothing of it. I had a mind to have given him a Living while he was in our Church.

L. C. J. When did your Servants tell you they saw him?

Sir Rich. Barker. They told me when I came home, which was in the latter end of *Whitsun-Week*, or the beginning, as I remember.

L. C. J. Was it in *Whitsuntide*?

Sir Rich. Barker. It was about that time; they told me the odd kind of Posture he was in, and that young Fellow that they speak of told me several Passages of Mr. Oates. (He is now dead.)

L. C. J. But when did they speak of it to you?

Sir Rich. Barker. My Lord, when I came home, two or three of them told me of it with great Admiration, as they have told your Lordship and the Court; and I said to one of them, *What! did he leave no Message?* They told me he enquired for Dr. Tongue, and asked for me, but that was all that they told me.

L. C. J. Come, was it in May?

Sir Rich. Barker. Yes, my Lord, it was in May was Twelvemonth.

L. C. J. How do you know it was May was Twelvemonth?

Sir Rich. Barker. It was last Year, about the beginning of May.

L. C. J. North. Nay, he tells you this, when you asked him the Question, Whether he knew Mr. Oates? Yes, said he, I did know him formerly; and when he was of our Church I did intend to have given him a Benefice.

Langhorn. Certainly his Change, that is, his becoming a Roman Catholick, could not be a thing so strange that he should intend then to give him a Benefice.

Mr. Just. Atkins. But hark you, Sir, I suppose you remember it by your own Sicknes very well?

Sir Rich. Barker. Yes, my Lord, very well; I had a little Distemper upon me, and Dr. Needham of the *Charter-House* came to see me; and I lay sick a matter of six or seven Weeks, and the latter end of my Sicknes I continued taking of Physick till I came to Town.

L. C. J. But you are sure of the Year by that?

Sir Rich. Barker. Yes, my Lord; and Yesterday I should have acquainted your Lordship and the Court, that there are some Persons not unknown to some of the Bench, if not near ally'd to them, and that is Sir William Tyrrel's Family, of *Lincolnsbire*, his Grandson, who had been at *Cambridge*, and then came to visit me, tho I happened not to be at home (they being my Wife's Relations) and it was before *Whitsuntide*, because he came to take the Advantage of that Season of the Year: and he had conversed with Mr. Oates, but he is not in Town at present; and there are two or three of the University that conversed with Mr. Oates at that time.

Mr. Just. Pemberton. Are they here?

Sir Richard Barker. I only tell it you for a Circumstance.

Sir Cr. Levinz. Then set up Mr. Clay. [*Who was sworn.*]

L. C. J. Do you know Mr. Oates?

Clay. Yes, I know him very well.

L. C. J. How long have you known him?

Clay. Since last April was a Twelvemonth.

L. C. J. Where did you see him then?

Clay. I saw him at Mr. Howard's, my Lord.

L. C. J. What Howard? one of my Lord of Norfolk's Brothers?

Clay. Yes, my Lord.

L. C. J. What is his Christian Name?

Clay. His Name is Mr. Charles Howard, my Lord.

L. C. J. Where was it?

Clay. In his House.

L. C. J. Where was his House?

Clay. It was part of *Arundel-House*, 'tis now made a new Street.

L. C. J. Did you speak with him there?

Clay. Yes, we saluted one another, and he said, *Your Servant, Sir.* I am sure I saw him there.

L. C. J. How often did you see him in that House?

Clay. Twice.

L. C. J. In April and May?

Clay. Yes, in April, and in the beginning of May.

Langhorn. I ask you if you do remember any Circumstance of it, to bring this to your Memory?

L. C. J.

L. C. J. By what Token do you remember it, that it was *April* and *May*?

Clay. By this Token, that *Mr. Charles Howard* told me he was one that was come from beyond the Seas, from *St. Omers*; and, said he, he hath some Thoughts of being a *Jesuit*, but I think I shall divert him from that.

L. C. J. How do you know that it was that Month?

Clay. It was in the latter end of *April*, and the beginning of *May*.

Mr. Just. Dolben. Are you sure it was last Year?

Clay. Yes, I am, it was in the Year 1678.

Langhorn. Was it at Dinner, or no?

Clay. No, no.

Langhorn. Did he dine there that Day?

Clay. I did not see him at Dinner, but I saw him there twice.

L. C. J. Are you a *Roman Catholick*?

Clay. Yes, I am of the Church of *Rome*, but not of the Court of *Rome*.

L. C. J. That is no new Distinction.

L. C. J. North. No, they have the Court of *Rome* distinct from the Church, and particular Favourites of it, as other Princes have, and there are those that profess themselves of that Religion, that won't acknowledge the exorbitant Power that the Pope claims.

Langhorn. Will your Lordship please to ask him, whether he does remember that *Mr. Oates* did at that time play with *Mr. Howard's* Son, and instruct him, and talk to him about his Learning, and put Questions to him.

L. C. J. Did he talk or put any Questions to *Mr. Howard's* Son about learning his Book?

Clay. Not any thing that I heard.

Langhorn. Was *Mr. Howard's* Son there?

Clay. No, not in the Room, as I think, I cannot tell certainly, my Memory is frail.

Then Mr. Smith was called and sworn.

L. C. J. How long have you known *Dr. Oates*?

Smith. I knew him before the Fire, he was my Scholar at the School where I was Usher.

Mr. Just. Pemberton. What Time did you see him last Year?

Smith. The beginning of *May*.

Mr. Just. Pemberton. How do you know that?

Smith. He came to see me, and dined with me.

L. C. J. Where?

Smith. At *Islington*, at my House there.

L. C. J. How long was he with you?

Smith. Three or four Hours.

L. C. J. What Time was it?

Smith. It was, as I take it, the first *Monday* in *May*, and I give this Reason for my remembrance why it was in *May*, because we dined by the Fire-side, being a little cold, of which we took particular Notice.

L. C. J. And you wondered that you should dine by the Fire-side in *May*.

Langhorn. Was it on a *Monday* in *May*?

Smith. It was on the first *Monday* in *May*, to the best of my Remembrance.

L. C. J. Was there none of the Family there besides?

Smith. Yes, there was my Wife there.

L. C. J. Why did you not bring her to testify the same?

Oates. He cannot find his Wife.

L. C. J. North. How long do you say was he with you?

Oates. Three or four Hours.

L. C. J. What did you talk of?

Smith. We talked about his Travels, about his Journey into *Spain*, and to *Valledolid*, and *Salamanca*.

Mr. Just. Pemberton. Was he in a Priest's Habit, or in another Habit?

Smith. My Lord, he was in a Cinnamon-coloured Suit, trim'd with green Ribbons.

Sir Cr. Levinz. We have done with our Evidence, my Lord.

L. C. J. Now, *Mr. Langhorn*, the King's Council have done with their Witnesses.

Langhorn. Pray call *Mr. Charles Howard* and his Wife.

L. C. J. I do not think *Mr. Charles Howard* will appear.

L. C. J. North. I believe he does not think it safe to come here; we know upon what Account.

But upon calling, after a while he did appear and stood up.

L. C. J. Well, what have you to say to *Mr. Howard*?

Langhorn. The Question that I would ask him is this; it hath been affirmed here by *Mr. Clay*, that old Gentleman, that about the end of *April*, or beginning of *May* last was a *Twelvemonth*, he did meet *Mr. Oates* at *Mr. Howard's* House; I would know the Truth of it.

L. C. J. *Mr. Howard*, you have heard the Question, do you know *Mr. Oates*?

Howard. Yes, my Lord, very well.

L. C. J. How long have you known him?

Howard. Above two Years.

L. C. J. When was he at your House?

Howard. My Lord, he hath been at *Arundel-House* about two Years ago, and several times since.

L. C. J. Was he there about a Year ago?

Howard. Thereabouts he was.

L. C. J. Do you think he was there about *May* was *Twelvemonth*?

Howard. My Lord, after *July* I remember he was there.

L. C. J. Was he there in *May*?

Howard. No, my Lord, not to my Remembrance.

Langhorn. Pray, Sir, when did your Son die?

Howard. The Fifth of *May* was two Year, 1677.

L. C. J. Why, how does that appear to be any thing in this Case? he did not say that *Mr. Howard's* Son was there.

Langhorn. He said he was in the House, but he could not tell whether he was in the Room or no.

L. C. J. You asked him whether he talked any *Latin*, or asked him any Questions; and he says he cannot tell whether the Son were there in the Room or no.

L. C. J. North. He says, *About two Year ago* I remember he was at my House, and about a Year ago; which contradicts all your Witnesses.

Langhorn. No, he says, *About two Year ago* I remember he was there, and about a *Twelvemonth* ago, after *July*; but he cannot remember whether he was here in *April* and *May* was a *Twelvemonth*.

Howard.

Howard. Mr. Oates was in my Lodging in April 1677, and then my Child was alive, and dined together with him and Mr. Clay.

L. C. J. That is two Years ago?

Howard. Yes, my Lord, two Years ago Mr. Oates was there with Mr. Clay, but not since.

L. C. J. Call Mr. Clay again to confront him in that

Oates. I did not know Mr. Clay two Years ago.

L. C. J. You are mistaken, I believe, for Mr. Clay does pretend that he did but just begin to know Mr. Oates in April was a Twelvemonth, and so Oates swears too.

Mr. Justice Pemberton. And he says nothing whether you had a Child died or no.

L. C. J. When was the Time that you first knew Mr. Oates?

Clay. The latter end of April, last Year.

L. C. J. Did you ever know him before that Time?

Clay. I never did.

L. C. J. Do you remember that ever you dined with him?

Clay. I do not remember the Day exactly, and I do not remember that e'er I dined with him.

Mr. Justice Pemberton. But he is positive that he did not know him but a Year ago.

L. C. J. Do you remember whether Mr. Howard's Son was alive?

Clay. He had a Son alive at that Time.

Oates. He had one Son indeed that died a Year before Mr. Clay and I met there.

Howard. I speak of my eldest Son, who died two Years ago.

Clay. I never knew him.

L. C. J. Well, 'tis plain there was a Mistake in it, he spoke of a Son that was then, and is now alive, and you speak of your eldest Son that died two Years ago. Have you any more Witnesses, Mr. Langhorn?

Langhorn. No, my Lord, I have no more Witnesses.

L. C. J. Well, would you say any thing? If you would, say what you have a mind to say.

Langhorn. My Lord, I am charged here by two Witnesses, the first is Mr. Oates; if I can prove any one Point (in answer to that which he hath given in Evidence) not to be true, then I conceive, my Lord, he ought to be set aside: And I think it hath been clearly proved, That whereas he said Sir Thomas Preston came over with him in April, it hath been clearly proved he was then at Liege; and whereas he hath affirmed, Sir John Warner, Mr. Poole, and two or three more that were at St. Omers, came over with him, I have proved That not to be true, beyond any Contradiction: Then, as the Witnesses about his own not coming over in April, Mr. Hillsley says he came not over with him in the Pacquet-Boat; and the others say that he was sick in the Infirmary after Mr. Hillsley came away: These Points being thus proved, I think there can be no Credit given to what he says; for I can say, and I know it to be Truth, that from November 1677, to this very Day, I never saw him. I have been a close Prisoner so long, and have had but one Week's Time to provide, and therefore must be fain to take such Information as my Friends and Relations could pick up, to answer

what he hath said in his Narratives, supposing he would have said the same here; therefore I am not able to make any better Defence.

L. C. J. Did you never know Mr. Oates?

Langhorn. I have seen him once or twice.

L. C. J. When was that?

Langhorn. In Michaelmas-Term, 1677.

L. C. J. Upon what Occasion?

Langhorn. He brought me a Letter from one of my Sons, my younger Son in Spain, and then he told me he was going to St. Omers: He said he could not be settled in any of the Colleges in Spain, and therefore he would go to St. Omers: and from that Day I never saw him till I saw him in the Court: I hope, truly, I have well proved that he was not here in England when he says he was, but that I must leave to the Jury: But surely these Boys cannot be supposed to have any Design, or to be bribed by any Reward, for I never saw the Face of any of them, till now.

L. C. J. North. They are all Papists, and speak in a general Cause.

Langhorn. If that be an Objection against them, I think it is hard if they are not to be believed because they are Papists and Friends; then the other, on the contrary, are not to be believed because they are Enemies: I think it is clear that he did not lodge at Grove's House; and I think it is clear that he did not come over in the Pacquet-Boat with Mr. Hillsley, and that Sir Thomas Preston did not come over with him, nor Warner, nor Poole; and if any of these Points be clear for me, I think his Testimony ought to be set aside. Now, as to what Bedlow says, in Truth it is impossible for me to examine any Witnesses, and that I think will be your Lordship's Opinion; it will not seem probable that one that was in my way of Practice should become a Clerk to register Letters, and to keep Accounts of any particular Religious Order, as he makes me to do; or, if I were, that I should admit Mr. Bedlow to be privy to those Accounts; but that I must leave to the Court; my Lord, 'tis impossible to prove a Negative: Mr. Bedlow is a Person that I have no Acquaintance with, truly I do not know that ever I saw him before this time in all my Life; tho' it is possible I may have seen him, but I do not know that ever I did: Now, that I should admit such a Person to such a Privacy in Accounts of this Nature, (if I were guilty of them) seems very improbable; but yet, as I said, it is impossible to prove a Negative. If I had known what he would have charged upon me before, perhaps I might have made a better Defence; and for those Witnesses that I have had, they were prepared by such Friends as thought they would be useful for me. These Men have had Time to get their Witnesses together: I never saw one of mine till they came into the Court. I hope, my Lord, I shall find no Disadvantage in my coming here upon the Account of my Religion, for that would seem as if you condemned me meerly for that: I disclaim all Principles of Disloyalty; and I do assure your Lordship, I do believe it is Damnation to any one that shall go about to kill the King, or deprive him of his Government; I shall leave the rest to your Lordship and the Jury.

L. C. J. Look you, Gentlemen, you have had an Account, in the first Part of the Evidence, in general, That there was a general Design of bringing

bringing in *Popery*; and in order to that, as the best and quickest means to accomplish it, to destroy the King. And without doubt they were in the right, for that matter: To destroy the King, was the most effectual Course to introduce *Popery* they could take. Whether they would do it, or no, is not now any Question; but, How much Mr. Langhorn, the Prisoner at the Bar, is concerned in it? And that depends upon the Testimony of Witnesses.

The Testimony that Mr. Oates gives against him, amounts but to thus much: *I cannot affirm, says he, that Mr. Langhorn was at the Consult, on the 24th of April, at the White-Horse Tavern, where they Signed the Agreement to destroy the King: But this I can say, That the next Day, or within a Day or two, I went, by Order from the Fathers, Whitebread and Harcourt, to Langhorn's Chamber, and acquainted him with what they had Agreed upon.* And he swears, That Mr. Langhorn did lift up his Hands and Eyes, and pray to God to give them good Success. He tells you further, That after some Talk with him, about bringing in of *Popery*, and destroying of the King, he had also Discourse concerning several Commissions; that he saw about Seven or Eight of them, and that he told him, he had more: One for my Lord *Bel-lasis*, to be General, and one for himself to be Advocate-General, with others; but those, he says, he saw, and perused them: And tho' he does not know of the Delivery of those several Commissions, yet he does know of the Delivery of one to his Son, to be carried to my Lord of *Arundel's* Eldest Son: And he does say, That Mr. Langhorn did tell him, he had sent it; and swears, that he had some Discourse with him, concerning Killing the King.

Bedlow, he comes, and swears, That he was there twice, and that he saw him Transcribe Letters; and that the Effect of one of them was, That they were prepared with Arms, and all things, but Money. That the Garrisons also were ready to be delivered up to them, but they staid only for this, and Six Thousand Pounds would do it, which the *Benedictines* were to raise. If that came, then there was nothing wanting. They had an easy King, whom they could destroy as they pleased; an Army in Readiness, every thing in good Posture, and no Time like this, to bring in *Popery*: Which Discourse, he says, was before Mr. Coleman. Here is the Effect then of those Letters which by him were written into a Book, and in which this Plot and this Contrivance was mentioned. These were Transcribed by Mr. Langhorn, says he, while Mr. Coleman and I walked in his Chamber. I saw him write them. And he swears it.

Now the Matter is this; If these two Witnesses do swear true, then is this Indictment of *Treason* highly proved. For the contriving, *To bring in Popery, To Levy War, and, to Kill the King*, (which, when he was acquainted withal, he lift up his Hands and Eyes, and begg'd of God to give it good Success; and which *Bedlow* says was the Effect of the Letters that he Transcribed into the Book,) Mr. Langhorn himself will not deny to be High-Treason: And when this is Sworn here by two Witnesses, he must either Invalidate their Testimony, or acknowledge it Just, if you find him Guilty of

the Indictment with which he is charged. Now the Question is, What Defence there is against it?

Mr. Langhorn says, If I can disprove a Witness in any one material Thing that he says, then will it take off from his Credit in every thing he says. And first as to Mr. Oates; Saith he, I did know him, I must confess, but I never saw him since the Year 1677. The thing that Mr. Oates charges him with, is in April or May 1678, or thereabouts. And Mr. Langhorn says, he never saw him since 77. Why Mr. Oates, saith he, was not here in England; and produces a great many Witnesses, that came from Beyond-Sea, to testify, That Mr. Oates was there in April and May, and longer. And whereas Mr. Oates says, That there came over in his Company with him, Sir John Warner, Sir Thomas Preston, Mr. Poole, and others; He proves by some Witnesses, that Mr. Oates was there both Months; and by others, that Sir John Warner was at *Watton*, and Sir Thomas Preston at *Liege*, and Poole at *St. Omers*, at the Time that Mr. Oates says they came over with him: And this, says he, I hope will be plain Evidence why you should not believe Mr. Oates; and the rather, because these Witnesses are such, says he, as that I do not so much as know their Faces; and you will not presume, that People to whom I am wholly a Stranger, should come hither, from *St. Omers*, to testify a Lye for me.

In Answer to this, I say, 'Tis no good Argument for all that; for tho' I believe they are Strangers to him, they are not Strangers to the Errand they came about. They came to defend all the *Roman* Catholicks, whom we would hang here for a Plot; and they are sent over for that Purpose, as far as their Testimony can go. How far that is, tho' they are not upon their Oaths, (for the Law will not permit it) I must say to you, in Favour of the Prisoner at the Bar, as I did to the Jury Yesterday, You must not take it, therefore, as if it were meer Talk, and no more; nor reject them too much because they do not swear: They would swear, 'tis likely, if the Law would allow it. Only one Remark I must observe to you upon their own Evidence: The *St. Omers* Gard'ner (which is one of them) takes upon him to give a very exact Account of Mr. Oates, in the Months of April and May; but when I came to enquire, what he knew of him in the Months of June and July; he tells you, Those were not the Months in Question.

But on the other Side, did not the Principles of their Religion so teach, and make us to know, that they will not stick at any Wickedness to propagate it: Did not the best and chiefest Doctors of their Church Preach and Print it: Did not his Holiness, the Pope, allow it; and never condemn any one Book in the World that hath asserted the Lawfulness of *DEPOSING* and *KILLING* *KINGS*, for separating from their Religion: Did not they Teach and Practise all sorts of Equivocations, and that a Lye does God good Service, if it be for the Propagation of the Faith: Were not these Young Boys capable of having this Doctrine instill'd into them; and, Were not they bred up in Colleges chiefly to serve that End; Then Mr. Langhorn had said something. Neither

ther are these Things artificially objected against them, for the Doctrines of their Church are so False and Pernicious, so Destructive and so Bloody; and the Way they take to come off from all Vows, Oaths, and Sacraments, by Dispensations before-hand, or Indulgence and Pardons afterwards, is a Thing still so much worse, that they are really unfit for human Society. They should get their Pope, if they would not have it thrown into their Dish, and have it believed by us; I say, they should get the Pope of *Rome* to Decry and Anathematize such Doctrines of Deposing and Killing Kings, and Discharging Subjects from their Allegiance: But that will never be; for his Holiness, the Pope, will keep himself where he is, and will part with Nothing that he hath of Advantage over any.

Look you, Gentlemen, thus much I cannot omit, with a good Conscience, to say, The Profession, the Doctrines, and the Discipline of the Church of *Rome* is such, that it does take away a great Part of the Faith that should be given to these Witnesses; nevertheless, we must be fair, and should hear them, if we could not answer what they alledge, by Evidence to the contrary. Mr. *Oates*, therefore, to justify himself, hath produced, I think, Seven or Eight Witnesses, that do prove, that he was here in the latter end of *April*, and beginning of *May*, which does contradict all their Testimony, who do say, he was Abroad all along, from *December* to *June*, and that they saw him every other Day.

'Tis true, if we were certain that what these Young Men spake, were indeed so as they say, it is impossible for Mr. *Oates*'s Testimony to be believed. If I were satisfied, that really and truly Mr. *Oates* was not here, but was Six Months together there, and that he hath invented this Story, and made this himself; I could no longer confide in the Man, nor find Mr. *Langhorn* Guilty: Yet is not the Time really the Substance of the Thing, tho' he hath made it so now, because the Consult was the 24th of *April*, at which he was present; and he did go, he says, to Mr. *Langhorn*, within a Day or two after, to acquaint him with the Resolution of it.

To this End hath Mr. *Oates* produced Seven or Eight Witnesses that saw him, as they swear. He hath produced a Minister, that says he saw him in a Disguise, but having known him before, recollected him to be the Man. He hath produced a Woman that agrees with that Story; for she says, that he came and talk'd with her about it, and told her then, that he had seen Mr. *Oates* the Day before, and gives you a Token why it was about that Time of the Year. Now, if this be not a new Matter, and new found out, this Woman (if she swears true) does justify the other in what he did say a Year ago, when they could never imagine that any great Weight and Moment should be laid upon that Accident of his seeing *Oates* in the Street. He hath produced to you the Coach-man of Sir *Richard Barker*, that says, he knew him well, when he came to his Master's House. There he call'd him by his Name, That asking for Dr. *Tongue*, but not finding him within, he went away presently; That he was in Disguise; That they acquainted their Master with it, as soon as he

came Home; and their Master says, That so they did. And the Person that then lived in the House, and now is dead, said to the Maid, Yonder is Mr. *Oates*, I think he is either turned Quaker, or Priest; What a Kind of Habit he is got into! No, said the Maid, he can't be a Quaker, because he wears a Perriwig; but she says, he named him to her, *Oates*, and that this is the Man, she knew him since. 'Tis the same Man that the young Man spoke to her about.

He hath produced farther one of their own Religion, one that is a Papist still, and he says, he saw him twice at Mr. *Charles Howard*'s in *Arundel-House*. There was indeed some Perplexity they would have put upon it, by reason of Mr. *Howard*'s Son being dead a Year before; but the Witness says he did not know the Son. A Papist he confesses himself expressly to be, if not a Priest; and I would not ask him the Question, because 'tis not fair to make him accuse himself: But he does swear expressly, he saw Mr. *Oates* at Mr. *Charles Howard*'s, in *April* or *May*, which contradicts all their Witnesses. He also produces a School-master, that tells that he Dined with him the Beginning of *May*: And I remember it, says he, very well, for we Dined by the Fire-side, which gave me Occasion to wonder at it, in *May*, and remember it. He says, moreover, that he staid three or four Hours with him, and talk'd of all his Travels in *Spain*. Now must all these People be downright Perjured; it can be no Mistake, but they are all falsely forsworn, if there be not Truth in it. And when here are Seven or Eight Witnesses positively Swearing against the Affirmation of so many others, we leave the Credit of both Sides to you, who are the Judges of the Fact.

There is indeed, (and I will repeat it for you, for I would not miss any thing, as near as I can, that would make for the Prisoner's Advantage); there is a Proof concerning Sir *John Warner*, and *Preston*, and *Poole*, that they were there at the Time, and there hath been no Answer given to it: But I say still, 'tis the same Thing; for if you do not believe those Witnesses to speak true, that affirm that *Oates* was there all the Time, but rather believe that he was here, by Seven or Eight People that testify it: I say, if you cannot believe he was there, you will never change your Mind for one Circumstance, whether he came over with Sir *John Warner* and others, or not; for it is but a Circumstance.

Langhorn. They are not the same Witnesses.

L. C. J. 'Tis true, they are not; you have Four or Five Witnesses that speak apart, but two of them do say, that they knew *Oates* also was there at the same Time that they speak that Sir *John Warner* was at home.

Langhorn. Not those two of *Liege*, my Lord, about Sir *Thomas Preston*.

L. C. J. No, they do not, for I leave it to you of the Jury, upon the whole Matter; there is little more to be said by me. If so be Credit is to be given to these Witnesses of *Oates*, more than to the others, then you must find him Guilty, and the rather, because I do a little suspect, they come over instructed, to say what they do. You find they apply themselves to the Thing they came for; and not only the Gard'ner, but

but another could tell you (which hath a very great Influence upon me, as to their Credit) that the Months of *April* and *May* were the Months in *Question*, and they were not to be examined any farther. So that it looks as if these Young-Men were sent of an Errand, and tho you do not know them, Mr. *Langborn*, and are innocent as to any tampering with them, yet I am afraid they are come to serve the Catholick Cause, as they call it. For they are very well taught, and they keep to those Months of *April* and *May*, of all the Months in the Year. Then they bring the Woman of the *White-Horse-Tavern*, where the Consult of the 24th of *April* was; and what is the Use they would make of her? why, it is, that Mr. *Oates* should make a Story of Fifty Fathers being in her Tavern at one Time (but he insists now there was a matter of Twenty) when there was not a Room in her House, that would hold Ten: But you hear how she was answered, from Testimony rising up in the Court of themselves, that were acquainted with her House, and know, that Forty People may Dine in two of her Rooms: And the King's Council observed well, how Chance it self hath put to Silence this Evidence. So that when Matters are alledged to be done at *Home*, there is not so great a Difficulty as in proving Things that are done *Abroad*.

I leave it to you, Sirs. Here is a Gentleman that stands at the Bar, upon his Life, on the one Hand; but if Mr. *Oates* says true, all our Lives, and Liberties, our King, and Religion, are at the Stake, on the other Hand. God defend that innocent Blood should be shed, and God defend us also from Popery, and from all Popish Plots, and from all the bloody Principles of Papists, which are very Cruel, as we know by Experience; and you cannot blame us to look to our selves. For I must tell you, the Plot is proved as plain as the Day, and that by *Oates*; and farther, *Oates's* Testimony is confirm'd by that which can never be answered. For when he comes at his first Testimony, and says, that upon the 24th of *April*, such a Consult was Summoned, and Held, it falls out, that five Days after a Letter is found amongst *Harcourt's* Papers, (a principal Person in the Design,) which does order the Meeting upon the 24th of *April*, being the Day after St. *George's* Feast, and gives them a Caution that they should not come too soon to Town; that they should not appear too much in *London*, for fear of discovering the Design, and of disclosing *That, the Nature of which requires Secrecy*. Plainer than this is hardly to be writ from a Jesuit, especially in so dangerous a Matter. And what can be answered to this Letter, that is found in a Priest's Hands, four Days after Mr. *Oates* had given in his Information about it?

Put all this together, and if you be satisfy'd herein, you may judge the better, as to the particular Business of Mr. *Langborn*, how far the Testimony of *Oates* and *Bedlow* affect him. You know what you do. And for *Bedlow*, 'tis true, what he says, that there is nothing to be said to his Evidence, because no Man can prove a Negative; and he swears expressly, that he had this Discourse with him, of these Treasonable Matters, killing the King, and altering Religion. If this be so, and you are satisfy'd in that particular, (and that a Man may very well be, as to the

Substance,) I do not see any considerable Answer that is given. I say once more, there is the Life of a Gentleman at Stake, and there are all our Lives at the Stake: Follow you your Consciences; do Wisely, do Honestly, and consider what is to be done.

L. C. J. North. With my Lord's Leave, because there hath been mention made of this Letter, which goes much in Confirmation of Mr. *Oates's* Testimony; it is in Court, but it hath not been produc'd at the Bar, I desire it may, if your Lordship please.

Sir *Cr. Levinz.* It is here in Court, my Lord, we will give your Lordship an Account how we came by it. Swear Sir *Thomas Doleman.* Which was done.

Sir *Cr. Levinz.* Sir *Thomas*, did you find the Paper amongst Mr. *Harcourt's* Papers?

Sir *Thomas Doleman.* I found this Letter amongst the Papers of Mr. *Harcourt*, that were committed to my Search.

L. C. J. When did you find it, Sir?

Sir *Thomas Doleman.* It was some five or six Days after Mr. *Oates* had given in his Information to the King and Council.

L. C. J. Do you mark it, Gentlemen? After Mr. *Oates* had told the Council of the Consult in the 24th of *April*, is this Letter found.

L. C. J. North. 'Tis in Confirmation of Mr. *Oates's* Testimony.

Then the Letter was read, being the same with that in Page 843, in the Trial of Whitebread, Harcourt, &c.

L. C. J. This Letter is only as to the Plot in general, and not to be applied to Mr. *Langborn* in particular.

Langborn. Mr. *Oates* might very well be able to speak of this Meeting of this Congregation, as they call it, before this Letter was taken, 'tis easy to believe, because Mr. *Oates* being at St. *Omers*, I suppose the like Letters of Summons might come over to St. *Omers*, to fetch some of them over hither.

L. C. J. You say well, but if you have but the Luck to give me an Answer to a Thing or two, you'll have better Fortune, and more Skill than the Priests. 'Tis true, he might, perchance, know of the Consult, if he were at St. *Omers*: But will you tell us what that Design was? And what is the meaning of the putting those Words into the Letter, *That they should not come too soon to London, nor appear too much about Town, for fear of discovering that Design*; which they knew required Secrecy in its own Nature?

Langborn. My Lord, I will tell you what I take to be the Meaning of that Letter. The Design, was the holding of a Congregation. There were divers of them, and it was like the Meeting of a Dean and Chapter in a College, and he bids them not to come too long before the Time, for they were certainly in very great Danger to be Taken.

L. C. J. What! at that Time? What Danger were they in then?

Langborn. Yes, my Lord, the Parliament was then sitting.

L. C. J. But you know what Indulgence there was to all Papists at that Time, if they would be but quiet. Well, but put it all together, they

were to come to *London*, not too soon, nor to appear too much, because the Parliament was Sitting, for fear of discovering the Design. What, was that only for Mr. *Whitebread*, and his Fellows, to make an Officer! Can it be answered by that?

Langhorn. Certainly, their holding of a Congregation in *England* does require Secrecy.

L. C. J. Gentlemen, here is the Thing, this is only an Evidence to the Plot in general, that there is a Plot, and you may make what reasonable Use you think fit of it. It is not a particular Evidence against Mr. *Langhorn's* particular Person, only it shews there was a Plot, and you have heard what they say to him in particular about it. And I'll tell you one Thing more, which, if *Oates* swears true, concerns you very much. He saith, they were a talking of the Ten Thousand Pounds that Sir *George Wakeman* was to have for poisoning the King, when their other Attempts had failed, and that he would not take under Fifteen Thousand Pounds: You, Mr. *Langhorn*, was very angry, and said it was a base, covetous Thing in him; and it being such a publick Cause, it would have been no matter if he had done it for nothing. I have repeated as much as I can well remember, without any Prejudice to Mr. *Langhorn's* Testimony. And so I leave it with you.

Then an Officer was sworn to keep the Jury, who withdrew to consider of their Verdict; and the Judges also went off from the Bench. The Lord Chief Justice telling the Auditory, that the Day being so far spent, and the Commission determining that Night, because of the Term, Sir Geo. Wakeman, and the rest, could not be Tried till next Sessions. And after a short space the Jury returned, and answering to their Names, delivered in their Verdict.

Clerk of the Crown. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. *Richard Langhorn*, hold up thy Hand. Look upon the Prisoner: You of the Jury, How say you? Is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. What Goods or Chattels?

Foreman. None, to our Knowledge.

Cl. of Cr. Harken to the Verdict, as the Court hath Recorded it: You say that *Richard Langhorn* is Guilty of the High-Treason whereof he stands Indicted: But you say that he had no Goods or Chattels, Lands or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge. And so you say all?

Omnes. Yes.

Mr. Recorder. It is a Verdict according to the Justice of the Evidence.

Upon which there was a very great Shout.

Then Mr. Recorder sent for the Prisoners Convicted before, to receive their Judgment; and they were brought to the Bar, and the Court proceeded thus:

Cl. of Cr. *Richard Langhorn*, hold up thy Hand:

Thou standest Convicted of High-Treason; What canst thou say for thy self, why the Court should not give Judgment on thee to Die, according to Law?

Langhorn. I have nothing to say.

Cl. of Cr. *Thomas White*, otherwise *Whitebread*, hold up thy Hand: Thou standest Convicted, in *Middlesex*, of High-Treason; What canst thou say for thy self, why the Court should not give Judgment on thee to Die, according to Law?

Whitebread. I can say nothing.

Cl. of Cr. *John Fenwick*, hold up thy Hand: Thou art in the same Case with him that went last before thee; What canst thou say, &c.

Fenwick. I have nothing more to say.

Cl. of Cr. *William Harcourt*, hold up thy Hand: Thou art in the same Case with the Two that went last before thee; What canst thou say, &c?

Harcourt. I have nothing at all to say.

Cl. of Cr. *John Gavan*, hold up thy Hand: Thou art in the same Case with the Three that went last before thee; What canst thou say, &c?

Gavan. I have nothing more to say, than I did say. God bless the King, and the Kingdom.

Cl. of Cr. *Anthony Turner*, hold up thy Hand: Thou art in the same Case with the Four that went last before thee; What canst thou say, &c?

Turner. I have nothing to say.

Cl. of Cr. Then, Cryer, make Proclamation of Silence while Judgment is given, upon pain of Imprisonment. *Which was done, on both sides of the Court.*

* *Mr. Recorder*. You the Prisoners at the Bar: You have been severally Arraigned, and now are severally Convicted of High-Treason: And that attended with all the ill Circumstances, that can be possible to aggravate so high a Crime. You attempted the Life of the best of Kings, who was full of Mercy and Compassion, even to You, under whom you might still have lived peaceably and quietly, had not your own Malice and Mischiefs prevented it. Nor were you satisfied with that alone; for you intended thereby to make way for the Destruction of the greatest part of the Kingdom, by a publick Massacre, by cutting the Throats of all Protestants; for that also appears to be your Design: To effect which, the nearest Way, and the best Means you could think of, was first to kill the King. And this was to be done, for the introducing of another Religion, as you call it; which, as we think, we more properly call Superstition; and so root out the best Religion that is Established among us by Law. And I therefore call it the Best of Religions, even for your sakes; for had it not been for the sake of our Religion, that teaches us not to make such Requitals, as yours seems to teach you, you had not had that fair formal Way of Trial, and of being Heard, as you now have been; but Murder would have been returned to you, for the Murder you intended to commit, both upon the King, and most of his People. What a strange sort of Religion is that, whose Doctrine seems

* *Sir George Jefferies.*

to allow them to be the greatest Saints in another World, that can be the most impudent Sinners in This? Murder, and the Blackest of Crimes here, are the best Means, among you, to get a Man to be Canonized a Saint hereafter. Is it not strange, that Men professed in Religion, that use all Endeavours to gain Profelytes for Heaven, should so pervert the Scripture, (as I perceive some of you have done) and make That justify your impious Designs, of Assassinating Kings, and Murdering their Subjects? What can be said to such a sort of People, the very Foundation of whose Religion is laid in Blood? Nay, lest you should not be able so easily to persuade them so cleverly to imbibe those Bloody Principles, you do Absolve them from all the Obligations that they remain under, of Obedience to their Sovereign; you do therefore from the Pulpits publicly teach, That the Oaths of Allegiance and Supremacy signify nothing. It's a strange Religion, that applies every thing to these wicked and detestable Purposes.

There is one Gentleman that stands at the Bar, whom I am very sorry to see, with all my Heart, in this Condition, because of some Acquaintance I have had with him heretofore: To see a Man who hath Understanding in the Law, and who hath arrived to so great an Eminency in that Profession, as that Gentleman hath done, should not remember, that 'tis not only against the Rules of all Christianity, but even against the Rules of his Profession, to attempt any Injury against the Person of the King. He knows, that it is against all the Rules of Law, to endeavour to introduce any Foreign Power into this Land. So that you sinned both against your Conscience, and your own certain Knowledge. But your several Crimes have been so fully proved against you, that truly, I think no Person that stands by, can be in any Doubt of the Guilt: Nor is there the least room for the most scrupulous Man to doubt of the Credibility of the Witnesses, that have been Examined against you: And sure I am, you have been fully Heard, and stand fairly Convicted of those Crimes you have been Indicted for.

I rather mention these things to you, because I know not whether you will think it necessary to have any Assistance, (I mean, such Assistance as by the Law of the Land is to be allowed to Persons in your Condition, of any Protestant Divines, or of any other Protestants) to prepare you for another World. And tho what hath been said proceeds from a Lay-man, to you that are Professed in Religion; yet I hope, it will not be thought amiss, it being intended for your Advantage. Let that vast Eternity, that you are ere long to enter into, you are now on the Brink of it; I say, let that prevail with you to consider, that there is a God in Heaven, who will call you to an Account for every one of those private Consultations, of which we can never come to any certain Knowledge. Tho you have put all those Obligations of Secrecy, upon your Party, which Religion could tie them by; tho you give them the Sacrament, not only to oblige them to do wicked Acts, but to conceal them when they are done; yet remember, there is a God in Heaven, from whom you cannot keep them secret. All your Ties and Obligations, all the Dispensations that you can give

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to your Inferiors, or your Superiors to you, will never dispense with that Account you are to give to the Great God of Heaven.

Gentlemen, with great Charity to your Immortal Souls, I desire you, for the Love of God, and in the Name of his Son Jesus Christ, consider these Things; for it will not be long ere you be Summoned before another Tribunal about them: And Great and Dreadful is the Day of Judgment, at which You and all Men must appear.

And I hope all Persons that stand by, will take Notice, that it is not the Principles of the Protestant Religion, to Murder any, (let it be upon their own Heads that profess it) for we abhor these Things. And we hope these publick Testimonies of our Religion, and this fair sort of Trial, will not only confirm those that are Protestants now, but will prevail upon those whom they have inveigled into their Persuasion, to desert such a Religion, till such time as they alter their Principles, from the Bloodiness and Inhumanity they are stained with, and which these Men have instilled into all their Profelytes. And this I thought fit to premise to you in great Compassion and Charity. And I pray God it may have that Effect which I designed; that is, that it may put you in Mind of that Great Immortality that you are to enter upon ere long. And thus, having given you this Hint, and the Law having had its Course upon you, you have been fairly Tried, fully Heard, and have nothing to say, why that Judgment should not be pronounced, which the Law hath designed against such Offenders: I am, therefore, in the Name of the Court, to do the Duty which the Law requires of the Court; and I do, in the Name of the Court, pronounce this to be your Sentence:

That you be conveyed from hence to the Place from whence you came, and from thence you be drawn to the Place of Execution, upon Hurdles; That you be there severally hang'd by the Neck; That you be cut down Alive; That your Privy Members be cut off; That your Bowels be taken out, and burnt in your View; That your Heads be sever'd from your Bodies; That your Bodies be divided into four Quarters, and your Quarters to be at the King's Dispose. And the God of infinite Mercy be merciful to your Souls.

After which there was a very great Acclamation.

Whitebread. My Lord, since we have not long to live, we desire we may have the Benefit of the Company of our Friends, that they may be permitted to come at us.

Mr. Recorder. Yea, 'tis fit they should have the Comfort of their Friends and Relations; and God forbid, but we should do all we can to make their Passage as comfortable as may be. You must keep that Decorum that becomes such as are in your Condition. You know you are under the publick Notice of the World, therefore you must use the Liberty that is granted to you with that Moderation and Prudence, that 'tis fit to use such a Privilege with; for I shall not deny you any lawful Favour.

Langborn. Sir, there will be more People come to me than ordinary, in Regard of their Business, that I have had in my Hands;

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I desire they may have the Liberty to come to me.

Mr. Recorder. I would not deny *Mr. Langhorn* any thing that I could grant him: If it be any Business that any Person would have an Accompt of, which you have been concern'd in for them, they may be permitted to come to you.

Capt. Richardson. There is no Body to be in private with him, to say any Thing but what I shall hear?

Langhorn. Yes, my Lord, I hope my Wife and Children may.

Mr. Recorder. Yes, God forbid but he should have his Wife and Children with him.

Langhorn. Or any others, that come about Business?

Mr. Recorder. Yes, Captain, with the Caution I have given you.

Then the Court Adjourned for London, to Guild-Hall, the 14th of July, and for London and Middlesex, in the Old-Baily, the 16th of July next. And the Prisoners were carried back to the Goal.

On Friday, June 20, the five Jesuits were drawn upon three Hurdles to the place of Execution.

In the first Hurdle went *Thomas Whitebread* and *William Harcourt*; in the second, *Anthony Turner* and *John Gavan*; and in the third, *John Fenwick*. And being come to the Place of Execution they were all put into one Cart.

Then *Gavan* said, If God give us his Grace it's no Matter where we die, at the Gallows, or elsewhere. The Executioner fastning the Halters,

Gavan said, I hope you will be civil to dying Men.

Executioner. I will be civil to you.

Gavan. I hope they will give us leave to speak.

The last Speech of THOMAS WHITEBREAD.

I suppose it is expected I should speak something to the Matter I am condemn'd for, and brought hither to suffer; it is no less than the contriving and plotting his Majesty's Death, and the Alteration of the Government of the Church and State. You all either know, or ought to know, I am to make my Appearance before the Face of Almighty God, and with all imaginable Certainty and Evidence to receive a final Judgment for all the Thoughts, Words, and Actions of my whole Life. So that I am not now upon Terms to speak other than the Truth; and therefore, in his most holy Presence, and as I hope for Mercy from his divine Majesty, I do declare to you here present, and to the whole World, that I go out of the World as innocent and as free from any Guilt of these Things, laid to my Charge in this Matter, as I came into the World from my Mother's Womb: And that I do renounce from my Heart, all manner of Pardons, Absolutions, Dispensations for Swearing, as Occasions or Interest may seem to require, which some have been pleas'd to lay to our Charge, as Matter of our Practice and Doctrine; but is a thing so unjustifiable and unlawful, that I believe, and ever did, that no Power on Earth can authorize me, or any Body, so to do. As for those who have most falsely accus'd me (as Time, either

in this World or in the next, will make appear) I do heartily forgive them, and beg of God to grant them his holy Grace, that they may repent their unjust Proceedings against me; otherwise they will, in Conclusion, find they have done themselves more Wrong than I have suffer'd from them, though that has been a great deal. I pray God bless his Majesty both temporally and eternally, which has been my daily Prayer for him, and is all the Harm that I ever intended or imagined against him. And I do, with this my last Breath, in the sight of God declare, that I never did learn, or teach, nor believe, nor can, as a Catholick, believe, that it is lawful, upon any Occasion or Pretence whatsoever, to design or contrive the Death of his Majesty, or any Hurt to his Person; but on the contrary, all are bound to obey, defend, and preserve his sacred Person, to the utmost of their Power. And I do moreover declare, that this is the true and plain Sense of my Soul, in the sight of him who knows the Secrets of my Heart, and as I hope to see his blessed Face, without any Equivocation, or mental Reservation. This is all I have to say concerning the Matter of my Condemnation; that which remains for me now to do, is to recommend my Soul into the Hands of my blessed Redeemer, by whose only Merits and Passion I hope for Salvation.

The last Speech of WILLIAM HARCOURT.

The Words of dying Persons have been always esteem'd as of greatest Authority; because utter'd then, when shortly after they are to be cited before the high Tribunal of Almighty God. This gives me hopes that mine may be look'd upon as such; therefore I do here declare, in the Presence of Almighty God, the whole Court of Heaven, and this numerous Assembly, that as I ever hope, by the Merits and Passion of my Lord and sweet Saviour Jesus Christ, for eternal Bliss, I am as innocent as the Child unborn of any thing laid to my Charge, and for which I am here to die.

Sheriff How. Or Sir *Edmund-bury Godfrey's* Death?

Harcourt. Or Sir *Edmund-bury Godfrey's* Death.

Sheriff How. Did not you write that Letter concerning the Dispatch of Sir *Edmund-bury Godfrey*?

Harcourt. No, Sir; these are the Words of a dying Man, I would not do it for a thousand Worlds.

Sheriff How. How have you liv'd?

Harcourt. I have liv'd like a Man of Repute all my Life, and never was before the Face of a Judge till my Trial: No Man can accuse me. I have, from my Youth, been bred up in the Education of my Duty towards God and Man.

Harcourt. And I do utterly abhor and detest that abominable false Doctrine laid to our Charge, that we can have Licences to commit Perjury, or any Sin to advantage our Cause, being expressly against the Doctrine of *St. Paul*, saying, *Non sunt facienda mala, ut eveniant bona*; Evil is not to be done that Good may come thereof. And therefore we hold it in all Cases unlawful, to kill or murder any Person whatsoever, much more our lawful King, now reigning, whose personal and temporal Dominions we are ready to defend with

with our Lives and Fortunes, against any Opponent whatsoever, none excepted. I forgive all that have contriv'd my Death, and humbly beg Pardon of Almighty God for them. And I ask Pardon of all the World. I pray God bless his Majesty, and grant him a prosperous Reign. The like I wish to his Royal Consort, the best of Queens. I humbly beg the Prayers of all those who are in the Communion of the *Roman Church*, if any such be present.

The last Speech of ANTHONY TURNER.

Being now, good People, very near my End, and summon'd, by a violent Death, to appear before God's Tribunal, there to render an Account of all my Thoughts, Words, and Actions, before a just Judge, I conceive I am bound in Conscience to do myself that Justice, as to declare upon Oath my Innocence from the horrid Crime of Treason, with which I am falsely accused: And I esteem it a Duty I owe to Christian Charity, to publish to the World before my Death, all that I know in this Point, concerning those Catholics I have conversed with since the first Noise of the Plot, desiring from the Bottom of my Heart that the whole Truth may appear, that Innocence may be clear'd, to the great Glory of God, and the Peace and Welfare of the King and Country. As to myself, I call God to witness, that I was never in my whole Life present at any Consult or Meeting of the Jesuits, where any Oath of Secrecy was taken, or the Sacrament, as a Bond of Secrecy, either by me, or any one of them, to conceal any Plot against his Sacred Majesty; nor was I ever present at any Meeting or Consult of theirs, where any Proposal was made, or Resolve taken or signed, either by me or any of them, for taking away the Life of our dread Sovereign; an Impiety of such a Nature, that had I been present at any such Meeting, I should have been bound by the Laws of God, and by the Principles of my Religion (and by God's Grace would have acted accordingly) to have discovered such a devilish Treason to the Civil Magistrate, to the end they might have been brought to condign Punishment. I was so far, good People, from being in *September* last at a Consult of the Jesuits at *Tixall*, in Mr. *Ewers's* Chamber, that I vow to God, as I hope for Salvation, I never was so much as once that Year at *Tixall*, my Lord *Aston's* House. 'Tis true, I was at the Congregation of the Jesuits, held on the 24th of *April* was twelve-month; but in that Meeting, as I hope to be sav'd, we meddled not with State-Affairs, but only treated about the Concerns of our Province, which is usually done by us, without Offence to temporal Princes, every third Year, all the World over.

Sheriff How. You do only justify yourselves here. We will not believe a Word that you say. Spend your time in Prayer, and we will not think your time too long.

Tur. I am, good People, as free from the Treason I am accused of, as the Child that is unborn; and being innocent, I never accus'd myself in Confession of any thing that I am charg'd with. Certainly, if I had been conscious to myself of any Guilt in this kind, I should not so frankly and freely, as I did, of my own Accord, have presented myself before the King's most honourable

Privy Council. As for those Catholics which I have conversed with since the Noise of the Plot, I protest before God, in the Words of a dying Man, that I never heard any one of them, either Priest or Layman, express to me the least Knowledge of any Plot, that was then on foot amongst the Catholics, against the King's most excellent Majesty, for the advancing the Catholick Religion. I die a *Roman* Catholick, and humbly beg the Prayers of such, for my happy Passage into a better Life. I have been of that Religion above thirty Years, and now give God Almighty infinite Thanks for calling me by his holy Grace to the Knowledge of this Truth, notwithstanding the Prejudice of my former Education. God of his infinite Goodness bless the King, and all the Royal Family, and grant his Majesty a prosperous Reign here, and a Crown of Glory hereafter. God in his Mercy forgive all those which have falsely accused me, and have had any Hand in my Death; I forgive them from the Bottom of my Heart, as I hope myself for Forgiveness at the Hands of God.

The last Speech of JOHN GAVAN.

Dearly beloved Countrymen,

I am come now to the last Scene of Mortality, to the Hour of my Death, an Hour which is the Horizon between Time and Eternity, an Hour which must either make me a Star to shine for ever in the Empire above, or a Firebrand to burn everlastingly amongst the damned Souls in Hell below; an Hour in which, if I deal sincerely, and with a hearty Sorrow acknowledge my Crimes, I may hope for Mercy; but if I falsely deny them, I must expect nothing but eternal Damnation; and therefore, what I shall say in this great Hour, I hope you will believe. And now in this Hour I do solemnly swear, protest and vow, by all that is sacred in Heaven and on Earth, and as I hope to see the Face of God in Glory, that I am as innocent as the Child unborn of those treasonable Crimes, which Mr. *Oates*, and Mr. *Dugdale* have sworn against me in my Trial, and for which Sentence of Death was pronounced against me the Day after my Trial. And that you may be assur'd that what I say is true, I do in the like manner protest, vow, and swear, as I hope to see the Face of God in Glory, that I do not, in what I say unto you, make use of any Equivocation, or mental Reservation, or material Prolocution, or any such like way to palliate Truth. Neither do I make use of any Dispensations from the Pope, or any Body else; or of any Oath of Secrecy, or any Absolution in Confession, or out of Confession, to deny the Truth: but I speak in the plain Sense which the Words bear; and if I do speak in any other Sense, to palliate or hide the Truth, I wish with all my Soul that God may exclude me from his heavenly Glory, and condemn me to the lowest Place of Hell-Fire: And so much to that Point.

And now, dear Country-men, in the second place, I do confess and own to the whole World, that I am a *Roman* Catholick, and a Priest, and one of that sort of Priests called *Jesuits*; and now because they are so falsely charged for holding King-killing Doctrine, I think it my Duty to protest to you with my last dying Words, that neither I in particular, nor the *Jesuits* in general, hold any such Opinion, but utterly abhor and detest

detest it: And I assure you, that amongst the vast Numbers of Authors, which among the *Jesuits* have printed Philosophy, Divinity, Cases, or Sermons, there is not one, to the best of my Knowledge, that allows of King-killing Doctrine, or holds this Position, That it is lawful for a private Person to kill a King, although an Heretick, although a Pagan, although a Tyrant: There is, I say, not one *Jesuit* that holds this, except *Mariana* the *Spanish* Jesuit, and he defends it not absolutely, but only problematically, for which his Book was called in, and that Opinion expunged and censur'd. And is it not a sad thing, that for the Rashness of one single Man, while the rest cry out against him, and hold the contrary, that a whole Religious Order should be sentenc'd? But I have not Time to discuss this Point at large, and therefore I refer you all to a Royal Author, I mean the wise and victorious King *Henry* the Fourth of *France*, the Royal Grandfather of our present gracious King, in a publick Oration which he pronounced, in Defence of the *Jesuits*, amongst other things, declaring, that he was very well satisfied with the *Jesuits* Doctrine concerning Kings, as being conformable to the best Doctors in the Church. But why do I relate the Testimony of one single Prince, when the whole Catholick World is the *Jesuits* Advocate? Therein chiefly *Germany*, *France*, *Italy*, *Spain*, and *Flanders*, trust the Education of their Youth to 'em in a very great measure; they trust their own Souls to be govern'd by 'em, in the Administration of the Sacraments. And can you imagine so many great Kings and Princes, and so many wise States should do, or permit this to be done in their Kingdoms, if the *Jesuits* were Men of such damnable Principles as they are now taken for in *England*?

In the third place, dear Country-men, I do protest, that as I never in my Life did machine, or contrive either the Deposition or Death of the King, so now at my Death, I do heartily desire of God to grant him a quiet and happy Reign upon Earth, and an everlasting Crown in Heaven. For the Judges also, and the Jury, and all those that were any ways concern'd either in my Trial, Accusation, or Condemnation, I do humbly ask Pardon of God, to grant them both temporal and eternal Happiness. And as for Mr. *Oates* and Mr. *Dugdale*, I call God to witness, they by false Oaths have brought me to this untimely End. I heartily forgive them, because God commands me so to do; and I beg of God for his infinite Mercy to grant them true Sorrow and Repentance in this World, that they may be capable of eternal Happiness in the next. And having discharged my Duty towards my self, and my own Innocence towards my Order, and its Doctrine to my Neighbour, and the World, I have nothing else to do now, my Great God, but to cast my self into the Arms of your Mercy. I believe you are One divine Essence and Three divine Persons; I believe the Second Person of the Trinity became Man to redeem me: and I believe you are an eternal Rewarder of the Good, and an eternal Chastiser of the Bad. In fine, I believe all you have reveal'd for your own infinite Veracity; I hope in you above all things for your infinite Fidelity; and I love you above all things for your infinite Beauty and Goodness; and I am heartily sorry that ever I offended so

great a God, with my whole Heart: I am contented to undergo an ignominious Death for the Love of you, my dear Jesu, seeing you have been pleased to undergo an ignominious Death for the Love of me.

The last Speech of JOHN FENWICK.

Good People, I suppose you expect I should say something as to the Crime I am condemn'd for, and either acknowledge my Guilt, or assert my Innocency. I do therefore declare before God and the whole World, and call God to witness, that what I say is true, that I am innocent of what is laid to my Charge of Plotting the King's Death, and endeavouring to subvert the Government, and bring in a Foreign Power, as the Child unborn; and that I know nothing of it, but what I have learnt from Mr. *Oates* and his Companions, and what comes originally from them.

Sheriff How. If you can make a good Conclusion to your own Life, it will do well; consider if your Letters did not agree with the Evidence, that's another matter.

Fenwick. I assure you, I do renounce all Treason from my very Heart. I have always, and ever shall disown the Opinion of such devilish Practices as these are of King-killing. If I speak not the whole Frame of my Heart, I wish God may exclude me from his Glory.

Sher. How. Those that murdered Sir *Edmund-bury Godfrey* said as you do.

Fenwick. As for Sir *Edmund-bury Godfrey*, I protest before God, I know nothing of it: I never saw the Man in my Life.

Sher. How. For my part, I am of Opinion you had a Hand in it.

Fenwick. Now that I am a dying Man, do you think I would go and damn my Soul?

Sher. How. I wish you all the Good I can, but I'll assure you, I believe never a Word you say.

Fenwick. I pray for his Majesty every Day, and wish him all Happiness with all my Heart. Also I do with all my Soul pardon all my Accusers. If the Judge or Jury did any thing amiss, I pardon them with all my Soul, and all Persons directly or indirectly. I am very willing and ready to suffer this Death. I pray God pardon me my Sins, and save my Soul.

And as to what is said, and commonly believ'd, of *Roman Catholicks*, that they are not to be believ'd or trusted, because they can have Dispensations for Lying, Perjury, killing Kings, and other the most enormous Crimes; I do utterly renounce all such Pardons and Dispensations, and withal declare, That it is a most wicked and malicious Calumny cast upon Catholicks, who do All, with all their Hearts and Souls, hate and detest all such wicked and damnable Practices; and in the Words of a dying Man, and as I hope for Mercy at the Hands of God, before whom I must shortly appear and give an Account of all my Actions, I do again declare, That what I have said is true; and I hope Christian Charity will not let you think, that by the last Act of my Life, I would cast away my Soul, by sealing up my last Breath with a damnable Lye.

Then they were at their private Devotions for about an Hour.

And Mr. *Sheriff How* spake to them; Pray aloud Gentlemen, that we may join with you;
we

we shall do you no hurt, if we do you no good. Are you asham'd of your Prayers? Then he spake to Mr. *Gavan*, and said, It is reported you did preach at the *Quakers* Meeting.

Gavan. To which he made answer, No, Sir, I never preach'd there in my Life.

After they had ended their Devotions, the Executioner pulled their Caps over their Faces, and went down and drew away the Cart, and they were all hanged together 'till they were dead, and then cut down and quarter'd, and their Bodies disposed of according to his Majesty's Command.

July 14, was appointed for the Execution of *Richard Langborne*.

When he came down from his Chamber to be put in the Sledge, he had a written Speech with him, but the Sheriff (telling him that he must use no Papers at the Gallows) took it away, so that he repeated there only so much of it as he could remember.

When the Hangman was putting the Rope about his Neck he took it and kissed it; afterwards he said, I do not know, whither you will allow me liberty of Speech or no; besides the Noise of the People is so great, that I believe it is impossible to be heard.

I would gladly speak to Mr. Sheriff *How*, [*who coming to him, he spake to him thus,*] Mr. Sheriff, I having some doubt whether I should be suffer'd to Speak in relation to my Innocence and Loyalty, I did for that Reason prepare what I had to say in writing and it is deliver'd into your Hands, and therefore for the particular and precise Words and Expressions I do refer my self to that, and hope you will be so just to my Memory that you will permit it to be seen.

I shall therefore make only a short Preface, and I do declare in the presence of the Eternal God, and as I hope to be sav'd by the Merits and Death of my dear Jesus, that I am not Guilty directly nor indirectly of any Crime that was sworn against me: I do not speak this to arraign the Court of Justice, either Judges or Jury, but those Men, who did swear it; and the Jury were at liberty to believe or not believe, as they pleased; and I do likewise say with the same averment, that I did never in my Life see any Commission, or Patent, or any Writing, or any other thing under the hand of *Johannes Paulus de Oliva*.

Sheriff. Nor under no other Hand?

Langborne. No, nor under any other Hand, of any Commission or Patent for the raising of an Army, or any thing else against the King.

Sheriff. What was the Patent for? nothing?

Langborne. I never saw any, nor do I believe there was any: And whereas I have read in a Narrative that I sent a Commission by my Son, to the Lord *Arundel* of *Warder*, and that I deliver'd another to the Lord *Petre* (or *Peters*) with my own hands, I take God to witness, that I never saw him in my Life, or ever to my knowledge saw the Face of that Lord; nor did I send or know of any thing, that was sent to my Lord *Arundel* of *Warder* of that nature.

Sheriff. Shorten your Business Mr. *Langborne*, you and your Party have so many ways to equivocate, and after Absolution you may say any thing.

Langborne. I refer my self to that Paper I gave you, Mr. Sheriff.

Sheriff. I think it is not fit to be Printed, but I will do you no wrong.

Langborne. I do not think you will.

Sheriff. You have already printed a Paper, or some Body for you.

Langborne. Sir, I did not Print it, it was done without any Direction or Permission of mine.

Then he spake so much of the Speech as he could remember; the whole was as follows.

IN regard I could not foresee whether I should be permitted to speak at my Death, so as to make a publick Declaration of my Innocency and Loyalty, as a Christian ought to do; considering likewise, that if it should be permitted unto me, it would be more advisable for me rather to prepare beforehand, and set down in Writing the very Words in which I should make my Declaration, than to trust my Memory with them; to the end that the same may be well consider'd of, and digested by me, and that all Mistakes might be prevented, as far as may be: I say, in regard of this, I have in the present Paper reduced what I have to declare, as to my Innocence and Loyalty. And 'tis in these following Words:

I do solemnly and sincerely, in the Presence of Almighty God, profess, testify, and declare, as followeth; that is to say,

1. That I do, with my Heart and Soul, believe and own my most gracious Sovereign Lord, the King's Majesty, King *Charles* the Second, to be my true and lawful Sovereign, Prince, and King, in the same Sense and Latitude, to all Intents and Purposes, as in the Oath commonly called *The Oath of Allegiance*, His said Majesty is expressed to be King of this Realm of *England*.

2. That I do in my Soul believe, that neither the Pope, nor any Prince, Potentate, or Foreign Authority, nor the People of *England*, nor any Authority out of this Kingdom, or within the same, hath or have any Right to dispossess his said Majesty of the Crown or Government of *England*, or to depose him therefrom, for any Cause or pretended Cause whatsoever, or to give Licence to me, or to any other of his said Majesty's Subjects whatsoever, to bear Arms against his said Majesty, or to take away his Life, or to do him any bodily Harm, or to disturb the Government of this Kingdom, as the same is now established by Law, or to alter, or go about to alter the said Government, or the Religion now established in *England*, by any way of Force.

3. That I neither am, nor ever was at any time or times, Guilty, so much as in my most secret Thoughts, of any Treason, or Misprision of Treason whatsoever.

4. That I did not in the Month of *November*, or at any other time or times whatsoever, say unto Mr. *Oates*, or unto any other Person or Persons whatsoever, in relation to my Sons in *Spain*, or either of them, or in relation to any other Person or Persons whatsoever, that if they did continue in the World, (as Secular Priests, or otherwise) they should suddenly have great Promotions in *England*, for that things would not last long in the Posture wherein they then were;

nor did I ever say any Words to that or the like effect to any Person or Persons whatsoever.

5. That I did never in all my Life-time write any Letter, or other thing whatsoever, unto, or receive any Letter or other thing, from Father *Le Chaise*, or any *French* Jesuit whatsoever; or from Father *Anderton*, or Cardinal *Barbarino*, or any other Cardinal; nor did I ever see any Letter, or the Copy of any Letter or other Paper, or other thing, written or purporting to be written unto the said *Le Chaise*, or unto the said Father *Anderton*, or to the said Cardinal *Barbarino*, by any Person or Persons whatsoever, other than the printed Letters printed in the Narrative of the Trial of Mr. *Edward Coleman*, lately Executed, which I never saw otherwise than in the said printed Narrative; nor did I ever hear any mention made by any Person whatsoever of the Name of *Le Chaise*, or Father *Le Chaise*, before I read the said printed Narrative.

6. That I did never in all my Life-time make any Entry or Entries, into any Book or Books, or take, or make, or write, or cause to be written into any Book or Books, or otherwise, any Letter or Letters, or any Copy or Copies of any Letter or Letters, written by the said *Edward Coleman*, to any Person or Persons whatsoever.

7. That I did never in all my Life-time enter or register into any Book or Books, Paper or Papers whatsoever, or take, or make, or write, or cause to be written any Copy or Copies of any Act or Acts, Consult or Consults, Determination or Determinations, Order or Orders, Resolve or Resolves, or other Matter or Thing, at any time made, determined, resolved, passed, decreed or agitated, at any Congregation or Congregations, Consult or Consults, Chapter or Chapters, Assembly or Assemblies, of the Society or Order of the *Jesuits*, or of any other religious Order whatsoever; nor did I ever see, read, or heard read, nor did any Person or Persons at any time whatsoever, ever communicate unto me any such Act, Consult, Determination, Order, Resolve, Matter or Thing whatsoever.

8. That I did never in all my Life-time, to my Knowledge, Belief, or Remembrance, see or speak with Mr. *Bedlow*, who gave Evidence against me at my Trial, until I saw him in that Court wherein he gave Evidence against me.

9. That after the Month of *November*, which was in the Year of our Lord 1677, I did never see or speak with Mr. *Titus Oates* before-named, until I saw him in the same Court where he gave Evidence against me at my Trial.

10. That I did never see, in all my Life-time, to my Knowledge, Belief, or Remembrance, any Commission or Commissions, Patent or Patents, Grant or Grants, Order or Orders, Instrument or Instruments, Writing or Writings, or other Matter or Thing whatsoever, under, or pretended to be under the Hand and Seal, or the Hand or the Seal of *Johannes Paulus de Oliva*, or any other General of the *Jesuits* whatsoever, other than the Paper or Instrument produced and shewed unto me in the said Court at my Trial, which whether it was sign'd or seal'd by the said *de Oliva*, I do not know.

11. That I did never in all my Life-time write, or cause or procure to be written, any Treasonable Letter or Letters whatsoever, or any thing which was or is Treason or treasonable, in any

Letter or Letters, Book or Books, Paper or Papers, or otherwise howsoever.

12. That I believe, that if I did know, or should know of any Treason or treasonable Design, that was or is intended, or should be intended against his said Majesty, or the Government of this his Majesty's Kingdom, or for the Alteration by Force, Advice, or otherwise, of the said Government, or of the Religion now establish'd in this Kingdom; and should conceal and not discover the same unto his said Majesty, or his said Majesty's Council or Ministers, or some of them; that such Concealment would be in me a Sin unto Death, and eternal Damnation.

13. That I do believe; that it is no ways lawful for me to lye, or speak any thing which I know to be untrue; or to commit any Sin, or do any Evil, that Good may come of it. And that it is not the Power of any Priest, or of the Pope, or of God himself, to give me a Licence to lye, or to speak any thing which I know to be untrue; because every such Lye would be a Sin against Truth: And Almighty God, who is perfect Truth, cannot give me a Licence to commit a Sin against his own Essence.

And I do solemnly, in the Presence of God, profess, testify, and declare, That as I hope for Salvation, and expect any Benefit by the Blood and Passion of my dearest Saviour Jesus Christ, I do make this Declaration and Protestation, and every part thereof, in the plain and ordinary Sense of the Words, wherein the same stands written, as they are commonly understood by *English* Protestants, and the Courts of Justice of *England*, without any Evasion or Equivocation, or Delusion, or mental Reservation whatsoever: And without any Dispensation, or Pardon, or Absolution already granted to me, for this or any other Purpose, by the Pope, or any other Power, Authority, or Person whatsoever; or, without any Hope, Expectation or Desire of any such Dispensation; and without thinking or believing that I am or can be acquitted before God or Man, or absolved of this Declaration, or any part thereof, although the Pope, or any other Person or Persons, or Power or Authority whatsoever should dispense with, or take upon him or them to dispense with, or annul the same, or declare that it was, or is, or ought to be null or void in part, or in the whole, from the Beginning, or otherwise howsoever.

Having made this Declaration and Protestation in the most plain Terms that I can possibly imagine, to express my sincere Loyalty and Innocency, and the clear Intention of my Soul, I leave it to the Judgments of all good and charitable Persons whether they will believe what is here in this manner affirm'd and sworn by me in my present Circumstances, or what is sworn by my Accusers.

I do now farther declare, That I die a Member (tho an unworthy one) of that holy Catholick and Apostolick Church of Christ, mention'd in the Three holy and publick Creeds, of which Church our Lord Jesus Christ is the invisible Head of Influence, to illuminate, guide, protect, and govern it by his holy Spirit and Grace; and of which Church the Bishop of *Rome*, as the Successor of St. *Peter*, the Prince of the Apostles, is the visible Head of Government and Unity.

I take it to be clear, that my Religion is the sole Cause which moved my Accusers to charge me with the Crime, for which, upon their Evidence, I am adjudg'd to die; and that my being of that Religion, which I here profess, was the only Ground which could give them any Hope to be believed, or which could move my Jury to believe the Evidence of such Men.

I have had not only a Pardon, but also great Advantages, as to Preferments, and Estates, offer'd unto me, since this Judgment was against me, in case I would have forsaken my Religion, and own'd myself Guilty of the Crime charged against me, and charged the same Crimes upon others: But blessed be my God, who by his Grace hath preserv'd me from yielding to those Temptations, and strengthen'd me rather to choose this Death, than to stain my Soul with Sin, and to charge others, against Truth, with Crimes, of which I do not know that any Person is Guilty.

Having said what concerns me to say as to my self, I now humbly beseech God to bless the King's Majesty with all temporal and eternal Blessings, and to preserve him and his Government from all Treasons and Traitors whatsoever; and that his Majesty may never fall into such Hands as his Royal Father, of glorious Memory, fell into.

I also humbly beseech thee (O God) to give true Repentance and Pardon to all my Enemies, and most particularly to the said Mr. Oates and Mr. Bedlow, and to all who have been any ways accessary to the taking away of my Life, and the

shedding of my innocent Blood, or to the preventing the King's Mercy from being extended unto me; and likewise to all those who rejoiced at the Judgment given against me, or at the Execution of the said Judgment; and to all those who are or shall be so unchristianly uncharitable, as to disbelieve, and to refuse to give credit unto my now Protestations.

And I beseech thee (O my God) to bless this whole Nation, and not to lay the Guilt of my Blood unto the Charge of this Nation, or of any other particular Person or Persons of this Nation. Unite all (O my God) unto thee and thy Church, by true Faith, Hope, and Charity, for thy Mercies sake.

And for all those who have shew'd Charity to me, I humbly beg (O my Jesus) that thou wilt reward them with all Blessings, both temporal and eternal.

13 July,
1679.

R. LANGHORN.

After which he asked the Executioner, *whether the Rope was right or no*: He said, *yes*: Then the Executioner asked him *whether he did forgive him*: To which Langhorn said, *I freely do. I shall now recommend my self to God in private.*

Sheriff. You may have liberty.

Then he Cross'd himself, and pray'd again, *Blessed Jesus, into thy Hands I recommend my Soul and Spirit, now at this Instant take me into Paradise: I am desirous to be with Jesus. I am ready, you need stay no longer for me.* Upon which he was turn'd off.

LXXXIV. *The Trial of Sir GEORGE WAKEMAN* Bart.*
WILLIAM MARSHAL, WILLIAM RUMLEY, and
JAMES CORKER, Benedictine Monks, at the Old-Baily, for High-Treason, July 18, 1679. 31 Car. II.



PON Friday the 18th of July, 1679, at the Sessions-House in the Old-Baily, London, the Court being met, and Proclamation made for Attendance, the Trials proceeded thus:

Clerk of the Crown. Set Sir George Wakeman, William Marshal, and William Rumley to the Bar.

Sir George Wakeman, hold up thy Hand. Which he did. And so of the other Two.

You stand Indicted, by the Names of Sir George Wakeman, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Bart. William Marshal, of the same Parish and County, Gentleman, and William Rumley, of the same Parish and County, Gentleman.

For that you, as false Traitors against the most Illustrious, Serene, and most Excellent Prince, Charles the Second, by the Grace of God, of Eng-

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land, Scotland, France, and Ireland, King, Defender of the Faith, &c. your Supream and Natural Lord; the Fear of God in your Hearts not having, nor weighing the Duty of your Allegiance, but being moved and seduced, by the Instigation of the Devil; and the cordial Love, true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King do, and of Right ought, to bear towards Him, our said Sovereign Lord the King, utterly withdrawing, and endeavouring and intending, with all your Strength, the Peace and common Tranquility of this Kingdom of England to disturb, and the true Worship of God within this Kingdom of England used, and by the Laws of the same established, to Overthrow, and the Government of this Realm to Subvert, and Sedition and Rebellion, within this Kingdom of England, to Move, Stir up, and Procure, and the cordial Love, true, due, and natural Obedience, which true and faithful

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* Burn. Hist. Own times, Vol. I. p. 467.

faithful Subjects of our said Sovereign Lord the King, ought, and of Right are bound, to bear towards Him, our said Sovereign Lord the King, wholly to Withdraw, Put out, and Extinguish, and Him, our said Sovereign Lord the King, to Death and Final Destruction to Bring and Put, You, the said Sir George Wakeman, William Marshal, and William Rumley, the 30th Day of August, in the Thirtieth Year of the Reign of our said Sovereign Lord King Charles the Second, at the Parish of St. Giles in the Fields, aforesaid, in the County aforesaid, falsely, maliciously, subtilly, advisedly, and traiterously did purpose, compass, imagine and intend, Sedition and Rebellion, within this Kingdom of England, to move, stir up, and procure, and miserable Slaughter among the Subjects of our said Sovereign Lord the King to cause and procure, and our said Sovereign Lord the King, from his Royal State, Title, Power and Government of his said Kingdom of England, wholly to deprive, depose, cast down, and disinherit, and Him, our said Sovereign Lord the King, to Death and final Destruction to bring and put, and the Government of this Kingdom of England, and the sincere Religion of God, within the same rightly and by the Laws of the same established, at your Will and Pleasure to change and alter; and the State of this whole Kingdom of England, through all its Parts well instituted and ordained, wholly to subvert and Destroy; and War against our said Sovereign Lord the King, within this Kingdom of England, to levy; and to accomplish and fulfil those your most wicked Treasons, and traiterous Imaginations and Purposes, You, the said Sir George Wakeman, William Marshal, and William Rumley, and other false Traitors unknown, the aforesaid 30th Day of August, with Force and Arms at the Parish aforesaid, in the County aforesaid, maliciously, subtilly, advisedly, and traiterously did assemble, unite, and gather your selves together; and then and there, falsely, maliciously, subtilly, advisedly, devilishly and traiterously did consult, consent and agree, our said Sovereign Lord the King, to Death and final Destruction to bring and put; and the Religion within this Kingdom of England rightly, and by the Laws of the same established, to change and alter to the Superstition of the Church of Rome; and to move, procure, and perswade them, the said William Marshal, William Rumley, and other false Traitors unknown, the Agreement aforesaid to fulfill and accomplish, You, the said Sir George Wakeman, after, to wit, the said 30th Day of August, in the Parish aforesaid, in the County aforesaid, to them the said William Marshal, William Rumley, and other false Traitors unknown, did traiterously promise to give your Assistance, the Government of this Kingdom to subvert, and the true Worship of God, in this Realm rightly and by the Laws thereof established and used, to the Superstition of the Church of Rome to alter: And that You, the said Sir George Wakeman, then and there, falsely, maliciously, subtilly, advisedly, devilishly and traiterously, did undertake to kill and murder our said Sovereign Lord the King: And in further Prosecution of the Treasons, traiterous Conspiracies, Intentions and Agreements aforesaid, You, the said Sir George Wakeman, the said 30th Day of August, at the Parish aforesaid, in the County aforesaid, falsely, traiterously, and against the Duty of your Allegiance, did receive and had (from a certain Person unknown, pretending to be Provincial of the Jesuits in England, and claiming Authority for the Granting Commissions in that Part from the See

of Rome,) one Commission to institute and authorize you the said Sir George Wakeman to be Physician-General of the Army, to be raised for the waging War against our said Sovereign Lord the King within this Kingdom of England, and the same Commission then and there falsely, advisedly, maliciously and traiterously did inspect and read over, and traiterously did keep in your Possession, and to the same falsely, knowingly, advisedly and traiterously did consent and agree, with that Intention, that you the said Sir George Wakeman should have, receive and exercise the Place and Office of Physician-General of the Army aforesaid, when you the said Sir George Wakeman, William Marshal, William Rumley, and the said other false Traitors unknown, should have performed and accomplished your Treasons, Compassings, Imaginations, Purposes, and traiterous Agreements aforesaid. And that you the said William Marshal and William Rumley, in further prosecution of your Treasons, traiterous Conspiracies, Intentions and Agreements aforesaid, the said 30th Day of August, in the Parish aforesaid, in the County aforesaid, did falsely, subtilly and traiterously consult, conclude, consent and agree, that you the said William Marshal, William Rumley, and other false Traitors unknown, should pay the Sum of 6000 l. towards furthering and consummating the traiterous Agreements aforesaid, amongst the said false Traitors had, our said Sovereign Lord the King to kill and murder, the true Worship of God within this Realm rightly and by the Laws of the same established, to the Superstition of the Church of Rome to alter, and the Government of this Kingdom of England to subvert, against the Duty of your Allegiance, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in this Case made and provided.

Cl. of Cr. How say'st thou, Sir George Wakeman, art thou Guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Sir George Wakeman. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be Tried?

Sir George Wakeman. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. [And so the other two.]

Cl. of Cr. Set James Corker to the Bar, (who was Arraigned and Pleaded the last Sessions.) James Corker, hold up thy Hand. You the Prisoners at the Bar, Sir George Wakeman, William Rumley, William Marshal, and James Corker, Those Men that you shall hear called and personally appear, are to pals between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; If therefore you or any of you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn. Call Ralph Hawirey, Esq; who appeared, and there being no Challenges the Twelve that were Sworn are as follows.

JURY.

Ralph Hawirey of Rislipp, Esquire.
Henry Hawley of New-Brentford, Esq;
Henry Hodges of Hanwell, Esq;
Richard Downton of Isleworth, Esq;
John Bathurst of Edmuntton, Esq;
Robert Hampton of Greenford, Esq;

William

William Heydon of Greenford, Esq;
 John Baldwyn of Hillingdon, Esq;
 Richard Dobbins of Harvile, Esq;
 William Avery of Enfield, Esq;
 William Wayte of St. Clement Danes, Gent.
 Richard White of Cripplegate, Gent.

Cl. of Cr. Cryer, count these. Ralph Haw-
 trey.

Cryer, One, &c.

Cl. of Cr. Richard White.

Cryer. Twelve good Men and True, stand to-
 gether and hear your Evidence.

Then the usual Proclamation for Information
 was made, and the Prisoners being bid to hold
 up their Hands, the Clerk of the Crown
 charged the Jury with them thus.

Cl of Cr. You of the Jury, look upon the Pri-
 soners, and hearken to their Cause. They stand
 Indicted by the Names of (*prout in the Indict-
 ment mutatis mutandis*) and against the Form of
 the Statute in that Case made and provided :
 And he the said James Corker, stands Indicted by
 the Name of James Corker of the Parish of St.
 Giles in the Fields, in the County of Middlesex,
 Clerk;

For that he with Thomas White, John Fen-
 wick, William Harcourt, John Gavan, and An-
 thony Turner, as a false Traitor against the most
 Illustrious, most Serene, and most Excellent Prince,
 Charles the Second, by the Grace of God, of Eng-
 land, Scotland, France, and Ireland, King, De-
 fender of the Faith, &c. his Supream and Natural
 Lord, not having the Fear of God in his Heart,
 nor weighing the Duty of his Allegiance, but being
 moved and seduced by the Instigation of the Devil,
 the cordial Love, true, due, and natural Obedience,
 which true and faithful Subjects of our said Sovereign
 Lord the King, towards him should, and of right
 ought to bear, wholly withdrawing; and devising,
 and with all his Strength, intending the Peace and
 common Tranquility of this Realm to disturb, and the
 true Worship of God within this Kingdom of England
 used, and by the Law Established, to overthrow, and
 the Government of this Realm to Subvert, and Se-
 dition and Rebellion within this Kingdom of Eng-
 land to move, stir up and procure, and the cordial
 Love, and true and due Obedience which true and
 faithful Subjects of our said Sovereign Lord the King,
 towards him should, and of right ought to bear, ut-
 terly to withdraw, put out, and extinguish, and our
 said Sovereign Lord the King to Death and final De-
 struction to bring, and put, on the Four and Twen-
 tieth Day of April, in the Thirtieth Year of the
 Reign of our said Sovereign Lord, King Charles the
 Second, at the Parish of St. Giles in the Fields,
 in the County of Middlesex aforesaid; He the said
 James Corker, together with the said Thomas
 White, John Fenwick, William Harcourt, John
 Gavan, and Anthony Turner, with diverse other
 false Traitors, Subjects of our said Sovereign Lord
 the King, to the Jurors unknown, falsely, subtilly,
 advisedly, maliciously, and traiterously, did purpose,
 compass, imagine, and intend Sedition and Rebellion
 within this Kingdom of England to move, stir up, and
 procure, and a miserable Slaughter among the Subjects
 of our said Sovereign Lord the King to procure and
 cause, and our said Sovereign Lord the King, of his
 Kingly State, Title, Power, and Government of his
 Kingdom of England, utterly to deprive, depose, cast

down, and disinberit, and him our said Sovereign Lord
 the King to Death and final Destruction to bring and
 put, and the Government of this Kingdom of Eng-
 land, and the Sincere Religion of God within the
 same, rightly, and by the Laws of the same establish-
 ed, at his Will and Pleasure, to change and alter,
 and the State of this whole Kingdom of England,
 thro' all its Parts well instituted and ordained,
 wholly to subvert and destroy; and War, within this
 Kingdom of England, against our said Sovereign Lord
 the King, to levy: And to accomplish and fulfil their
 said most wicked Treasons, and traiterous Imagina-
 tions and Purposes, He the said James Corker, to-
 gether with the said Thomas White, John Fen-
 wick, William Harcourt, John Gavan, and An-
 thony Turner, and other false Traitors against our
 said Sovereign Lord the King, to the Jurors unknown,
 the said Four and Twentieth Day of April, with
 Force and Arms, &c. in the Parish aforesaid, and
 County aforesaid, falsely, maliciously, subtilly, advised-
 ly, devilishly, and traiterously did assemble, unite and
 gather together, and then and there, falsely, malicious-
 ly, subtilly, advisedly, devilishly, and traiterously did
 consult, consent, and agree, our said Sovereign Lord
 the King to Death and final Destruction to bring and
 put, and the Religion of this Kingdom of England,
 rightly, and by the Laws of the same established, to
 the Superstition of the Romish Church to change and
 alter, and the Government of this Kingdom of Eng-
 land to subvert; and that one Thomas Pickering,
 and one John Grove, should Kill and Murder our
 said Sovereign Lord the King; and that he the said
 James Corker, together with the said Thomas
 White, John Fenwick, William Harcourt, John
 Gavan, and Anthony Turner, and other False
 Traitors, against our said Sovereign Lord the King,
 to the Jurors unknown, should therefore say, cele-
 brate, and perform, a certain Number of Masses,
 then and there amongst themselves agreed on, for the
 Soul of the said Thomas Pickering, and for that
 Cause should pay to the said John Grove a certain
 Sum of Money, then and there amongst themselves
 agreed on; and that he the said James Corker, to-
 gether with the said Thomas White, John Fen-
 wick, William Harcourt, John Gavan, and An-
 thony Turner, and other False Traitors to the Ju-
 rors unknown, in further prosecution of the Treasons
 and traiterous Consultations and Agreements afore-
 said, afterwards, the said Four and Twentieth Day
 of April, at the Parish aforesaid, in the County a-
 foresaid, falsely, subtilly, advisedly, maliciously, de-
 vilishly, and traiterously, did severally each to the
 other engage themselves, and upon the Sacrament
 traiterously did swear and promise, to conceal, and
 not to divulge the said most wicked Treasons, and
 traiterous Compassings, Consultations, and Purposes
 aforesaid amongst themselves had, traiterously to kill
 and murder our said Sovereign Lord the King, and
 to introduce the Romish Religion within this King-
 dom of England, and the true reformed Religion
 within this Realm, rightly, and by the Laws of the
 same established, to alter and change: and that he
 the said James Corker, together with the said Tho-
 mas White, John Fenwick, William Harcourt,
 John Gavan, and Anthony Turner, and other
 false Traitors to the Jurors unknown, in further pro-
 secution of their said Treasons and traiterous Inten-
 tions and Agreements aforesaid, afterwards, the said
 Four and Twentieth Day of April, at the Parish
 aforesaid, in the County aforesaid, falsely, subtilly, ad-
 videdly, maliciously, devilishly, and traiterously, did
 prepare, perswade, excite, abet, comfort and counsel

four other Persons to the Jurors unknown, Subjects of our said Sovereign Lord the King, traiterously our said Sovereign Lord the King to kill and murder, against the Duty of his Allegiance, against the Peace of our Sovereign the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Upon these several Indictments they have been Arraigned, and thereunto have severally pleaded Not Guilty, and for their Trial put themselves on God and their Country, which Country are you. Your Charge is to enquire, whether they be Guilty of the High-Treason whereof they stand Indicted, in Manner and Form as they stand Indicted, or Not Guilty, &c.

Mr. Edward Ward. May it please your Lordship, and you Gentlemen of the Jury; Sir George Wakeman, Bar. William Marshal, and William Rumley, the Prisoners at the Bar, stand Indicted; for that they as false Traitors against our Sovereign Lord King Charles the Second, their Supreme and Natural Lord, not having the Fear of God before their Eyes, did traiterously endeavour and intend, with all their Strength, the Peace and Tranquility of this Kingdom of England to disturb, and the Worship of God in the same rightly, and by the Laws of the same established, and the Government of the Kingdom in all its Parts well instituted and ordered, to subvert and overthrow, and Sedition and Rebellion within the same to move and procure, and to bring and put the King to Death and final Destruction; and to that Purpose the 30th of August, in the 30th Year of the King that now is, they did falsely, maliciously, subtilly, advisedly, and traiterously compass, imagine, intend, and devise, those things that I have enumerated to you; that is, Sedition and Rebellion in the Kingdom to move, the Peace and Tranquility of the same to disturb, the Worship of God to overthrow, and the King from his Royal State, Title, Power, and Government wholly to depose, and to put the King to Death and final Destruction, and the Religion at their Wills and Pleasures to alter, and to introduce the *Romish* Superstition, and War within the Kingdom to Levy against our Sovereign Lord the King. And to accomplish these Treasons and Purposes, they the Prisoners at the Bar, with other false Traitors unknown, the Day and Year beforementioned, did assemble and meet together, and did then and there consent and agree to put the King to Death and final Destruction. And to persuade Marshal and Rumley to these Treasons, the said Sir George Wakeman promised his Assistance; first, to subvert the Government, and then to alter the Religion to the *Romish* Superstition, and traiterously undertook to kill the King: and he did receive for that Purpose, from the pretended Provincial of the Jesuits in England, (who claimed an Authority from the See of Rome, of granting out Commissions) a Commission which constituted him Physician-General of the Army; which Army was to be raised for the levying of War against the King, and the Subversion of the Government and Religion: That he read this Commission, that he kept it in his Possession, that he consented to it, accepted it, and intended to execute the Employment, when their Designs were accomplished. The Indictment further sets forth, that Marshal, and Rumley, and other false Trai-

tors, agreed to pay the Sum of 6000 l. for the carrying on and effecting of this Treason; and this is laid, to be against the Duty of their Allegiance, against the King's Peace, Crown and Dignity, and against the Form of the Statute. To this Indictment they have pleaded Not Guilty; if we make out these Crimes against them, or any of them, you are to find them Guilty.

There is also another indicted, that is James Corker; For that he as a false Traitor against the King, and withdrawing his Allegiance, and due and natural Obedience, which he owed to him, as his Sovereign, together with other Persons there mention'd, White, Fenwick, Harcourt, Gavan, and Turner, did intend to overthrow the Religion, to subvert the Government, and to do all those Treasons that I have here enumerated, and that they did the 24th of April, in the 30th Year of this King, at the Parish of St. Giles in the Fields, in your County, compass and imagine the King's Death, levying of War, and those other Things; and in order thereunto, they did contrive that Pickering and Grove should kill the King, and that Corker and the others should say Masses for the Soul of Pickering, and should pay Grove a Sum of Money. That to this they plighted their Faith, and received the Sacrament upon it: And that Corker and the others, the Day and Year aforesaid, traiterously persuaded, excited and abetted four other Persons to murder the King. To this he hath pleaded Not Guilty; if we prove him Guilty of any of these things, we hope you will find it so.

Sir Robert Sayer. My Lord, and you Gentlemen of the Jury, The Prisoners at the Bar with whom you are charged, stand Indicted as principal Actors and Instruments of that late most Catholick and Bloody Plot some time since discovered; and I hope, by the Blessing of Almighty God, in a great measure prevented. The Design, Gentlemen, was against the King and the Church; both Church and State were too little a Sacrifice to be offered up to the universal Supremacy of Rome. They well knew, Gentlemen, that so long as God should preserve the Life of our Prince, and as long as those Legal Pales, where-with the Church of England is encompassed, did but continue firm, neither the Gates of Hell nor Rome could prevail against it. And I wish that all Protestants were of the same Mind.

I shall not enter now into any large Discourse of it, nor trace the several Steps of this Plot, which is so well known to all Men of this Nation at this Day, but only touch upon those Parts of it that do concern the Prisoners now at the Bar, unless they shall give me occasion to recur to any former Passages. Gentlemen, we shall make Proof to you, that the 24th of April, 1678, there was a very great Consult of a numerous Company of Jesuits here in London; and there was the Foundation laid, or at least the Execution was then determined of bringing this Plot to its Accomplishment. To this Consult we shall make it appear, that the Gentlemen at the Bar were privy and consenting to it. The King must die, that is resolved on, and you have heard formerly of the several Ways that it was to be acted; some Persons were designed to shoot him, these have received their Trial and condign Punishment; then there was another Sett, and they were to Stab him, and some of these have been brought to

to Justice too; but then there was a third Sort, (for they did invent all the imaginable Ways of Death) and that was Poysoning; and that will come principally before you at this Time. And they had chosen out a very proper Instrument for it, a Gentleman whose Experience rendred him able, and whose near Relation to and Dependance upon the Royal Family, gave him a great Opportunity to commit that horrid Crime. But, Gentlemen, tho' his Perswasion might go a great way, yet he would not do it *Gratis*, and thereupon he must be hired for a great Sum of Money, not under 15000*l.* and then he undertook that great Employment.

We shall prove to you, that this was his Bargain, that part of his Wages he had received, for he would be sure of something in Hand before the Work were done. We shall make it appear, Gentlemen, that he was privy also to the Consult (for I apply my self at present peculiarly to him) and approved of it. And as a further Reward, besides that of Money, he was to be preferred to be Physician-General of the Army that was then to be raised, that Employment was designed for him; nay, he accepted of the Commission, as we shall endeavour to prove to you.

We shall also prove, that the other Gentlemen at the Bar, the other Malefactors that stand there, were privy to the great Consult of the Death of the King. That there was 6000*l.* which was to be furnished by the *Benedictine* Monks; for tho the Jesuits were the great Engineers, yet all the other Orders were to contribute, and 6000*l.* was to be furnished by them. And in the course of our Evidence we shall give you several Instances which will concern all these particular Prisoners now at the Bar; and one truly that there was such a Design of Poysoning, which is very remarkable, and that was from a very great Engineer that hath suffered already, and that was Mr. Ireland; and wherein I must desire that you would observe another thing that falls out very materially, that tho Mr. Ireland, at the time of his Death, and all along, disowned that he was here in London in August, and with great Asseverations did affirm it, it will appear by the course of our Evidence that he was here in London then, and had frequently Discourses that it was an easy Matter to take off the King by Poyson: And for that purpose do I mention it to you as an Instance that Poyson was one of the great Ways that they intended to murder the King by. And, Gentlemen, you will collect from that Evidence, what Credit is fit to be given to the Words of such dying Men, and whether living Witnesses that are upon their Oaths, are not rather to be believed, than those whose concern it is for more Reasons than one to perswade the People that they are innocent. And you will likewise collect that those who have lived in the Sin of committing such horrid Crimes as these are, will not stick to protect that same Church (which they would propagate by those Crimes) by denying the plainest Truth.

We will not trouble you any further with the Opening of the Evidence, because the Witnesses are many, and their Testimony various; but we shall call our Witnesses, and let them tell it you themselves.

Mr. Ward. Call Dr. Oates, Mr. Bedlow, Mr.

Dugdale, Mr. Jennison, and Mr. Prance, (who were all Sworn, and Mr. Dugdale set up.)

Sir Robert Sawyer. Gentlemen, we call first Mr. Dugdale to give you a general Account of the Plot, not so much for the Proof of the things here charged particularly on the Prisoners, as the general Design.

Mr. Ward. Pray, Sir, speak your Knowledge of what you know concerning the Plot in general.

Dugdale. I have for this seven Years known something of it, but nothing particularly till within these two Years. About two Years since it was communicated to me by Mr. Ewers, Mr. Gavan, Mr. Peters, Mr. Lewson, and some other Priests, which I cannot now remember their Names, and they did perswade me to be of the Management of the Business, for the carrying on of the Design, for the introducing their Religion, and for the killing of the King and the Duke of Monmouth; both those two things were communicated to me, upon my Oath, by Mr. Gavan, Mr. Ewers, Mr. Peters, Mr. Lewson, and my Lord Stafford.

Mr. Justice Atkins. What, Mr. Gavan that was executed, do you mean?

Dugdale. Yes, he was the Man: I have had several Pacquets of Letters which concerned the Plot: All the Letters that came from Mr. Harcourt, or from any others concerning the Plot, were directed to me: I have had sometimes eight, sometimes nine, sometimes more Letters at a time, but I never saw any, almost, but they all tended to the carrying on of this Design.

Lord Chief Justice *. Did they shew you these Letters, or did you open them?

Dugdale. I did open several of them, a great many, and some of them that I could not handsomely seal up again, I kept.

L. C. J. They did not know you opened them?

Dugdale. No, they did not all the time.

L. C. J. To what purpose did they write?

Dugdale. My Lord, they were to give Instructions to Mr. Ewers how he should manage the Affairs for carrying on the Design, how he must go about for the raising of Money, and for the engaging the Gentlemen in the Country, as particularly Mr. Gerard of Hilderson, and Mr. Howard of Horecrosse, and Sir James Simons, and one Gentleman that is dead, one Captain Atherley, and several other Gentlemen were engaged in it, to be Officers when they had accomplished their Business of Killing the King.

Sir Robert Sawyer. You say they were to be Officers; what, were they to be Military Officers, or what?

Dugdale. Yes, they were to be Military Officers.

Sir Robert Sawyer. Was there an Army to be raised?

Dugdale. Yes, there was an Army spoken of to be raised.

Sir Robert Sawyer. By whom?

Dugdale. There was Money ready in July last, for I saw Acquittances that came from St. Omers that the Money was paid. But then there was Caution given to be sure not to make any Rumor of Arms or any thing, till the King was dispatched.

L. C. J.

L. C. J. Did they write that in a Letter?

Dugdale. They writ that in a Letter directed to me.

L. C. J. To you?

Dugdale. Yes, to me.

L. C. J. Who writ that Letter?

Dugdale. My Lord, truly I cannot be certain at present who it was; but upon recollection I can, may be, remember who it was: but it contained that there should be Caution given to all, to be sure that none should mention Arms, or any thing, till the King was dispatched.

Sir Robert Sawyer. From whence did that Letter come, Mr. *Dugdale*?

Dugdale. It came from Mr. *Harcourt*, I am certain, and in Mr. *Grove's* Pacquet; but I am not certain of the Person that writ the Letter, but I can recollect hereafter perhaps, who it was.

L. C. J. Did it come from beyond Sea, or London?

Dugdale. It came from London, but I suppose it came thither from beyond Sea.

L. C. J. The Letter came to you, you say; was it dated from any Place, and what?

Dugdale. I am not certain whether it was dated from any Place; there were several Letters that came from all Parts, some from St. Omers, some from Paris, some from Rome.

Sir Rob. Sawyer. Pray what do you know of any Correspondence that was between your principal Agents in Staffordshire, and those Conspirators here at London?

Dugdale. Yes, there was a Correspondence between them.

L. C. J. Between whom? Name them.

Dugdale. Betwixt Mr. *Ewers*, Mr. *Gavan*, and Mr. *Vavasor*, these were in Staffordshire; and betwixt Mr. *Ireland*, Mr. *Harcourt*, Mr. *Fenwick* and Mr. *Grove*, these I know.

L. C. J. Where were these last?

Dugdale. In London these Persons were, they did write constantly three times a Week Letters into Staffordshire about this Business.

L. C. J. But pray was there any thing mentioned in any of these Letters concerning Killing the King?

Dugdale. Yes there was.

L. C. J. Was there any thing plain of that in those Letters?

Dugdale. There was in one from Mr. *Whitebread*.

L. C. J. What did that Letter say?

Dugdale. There was one from him that did give a Caution to Mr. *Ewers*, that he should be sure to chuse no Persons but such as were stout and hardy, or to that Effect.

L. C. J. To do what?

Dugdale. To kill the King.

L. C. J. Was that expressed in the Letter?

Dugdale. Yes, my Lord, it was.

L. C. J. And did they write that they should chuse hardy Persons to kill the King? Was that the Subject of it?

Dugdale. Yes, my Lord, it was.

L. C. J. Did it come by the common Post?

Dugdale. Yes, my Lord, it did; but they had devised it so, that there was care taken they should not be discovered, they would set but two Letters of their Names to them, and they were directed all to me, so that I was to bear all the Danger.

Sir Rob. Sawyer. How was the Direction? Was it directed plainly to you on the out-side?

Dugdale. Yes, it was; and if it were discovered, I was sworn by Mr. *Ewers* to deny it, and then they could not be discovered.

Mr. Just. Atkins. Did they give you any Oath to that Purpose?

Dugdale. Yes, I was sworn Ten times at least to Secrecy, and promised it on the Sacrament.

Sir Rob. Sawyer. Besides what came in those Letters, had you any Discourse with any touching Killing the King?

Dugdale. Yes.

Sir Rob. Sawyer. With whom?

Dugdale. With Mr. *Gavan*, Mr. *Ewers*, Mr. *Lewson*, and my Lord *Stafford*.

L. C. J. And would they have perswaded you to have done it?

Dugdale. Yes, I was to have been employed as an Actor in it, either to have taken his Life away, by Shooting, or by Stabbing, or some Way.

L. C. J. Did they propose it to you, and how, in what manner would they have you do it?

Dugdale. No, my Lord, I was not told absolutely in what manner; but I was directed to come to London, and I should have Instructions about it there.

L. C. J. Tell us again who they were that did solicit you?

Dugdale. Mr. *Ewers*, Mr. *Gavan*, Mr. *Peters*, Mr. *Lewson*, and my Lord *Stafford*.

Mr. Just. Atkins. My Lord *Stafford* you say?

Dugdale. Yes, I said so before, my Lord.

L. C. J. They ingaged you in the Business in general, you say, and you were to have Directions about it at London, that is that you say?

Dugdale. Yes, my Lord, Mr. *Ireland* was to take care of me there.

Sir Rob. Sawyer. Pray Sir, had you Discourse of the several Ways, what Ways were to be taken?

Dugdale. I had no particular Way mentioned, but I was told that it was easy to be done by Shooting or Stabbing.

L. C. J. Did you ever come to London upon that Errand?

Dugdale. No, never.

L. C. J. When they had engaged you to do the Thing, why did not they send you about it?

Dugdale. I was not to come till October.

L. C. J. When was it that you were engaged first?

Dugdale. I had particular Intimation of the Matter of the Plot about two Years before, but I was not to come up till October.

L. C. J. Which October?

Dugdale. Last October.

L. C. J. Why, you were engaged a great while before, how chanced you were not to come up till October?

Dugdale. I was engaged a Year and a half before, but it was not positively then said to me, that I was to be instrumental in killing the King, till that time, which was about July, when my Lord *Stafford* came down, and I was to come up in October.

L. C. J. I thought you had said that you were engaged in it a Year and half before.

Dugdale. That was only in the Plot in general.

L. C. J.

L. C. J. Was there no Time appointed for the killing the King then? When was it that you were first engaged to be an Instrument to take away the King's Life?

Dugdale. Two Years ago I was spoke to about the Plot, but I was not particularly assigned till the last Summer, and then I was appointed to come to London in October.

L. C. J. What said they then to you?

Dugdale. My Lord Stafford did offer me 500*l.* he told me I should have that for a Reward at present, and if Things did go on, I should have a better Reward when the Thing was accomplished, but this was for my present Encouragement.

L. C. J. When were you to have the Money?

Dugdale. When I came to London.

L. C. J. And why did not you come to London then?

Dugdale. I was to come to London, and the Plot was broke out and discovered first.

Mr. Ward. Pray, do you know of any Letters about the Death of Sir Edmund-bury Godfrey?

Dugdale. Yes, there was a Letter came down to my Lord Aston's, it was directed to Mr. Ewers, and it contained in it, *This very Night Sir Edmund-bury Godfrey is dispatched*: those were the Words of the Letter.

L. C. J. What Night was that?

Dugdale. I have well remembered it since, and it was Saturday Night, which was about the twelfth of October, or thereabouts, as I remember: it had those Words, *This very Night Sir Edmund-bury Godfrey is dispatched*; and it went on with more things relating to the Plot, which I cannot particularly now remember; and I caught Mr. Ewers at the reading of it, and said I to him, *Do you think this is the way to have the Design succeed? if this do not overthrow the Plot, I will be hang'd.* Not so, said he, be patient, and do not mistrust it, he was a Man that was used to punish debauch'd Persons, and it will rather reflect upon them than us.

L. C. J. Did that Letter come to your Hands?

Dugdale. Yes, it did, but it was writ to Mr. Ewers.

Mr. Just. Atkins. What Day did it come to you?

Dugdale. Upon Monday Morning.

Mr. Just. Atkins. When was it writ?

Dugdale. It was writ the Saturday Night before.

L. C. J. Did Mr. Ewers shew it you? or did you break open the Letter?

Dugdale. Mr. Ewers shewed it me for an Encouragement, that one of our Enemies was taken out of the way.

Mr. Just. Wyndham. Did you report it to any Body?

Dugdale. Yes, to the Parson of the Town, and a Relation of my Lord Aston's.

L. C. J. What was his Name?

Dugdale. One Mr. Sandwich and Mr. Philips; said I, *Do you not hear of a Knight, a Justice of Westminster, that is killed?* No, said they, *we hear nothing of it*: but it seems Mr. Sandwich went to Dinner to ———— and there he did report it.

L. C. J. Why did they look upon Sir Edmund-bury Godfrey as such an Enemy to them?

Dugdale. They had intrusted him before, but he began to be strict with Dr. Oates, searching and prying into all the whole Concern, as Mr. Ewers told me (for I knew no more than he informed me of) so they thought good to take him off.

Sir Rob. Sawyer. Gentlemen, will you ask him any Questions?

Corker. I would have been glad to have heard what he said, but I could not hear the tenth Part.

Sir Rob. Sawyer. Gentlemen, there is nothing that does particularly reflect upon you at the Bar, but is only to prove the general Design of the Plot.

Sir George Wakeman. 'Tis the worst made out that ever I think was Trial.

Dugdale. If there be any more Questions, that your Lordship or the Court will be pleased to ask me, I will be sure to answer them.

L. C. J. I will tell you the Effect of what he says, and that is this; he speaks in general, that there was a Plot to bring in Popery, and in order to that, the best way was to kill the King; and to that purpose, there were several Letters sent Weekly into Staffordshire, and very often directed by the Cover to him, wherein were seven or eight several Letters, as from Ireland, and Harcourt, and Grove, to People that were in Staffordshire; that is, to Ewers, and Lewson, and Vavasor; and many times they did write concerning the going on with this Plot of Killing the King, that they must use great Secrecy in it, and makes mention what Officers they should have for an Army to support that Matter, when they had done; they engaged him particularly first, about two Years ago, to be one in it, but more precisely in June or July last was Twelvemonth, and he should have gone, he says, in October after, up to London, in order to it; and there he should have Directions from Ireland, how he should manage himself. And he gives you an Account, that my Lord Stafford promised him he should have 500*l.* as part of his Reward, and when the Work was done, he should be better gratified; and he says, he did intend to have gone up in October to this Purpose, but the Plot broke out, and he was prevented.

Sir Rob. Sawyer. Pray, Mr. Dugdale, you have been formerly Examined, did you hear any thing of a Massacre? or of any particular Persons to be murdered, besides the King and Duke of Monmouth?

Dugdale. I do not remember any in particular, but they two; but in general, all Protestants they intended to cut off.

Mr. Ward. All Protestants?

Dugdale. Yes.

Mr. Just. Atkins. Pray, Sir, what did induce them to have so much Confidence in you? Had you any such Zeal for their Religion?

Dugdale. Yes, insomuch that they thought I was a Priest in the Country.

Mr. Just. Atkins. Had you been free of your Purse? did you give them any Money?

Dugdale. Yes, I gave them for this, and for the Praying for my Soul, the Sum of 400*l.* which was secured upon a Deed of Land; and I promised them another 100*l.* when they made moan for the Want of Money; and when Mr. Peters said if they did not make more Haste with their

their Contributions, they should be at a great Loss: And Mr. *Gavan* promised me, I should be Canonized for a Saint.

L. C. J. When had you given the 400*l*?

Dugdale. I had given it them in Money, it was upon a Deed of Land, which was conveyed to Mr. *Gerrard*, and was to be sold for the raising of that Money.

Corker. Mr. *Dugdale*, you make mention of a certain Letter sent from *London* here, from Mr. *Harcourt*; but not Mr. *Harcourt*'s Letter, in which Letter you say it was mentioned that the King should be killed, and that an Army should be raised, and some such Matters of grand Design. Sir, don't you know from whom that Letter came, I ask you?

Dugdale. I cannot directly at present call to mind the Person's Name, I may by and by, perhaps.

Corker. Then, my Lord, I appeal to the Court, and beg the Judgment of the Court, whether a Letter of that vast Concernment, about killing the King, the Destruction of the Nation, and the raising of an Army, should be sent from a Man that he himself does not, nor can tell his Name, nor the Place this Letter came from. That a Man should be so mad to send by the common Post a Letter of such vast Concern, and yet neither the Party to whom, nor the Party from whom it came, be remembered.

Dugdale. I can give you Satisfaction, as to some Letters I have received, and I can tell you in particular from whence they came. One came from *Paris* to *St. Omers*, and so from *St. Omers* *London*, and from thence by a special Messenger to *Tixall* in *Staffordshire*; and my Lord *Aston* and Mr. *Ewers* read it one Night, in my sight, in the Parlour.

Corker. Just now he said it was by a special Messenger; before he said, the Letters came by a common Post.

Dugdale. I speak of another Letter now, than those I spake of before.

L. C. J. He did, indeed, say before, that there was a Letter as you repeat it, that had the Importance of killing the King, but he could not particularly charge himself with the Person that writ it, but saith he, I can now remember another Letter, that was sent by a special Messenger, and he will tell you who that Letter was writ by, and who it came from. From whom came it?

Corker. That was only to correct a former Lye.

Dugdale. There was *J. W.* writ to it, and I suppose it was from Sir *John Warner*.

L. C. J. Where was it dated? Whence did it come?

Dugdale. There was one from *Paris*, it was first begun at *Paris*, where Advice was first to be had, and Assistance was promised, how it should be carried on, and they thought it was the best Way, after they had killed the King, for the Papists to give the first Alarm, that it was those still King-killing Presbyterians that had done that Act, and that then the Church of *England* Men would be willing to join with the Papists to cut them off.

L. C. J. This was the Substance of the Letter?

Dugdale. Yes, this was the Substance of the Letter. And the Letters from *London* said, they

thought it good Advice, and there were several Lords in *England* set their Hands to it, acknowledging it as good Advice: And in that very Letter there was an Army mentioned, that there should be an Army ready to cut off those that should escape having their Throats cut.

L. C. J. Who brought that Letter?

Dugdale. I do not know who brought it from *London* to *Boscobel*, but there was a special Messenger brought it thence to *Tixall*, and his Name was ——— *Carrington*.

L. C. J. You say there were several Lords set their Hands to it; what Lords were they?

Dugdale. I have formerly mentioned them, there was my Lord *Stafford*, my Lord *Bellasis*, and my Lord *Arundel*.

L. C. J. To what Purpose did they set their Hands to it?

Dugdale. That they approved it as good Advice.

L. C. J. Then, Gentlemen, this is that he says. Here is a Letter that was brought by one ——— *Carrington*, to my Lord *Aston*'s, and the Substance of the Letter was to justify the Killing of the King, by the raising of an Army, and that this Letter came from *St. Omers*, and that it had the Letters *J. W.* Subscribed to it, which was supposed to be Sir *John Warner*, and that this Letter was looked upon by some at *London*, and that they, as approving of it, set their Hands to it as good Advice, and then sent it down into the Country.

Corker. Was the Letter dated from *St. Omers*? Was *St. Omers* write in the Inside, what say you? Speak.

Dugdale. There were three Letters, I say, that came in that Pacquet from *St. Omers*; one came from *Paris*, another from *St. Omers*, and another from *London*.

L. C. J. And all these in one Cover?

Dugdale. Yes.
Sir George Wakeman. How could the same Cover cover all those Letters?

Dugdale. All the Letters were cover'd in *Grove*'s Pacquet.

L. C. J. Here is the Matter; he supposes there was a Letter writ, first at *Paris*, and that is then sent to *St. Omers*; and then there was a Letter writ there, by Sir *John Warner*, or some of them, and sent to *London*, and perused in *England*, by the Lords, and all sent in one Cover into *Staffordshire*.

Corker. Your Lordship makes Sense of it, but he made none but Contradictions, and said he did not know whence it came, nor who writ it. You say, Sir, you were one of those to kill the King; pray when were you to kill the King?

Dugdale. In *October*, I was to have done it, when I came up.

Corker. My Lord, here is a Plot and a Design driven on several Ways, to murder the King. Dr. *Oates* in his Narrative, as I perceive, gives us a Description of several Contrivances that were made use of to commit this Murder. He, in all his Descriptions, tells us only, as I take it, of three Ways of killing the King, the one by *Grove* and *Pickering*, another by the *Ruffians*, I know not whom, a third was by Poison; now Dr. *Oates*, in all his Relations, makes not any mention of a fourth Design to kill the King, or of any other Plot or Design at *London* to kill the King; but he says, if *Grove* and *Pickering* mis-

carried,

carried, it was to be done by the four Ruffians, and they miscarrying, it was to be done by Poison, now comes he with a Thing that never was thought of before, that *Oates* never gives any Relation of.

L. C. J. What then?

Corker. He, my Lord, tells us, that this was to be done in *October*, when all the other Things that were to be done were past; and what, should they design to kill the King in *October*, when it was to be done before in *July* or *August*?

L. C. J. Look you, the first part of your Objection, wherein you say he names but three Ways of killing the King, what do you infer from that? that because this Gentleman says there was a fourth, there was not. Dr. *Oates* told you as much as he knew of the matter, but he does not undertake to give you an account of all the Plot or Plotters in this Affair. If you make any reasonable Objection against Mr. *Dugdale's* Testimony, I will allow it, but these Inferences I must not. That this is a strange Story of Mr. *Dugdale's*, because 'tis not part of *Oates's* Discovery, is that a reasonable Objection? But then for the latter Part, that Dr. *Oates* says the King was to have been killed in *July* or *August*, therefore what should they think of killing him in *October*, he tells you, that in *June* and *July* they did engage him in the general Plot, and first then to be instrumental in killing the King, but he was not to be gone till *October* to *London* to do it.

Corker. When the Thing was done.

Mr. Just. *Wyndham.* No, no, because the Thing was not done, or because it might miscarry by others, therefore he was to come then.

L. C. J. They could not tell when it would be done, or by what Hand it would be done; therefore they were engaging as many as they could, provided the Thing were not done.

Marshal. Amongst other Things that seem to render his Testimony suspected, there is one which is taken from the common Practice of all Men, in Cases of like Nature, for where there is Danger in Matters of Concernment, Men use to be very circumspect who they choose, and make choice of as few as possible; but now here is Person after Person, Conspiring without End, and Letters to this Person, and to that Person, and nothing is proved to be done upon it, so that here is the greatest Confusion imaginable, an Hundred of Men, nay, almost a whole Nation are acquainted with it, when a few might serve the Turn.

Sir Rob. *Sawyer.* Why do you say 'twas known to the whole Nation, when 'twas so close a Conspiracy?

L. C. J. North. You that are at the Bar; We do not object to what you say, as to the Way of it, but as to the Time that you deliver it in; it is the Course, that you deliver your Objections when the King's Evidence is done; indeed when the King's Council have done what Questions they have to ask of the Witnesses, then you may ask them what Questions you will, but for the Observations that you would make by way of Objection to the Evidence, and as to their Credit, you should reserve that to the last, when the King's Evidence is done.

Prisoners. My Lord, we desire we may be allowed Pen, Ink and Paper.

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* Mr. Recorder. Let them have it.

* Sir George Jefferies.

L. C. J. Indeed there is one Thing very considerable on your side, and 'tis fit there should be an Account given of it. 'Tis very strange, that a Thing of that Nature should be writ so plain, I mean the killing of the King, in a Letter that should be sent by the Common Post; what say you to that?

Dugdale. Mr. *Ewers* did it for no other End in the World, but that they intended, if it should be discovered, all should be flung upon me, and I was sworn to deny it, and they were to go free.

L. C. J. What were the Words of the Letter?

Dugdale. In that of Mr. *Whitebread's*, it was contained downright plainly, *he should choose such as were hardy, for the killing of the King.*

L. C. J. And how did that Letter come?

Dugdale. By the common Post.

Sir George *Wakeman.* No Man living can believe it.

Mr. Just. *Pemberton.* There was no mention of *Ewers*, on the Out-side, nor no Name to it, was there?

Dugdale. No, none at all, my Lord.

Mr. Just. *Pemberton.* No Name to the Letters?

Dugdale. Only the two first Letters of their Names.

Marshal. Would they, in such Case, can any Man think, be so mad as to venture their Lives, and all, for they knew not what? Would the Lords, whose Names, he says, were subscribed to one of the Letters, engage their Lives and Fortunes in the Signing of a Letter, wherein both were so much endangered, and commit it to such an Hazard?

Rumley. Would they set their Hands to such a Letter, as they could not be certain into whose Hands it might come? and he says, he does not know who it came from.

Mr. Just. *Pemberton.* Mr. *Dugdale*, was that Letter by a common Post, that the Lords set their Hands to?

Dugdale. No, it was by a special Messenger.

L. C. J. Look you, Gentlemen, the Answer that he gives to your Objection is this; You say it is strange, and indeed it is so, that such a Design should be writ so plain in *English*, in a Letter; but he says there was no Body in Danger by it, but himself, for there was no Body could tell from whence it came, because only two Letters of the Name were subscribed; and, says he, it was directed to me only, and so I might have suffered, but *Ewers's* Name was not mentioned, to whom it was intended to go.

Rumley. Yet he says he does not certainly know who it came from.

Mr. Recorder. Gentlemen, you have your proper Time for that, if you will make any Remarks.

Mr. Just. *Pemberton.* Will you ask him any more Questions? As for your Arguments, you must not use them now.

L. C. J. North. But they have desired Pen, Ink, and Paper; is it given to them?

Mr. Recorder. You must allow the Prisoners Pen, Ink, and Paper, if they desire it.

L. C. J. Ay, all of them, if they would have it. [*Which was done.*]

L. C. J. Mr. *Dugdale*, this Letter that came from *Whitebread*, it came with others, did it not?

Dugdale. Yes, my Lord, it did.

L. C. J. The Cover was directed to you, was it not?

Dugdale. Yes, my Lord, it was.

L. C. J. Had the other Letters particular Directions, to particular Persons?

Dugdale. Every Letter was directed to me.

L. C. J. What, besides the Cover?

Dugdale. Yes, besides the Cover.

L. C. J. Who were you to communicate them to?

Dugdale. They had a particular Mark that they were known by, there was always a black Cross upon them. I was to give them to Mr. *Ewers*, and he was to communicate them to others concerned.

L. C. J. What was upon the other Letters?

Dugdale. I had no Letters but what I delivered to *Ewers*.

L. C. J. Was he the only Man that they were delivered to?

Dugdale. Yes, my Lord.

L. C. J. And he distributed them as he pleased, did he?

Dugdale. Yes.

L. C. J. Had you more Marks than one?

Dugdale. No, my Lord, no more Marks than one.

L. C. J. So you were only Agent between Mr. *Ewers* and them, and none else?

Mr. Just. *Wyndham*. They were all directed to you, how did he know who they were to go to?

Dugdale. I was to deliver them to him, and he dispersed them to the several Persons, and he rid constantly abroad about it.

L. C. J. Were there several Marks to know who they were to?

Dugdale. My Lord, he knew, by conversing with them, their several Hands, and so could tell, by what was written, what was intended, and what the Business was, and for whom.

Corker. There must have been several Transactions, and a Man must have received several Letters, before he knows another's Hand.

Mr. Just. *Pemberton*. Will you ask him any Questions? you must not argue upon it yet.

Rumley. How many Letters came to you, pray, from beyond Sea?

Dugdale. An hundred, I believe, in two Years Time.

Rumley. From how many several Persons? Methinks you should produce some of those Letters.

Dugdale. There were Letters from Sir *John Warner* very often. I cannot remember all.

Rumley. Methinks you might be more ready in your Evidence, than upon every Turn to say, You can't remember. Have you none of those Letters?

Dugdale. I burnt those Letters which I kept, before I intended to discover the Plot; but in a multitude of Letters, 'tis hard to tell Particulars, I tell you what I remember of them.

Corker. You make mention of killing the King, and raising an Army, and these were specified in two Letters. In those Matters which concerned the raising of an Army, were there only

Letters, no Commissions sent, for the raising of Forces? Did you never see any of the Officers? Did you never communicate with any of them?

L. C. J. Did you see any Commissions first?

Dugdale. No, I never did see any of them.

L. C. J. Did you ever talk with any that were intended to be Officers?

Dugdale. Yes, I have.

L. C. J. Name them.

Dugdale. There was Sir *James Symons*, and Mr. *Howard*, I have talked with them.

L. C. J. With them two?

Dugdale. And with one Captain *Adderley*, that is dead.

Corker. Why, there are three Officers towards the raising of several Thousands of Men.

Mr. Just. *Pemberton*. Look you, Mr. *Corker*, you must direct your self to the Court, and propose your Questions here.

Corker. Mr. *Dugdale* tells us, that for the promoting of this Design, that he gave 400*l.* and with the same Breath says, he was to receive 500*l.* Methinks this is to do and undo.

Mr. Just. *Dolben*. Pray keep this arguing of yours till the last.

L. C. J. North. The Court hath told you already, this is not proper for you. 'Tis true, you must have Liberty to ask Questions, because there are some Questions that else may be forgotten, and the Opportunity will be lost: But when you have asked those Questions, make your own Observations upon them in private to your selves, and afterwards it will be time for you to argue upon it to the Jury, when the King's Council shall have done their Evidence: But now to make these Inferences will do you little Service, and can't be permitted.

Dugdale. My Lord, I desire to answer it now. It was my Lord *Stafford* that promised me the Money, and I went presently to know of Mr. *Ewers* what it meant, because I had given my Money before, and my Lord *Stafford* did not, I suppose, know any thing of it.

L. C. J. How long was it before that you gave the Money?

Dugdale. It was two or three Years before; at the Beginning, when the Plot was first discovered to me, for the introducing of their Religion.

Mr. Just. *Atkins*. He was a great Zealot, but my Lord *Stafford* did suppose the Money might quicken him.

Dugdale. It was for my Encouragement, and I should have a greater Reward after.

Corker. He received the Money, I suppose, when he was in Prison for Debt, rather than for any thing else.

L. C. J. North. You may observe that by and by.

L. C. J. Look you, this is what he hath said, it is all but in general, and he does not name any of you Four: But here was a general Contrivance, he says, to bring in Popery; I am afraid that is too true; and as the best way to effect that, they resolved to kill the King; and I am afraid that is too true too, for it was indeed the likeliest way.

Then stood up Mr. Prance.

Mr. *Ward*. Mr. *Prance*, pray will you give the Court an Account, only in general, of what you

you know of any Design that was at this time?

Prance. It was a Fortnight or Three Weeks before *Michaelmas*, I went to one Mr. *Ireland's* Chamber, in *Russel-Street*, where was Mr. *Fenwick* and Mr. *Grove*, and there they were discoursing of 50000 Men that were to be raised, for the settling of the *Roman Catholick Religion*; and I asked Mr. *Fenwick*, how that could be done? And he said, Very easily, in a short time. Then I asked him, What poor Tradesmen should do? And he said, I need not fear, for I should have Church-Work enough, to make Crucifixes, Basons and Candlesticks.

Mr. *Just. Atkins.* You are a Working-Goldsmith?

Prance. Yes. Then I asked, who should govern them? And he said, my Lord *Powis*, my Lord *Stafford*, my Lord *Arundel*, my Lord *Bellasis*, and my Lord *Petre*. Two or three Days after that, *Grove* came to my Shop to buy some Spoons for a Christning; and then I did ask him, what Office he was to have? He said, he did not know, but he said, that my Lord *Bellasis*, my Lord *Powis*, and my Lord *Petre*, had Commissions to govern the Army. And after that, there was one Mr. *Paston* in *Duke-Street*, I went to him, to know how I could direct a Letter; and after a little Time, we fell into Discourse concerning the Affairs of the Times. He told me, The Lords had given out Commissions, one was to Sir *Henry Bennyfield* in *Norfolk*, another was to Mr. *Stoner* in *Oxfordshire*, and another was to Mr. *Talbot* of *Longford*. He said that they had given Commissions for to raise an Army.

Mr. *Ward.* What was that Army to do?

Prance. It was to settle the Catholick Religion.

Mr. *Ward.* Did you hear any thing mentioned of killing the King?

Prance. Yes, I did.

L. C. J. Who told you this that you speak of about the Commissions?

Prance. Mr. *Paston*, my Lord, in *Duke-Street*.

L. C. J. Was he a Priest?

Prance. No, but he kept some in his House, and they said Mass every Morning.

L. C. J. Is he of any Profession?

Prance. He was a Counsellor, but doth not practise now, he hath an Estate of 5 or 600 a Year.

L. C. J. Now go on, and say what he told you.

Prance. He said, there were Commissions given out to Sir *Henry Bennyfield*, and one *Talbot* of *Longford*.

L. C. J. When was it he told you this?

Prance. It was in *August* last.

L. C. J. And did he say they had Commissions sent to them?

Prance. Yes, they had them in the Country, where they were to raise their Troops: I heard of more, but I only remembred those Three.

Mr. *Ward.* Do you know one *Messenger*?

Prance. Yes.

Mr. *Ward.* What Discourse had you with him?

Prance. My Lord's Butler told me —

L. C. J. Who told you?

Prance. My Lord's Butler.

L. C. J. What Lord?

Prance. My Lord *Arundel*. He waited then

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on one *Sheldon*, that was Almoner to the Dutchess of *York*. He told me, That Mr. *Messenger* was to kill the King, and he was to have a good Reward for the same. Soon after, I was going over *Lincolns-Inn Fields*, and met with Mr. *Messenger*, and asked him, Why he would kill the King? He seemed to be surprized, and starting back said, Who told you that? Said I, Your Butler told me. Oh, said he, we are quite off of that now: But then I was going away, and he called me back, and asked me, if I would go and drink with him? No, said I, I cannot stay at this Time. However, pray, said he, keep Counsel, for we are off of that now.

Mr. *Ward.* Will you ask the Witness any Questions?

Corker. Yes, my Lord. Those Commissions you speak of, when were they sent? in *August*?

Prance. No, I do not say so; but that Mr. *Paston* told me of them in *August*. I cannot tell the Day.

Sir *Rob. Sawyer.* If you observe it, Gentlemen, he only tells you what some of the Priests and Persons of your Religion acquainted him with; not any thing particularly against you.

Mr. *Ward.* Then next we call Mr. *Jennison*. Who stood up.

Sir *Rob. Sawyer.* Mr. *Jennison*, pray give the Court an Account of what you know of any Design in Hand, or what Discourse you had with any Person about such a Thing.

Jennison. Sir, in the Month of *June* 1678, I was at Mr. *Ireland's* Chamber.

Sir *Rob. Sawyer.* Where, Sir?

Jennison. In *Russel-Street*, next the *White-Hart*. And there arose a Discourse about Religion, and some hopes there were, he said, that the *Romish* Religion should be publicly owned again in *England*; and when I came in, I remember Mr. *Ireland* did say, There was only One in the Way, that stop'd the Gap, and hindred the Catholick Religion from flourishing in *England* again; and said, it was an easy matter to poyson the King.

L. C. J. Who was by pray when he said so?

Jennison. His Sister was by.

L. C. J. Name her, Sir.

Jennison. Mrs. *Anne Ireland*.

L. C. J. Who else?

Jennison. None else.

L. C. J. Then there was only you, and *Ireland*, and his Sister. And you say, That they were discoursing concerning their Hopes of bringing in Religion, and *Ireland* said, there was but One in the Way, and that it was not an hard matter to poison the King.

Jennison. Yes, my Lord; and so I not knowing any thing at all of the Plot, or imagining the Design, did answer, Perhaps it may be done, but it would be a very horrid thing if it should. Then Mrs. *Ireland* did rebuke her Brother, and asked him, Why he talk'd so? And then he answered with some *Salvo* or other, That he did not think it ought to be done. Then I pursued the Discourse about Religion, and told him, I thought it would never come in by Violence, and that it was a great scandal to Religion for the Professors of it to propagate and promote it by any such Ways: And then I put him in mind of the Gunpowder Treason, of the ill Success it had, and the great Injury it did to the Cause.

He answered, That was only a State Trick, and an Invention of my Lord Cecil's.

L. C. J. Ay, they do say so, I know; were you a Papist then?

Jennison. Yes, my Lord, I was.

L. C. J. Are you one still?

Jennison. No, my Lord.

Ward. Mr. Jennison, were you with him again at any time? And what time was it that you met him, as you remember?

Jennison. The 19th of August, after I came from Windsor.

L. C. J. Where did you see him?

Jennison. At his own Chamber in Ruffel-Street.

L. C. J. How do you so precisely remember the Day, that it was the 19th of August?

Jennison. I remember it by this; the beginning of August I went to Tunbridge with Mr. Tonstall and another Gentleman, and there I staid till the 14th, when I came to Town, and staid two or three Days, and on Saturday in the Afternoon I went to Windsor to take my leave of Mr. Bowes, being to go down into the North; and there I staid all Sunday, and came back again on Monday Morning, and came to Town about Twelve a Clock the 19th Day, as I have considered it since it was, and a Monday.

L. C. J. And then you went to Ireland's Chamber, did you?

Jennison. Yes, then I went to Mr. Ireland's Chamber.

L. C. J. By the Oath you have taken, because it is very material, not to your Cause, but it shews how fit it is that the World should know with what Truth or Falshood these Men dare die, and this Man did in particular. It was affirmed by him to the very last of his Breath, that he was never here in London after the third of August, till some time in September, but was all the while in Staffordshire; and they did at the last Trial produce Sir John Southcot, and his Coach-Man, and his Lady, and I know not how many other Witnesses, to give an Account where he was from the third of August, all along till the middle of September; and they testified that they kept Sixteen Days together in his Company; and then they produced People in Cheshire to say, that they saw him there. Therefore I do now ask you upon your Oath, Are you sure that you saw Ireland here the 19th of August?

Jennison. Yes, my Lord.

L. C. J. Do you swear that positively?

Jennison. Yes, my Lord, I do.

Sir Rob. Sawyer. He will tell you the Discourse he had with him then.

Jennison. After that I came to Mr. Ireland's Chamber, I understood he was newly come out of Staffordshire. And he pull'd off his Boots while I was there upon the Frame of a Table, or else upon a Jack, I cannot positively tell which, but I believe it was on a Frame of a Table. I asked him, how all our Friends did in Staffordshire? He told me, very well, and that they would be glad to see me there. Then he asked me, whence I came, and where I had been? I told him, I had been at Windsor. He asked me, what News? How the Court diverted themselves? I told him, I understood his Majesty took great Delight in Hawking, and Fishing, and chiefly in Fishing, and used to go out very early in the Morning, accompanied only with three or four Persons of Quality.

L. C. J. Did he ask you what Company he had? Or did you tell him of your own accord?

Jennison. No, I think I told him of my own accord, that the King went out very early, and had but little Company with him. Lord, said he, I wonder the King should go so thinly Guarded, he were easily taken off, I wonder he should go so open. Said I, God forbid, sure nobody would be so wicked; and then he qualified it by some Expression; so that at that time I made no ill Reflection upon it, till after the Plot broke out, and then discoursing of it to my Father and my Sisters, I said, I wish it be not true, pray God there be nothing in this Plot, because of the Discourse that happened between Mr. Ireland and me. 'Tis very suspicious, said I.

Sir Rob. Sawyer. At that time had you any Discourse whence he came, and about his weariness?

Jennison. He said, he came out of Staffordshire, and came Post. I understood he came very early that Morning. I told him that Scholars, such as he, would rather choose to come upon an Ambling Horse, and that I was weary my self.

Sir Rob. Sawyer. Were you very well acquainted with Mr. Ireland that suffered?

Jennison. Yes, very well.

Sir Rob. Sawyer. Are you sure he was in London the Nineteenth of August?

Jennison. Yes, and I talked with him then.

L. C. J. How long had you known him before?

Jennison. A Year and a half.

Sir Rob. Sawyer. Pray when did you go out of London to the North? What time did you go away?

Jennison. I went the fourth of September, as the Coach Book will make it appear.

L. C. J. The Evidence they gave was, that he did not come to Town till the 13th of September, but he was gone the 4th it seems to the North, and that is before that time. Well, will you ask him any Questions?

Corker. Mr. Ireland had been in Staffordshire? Had not he? for the 19th you say he came to Town, I do not well remember, but the Design of the Ruffians of killing the King, about which Oates speaks, was before the 19th, at the Consult of which Ireland was so grand an Instrument.

L. C. J. That was in May, was it not?

Corker. No, that of the Ruffians was in August, as he says.

Sir Rob. Sawyer. Will you ask him any Questions? Look upon him; you see how creditable a Witness he is.

Corker. Did you, pray Sir, leave your Religion, and make this Discovery before the pretended Plot came out? When did you leave your Religion?

Jennison. About three Months ago.

L. C. J. He told you that as soon as the Plot broke out, said he, I told my Sisters and my Father of it, and said, I pray God this Plot have not more in it than we are aware of, for I had some Discourse with Mr. Ireland, which I took no notice of then, because he qualified it at that time, and said it was not lawful, and did make nothing of it then, but now it runs much in my Mind.

Corker.

Corker. This, he says, but this Man did not leave his Religion, nor make this Discovery till it appeared advantageous to him so to do.

Mr. Recorder. It is an Observation you make, but it had been well if you, and all of that Perswasion, would have left it when you saw what it led to.

L. C. J. I know not what Advantage you mean, nor do I see any colour you have to say so, for they say this Gentleman's Father is one of 1000 a Year, and he is his eldest Son.

Corker. Are you your Father's Eldest Son?

Mr. Recorder. There is an Elder Brother, my Lord, but he is a Priest.

L. C. J. Is your Elder Brother a Priest?

Jennison. My Lord, I don't know that, he is in *Newgate* about it.

L. C. J. It is reported that he is so?

Jennison. My Lord, I don't know it of my own knowledge.

Corker. He does not know it, and therefore he is not the Heir, and therefore the Advantage of his Estate is not such, but that he might lay hold of this Discovery.

Sir Rob. Sawyer. I hope by and by, Gentlemen, you will make a better Defence than this.

Mr. Just. Pemberton. What you say should be by Way of Question proposed to the Court.

Mr. Recorder. But you take it upon your Oath that you saw *Ireland* the 19th of *August*? Was that after you met with *Mr. Bowes*?

Jennison. I did not meet with *Mr. Bowes*.

Mr. Recorder. How long after you had left him was it?

Jennison. I did not see him there, I went to see him, but he was not there.

L. C. J. But he says precisely that the 19th of *August* he went to *Mr. Ireland's* Chamber, where he saw him pluck off his Boots, and talking, as if he had come out of *Staffordshire*, Post, so that indeed he was in *Staffordshire*, but not all that time he said he was.

Mr. Ward. Then pray call *Mr. Bowes*. *Who was sworn.*

Sir Rob. Sawyer. Pray, Sir, will you give the Court an Account, when you saw this Gentleman, and about what time he went out of Town.

Bowes. My Lord, I saw him in *August*, the beginning, or about the middle of *August*, in *Tunbridge*, before my coming to Town.

Sir Rob. Sawyer. Pray when did he leave this Town? when did he go out of Town?

Bowes. I cannot point blank tell the time, but I could recollect my self, I believe, in a little time.

Sir Rob. Sawyer. Do you know of his going to *Windsor*?

Bowes. I did not see him there, but he writ a Letter to me that he went thither to meet me there, but I saw him not till he came to Town again.

L. C. J. Who is't you speak of?

Bowes. *Mr. Jennison*.

Sir Rob. Sawyer. What did he write you in that Letter?

Bowes. Sir, the Letter is here in Court, I don't remember the particulars.

Sir Rob. Sawyer. Is it here in Court?

Bowes. Yes, it is, I think.

Mr. Recorder. Shew it him, for it may refresh his Memory about the time. *[Which was done.]*

L. C. J. Is that the Letter?

Bowes. This is the Letter.

Sir Rob. Sawyer. Pray, when did you receive it?

Bowes. It was in *December* before *Christmas*, here is a Gentleman that then saw it.

Sir Rob. Sawyer. Pray, Sir, will you please to look upon it, and then acquaint the Court with some of the Contents.

L. C. J. North. You are sure, *Mr. Bowes*, that *Mr. Jennison* was in Town in *August*?

Bowes. He came then from *Tunbridge*.

L. C. J. That is all, we can make no more of it: Did he meet you at *Windsor*?

Bowes. No, my Lord, I was gone to *Windsor* before, and when he came I was gone out of the Town.

L. C. J. What time went you to *Windsor*?

Bowes. The twelfth or thirteenth of *August*; it was on a *Monday* or a *Tuesday* after I came from *Tunbridge*.

Sir Rob. Sawyer. Then we shall call one Witness more, and we shall prove by him (that is one *Mr. Burnet*) that the seventeenth of *August* he did meet *Mr. Jennison* going to *Windsor*. Pray call *Mr. Burnet*. *[Who was sworn.]*

L. C. J. Pray, Sir, do you know *Mr. Jennison*?

Burnet. I met him as I was coming from *Windsor* that Day *Dotchet's* Horse-Race was.

L. C. J. What Day was that?

Burnet. I cannot exactly remember the Day.

L. C. J. What Month was it?

Burnet. In *August*.

L. C. J. Was it the middle of *August*, or the latter end?

Burnet. It was about the middle of *August*.

L. C. J. This does not so much relate to you, but it is to give satisfaction to all the World, that what was asserted by *Mr. Ireland* all along, and at his Death, and seems to be justified by so many Witnesses as were produced on that account, to prove that he was not here in *August*, is utterly untrue; for this Gentleman, *Mr. Jennison*, swears he saw him here in Town the 19th of *August*; and to prove that *Mr. Jennison* was here, here is *Mr. Bowes*, and this other Gentleman that come to fortifie his Testimony, who swears precisely, that the 19th of *August* he was at *Mr. Ireland's* Chamber, where he saw him pluck off his Boots, and talk'd as if he came Post then from *Staffordshire*.

Corker. I suppose it will not be permitted us to make any Argument upon this neither as yet.

L. C. J. No, no.

Sir Rob. Sawyer. But, now, Gentlemen, it will behove you to take Notes, for we shall come home to you, and we begin with *Dr. Oates*. *[Who stood up.]*

Mr. Ward. Pray, Sir, will you tell your whole knowledge of this matter, and apply your self as near as you can to every one of the Prisoners at the Bar.

Oates. My Lord, in the Month of *July* *Mr. Ashby* came to Town sick, and being sick, and one of the Society, the Prisoner at the Bar, *Sir George Wakeman*, was his Physician, and being his Physician he did write him some Instructions how he should order himself before he went,

went, and at the *Bath*; That he should, in the first place, take a Pint of Milk in the Morning, and a Pint of Milk at Night, and should drink no Morning's Draughts but Milk, and that he should have one hundred Strokes at the *Bath*, at the Pump; I do not so well understand what that means, but I suppose the Court doth; but these were the words of the Instructions: In this Letter Sir George *Wakeman* did write, that the Queen would assist him to poison the King, and this Letter was brought by a Messenger to Mr. *Ashby*. Within a Day or two after I saw Mr. *Ashby* and Sir George *Wakeman*, the Prisoner at the Bar (he was so called, but I had no acquaintance with him, but just the sight of him) I saw him sit in a writing Posture, I saw him lay by his Pen, rise up and go away, and the same Hand that he left behind him in a Paper where the Ink was not dry, was the same Hand that writ the Letter to Mr. *Ashby*. And, my Lord, in that time of converse, while he was writing this, Mr. *Ashby* did give him some Instructions concerning the Commission he had received of being Physician to the Army. Now, my Lord, in some few Days after there came a Gentleman for some of the Fathers from *Wild-House*, that had the Title either of Sir *Richard* or Sir *Robert*, but he was a middle-statured Man, and a brisk Man, about the Age of four or five and forty, and he came with Commands from the Queen for the Fathers to wait upon her at *Somerset-House*, and I did wait upon these Fathers, there was Father *Harcourt*, Father *Kaines*, Father *Langworth*, and Father *Fenwick*, and another Father, I cannot remember his Name. And, may it please your Lordship, we did attend at *Somerset-House*, and the Fathers went in to the Queen, into a Chamber where she was, and I waited in an Anti-Chamber, and I did hear a Woman's Voice which did say, that she would assist them in the propagation of the Catholick Religion with her Estate, and that she would not endure these Violations of her Bed any longer, and that she would assist Sir Geo. *Wakeman* in the poisoning of the King. Now, my Lord, when they came out I desired that I might see the Queen, and so when I came in I had, as I believe, from her a gracious Smile. Now, if it please your Lordship, while that I was within I heard the same Voice speak thus to Father *Harcourt*, and asked him, whether he had received the last 1000*l.* and it was the same Tongue, as I can possibly guess, the same Voice which I heard when I was without; and I saw no other Woman there but the Queen, and there were these Fathers. My Lord, in that very Month of July Sir George *Wakeman* was proposed 10000*l.* in the presence of Father *Harcourt*, and Father *Fenwick*, I think was there, and Father *Ireland*.

L. C. J. Were you there?

Oates. I was there.

L. C. J. Was this Proposal made to Sir George *Wakeman* after this Discourse you heard at *Somerset-House*?

Oates. My Lord, I will not be positive whether it was before or after, but it was near that time, this 10000*l.* he did refuse.

L. C. J. But you say you heard the 10000*l.* was proffer'd him; pray, who did propose it to him?

Oates. *Ashby* was to do it.

L. C. J. But who did it?

Oates. It was *Ashby* in the name of the Provincial, from whom he had received Instructions so to do.

L. C. J. But you say, in your hearing 10000*l.* was offered him by *Ashby*.

Oates. Yes, my Lord.

L. C. J. What said he?

Oates. He refused it.

L. C. J. What words did he use?

Oates. He said it was too little.

L. C. J. What was the 10000*l.* to be given for?

Oates. To poison the King.

L. C. J. Were those the words?

Oates. Yes, they were.

L. C. J. How did the Discourse begin?

Oates. I will tell your Lordship how: There was a Meeting of the Fathers for this very Purpose to treat with Sir Geo. *Wakeman* before *Ashby* went to the *Bath*, and there being a Meeting they did break this business to him; but what preamble they made to it I cannot remember. My Lord, as for the other Prisoners at the Bar, Mr. *Corker* —

L. C. J. But before you go from this Matter, you say you know not how they brought it in, but they brought it in some Way, he was to meet them to that Purpose, and there *Ashby* did tell him he should have 10000*l.* What Answer made he to it?

Oates. He said it was too little for so great a Work.

L. C. J. Is that all?

Oates. That is all that I remember.

L. C. J. Did he say what he would have?

Oates. I can't remember that, but he said that was too little.

L. C. J. Did he say he would have five more, or any other Sum?

Oates. No, that was not then mentioned; but there were Letters presently dispatched to *Whitebread* to tell him, that Sir Geo. *Wakeman* had refused 10000*l.* and then this same *Whitebread* did order the Fathers in *London* to propose five more, which proposal was made to Sir Geo. *Wakeman*. This I speak but by hear-say, and it was accepted, and 5000*l.* of it received in Part, and Sir George *Wakeman*'s Name was subscribed to the Entry-Book.

L. C. J. Did you see his Name subscribed?

Oates. Yes, my Lord, I did.

L. C. J. Where?

Oates. To the Entry-Book.

L. C. J. Where was that Book kept?

Oates. It was the Book that the Jesuits kept: it was then in our Custody.

L. C. J. Whose Custody?

Oates. The Fathers Custody.

L. C. J. Whose particularly? And at whose Chamber was it kept?

Oates. At *Wild-House*.

Sir Rob. *Sawyer*. Do you know who was the Keeper of it?

Oates. I cannot positively say that, I suppose the Secretary and the Fathers.

Sir Rob. *Sawyer*. And what did you see writ in that Book?

Oates. That such a Day (which Day I cannot remember) but such a Day in *August* so much was proposed to Sir Geo. *Wakeman* and he accepted it, and received it: those were the Words, or to that Purpose.

L. C. J.

L. C. J. Were those the Words writ in the Book?

Oates. Yes, or to that Purpose.

L. C. J. Do you know whose Hand writ that?

Oates. Yes, my Lord, I can tell whose Hand, it was Father *Harcourt* writ those Words.

L. C. J. Sir Geo. *Wakeman*'s Hand was not to it, was it?

Oates. Yes, it was just underneath: Received so much Money of Father *Harcourt* by the Order of *Edward Coleman*: now there was the Goldsmith's Name to it, I cannot undertake to say who it was, but in my Conscience I think it was *Staley*.

L. C. J. How much was the Money?

Oates. Five Thousand Pounds.

L. C. J. Was Sir Geo. *Wakeman*'s Hand subscribed to that Receipt?

Oates. Yes, it was.

L. C. J. Once more, what were the Words in the Book?

Oates. Memorandum. Such a Day 15000 l. was proposed to Sir Geo. *Wakeman* which he accepted. I tell you the Purport, and the Words as near as I can.

L. C. J. Was it said for what the Money was proposed?

Oates. I will not be positive in that, I suppose it was.

L. C. J. But you say it was written such a Day 15000 l. was proposed to Sir Geo. *Wakeman*, and by him accepted?

Oates. Yes, my Lord, and then underneath it the Receipt was written, and this Receipt was written thus, *Received in Part of this 15000 l. 5000 l. of Father Harcourt by Order of Edward Coleman.* Geo. *Wakeman*.

L. C. J. Was the Receipt, which is said such a Day, the same Day that the other?

Oates. There was no other Date to it.

L. C. J. Had the first a Date to it?

Oates. Yes, my Lord, it had.

L. C. J. What Day was it?

Oates. It was in *August*.

Corker. What Day in *August*?

Oates. I cannot tell.

Corker. About what time in *August*?

Oates. It might be betwixt the beginning and the middle.

L. C. J. But we will suppose for the present Question a Day: Suppose it was written the 10th of *August*, *There was proposed 15000 l. to Sir G. W. and by him accepted*; and then comes afterwards this Note, *Received then 5000 l. in Part of this 15000 l. with his Name to it.* Was there any other Date to that?

Oates. No, that was set down as the same Day, *Received 5000 l. in Part by the Order of Edward Coleman.*

L. C. J. And then Sir Geo. *Wakeman*'s Name was set to it at length, was it?

Oates. Yes, it was.

Sir Geo. *Wakeman*. Where was that Received? In whose Chamber?

Oates. I cannot say that.

L. C. J. Was there any Place mentioned in the Note where it should be Received?

Oates. No, my Lord. I was then sick of the Stone, and was not at the Payment of the Money.

L. C. J. But did the Note mention any Name? Received of any Body?

Oates. It was by Order of Mr. *Edward Coleman* 5000 l. in part of this 15000 l.

Sir Geo. *Wakeman*. Does he say this was in the Entry-Book?

Oates. Yes, it was.

Sir Geo. *Wakeman*. Where was that kept?

Oates. Sometimes at *Wild-House*, sometimes Mr. *Langhorn* had the Custody of it.

Sir Geo. *Wakeman*. I humbly beg of the Court that Mr. *Staley* may be sent for.

L. C. J. He only says he believes Mr. *Staley* paid it.

Sir Geo. *Wakeman*. Does he mention no Place where it was Received?

L. C. J. No.

Sir Geo. *Wakeman*. Nor no Person it was paid to?

L. C. J. No, he says, All I saw is this, that in the Entry-Book sometimes kept at *Wild-House*, sometimes by Mr. *Langhorn*, there was written, *This Day (which was some Day in August) was proposed to Sir G. W. 15000 l. and by him accepted*, and under that a Line or two more, which contained, *Then Received 5000 l. by Order of Edward Coleman, being Part of this 15000 l.*

Geo. *Wakeman*.

Sir Geo. *Wakeman*. Will your Lordship please to give me leave to speak something now, I may forget it hereafter.

Mr. *Ward*. We have not done yet.

Mr. *Just. Pemberton*. Sir George, they have not yet done with this Witness for the King.

L. C. J. North. Take a Memorandum of it in your Paper.

Sir Robert *Sawyer*. Pray, what do you know more of the Prisoner at the Bar, Sir George *Wakeman*?

Oates. This is all I can recollect at present.

Sir Robert *Sawyer*. Do you know any thing of any Commission that he had?

Oates. I did urge that he received a Commission to be Physician-General of the Army.

L. C. J. Did you see that Commission?

Oates. Yes, I saw it in Sir George *Wakeman*'s Hands.

L. C. J. Had you seen it before?

Oates. Yes, I had.

L. C. J. Where did you see it in his Hand?

Oates. When he was writing at Mr. *Asbby*'s.

L. C. J. What Note was that he left behind him there?

Oates. It was an Apothecary's Bill, as I suppose.

L. C. J. What Month was it that you saw the Commission?

Oates. It was in *July*.

Mr. *Ward*. What do you know of his being privy to the Consult in *April*?

Oates. I cannot speak any thing to that.

L. C. J. Did he write his Name to that Bill?

Oates. I cannot say that, my Lord, it was finished, but I cannot be positive about the Name.

L. C. J. But you say, that you believe that the Name of *George Wakeman* was the same Hand with that you saw when he writ the Apothecary's Bill?

Oates. It was, as near as I can guess, the same with that Letter that was writ to *Asbby*, wherein he does direct him to take a Pint of Milk in the Morning, and a Pint of Milk in the Evening, and that he should have an hundred Strokes

at the *Bath*: And this Hand was the same with that of the Apothecary's Bill.

L. C. J. You never saw Sir George Wakeman write in your Life, did you?

Oates. I saw him in a writing Posture, and I saw him lay by the Pen.

L. C. J. But you did not see him write?

Oates. No, my Lord; but the Gentleman that fate by him was lame of both his Hands and could not write: And I saw him lay by the Pen, and when he was gone away the Ink was not dry.

L. C. J. You speak of that only to shew the Likeness of the Hand.

Sir Geo. Wakeman. Have you not said that you do not know my Hand?

Oates. I have told the Court before how far I have known your Hand. I saw a Letter, that I say was signed and subscribed George Wakeman, and that was the same Hand that was to the Receipt, and to the Apothecary's Bill.

Sir Geo. Wakeman. Have you not said positively that you do not know it, and is not that Matter on Record?

Oates. I did see a Letter subscribed George Wakeman, 'tis a fine genteel Hand, and after I saw him in a writing Posture, I saw him lay by the Pen, the Ink and Paper was wet; I did not indeed see him write, but there was no body in the Room that could write, or in a writing Posture but he, for the other Gentleman was lame of both Hands.

Sir Geo. Wakeman. But I pray give a positive Answer to what I ask you; have you not said you do not know my Hand?

Oates. I do not remember I have said so.

Mr. Just. Pemberton. But he says now he believes that the Hand that writ the Letter to *Ashby*, and the Bill that he saw green, when no Body was by that could write but you, were the same.

Sir George Wakeman. Have not you said, before the King and Council, that you never saw me in all your Life, and that you did not know me?

Oates. My Lord, you may be pleased to know, when I saw Sir George Wakeman at the Council I had been up two Nights together, and the King was willing once to excuse me from staying any further Examination, and being so ill and indisposed for want of Rest, in respect both of my Intellectuals, and every thing else, I might not charge him so home; but now I have a proper Light whereby I may see a Man's Face, I can say more to him.

Sir Geo. Wakeman. This is just Coleman's Case, the Light was in your Eyes.

Oates. This is the same Gentleman: I desire he may propose his Questions to the Court.

L. C. J. This is his Question, whether you did say before the King and Council, you did not know Sir George Wakeman?

Oates. I do not remember whether I did or did not. I saw one called Sir George Wakeman, and this is that Man; but I will not say, this was the Man that was before the Council when I was there.

Mr. Just. Pemberton. Did you see the Commission in this Man's Hand?

Oates. Yes, I did.

L. C. J. Did you know this Gentleman before he was at the Council?

Oates. I saw this Gentleman with Mr. *Ashby*, and he can't deny it.

Sir Geo. Wakeman. Can't deny it! Yes. I hope you will be able to prove it. You said you never saw me in your Life, before you saw me at the Council.

L. C. J. Did you ever see him more than once?

Oates. Yes, twice in Mr. *Ashby's* Chamber.

L. C. J. What, two several Days?

Oates. Yes, two several Days.

Mr. Just. Pemberton. Where was it that you saw him when the Writing you say was green that he left behind him?

Oates. It was at Mr. *Ashby's* Chamber.

L. C. J. You never saw him before that, did you?

Oates. No.

L. C. J. How often after?

Oates. But once after that.

L. C. J. Was that at the Council?

Oates. No.

L. C. J. Look you what he says, he never saw you but twice before he saw you at the Council.

Oates. I saw you when the 10000*l.* was proposed to you.

Sir Geo. Wakeman. Where was that?

Oates. At *Wild-House*.

Sir Geo. Wakeman. Did Mr. *Ashby* lie there?

Oates. He did lie there, because the Provincial was beyond Sea, and he came up to *London* in order to go to the *Bath*.

Sir Geo. Wakeman. What Day was that Proposal made to me?

Oates. It was before Mr. *Ashby* went to the *Bath*.

Sir Geo. Wakeman. In what Month?

Oates. In the Month of *July*.

Sir Geo. Wakeman. By whom? By Mr. *Ashby*?

Oates. Yes.

Sir Geo. Wakeman. In the Presence of whom?

Oates. Father *Harcourt*, Father *Ireland*, and Father *Fenwick*.

Sir Geo. Wakeman. You will be sure to name those that can be neither Witnesses for me nor against me.

L. C. J. Who can help that?

Oates. I reckon up such as you did keep Company with.

L. C. J. Do you know when Mr. *Ashby* went to the *Bath*?

Oates. The latter end of *July*, or the beginning of *August*, as I remember. And this was before he went: he stayed but fourteen or sixteen Days, as I remember, in *Town*.

L. C. J. He says he saw you but twice, once when you writ that Note, and the second time when the Proposal was made to you.

Sir Geo. Wakeman. And you knew all these Things, at that Time when I was examined before the King and Council? Turn this way and answer me.

Oates. I am not bound to answer that Question.

L. C. J. But you must answer his Questions, if they be lawful.

Sir Geo. Wakeman. I say, I ask him, Whether he knew all these Things before that Time I was examined before the King and Council?

L. C. J.

L. C. J. That must needs be, for all these Things were done before.

Sir Geo. Wakeman. Then I ask him this Question, Why did you say before the King and Council, that you knew nothing of me, but concerning one Letter that was writ from Mr. Ashby to Mr. Fenwick? I shall prove this upon you; but, my Lord, let me observe this, Can any one believe, that if such Evidence had been given in to the King and Council, against me, as he now speaks of, that I should not have been immediately taken into Custody, but that I should have my Liberty so long as I had?

L. C. J. I will tell you, Sir George, you will do very well and properly to call up your Witnesses by and by, when you come to make your Defence, and to prove what he said at the Council-Table. Pray, Dr. Oates, what was the Reason you did not give the same Evidence then you do now?

Oates. I can, by and by, give an Answer to it, when it is proved by him what I did say. As to Mr. Corker, I say this, He had a Patent from the See of Rome, to be Bishop of London, and Mr. Corker was privy and consented to a Proposal that was made by Langborn to the Benedictine Monks, whereof he is one. And these Benedictine Monks did contribute 6000*l.* to the Society of the Jesuits, in order to the carrying on of this Design. And Mr. Corker, tho he did deny before some Justices of the Peace, that he did go out of the Kingdom, yet he did go over to Lampspring in Germany, and staid there some short Time, and he did write a Letter, but whether it was dated from Lampspring in Germany, or no, I cannot tell, because there was only the Date of the Month, but not of the Place from whence it came, but the latter end of August, it was, and therein he wrote, that he did consent to the Proposal, for the raising of the said 6000*l.* for he is President of the Benedictine Monks, and therefore it was necessary that he should give the Suffrage, and he had been with Father Le Cheefe and the English Monks in Paris, and had given an Account what Prospect of Affairs he had in England, and how the Design went on.

L. C. J. Was this in a Letter?

Oates. Yes, it was.

L. C. J. To whom was that Letter directed?

Oates. It was directed either to Father Hitchcot, or to Father Howard, then in London.

L. C. J. You saw the Letter?

Oates. Yes, I saw the Letter.

L. C. J. Were you acquainted with his Hand-writing?

Oates. I will shew you how far I might be acquainted with his Hand. My Lord, this Gentleman, as I think, went away in July, as near as I can remember, I won't be positive in the Time he went over; but in the Month of June I saw this Gentleman with Mr. Fenwick, and he had given him an Account either of some Friend or Kinsman of his, at St. Omers, that had not had his Pension paid, and Mr. Corker did give a Note under his Hand, to Mr. Fenwick, where to take up so much Money, and the Money was to be received of Mr. Langborn.

L. C. J. How much was that Money?

Oates. It was about 20 or 25*l.* and he subscribed his Name to it, James Corker; for that is his Name, tho' he is Indicted, I know not how, by

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the Name of Anthony: And I have a Summons to give Evidence against Anthony Corker.

L. C. J. He is Indicted by the Name of James.

Oates. And then I saw his Name to an Examination that was taken by Sir Charles Harbord, and some other Justices that were of the House of Commons that took the Examination of this Corker, and it was the very same Hand he usually writ, only it was not so fair, nor so well, in his Examination. This is that I say against Mr. Corker.

Sir Rob. Sawyer. Shew him that Hand there: Pray, Sir, look upon it.

[Then a Paper was shewn to him.]

Oates. This is the same Hand.

Corker. Is that a Copy of my Examination before the Justices?

L. C. J. It is the Original.

Corker. I am glad it is there.

L. C. J. Shew it the Prisoner.

Oates. Mr. Corker did use to bestow the Queen's Charity —

L. C. J. Is that your Hand?

Corker. Yes, my Lord.

L. C. J. Shew him the other.

Corker. These are both my Hand, as far as I can see.

Oates. That Note he gave to Fenwick, for the receiving this Money, was the same Hand with this, and so was the Letter that came, as we suppose, from Lampspring in Germany; but I cannot say it did so, wherein he did give Consent to the raising and giving this 6000*l.* for the carrying on of the Design.

Sir Rob. Sawyer. What was that you had more recollected?

Oates. He did dispose of the Queen's Charity (as it was so called) but Mr. Corker did say, it was to carry on the Design; and this he did say in the Month of June, when he was with Mr. Fenwick. Now, what he meant by that Design, I leave to the Jury to judge, only some Parcels he had distributed, Two or Three Shillings to some, and Forty Shillings to another, to some more, to others less: But a great Part of it he did use for the carrying on of this Design, and he said the Queen had given him Orders so to do.

Sir Rob. Sawyer. What do you know of his being privy to the Consult of the 24th of April?

Oates. He did know of it, and I will tell your Lordship how I know he knew of it. He did except against Pickering being chosen.

L. C. J. To do what?

Oates. To do that wicked Thing to kill the King, for said he, Pickering is commonly attendant upon the Altar, and he thought it not so convenient, that he should be employed about that Business because he might miss an Opportunity, by being at High Mass, whereas another, a Lay-man, might do it.

Sir Rob. Sawyer. Were you present when the Exception was made?

Oates. Yes, it was when the Order was given about the Money, to Fenwick.

L. C. J. At whose House was it?

Oates. At the Benedictine Convent in the Savoy.

Sir Rob. Sawyer. Was it expressed at that Time what *Pickering* was to do?

Oates. His being privy to the Consult in *April*, I had it only from his own Mouth, for he wondered that the Jesuits should employ *Pickering* in that Business, when they might have a Lay-man, who was more fit; he being a Religious-man, and attending upon the Altar, it was not so convenient.

L. C. J. Where was that 6000 *l.* to be raised?

Oates. Out of the *Benedictines* Estates.

L. C. J. Was he their President?

Oates. Yes, he was.

Mr. Just. Ellys. Dr. *Oates*, was he against the Thing, the doing of it at all, or against *Pickering's* doing of it only?

Oates. He was only against *Pickering's* doing of it. He would have had a Lay-man employed in it.

Mr. Just. Pemberton. That is plain, for he did give Consent that the 6000 *l.* should be raised for the carrying on the whole Design.

Sir Rob. Sawyer. Do you know any thing besides that Letter you have mentioned, which he writ to give his Consent?

Oates. Nothing, but that because he had given his Consent, the Money was paid.

L. C. J. Do you know it was afterwards paid?

Oates. I believe that the Money was paid, for our Fathers said that they had received it.

Mr. Recorder. What say you to the rest of the Prisoners?

Oates. Mr. *Marshal* I do charge with the same, that is, that he was actually present at the *Benedictine* Convent, when the 6000 *l.* was agreed to be contributed, but it was not to be paid till they had an Answer from Mr *Corker*.

Sir Rob. Sawyer. That Letter you speak of, was an Answer to it, I suppose?

Oates. Yes, my Lord, it was so.

Sir Rob. Sawyer. What do you know of the Consult, was he privy to that?

Oates. I will not be positive as to Mr. *Marshal's* being privy to the Consult, I know that he was privy to *Pickering's* undertaking to kill the King.

Sir Rob. Sawyer. How do you know that?

Oates. Because he was of *Corker's* Opinion, that they had better take a Lay-man.

Mr. Recorder. What say you to *Rumley*?

Oates. He is a *Benedictine* Monk, or at least-wise a Lay-Brother. And he was privy to this Consult, in which the 6000 *l.* was agreed to be paid and given, and I do judge he did consent to it, for he did pray God that it might have good Success, and that the Catholick Cause might once again flourish in England.

L. C. J. North. He was there then, was he not?

Oates. Yes, he was there, but only as a Servant, a Lay-Brother of that Order.

L. C. J. North. Why, is he professed?

Oates. Yes, I think he is.

L. C. J. North. What Time was this, Mr. *Oates*?

Oates. In *August*.

L. C. J. North. Was it the former part of *August*?

Oates. I cannot be positive, but I think it was.

Sir Rob. Sawyer. Can you say any thing more against the rest of the Prisoners?

Oates. I do not recollect any thing more, at present.

Mr. Ward. Now, Gentlemen, if you please to ask him any Questions, you may.

Rumley. Were you there present?

Oates. Yes, I was.

Rumley. Was it in the Month of *August*?

Oates. Yes, it was.

Sir Rob. Sawyer. Will any of you ask him any more Questions?

Corker. He says I went in *June* to *Lampspring*, now I would ask Mr. *Oates* where *Lampspring* is?

Oates. We suppose it to be in *Germany*.

Corker. 'Tis almost at the furthest end of *Westphalia*, and he says, that being there, I had Discourse with *le Cheefe*, and the *English* Monks at *Paris*, about this Design. I would fain make Sense of this, if I could.

Oates. To satisfy Mr. *Corker*, I cannot say that he went to *Lampspring*, but only as he said himself; and they used to say they go to one Place, when they go to another: As *Ireland* said he went to *St. Omers*, when he went into *Staffordshire*.

Corker. Where, and when, did I give my Consent to the Design about murdering of the King, for you named the 24th of *April*?

Oates. This is that I say to the Court, that the Privy that Mr. *Corker* had of the Consult of the 24th of *April*, was that I had out of his own Mouth, in which he did declare, that he did think the Jesuits had not done well to make Choice of one of their Order to do that Business, since he was to attend upon the Altar, but it would have been well if they had made Choice of some other Lay-man to match *Grove*.

Corker. You tell me, I had a Patent to be Bishop of *London*.

Oates. I saw it in your own Hand.

Corker. Who gave me that Patent?

Oates. I did not enquire into that.

Corker. Did you hear me say, I accepted of it, and should be Bishop of *London*?

Oates. I heard you say this, you hoped it would not be long ere you should exercise your Episcopal Function.

[At which the People laughed.]

Oates. I now recollect something more. I remember Mr. *Marshal* was present when Father *Hitchcot* and Father *Howard*, and *Conyers* the *Benedictine* Monk, were there present, about the laying of a Wager, whether, or no, the King should eat any more *Christmas-Pies*, and this *Benedictine* Monk, *Conyers*, did lay he should not, and another Gentleman lay'd that he would, and this Gentleman, *Marshal*, did go halves with *Conyers*, that he would not.

Marshal. I desire you would tell my Lords the Judges how long you have known me, and where you have seen me.

Oates. I have seen this Gentleman several times, but had never any Familiarity with him, but I have seen him officiate at the Altar.

Marshal. How long have you known me?

Oates. First and last, two Years; but the first time that I knew you, to hear you speak, was when Father *Hitchcot* and the rest were there.

Marshal. He says he hath known me these two Years, and yet never spake to me.

Oates. I knew him by sight.

Marshal. He looked upon me as a Priest, it seems, he knew me to be engaged in this Business,

ness, as he says, I wonder he should never converse with me.

Oates. There are a great many that I know by sight, whom I never did converse with.

L. C. J. What do you infer from that? It may be, you know some of the Bench by sight, that you never spake to before, nor they to you.

Marshal. What Day of the Month was this Consult?

Oates. It was in *August*.

Marshal. But what Day of *August*?

Oates. 'Tis a great Privilege that I tell you the Month. It was between the first and the middle of *August*.

L. C. J. He tells you it was the former part, but it lyes in his Breast, whether he will or no, to tell you the exact Day.

Marshal. My Lord, 'tis impossible to make a Defence, if Circumstances of Time and Place be not mentioned.

L. C. J. 'Tis fit he should answer, if he can tell the Time, but if he cannot, we can't help it.

Marshal. But if does not name the very Day he may name the Place.

L. C. J. He does name the Place, it was at the *Benedictine* Convent.

Marshal. Why can't he as well remember the Day?

Oates. If they will tell me when the Feast of the Assumption is, which is a Feast of their making, then I will give them a pretty near Account when it was.

Marshal. The Feast of the Assumption is the 15th of *August*.

Oates. My Lord, it was either the Day before, or the Day after.

Marshal. Now he hath avouched this positively.

Oates. Nay, I will not be positive.

Marshal. But you were so, that it was the Day before, or the Day after.

Oates. I appeal to the Judges of the Court.

L. C. J. If he will say it, let him, but People are not to be snap'd up thus. Mr. Oates, you are upon your Oath, and pray answer the Question that is asked by the Prisoner as positively as you can. If you can, say so, if you cannot, say so.

Oates. My Lord, I do believe verily it was either the Day before, or the Day after.

L. C. J. Are you sure it was?

Oates. My Lord, I do verily believe it.

Marshal. But what Accusation is it of a Thief or a Murderer upon the High-way, unless you tell the Time exactly?

L. C. J. You see he will not answer positively.

Marshal. Mr. Oates, was I at any other Consult besides this one?

Oates. Yes, you were, upon the 21st day of *August*, if it fell upon a *Wednesday*.

Marshal. What matter is it what Day it fell on?

Oates. If it were a *Wednesday*, then the 21st of *August* you were at a Consult, when we had Letters from Archbishop *Talbot*, wherein we had an Account of the State of *Ireland*, how the *Irish* Affairs did stand, but it did not pay an *Irish* Letter's Price, and therefore I suppose it came from this side of the Water, tho it was directed as if it came from *Dublin*. And this was read there, and there was in it a Prayer, that a Commission

might be sent down, and there were some Jesuits and some *Benedictines*, amongst whom *Marshal* was one, and he did give his Consent that the Commission should be sent down.

L. C. J. What Commissions were they?

Oates. For Officers in the Army that was to be raised there.

Marshal. Where was that Letter read?

Oates. At the *Benedictine* Convent.

Marshal. And this, you say, was the 21st of *August*?

L. C. J. And that was on a *Wednesday*, as the Almanack says.

Oates. There he agreed to send the Commissions into *Ireland* for the appointing of Officers, and did consent to the poisoning of the Duke of *Ormond*.

Rumley. When was *Pickering* taken?

Oates. He was taken the Night before, or *Michaelmas*-day in the Morning.

Rumley. Were not you there, Mr. Oates?

Oates. Yes, I was.

L. C. J. Were you at all the Consults?

Oates. No, I was sick, when Sir *George Wakeman* was offered the 15000*l.* and receiv'd the Five.

L. C. J. What Consults were you at?

Oates. I will answer to those Consults that these Persons are affected in; there was one Consult about the beginning or middle of *August*, there was another the 21st of *August*, and then there was another Consult wherein the 5000*l.* was paid, or ordered to be paid, to *Wakeman*, and I was not there.

Rumley. Who was the Messenger that took *Pickering*?

Oates. I do not know him.

L. C. J. Was the Consult of Sir *George Wakeman* after the 21st of *August*?

Oates. No, my Lord.

Mr. Ward. Will you ask him any more Questions?

Oates. My Lord, I desire I may have leave to retire, because I am not well.

L. C. J. You must stay, Dr. Oates, till after their Defence be over.

Mr. Recorder. If you desire to have any Refreshment, you shall have it got for you.

Sir Rob. Sawyer. Then we call Mr. *Bedlow* next. (*Who stood up.*) Pray, Sir, speak your Knowledge concerning the Prisoners at the Bar.

Bedlow. My Lord, before I speak any thing to the Prisoners, I desire there may be a Difference between the Clerks of the Counsel and me decided, they have mistaken a Word in my Evidence, and put in *New-market*, for *Windfor*.

L. C. J. What does that signify to the present Business?

Bedlow. I desire it may not be brought against me in my Evidence.

L. C. J. Then 'tis only for a Caution beforehand.

Bedlow. The latter part of the last Summer, it was, I think, about the beginning of *August*, Sir *George Wakeman* was at *Harcourt's* Chamber, I myself was there first, and when he came in, he fetch'd a Turn or two about the Room, seeming angry and discontented, and asked *Harcourt* if he had any thing for him? Then *Harcourt* asked him, How he did proceed? Said he, I don't know whether I shall or no; for what Reason am I drill'd on, in such a Concern as this?

Says Mr. *Harcourt*, Stay, Sir George, you need not be so hasty to blame us, for we are better provided for you than you think for. With that *Harcourt* went to his Cabinet, and took out five or six Papers, and brought a small Bill, and asked Sir George *Wakeman*; said he, Sir George, how are you provided? Said Sir George, I have been ready long since, but you have not been so punctual with me: But what have you there? Said *Harcourt*, I have a Bill of 2000*l.* From whom? said Sir George *Wakeman*. Then he named a Gentleman, but I don't know him, nor can't remember him. And said he, I came now from *White-hall*, and receiv'd it from such an one, which he said was by the Queen's Order, and that he had it from her. This Bill is charged upon such a Goldsmith, and named him, he dwelt some where about St. *Dunstan's Church*, but I can't remember his Name, I'll tell you by and by why I think he dwelt there. As soon as Sir George had read it, 'tis well, said he, if it be accepted, I find more Encouragement from my good Lady and Mistress, than from any of you all. They had some little more Discourse, and Sir George asked of *Harcourt*, who I was? Said he, 'tis a Friend that hath been long engaged in our Business, and is to do the next great Work to yours. Well, said Sir George, I will go and see if the Bill be accepted, and you shall hear of me to-night; and accordingly he did go. I did not stay but a very little time after him, and therefore I collect he could not go far to get the Bill accepted; for I did cross *Lincolns-Inn-Fields*, and came down a Lane by *Temple-Bar*, and between the *Queen's-Head* and *Chancery-Lane* end I met with Sir George *Wakeman*: Said I, Have you been with your Bill already, and is it accepted? Yes, said he, 'tis accepted. And when is it to be paid? I am to go, said he, in the Afternoon, to receive it.

L. C. J. Who said so?

Bedlow. Sir George *Wakeman*.

L. C. J. To whom?

Bedlow. To me. And seeing of him return from the City-ward again, I concluded it was not far off, and spoke to him as I tell you. Sir George and I were not very well acquainted, but I had known him five Years, and upon that Character Mr. *Harcourt* had given of me, I thought I might make bold with him, and when I asked him and accosted him with that short Question, Is your Bill accepted? he made me Answer it was, and he was to receive it in the Afternoon, and thought it not fit to dispute any thing with me.

L. C. J. You don't know what Goldsmith it was upon?

Bedlow. It must be one that lives about St. *Dunstan's Church*, or *Fleet-Street*, for he could not go far in that time.

L. C. J. Where was *Harcourt's* Chamber?

Bedlow. In *Duke-street*, next the Arch. Now I asked *Harcourt* afterwards, whether this was part of the 15000*l.*? Said he, We have not adjusted that Matter yet, but he receiv'd this only as a present Supply. And he did in a short time after receive as much as made it up 5000*l.* But I asked, whether it were for the old Business? Yes, said he, 'tis for the same Design, if we should fail of it by other Means. (And so was the Discourse to Sir George *Wakeman*) if we should fail of it at *Windsor*, then this Way is to

be taken; and if this fail too, we will make sure of it at *New-Market*.

L. C. J. What do you know of the other Prisoners?

Bedlow. Mr. *Corker* I have seen with *Kaines* and *Le Fevre*, but never in their Company but once, where being in the great Court at *Somerset-house*, we walked out of the Court into the Piazza, and there we were speaking of our Business. *Kaines* was saying to me, You brought such a Letter, such a Time, for me, and I have lost it: I do not know what to do for it. Said I, Do you remember the Contents of it? Yes, said he, I do. Said I, You should take such Letters in such a Character as none could read but your self, and then burn the Letters themselves. Said he, I hope it will not come to Light, for none will meddle with my Papers, that can do me any Hurt. I heard nothing from Mr. *Corker*, that did relate positively to the Murder of the King, but *Corker* and *Le Fevre* were speaking in general, about the Business, what Letters they had received from beyond Sea how to manage their Affairs.

L. C. J. About what Matter?

Bedlow. About the Plot, what Letters they had received from beyond Sea, and how forward they were in their Proceedings here.

Corker. What did we talk about?

L. C. J. What was it about still?

Bedlow. It was about raising the Army, and what Interest he had with the People. It was in general, I come not to Particulars.

Corker. Did *Kaines*, or I, or any of us, name any such thing as Plot, Design, or the like?

Bedlow. We were discoursing of the Business in general, I don't take upon me to speak to Particulars.

L. C. J. What was it about, say you?

Bedlow. About raising an Army, what Interest he had in the People, who had been sent into the Country, what they had done, and the like.

Corker. Did you hear any Word of Killing, Army, or Design?

Bedlow. Yes, every one of those words were used. I don't take upon me to tell how the Words were placed.

Mr. *Ward*. What say you to the rest?

L. C. J. When was this Discourse?

Bedlow. July was Twelvemonth.

Mr. *Ward*. What say you to Mr. *Marshal*?

Bedlow. Mr. *Marshal* hath reason to know me, and I suppose will not pretend to the contrary, for he cannot but remember that I knew him when I went to the *Gatehouse*. He hath carried several Letters that have been brought from beyond Sea, and others that have been writ in England, into the Country, and I have been with him in *Latham's Chamber* in the *Savoy*, and *Somerset-house*, so long since as *Latham* was one of the Queen's Monks. He hath carried the same Letters that I have brought from beyond the Sea, three or four, or more at a time, to communicate to the Country Gentlemen of the Catholick Party, that were Assistants to us, particularly to Sir *Francis Ratcliffe* and others, I am sure he hath carried, and he knew what was the Effect of those Letters, and what were the Answers to them; he read them as well as any of them, for I think he is of the same Order, to the best of my knowledge, tho I never saw him in his Habit.

L. C. J.

L. C. J. What was the Import of the Letters?

Bedlow. I never brought any one Letter to the Religious Fathers (and I have brought a great many) but what did import what I have now given in Evidence, and did relate to the full substance of what I say now.

Sir Rob. Sawyer. Can you mention the Particulars of any one Letter that he knew the Contents of?

Bedlow. I do mention one which I very well remember, and that was to Sir Francis Radcliff, and I remember it tho it be long since, because I was well acquainted with Sir Francis Radcliff's Son, and I brought Commendations from his Son to England.

Sir Rob. Sawyer. Well, Sir, What was the Contents of that Letter?

Bedlow. It was a Copy of the Letter from Le Cheefe in Paris to the Monks and Jesuits in England, in Answer to the first Letters that I brought over to them relating to the management of the Design.

L. C. J. Was it mentioned in that Letter what the Design was?

Bedlow. In that which I carried over to Le Cheefe, it was, that all things were in readiness and the time now drawing near, for they did hope in a Year or two, or in a little time they should be in a Capacity to put this in Practice, and they did not question but to subvert the Oppression and Tyranny the Catholicks were under in England.

Sir Rob. Sawyer. Was Mr. Marshal acquainted with the Contents?

Bedlow. He was one of them that used to examine the Answers. It was written to him partly, for if he were not a Member of their Order, as I think he is, he was one of the Club and Consult that saw the Contents of all Letters. I have not seen him so often as I have done the others, but I believe he hath been there as often, but he hath received to my remembrance twice Letters to communicate into the Country concerning the Subversion of the Government, and the Introducing of Popery.

Mr. Ward. What say you to Mr. Rumley?

Bedlow. I cannot be positive as to my own knowledge, but what Mr. Harcourt has said.

L. C. J. Do you know any thing of your own knowledge by him?

Bedlow. I have been told he hath communicated Letters of this business into the Country. And that he was one employed when any Secret Letters were sent.

L. C. J. So you cannot declare upon your Oath, that you know that Mr. Rumley knew the Contents of any Letters relating to the Plot?

Bedlow. No, my Lord, I do not. I have a good remembrance of Faces, but I do not remember his.

Sir Geo. Wakeman. What Day was it that I had the Discourse with Harcourt, and received the Bill from him as you say?

Bedlow. You ask me a Question as if I were in the state I was formerly in, when I might have an Indulgence for telling a Lye. No, I have no Delight to Damn my Soul, to make you a Martyr, but to satisfy you as well as I can, I say, it was the beginning of August, or part of the beginning. I do not speak to a Day.

Sir Geo. Wakeman. How do you know it was a Bill of Exchange for this Money?

Bedlow. You did read it aloud.

Sir Geo. Wakeman. Had I any Acquaintance with you?

Bedlow. No, but Mr. Harcourt told you who I was.

Sir Geo. Wakeman. And would I upon the first sight of a Man discover to him what would endanger my Life?

Bedlow. Ay, and a hundred times more, if Mr. Harcourt did but tell you I was his Confident.

L. C. J. What were the Contents of that Note?

Bedlow. It was directed to a Goldsmith whose Name I tell you I cannot remember.

Sir Geo. Wakeman. You are good at remembering some Sir-Names, why can't you remember this Name as well?

Bedlow. I can remember Names that do relate to any business, but only hearing this Name by the by, I cannot remember it, for I did not then think it of such Consequence.

Sir Geo. Wakeman. You do not know me?

Bedlow. Yes, I do.

Sir Geo. Wakeman. I call God to Witness I never saw you before in my Life, that I know of. You have a very remarkable Face, and if a Man had once seen you he must know you again.

L. C. J. Who subscribed that Note?

Bedlow. I don't know, it was one of the Queen's Gentlemen that Harcourt had it from. And whereas Sir Geo. Wakeman says he does not know me, I did take Physick of him at the Bath.

Sir Geo. Wakeman. When was I at the Bath?

Bedlow. It was some Years since.

Sir Geo. Wakeman. I never was there but once, and that was a Year and a half ago.

Bedlow. No, Sir, it is more than that, for you were there when the Queen was there.

L. C. J. How long is it ago that you were there, Sir George?

Sir Geo. Wakeman. It was about two Years ago.

Bedlow. It is three Years this Summer.

L. C. J. Then that is well enough; for that is some Years since.

Bedlow. I had acquaintance enough with him while he was there.

Sir Geo. Wakeman. I say this, my Lord, if I had been acquainted with Mr. Bedlow, I should have known him to be a great Rogue, which is but what he hath said of himself; and then I should not have thought it fit to have trusted such an one with such a great Secret as this.

L. C. J. It may be he calls himself great Rogue for that which you would have applauded him for, and canoniz'd him too. It may be he thinks he was a Rogue for going so far as he did; but perhaps you are of another Opinion.

Bedlow. My Lord, I could not count myself an Honest Man, that had consented to the Death of the King and Sir Edmund-bury Godfrey.

Sir Geo. Wakeman. But tho he gives you an Account of such a Bill delivered to me, yet neither he tells you the Time, nor mentions the Man upon whom it was drawn: Here are all the Marks of Falshood that can possibly be.

L. C. J. No, he does not mention the Man upon whom it was drawn, nor from whom; nor can he say that ever you received it; but you were to receive it.

Sir

Sir Geo. *Wakeman*. How came he to omit that? but because I should have no Plea for my self when I came to be accused of it.

Bedlow. Pray Sir George don't press me to say more than I know. I do tell you all that I can say of my self.

Mr. Recorder. Have you any more Questions to ask him?

Marshal. I ask you this Question; First, Why will you Damn your Soul to send me to Heaven? Lay your Hand upon your Heart, and in the Presence of God declare whether ever you saw me in your Life, before you came to the *Gatehouse*? Whether ever you saw me in any Part of the World whatsoever? And whereas you say now that I owned that I knew you there; it was so far from it, that all the Company that were there, will say that you did not know me, and declared your self a Stranger to me.

Bedlow. No, Sir, pardon me; you did not deny but that you had seen my Face.

Marshal. No, all the Company that were there will say that you owned your self a Stranger to me; you told me, *Mr. Marshal, be not afraid; I will do you no hurt*. But *Mr. Bedlow*, Where have you seen me?

Bedlow. At the *Benedictine* Convent in the *Savoy*. And, my Lord, the first Word that I said, when I saw him, was, that this Man's Name is *Marshal*, and he carried such and such Letters into the Country, and Sir *William Waller* can testify the same. [*Who standing upon the Bench, was sworn.*]

Mr. Recorder. *Mr. Marshal*, you had best to hearken to what Sir *William Waller* says.

Sir *William Waller*. My Lord, I went to the Prison to see *Mr. Marshal*, and *Mr. Bedlow* was there with me, *Mr. Bedlow* asked him if he did not know him, and called him by his Name; he declared he had seen him before, but said he did not know him.

L. C. J. Did he call him by his Name as if he knew him?

Sir *William Waller*. Yes, my Lord, he did.

L. C. J. Look you, *Mr. Marshal*, he says that you your self owned that you had seen him before, tho you were not of his Acquaintance.

Marshal. What Sir *William Waller* says I must oppose, tho I am extremely sorry so to do. Sir *William*, you may please to remember that you came to me after *Mr. Bedlow* was gone.

Sir *William Waller*. No, I was there with you before he came in.

Marshal. I believe those of the *Gatehouse* do remember that I spoke with *Mr. Bedlow* in private in an interior Room; what you spoke was in the open Hall there. You asked me whether *Mr. Bedlow* had not been there? I told you, Yes; that was in the publick place; whereas *Mr. Bedlow* talked with me only in a private Room.

Sir *William Waller*. My Lord, what I have said is upon my Oath, and 'tis nothing but the Truth.

Marshal. And I am upon my Life, therefore I am very sorry I must for the Truth sake, and Defence of my Life, contradict what you say. What your Worship and I spoke was in the publick Room; but what Discourse *Mr. Bedlow* and I had, was in another private Room.

L. C. J. Look you, Sir *William Waller*, was you there when *Mr. Bedlow* was with him?

Sir *William Waller*. I was, my Lord.

L. C. J. Where?

Sir *William Waller*. In the common Room.

L. C. J. What did he say concerning *Mr. Bedlow* in the common Room?

Sir *William Waller*. *Mr. Bedlow* called him by his Name, and asked if he knew him? he said he had seen his Face, but did not know him.

L. C. J. Do you hear that, *Mr. Marshal*?

Marshal. Truly, my Lord, it goes against my Heart to speak any thing in opposition to what Sir *William Waller* says, for I would not for all the World reflect or say any thing that should glance upon Sir *William Waller*, as if he had taken a false Oath; but all in the *Gatehouse*, nay *Mr. Bedlow* himself knows, that he had discourse with me in a private Room before Sir *William Waller* came.

L. C. J. *Mr. Bedlow*, speak your self; was Sir *William Waller* there when you came to the *Gatehouse*?

Bedlow. My Lord, I had an Order from the Council-Board to go and see the Prisoner, there was no Body that told me his Name, nor that I knew, knew it; but I would not do it, I was so cautious, but in the hearing and company of a Justice of the Peace, and therefore I went away before they had called him down, and I went to see if the House of Commons were sitting; and when I came back, Sir *William Waller* was just coming thither, and so I went in with him, for I met him at the bottom of the Stairs. We came into the common Room, and there was *Mr. Marshal* with the Keeper, and I was in no other Room, but the common Room. And Sir *William Waller* withdrew to the end of the Room while I asked him some Questions; and pray will you please to ask Sir *William Waller* whether I did not call him by his Name as soon as I saw him?

Sir *William Waller*. Yes, my Lord, he did: He asked him if his Name was not *Marshal*: and whether he did not know him: and he said he had seen his Face, but had no Acquaintance with him.

Marshal. Were not you with me first in that Room which turns in on the right-hand from the common Room?

Bedlow. I do not know any such Room in the *Gatehouse*.

Marshal. There were your Guards, *Mr. Bedlow*, and there were several others in the *Gatehouse*; they cannot but remember what Room I was brought into: They cannot possibly but remember, that when Sir *William Waller* came to me, he asked me whether *Mr. Bedlow* had been with me.

L. C. J. Look you, Gentlemen, they have done, call what Witnesses you will, and make your Defence as well as you can.

Marshal. My Lord, I did not think or imagine any such thing would be spoke of; or that there would need any Attestation for it.

L. C. J. Look you, they have done; we will hear what your Witnesses will say as long as you will.

Marshal. My Lord, *Mr. Bedlow* seem'd a perfect Stranger to me when he came to the *Gatehouse*; and to encourage me, told me, *Mr. Marshal* (says he) *do not fear, I will do you no hurt at all: Did not you send* (said he) *to such an one, to have*

have Mr. Bedlow questioned about such and such things? Which I denied, and he did not seem by any word that he spoke, to have seen me before in his life.

L. C. J. He told Sir William Waller your Name was *Marshal*, tho you went by a wrong Name, the Name of *Marsh*.

Marshal. He might easily know my Name, by those that took me.

L. C. J. But I tell you, you went by a wrong Name then, *Marsh*.

Marshal. My Lord, I am called promiscuously *Marsh* and *Marshal*. But *Marshal* is the Name I own.

L. C. J. And that is the Name he knew you by.

Marshal. I did not call my self *Marsh* when I was taken, but told my true Name.

Bedlow. My Lord, I did not hear of any Name at all, but I said, This is *Marshal*, one of the *Benedictine* Monks, as soon as I came in.

Marshal. Mr. *Bedlow* seem'd to encourage me to hope, and bid me not fear; said he, You will have an honourable Bench, and a good Jury. And this, they that were there can testify.

L. C. J. Call them: Call your Witnesses.

Marshal. But, my Lord, I did not know any thing of this. And Sir William Waller's Question that he asked me was, if Mr. *Bedlow* was with me?

L. C. J. You hear what he says.

Marshal. I am infinitely loth to say it, because he swears it; and you well know, Mr. *Bedlow*, you talked with your Guards a while, and then turned at last to me.

Bedlow. Yes, I did talk with my Guards, but Sir William Waller was in the Room as well as I.

L. C. J. By what Name were you committed?

Marshal. I had Letters about me, writ to me by that Name; and I thought it my Duty to answer to that Name that the Letters did call me by.

L. C. J. Well, have you any Witnesses?

Marshal. This is a Surprize, I did not know of any such thing.

L. C. J. Have you any Witnesses, Sir George Wakeman?

Sir George Wakeman. Yes, my Lord, I have several.

Marshal. But, Mr. *Bedlow*, can you say you have seen me any where before you saw me at the Gatehouse?

Bedlow. Yes.

Marshal. Where?

Bedlow. At the *Savoy*.

Marshal. And any where else?

Bedlow. Yes, and at other Places.

Marshal. Name one other Place in the whole World, and I will be contented to die.

Bedlow. I will tell you why I cannot name any other Place positively. I did carry the Letters thither, there were the Consults about them, and there I used to converse with you most.

Marshal. Can you prove that ever you were in the *Savoy* in your Life? and I will be hang'd without any more to do. If you can prove it either by Man, Woman, or Child, I will go to the Gallows, and will not say one Word more.

Bedlow. My Lord, I have other Witnesses, but at present I cannot produce them: there are

some in *Kent*, they are some of them in one Country, and some in another, I reserve them for another time, but there is Oath made of it before the secret Committees of the Lords and Commons.

L. C. J. How can he imagine that this should be put upon him? therefore you may well believe that he hath never a Witness present. It may be he hath none can prove he ever was at *Westminster-Hall* in his Life, for who could imagine such a Question should be put to him?

Marshal. Having been there several times, I suppose he did not use to go alone; 'tis impossible, but if they had been with him often there, he might prove it; if he say true, sure some should attest it.

L. C. J. 'Tis likely it should be so, but he hath them not here.

Mr. Just. Pemberton. Why, do you think he can bring Witnesses for every Act that he did in his Life?

Marshal. If he have them not here, let him have time to produce them.

L. C. J. He hath a Witness in *Kent*, would you have us keep up the Jury till he sends for his Witness out of *Kent*?

Bedlow. There is my Landlord, at whose House I lay so long, can testify it.

Marshal. Who is that?

Bedlow. Mr. *Cott* a Belt-maker in the *New Exchange*. He hath gone often with me when I have gone into the Convent, and he hath gone round about, and his Maid that used to carry the Portmantle, wherein I brought over the Letters from beyond Sea.

L. C. J. Can you name any one body that ever saw you in the *Savoy*?

Bedlow. I do name one; and besides, my Lord, I lay in the *Savoy* half a Year at one *Woodroff's*.

Marshal. Was that the Place you saw me in?

Bedlow. No, no body came there but Monks and Messengers.

Marshal. Was you there at the time when the *Savoy* was searched?

Bedlow. No, but I gave Sir William Waller directions to search in the most material places of it.

Mr. Recorder. He says a material thing, if he be in the right, that he did give directions to Sir William Waller to search in the most material Places of the *Savoy*. We will ask that Question of Sir William whether he did or no.

Sir William Waller. Both Mr. *Oates* and Mr. *Bedlow* did give me Directions to search in the *Savoy*; they told me of such a particular Room where *Pickering* lay, and where such a Closet was, and many other things; and it was by their Directions that I made the Search.

L. C. J. Look you what Sir William Waller says; he says that both Mr. *Oates* and Mr. *Bedlow* did describe several Rooms to him in the *Savoy*, which it was impossible for them to make such a Description, if they had not been there before.

Marshal. I desire to know when that Description was given?

Sir William Waller. Two or three Days before I took Mr. *Marshal*.

Marshal. Mr. *Oates* made Searches there before.

L. C. J. But we speak of *Bedlow* now.

Marshal.

Marshal. But Mr. *Bedlow* might have knowledge from him and others that were there.

L. C. J. Do you think he must needs go officiously to inform *Bedlow* of what he found, upon an imagination that such a Question should fall out hereon? And if he receiv'd no Information, how then could he describe the Rooms without he knew them?

Marshal. May there not be several Houses that I may give a description of, upon the hearsay of others, tho' I were never in them my self?

L. C. J. No, I know not very well how; and there is no reason you should imagine he receiv'd information from *Oates*.

Marshal. My Lord, there is reason enough, because both do combine in the same Accusation.

Bedlow. My Lord, I gave Sir *William Waller* Directions to search in such a Place, under such a Bench in *Pickering's* Apartment, where he found the Gun that was to kill the King.

L. C. J. Well, call your Witnesses, Sir *George*.

Sir *George Wakeman*. Call Mr. *Chapman*.

L. C. J. But before they begin, Sir *Robert Sawyer*, we must do all the Right to every one we can. I do not find, by the strictest Observation that I have made, that Mr. *Bedlow*, who is the second Witness, does say any great thing, any material thing against any one of them; but as for *Rumney* he says nothing at all. He says, in effect, against Sir *George Wakeman*, no more than this, That he saw *Harcourt* give him a Note for 2000*l.* which he said was from the Queen; upon which Sir *George* said he was more beholden to his good Lady and Mistress, than to any of them all. The Note he does not know who drew it, nor upon whom it was drawn; nor does he say what it was for, more than what *Harcourt* told him, which was in doubtful words, That it was about the old business; but *Harcourt* did not tell him this in the presence of Sir *George Wakeman*, but he spoke to *Harcourt* about it. It is no more, than Sir *George Wakeman* receiv'd from *Harcourt* the Bill of Exchange, he does not know upon whom, nor for what.

Sir *Robert Sawyer*. My Lord, he says more, with submission; for he says this further, That there was a discourse about the business; and he did tell you, That Sir *George Wakeman* should complain, that they had not done well with him, and asked why he was drill'd on; but when the Note was produc'd, he said, My Matters are already prepared, but you are not so ready to perform your Promises. Then said *Harcourt*, If you are ready for us, we are ready for you: and told him, If he did not do it, they would do it at New-market.

L. C. J. What is all this? Pray Mr. *Bedlow* stand up again: We are now in the Case of Mens Lives, and pray have a care that you say no more than what is true upon any Man whatever. I would be loth to keep out Popery by that way they would bring it in, that is by Blood or Violence: I would have all things go very fair; Pray what, upon your Oath, was the first part of Sir *George Wakeman's* Discourse with *Harcourt* when they met?

L. C. J. North. Relate again your whole knowledge concerning Sir *George Wakeman*, and the Bill of Exchange, and the Discourse after it, because we are now upon the consideration of it, what effect it will have upon him.

Bedlow. My Lord, I was with *Harcourt* in the Chamber, and Sir *George Wakeman* came in, and walked a turn or two about the Room, and seem'd to be discontented. How do you, Sir *George*? said *Harcourt*. Says Sir *George*, For what am I drill'd on thus in a Concern of this Importance? What is the matter with you, Sir *George*? said *Harcourt*. Why, is this a business to be slighted, said Sir *George*, as I am? for I have no performance of your Promises. Why, said *Harcourt*, what would you have? we are ready for you. Then, said he, I am ready for you. And then *Harcourt* spoke merrily to him, Why are you so angry, Sir *George*? And upon that he goes to his Cabiner, and searching among his Bags he found a little Note among them, and gave it to Sir *George*; faith he, There is a Bill for you: I have been to-day at Whitehall, and receiv'd it by the Queen's Order, from such a Gentleman: [whose Name I cannot now remember]; and 'tis upon such a Man for 2000*l.* [but I cannot remember the Goldsmith's Name neither.] Well, said Sir *George*, 'tis well somebody gives me Encouragement; I have more Encouragement from my good Lady and Mistress, than from any of you. Nay, said *Harcourt*, for Encouragement, that you shall not want; for the rest shall be paid in due time.

Sir *George Wakeman*. If the Queen had given me 2000*l.* for the Service I had done her, was that any harm? I have deserved it, I am sure, for nine Years Service.

Sir *Robert Sawyer*. What other Discourse had they then?

Bedlow. Said *Harcourt*, But Sir *George*, this must be well followed, and closely observed, because so much depends upon it; for if we should miss to kill him at Windsor, or you miss in your way, we will do it at New-market.

L. C. J. Who said so?

Bedlow. *Harcourt*.

L. C. J. Did *Harcourt* say, before Sir *George's* Face, If we miss killing him at Windsor, and you miss your way, we will do it at New-market?

Bedlow. Yes, he did say, If we miss killing him at Windsor, and you miss in your way (which we hope you will not) we will do it at New-market.

L. C. J. He says now quite another thing than he said before.

L. C. J. North.

Mr. Recorder.

Sir Rob. Sawyer.

L. C. J. What Answer made Sir *George Wakeman*?

Bedlow. Sir *George Wakeman* said, If I find you ready, I will be ready in all things.

L. C. J. Was the Word spoke of Poysoning?

Bedlow. I have spoken that already. If we miss at Windsor, and you miss in your Way; I do not remember whether the Word Poyson was used; but I knew by what Mr. *Harcourt* and others had told me that Poyson was meant by it.

L. C. J. Was all this one intire Discourse?

Bedlow. Yes, my Lord.

Then Sir *George* said privately to his Fellow-Prisoners,

There is my business done.

Sir Rob. Sawyer. Here is a positive Proof of the Receipt of Money, which coupled with what *Oates* says, and the Discourse that Mr. *Bedlow* tells you of, makes it out what it was for. This was paid in Part, was it not, Sir?

Bedlow.

Bedlow. The Answer that Mr. *Harcourt* gave to Sir *George*, was, That he should have the rest in due time.

L. C. J. But what say you to *Marshal*, but that he carried Letters?

Sir Geo. Wakeman. Was there no body present but you?

Bedlow. There was only *Harcourt*, You, and I.

L. C. J. But what say you to *Corker*?

Bedlow. *Corker* hath been in the Company with *Le Faire*, talking of News, what Encouragement they had by Letters from beyond Sea, as those they had from *France*; such and such Letters speak that they are in readines of Money, Men and Arms; and if we are ready here, they are ready for us. This was usually the Discourse, and all upon the same Design. Now when we talked of this business, we did not say the Word *Plot*, but we all know what was intended by it, that is the Plot.

L. C. J. And what said *Corker*?

Bedlow. He said it was well. He did know what readines such and such Persons were in, when the Design was likely to take Effect. I know not their Names; we were talking of several Persons several Times, some in *England*, and some beyond Sea.

L. C. J. What can you say to *Marshal*?

Bedlow. I do say, that he hath been to consult of the return of Letters which were the Answers to those I brought from beyond Sea.

L. C. J. Did he know the Contents of those Letters?

Bedlow. Yes, my Lord, he hath been in Consultation what Answer to make again.

L. C. J. And was all this about the Plot?

Bedlow. Yes, for the subverting the Protestant Religion, and bringing in Popery, and raising of an Army.

Marshal. Can you prove I knew any of those Gentlemen the Letters were carried to?

Bedlow. I name one, that was to Sir *Francis Radcliff*.

Marshal. How does he know that I know Sir *Francis Radcliff*?

L. C. J. Well, Sir *George*, will you call your Witnesses?

Sir Geo. Wakeman. Call Mr. *Chapman*. [Which was done.] My Lord, there was a Letter or Note of Directions from me to Mr. *Ashby*, and 'tis affirmed by Mr. *Oates*, that in that Letter I should let Mr. *Ashby* know I did approve well of the Proposals that were made to me to poyson the King, and that the Queen would assist me in it; and that in the same Letter there were directions given what he should take, and how many Strokes of the Pump he should make use of, and several other things fit for a Physician to direct his Patient in. Now, my Lord, I will prove by this Gentleman Mr. *Chapman*, who is Mayor of *Bath*, that he received this very Note from Mr. *Ashby*, that he read it from the beginning to the end of it; that there was no Word in it, or mention of the King or Queen in the whole Letter, unless it be of the King or Queen's *Bath*. And, my Lord, I think he hath a piece of this Letter still, that Part that was the Physical Part he tore off, and kept himself. Now 'tis none of my Hand, I never writ a Letter to *Ashby* upon any occasion whatsoever; and I will tell your Lordship how it came to pass I did not write that Letter, I hope by a Providence,

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for I never but used to write my Physical Directions with my own Hand. It happened that I came home late, and I was very ill; *Ashby* sent to me for his Note, because he was to go out of Town the next Morning; being weary and indisposed, I laid me down on the Couch, and sent for my Man, who is an Apothecary now, and is better able to write such a Letter; I dictated the Letter to him, all my Family, and all that were by, can testify the same; he knows very well my Hand, and hath Part of it to produce; for when the Queen was there, I made use of him for my Apothecary, and those Physical Directions I sent down for the *Bath*, I sent always to him. He is a very good Witness as to my Hand.

L. C. J. But you may speak of one Letter, and Mr. *Oates* of another.

Sir Geo. Wakeman. Why, did I write two Letters of Directions? what need that? He says he saw a Letter with my Name subscribed to it.

L. C. J. Yes, it was so, and that you should be assisted by the Queen to poyson the King; and being asked how he did know that was your Hand? he said, I did not see him write, but I saw him in the Posture of writing; and when he went away, there was left on the Table, and the Ink was not dry, a Physical Bill, which was the same Hand with that the Letter was.

Sir Geo. Wakeman. Ay, my Lord, but he does not call that a Letter, but it was a Physical Bill, and not a Letter; so that there was but one Letter.

L. C. J. But there was a Note of Physical directions in the Letter.

Oates. That Letter was at least half a Sheet of a side, close written, wherein were those passages that I mentioned; but I cannot give an account of all contained in it; but this, my Lord, I remember, that he should take a Pint of Milk in the Morning, and a Pint of Milk in the Evening, and should have so many Strokes at the *Bath*; but this was several Days before *Ashby* went to the *Bath*, I believe at least ten. Presently after he came to Town. And I say, that this Letter that the Court asks me how I prove it to be his Hand, I prove it thus: I saw him write a Bill to an Apothecary for Mr. *Ashby* to take something when he was in Town.

L. C. J. But was that business of being assisted to kill the King in the same Letter that the Physical Directions were in?

Oates. Yes, my Lord.

Sir Geo. Wakeman. Then 'tis the same Letter.

L. C. J. How does that follow? might there not be two?

Sir George Wakeman. There is only that part of it which is the Physical Prescriptions, he hath torn off the other part.

Then Mr. *Chapman* was Examined.

Chapman. My Lord, the 17th of July last Mr. *Thimbleby* came to the *Bath*.

L. C. J. Who?

Chapman. Mr. *Thimbleby*; a Man of about Fourscore Years of Age, a very feeble and infirm Man. As soon as he came to me, he told me that Sir *George Wakeman* recommended me to him, and desired me that I would provide a Lodging for him as near the King and Queen's *Bath* as I could: I did so; and then he shewed me a Letter from Sir *George*, whereof this was the lower

part of Half a Sheet of Paper; there was full Directions how to take the Physick, and after the taking the *Bolus*, to drink the Waters so many Days, and then to use the Bath, and after that the Pump, and after that he was to take a Dose of Pills after his Bathing. I took off this *Latin* Bill that concerns me, my Lord, and gave him the *English* Part.

L. C. J. Did you read the *English* part?

Chapman. My Lord, my Son read it, as well as I, who should have come up, and testified the same, but that it is impossible for both my Son and me to leave the Shop and come together, because of my Employment.

L. C. J. But in that Letter there was nothing mentioned of killing the King, was there? nor of the Queen?

Chapman. No, my Lord, not upon the Word of a Christian, except it were the King and Queen's Bath.

Then the Paper was shewn him.

L. C. J. Whose Hand is that? do you believe it is Sir George's Hand?

Chapman. No, my Lord: I have brought some of Sir George *Wakeman's* Bills here.

L. C. J. Do you know whose Hand it is?

Chapman. No, my Lord.

Mr. Just. Atkins. What Name was subscribed to that Letter?

Chapman. There is none subscribed to this Paper.

L. C. J. Was there no Name to it?

Chapman. I did not take notice of that.

L. C. J. But look you, this cannot be that Letter, because that Letter Mr. Oates speaks of was of Sir George's own Hand, as he thinks by Comparison, and his Name subscribed to it.

Sir Geo. Wakeman. I never writ any other Letter, but what was dictated to my Man, and sent by *Asbby* to the Bath. My Lord, he hath owned it himself before the House of Lords, that I writ but one Letter, and I had my Liberty before. Now it was told him there, that if he had mentioned that Letter when I was examined before the Council, I had been certainly taken into Custody then, and should never have had my Liberty so long. I had my Liberty from the last of *September*, and could have gone to *Constantinople* in the Time I had my Liberty; and certainly I should have provided for my self, if I had known my self guilty, seeing so many cast into Prison upon that Account.

Mr. Recorder. 'Tis not probable that Mr. *Asbby* would communicate such a Letter to this Gentleman, that had such a Design in it.

Sir Geo. Wakeman. But if any one can, let him prove that I had any other Business with him, than merely the Business of a Physician with his Patient. My Lord, I have a Physician in Town, that will testify, that I was to meet him in Consultations about *Asbby*.

L. C. J. The Answer is no more than this, That you did write a Letter, or there was a Letter writ by your Directions, to *Asbby*, which hath not any such Matter in it as Oates speaks of; but this answers not Mr. Oates's Testimony; 'tis true, the Question will be upon Mr. Oates's Credit, how far the Jury will believe him: If Mr. Oates swear true, then you did write another Letter, and this is not the Letter, and there is no Contradiction in your Answer, to what he says, but Mr. Oates

stands with the Jury how far they will believe him.

Sir Geo. Wakeman. Gentlemen of the Jury, take notice, I never writ any Letter but that.

L. C. J. How does that appear? if Mr. Oates swears true, you did write another Letter.

Mr. Just. Atkins. Mr. Chapman, was there any mention of Milk in that Letter?

Chapman. No, my Lord. It is ridiculous to drink Milk with the Waters, it will make it curdle.

Oates. That is not the Hand the Letter I saw was in.

L. C. J. He says 'tis not the same Hand.

Oates. It was another, a genteel Hand.

Mr. Just. Pemberton. And there was no mention made of Milk in it, the Contents are not the same.

Sir Geo. Wakeman. The Contents were the same: But as for the Milk, it is so ridiculous a thing, that never a Physician in *England*, but will say 'tis perfect Poison. I appeal to Mr. Chapman, who hath so long known the Way there used, if any one prescribed Milk to any one that took the Waters.

L. C. J. Mr. Oates, was there, in the Letter you saw, where mention is made of the Strokes that were to be received from the Pump, any mention of the Milk to be taken?

Oates. The Direction of the Milk was for the Time he staid in Town.

Mr. Just. Atkins. The Milk was to be used while he stayed here, was it?

Oates. Yes, my Lord.

L. C. J. Look you, there were two Things that he should do, the one of them was to be done while he was here, that was the Milk; the other was to be done when at the Bath, and that was the Strokes.

Sir Geo. Wakeman. No, 'tis no such Thing; for he went away two Days after that Letter was written.

Mr. Just. Pemberton. Mr. Chapman, is this part of the Body of the Letter?

Chapman. Yes, my Lord, upon the Word of a Christian; I tore it off my self.

Mr. Just. Ellys. If Dr. Oates swears true, it cannot be the same Letter.

L. C. J. Your Answer to it, which should make it probable, is, That it is ridiculous to prescribe Milk. Now he says those were Directions what he was to do before he went to the Bath.

Sir Geo. Wakeman. Why should I repeat the Number of the Strokes twice, and write two Letters about one Thing?

Mr. Just. Pemberton. Is there any Date upon that Letter?

Chapman. No.

Mr. Just. Pemberton. Off of what part of the Letter did you tear it?

Chapman. Off the bottom of it.

L. C. J. North. What, it was writ cross, was it?

Chapman. Yes, I believe so.

Mr. Just. Atkins. The Truth of it is, This is no Evidence, and ought not to be offered as such, for 'tis but a Part of a Thing, which we do not know what it was in the Whole.

Chapman. I can give it upon my Oath that there was nothing in it of the King or Queen, except the King or Queen's Bath.

L. C. J.

L. C. J. Mr. Oates, if I remember right, you say the Directions that you saw were at the beginning of the Letter.

Oates. He was very weak when he came to Town, and his Directions to him then were, That he should take a Pint of Milk in the Morning, and that when he went to the *Bath* he should have a hundred Strokes, or thereabouts.

L. C. J. Was this in the beginning of the Letter?

Oates. It was after a Line or two that was Compliments.

L. C. J. Was there any Receipt for Physick, in *Latin*, in it?

Oates. No, my Lord, there was not: No, my Lord, it was half a Sheet of Paper; it was full of it self to the bottom; this is not the Letter, my Lord.

Mr. Just. Pemberton. He says, this is neither the Hand, nor the Name subscribed, nor the Contents of the Letter; all these differ.

Sir Geo. Wakeman. I'll tell you the Reason why my Name was not subscribed, I was sick, my Man is here to witness, that he carried it himself, and delivered it to *Asbby*.

Mr. Just. Pemberton. But, Sir George, you do not observe, that to the Letter which he saw, your Name was subscribed.

Sir Geo. Wakeman. This then is that I desire may be taken notice of; 'tis not probable that I should write two Letters for the same Thing, and I never writ any other Letter in my Life.

L. C. J. This is that you say, and let it be taken notice of, That it is not probable that you should write two Letters for the same Directions how he might use the *Bath*.

Mr. Just. Pemberton. This might be writ to serve a Turn very well.

Sir Geo. Wakeman. Then I'll tell you the Reason why my Name is not to it, and so I satisfy you about it as much as I can; I was very ill after I had dictated that Letter to him, and went immediately to Bed. It was not writ very fair, or something was left out, which he interlined, and so he transcribed it again in his own Chamber, and I was then asleep, and so did not put my Name to it, and he went away two Hours in the Morning before I awoke.

Mr. Just. Atkins. Who wrote the Letter? Was the Letter you tore off in the Man's Name, or in Sir George's Name?

Chapman. I know not who wrote it.

Mr. Just. Atkins. Was it said to be, By my Master's Directions? What were the Contents of the Letter?

Chapman. It was only thus, *As soon as you come to the Bath, after resting a Day, in the first place take your Bolus, and after drink the Waters.* Which he did, for six Days together.

Oates. My Lord, I would answer to this: This was not the Letter, for therein he only told him what he should do before he went to the *Bath*, and how many Strokes he should receive: Besides, my Lord, there was not one Syllable of the *Bolus* in the Letter, or what *Bath* he was to go into; but when he came there, he was to receive so many Strokes of the Pump.

Sir Geo. Wakeman. Nor one Syllable of the Milk in it neither?

Oates. Yes, there was; he did take Milk, Night and Morning, for I attended upon him.

Sir Geo. Wakeman. My Lord, you see this Witness is a Protestant.

Mr. Just. Pemberton. Mr. Oates, you say that the Letter that you saw was written ten Days before he went to the *Bath*?

Oates. Yes, if not more.

Sir Geo. Wakeman. Why should I tell him of an hundred Strokes so long before he went to the *Bath*?

L. C. J. You might mention it to give him Satisfaction. Well, have you any more?

Sir Geo. Wakeman. Yes, my Lord. Call *Hunt*. [*Who stood up.*]

L. C. J. What do you call him to, Sir George?

Sir Geo. Wakeman. This is my Man. What do you know concerning a Letter of Directions, that was sent to Mr. *Asbby*? Give an Account of it.

Hunt. If it please your Honour, my Master was out late, and coming home, I told him, Mr. *Asbby* had sent for some Directions for the *Bath*; and being weary and indisposed, (for it was late, and he was not well) said he, *I cannot write my self, do you take my Pen and Ink, and write.* I did take the Pen and Ink, and write; and when I had written, something was false in it; Pray, said he, *correct that*: I did so, and interlined it, and when my Master was in Bed I writ it over again, and the next Morning, before he was awake, I carried it to Mr. *Asbby* myself, and there were only Directions in it what to do at the *Bath*.

L. C. J. When was Mr. *Asbby* to go to the *Bath*? How soon after?

Hunt. He was to go the next Morning.

L. C. J. If what Mr. Oates swears, be true, this Letter that he saw was ten Days before, so what he speaks is quite another Thing.

Sir Geo. Wakeman. I never writ any such Letter in my Life, and I hope the Jury will take notice of it.

Mr. Just. Atkins. Do you know any thing of Mr. *Asbby*'s drinking Milk while he was here?

Hunt. No, but he was saying he was advised by a Friend of his to drink Milk.

L. C. J. When, at the *Bath*?

Hunt. No, when he was in Town.

L. C. J. When he was in Town? that is consistent with Mr. Oates's Testimony.

Sir Geo. Wakeman. My Lord, there is a Physician that was in Consultation with me about Mr. *Asbby*, I think it of great Consequence to shew that I came to him about no Treasonable Affair, I vow to Almighty God I did not.

L. C. J. If you have any more Witnesses, call them.

Sir Geo. Wakeman. Call *Elizabeth Henningham*. [*Who stood up.*]

L. C. J. Sir George, What do you ask her?

Henningham. I was present, my Lord, at the writing of the Letter. His Servant writ, and he dictated to him, every Word of the Letter I saw, but there was no such thing in it.

L. C. J. I am very confident that this is true that you say, but it is not to the thing that Mr. Oates speaks of, and charges you withal: that you did write such a Letter as these People mention, and there was nothing in it, but like a Physician's Directions to his Patient, I do believe, and this was just when he was going to the *Bath*; but Mr. Oates tells you (if he says true) that this Letter he speaks of, to which Sir George Wake-

man

man was subscribed, was ten Days before he went to the *Bath*; and that there was no mention of any *Bolus* in that, but the Direction was in the first Part how he was to use himself, while he staid in Town to drink Milk, and when he came to the *Bath*, to use the Pump; so that this your Witnesses say, and you urge, is true, but not pertinent.

Sir Geo. Wakeman. I say, my Lord, it is not probable that I should write Directions so long before he went.

Henningham. My Lord, he said himself he wanted Directions to go to the *Bath*, in my own Hearing.

Mr. Just. Pemberton. Yes, he might, and indeed he did so, for the first contained none, but how he should behave himself while he was here.

L. C. J. Have you any more Witnesses? Pray call them.

Sir George Wakeman. My Lord, I have this to say, as I told you before, that I had my Liberty for twenty-four Days after my Examination before the Council. Mr. Oates call'd at the Bar of the House of Commons, and there gave an Account of this very Letter that he mentions now, I say it was at the Bar of the House of Commons. And thereupon the Commons sent an Address to the House of Lords, with Astonishment that I was not under Confinement; and thereupon Mr. Oates was called to the Bar of the House of Lords, and was commanded to give an Account what it was he knew concerning me, that should create such an Astonishment in the House of Commons: He told them of this Letter, and my Lord Chancellor said to him, *Do you know it was Sir George Wakeman's Hand?* No, said he: *How do you know it was his Letter then?* I know it only by this, said he, it was subscribed, George Wakeman. If he had such Proof as he says he hath now, if he had seen me writing, and came into the Room where the Paper I writ was yet wet, whether he would not have mentioned it there when he was examined about the Knowledge of my Hand.

L. C. J. Call your Witnesses: But what say you, Mr. Oates, your self to it?

Oates. My Lord, Sir George Wakeman had his Liberty because I was so weak, by reason of being up two Nights together, one whereof was so very wet, and being hot, wet, and cold, all in a few Hours time, so that I thought it would have cost me my Life; not being used to such hard Services, I did not charge Sir George so fully: Tho' it may be objected to this Court, that I was bound to speak the whole Truth; and so I did, as Opportunity and Health would give me leave. And as to the Letter, and what I said about it in the Lords House, Sir George is mistaken. He says here that I said I knew his Hand no otherwise, but by seeing Sir George Wakeman subscribed to it.

Sir Geo. Wakeman. I will prove it by the Record.

Oates. Now, my Lord, I humbly desire that he may propose his Questions to the Court: And I desire to know, whether I did say, I did not know it any other ways but by its being signed George Wakeman.

Sir Geo. Wakeman. Pray, my Lord, be pleased to give me leave —

L. C. J. Mr. Oates, did you mention in the

House of Lords, whether you knew his Hand or no?

Oates. My Lord, I cannot call to mind what I then said. I did say, I saw such a Letter, signed George Wakeman; but if he will bring the Record, and one that shall swear those were the Words, I will leave it to the Jury. But this, my Lord, I would add, if you will give me leave; the Words I did say, as near as I can remember, were these, when they asked me, how I knew Sir George Wakeman's Hand? I said, I saw such a Letter signed George Wakeman. Now, my Lord, upon this Information, they did think fit to take Sir George Wakeman up and secure him; and now I come Face to Face, and am not only to satisfy Judges, but a Jury, I shew you what Reasons I have to believe it, and what they may have, that it was his Hand: For I say, I saw him in a writing Posture, I saw him lay by the Pen, I saw him withdraw from the Paper, I saw none but another Gentleman there, that was lame of both his Hands, and the Ink was not dry, and it was the same Hand with the Letter.

Sir Geo. Wakeman. Was my Name to that Note?

Oates. No, I will not swear that; but the Character of the Hand was the same, if I may judge of Writing.

L. C. J. North. Look you, Sir George, you spoke of Witnesses you would call to prove what he swore in the House of Lords; if you can call any Witnesses for that, do.

Sir Geo. Wakeman. Call Sir Philip Lloyd: I hope your Lordship will please to allow me, at least, this Advantage (I know not whether it be an Advantage) that the Record of the House of Lords may be made use of as a Record here. If I prove it by the Record, it will be a good Evidence.

L. C. J. Have you that Record here?

Sir Geo. Wakeman. I have a Copy of that Record, and a Witness that will swear it.

Then Sir Philip Lloyd appeared, and stood up.

L. C. J. What do you ask Sir Philip Lloyd?

Sir Geo. Wakeman. I desire to know of Sir Philip Lloyd, what Mr. Oates said of me before his Majesty and the Council, the last Day of September; Sir, you were there present, and sent by the King to me, and commanded to bring me in to the Council.

Sir Philip Lloyd. I will, my Lord, as well as I can, recollect and tell you, as near as I can, what Mr. Oates did then accuse him of. It was upon the One and Thirtieth Day of September, Mr. Oates did then say he had seen a Letter, to the best of his Remembrance, from Mr. White to Mr. Fenwick at St. Omers, in which Letter he writ word, that Sir George Wakeman had undertaken the Poysoning of the King, and was to have 15000*l.* for it; of which, 5000*l.* had been paid him by the Hands of Coleman. Sir George Wakeman, upon this, was called in, and told of this Accusation; he utterly denied all, and did indeed carry himself as if he were not concerned at the Accusation, but did tell the King and Council, he hoped he should have Reparation and Satisfaction, for the Injury done to his Honour. His Carriage was not well liked of by the King and Council, and being a Matter of such

such Consequence as this was, they were willing to know further of it; and because they thought this Evidence was not Proof enough to give them occasion to commit him, being only out of the Letter of a third Person, thereupon they called in Mr. Oates again, and my Lord Chancellor desired Mr. Oates to tell him, if he knew nothing personally of Sir George Wakeman, because they were in a Matter of Moment, and desired sufficient Proof, whereupon to ground a Commitment; Mr. Oates, when he did come in again, and was asked the Question, did lift up his Hands (for I must tell the Truth, let it be what it will) and said, No, God forbid that I should say any thing against Sir George Wakeman, for I know nothing more against him. And I refer my self to the whole Council, whether it was not so.

Oates. I remember not one Word of all this.

Sir Geo. Wakeman. My Lord, this is a Protestant Witness too.

Oates. My Lord, give me leave to make an Answer: When I did report this Letter, the Council did ask me whether or no Sir George was any ways concerned in this Letter? I replied, I had it by Report, that Sir George had received 5000*l.* of this Money. My Lord, the Council did not press me, to my Knowledge; I will not be positive; but if the Council did press me, and I did make that Answer, I do appeal to the whole Board, whether or no I was in a Condition to make any Answer at all, when, by reason of my being hurried up and down, and sitting up, I was scarce *Compos mentis*.

L. C. J. What, must we be amused with I know not what, for being up but two Nights? You were not able to give an Answer; that when they call and send for Mr. Oates again to give a positive Charge, and then you tell us a Story so remote: What, was Mr. Oates just so spent, that he could not say, *I have seen a Letter under Sir George Wakeman's own Hand*.

Oates. My Lord, I did, to the best of my Remembrance, make mention of that Letter, that Sir George Wakeman writ, before the Board. I say, to the best of my Skill and Knowledge; but I will not be positive in it.

L. C. J. You have heard what Sir Philip Lloyd says.

Mr. Just. Dolben. What say you, did Mr. Oates make any mention of this Letter?

Sir Philip Lloyd. Truly, my Lord, I can't remember that there was any such Letter mentioned. I tell you what I do remember; and afterwards because he came and gave this Deposition before the Lords and Commons, that he found such a Letter upon the Table from Sir George to Ashby, indeed I did very much wonder at it, and it made me reflect upon that other Passage at the Council, of his denying to accuse Sir George further, and it hath been in my Mind ever since.

L. C. J. And you do declare, that when the Lords of the Council asked him, whether he knew any thing more particularly against Sir George Wakeman, he did lift up his Hands and said, *No, God forbid I should charge him any further, I know no more against him*.

Sir Philip Lloyd. Yes, my Lord, so it was.

Oates. My Lord, I believe Sir Philip Lloyd is mistaken; but however I was so weak, and the

King and Council were so sensible of it, that the King himself had like to have sent me away once or twice before, because he found I was so weak.

L. C. J. It did not require such a deal of Strength to say, *I saw a Letter under Sir George's own Hand*.

L. C. J. North. Well, it must be left to the Jury: If you have any more Witnesses call them.

L. C. J. Mr. Oates, Sir George Wakeman urged it right, that he should not have been permitted to have his Liberty so long, if you had charged him home then.

Sir George Wakeman. Call Mr. Lydcot.

Oates. To speak the Truth, they were such a Council as would commit no Body.

Mr. Recorder. That was not well said.

Sir George Wakeman. He reflects on the King, and all the Council.

L. C. J. You have taken a great Confidence, I know not by what Authority, to say any thing of any Body. But this is naturally true, That when the Council were offended at the Carriage of Sir George Wakeman at the Board, and therefore sent for Mr. Oates again, doubting in themselves, whether what they had would be sufficient to commit him; for indeed it was only a wild thing, of what was mentioned in a Letter of a third Person's, that Sir George had accepted of Fifteen thousand Pounds, and received the Five; therefore, said they, we will know of Mr. Oates some more Particulars, and sent for him in again, and asked him, *Do you know any thing of your own Knowledge?* If he had come in then and said, *Yes, I have seen a Letter subscribed under Sir George Wakeman's Hand*, would not they have committed him? surely they would. And now the Council's not committing him, is an Argument that they had not sufficient Evidence, and Oates did omit at that time to charge him with this Letter.

Then Mr. Lydcot stood up.

Sir Geo. Wakeman. Mr. Lydcot, have you a Copy of the Lords Records?

Lydcot. Yes, it is.

Sir Geo. Wakeman. Pray, what did Mr. Oates say to my Lord Chancellor in the House of Lords?

L. C. J. You must have that which is proper Evidence: You shall have all the fair Dealing that can be, and all that can be admitted for your Defence shall be.

Sir Geo. Wakeman. My Lord, I humbly thank you. I find it.

L. C. J. Ay, but this is now what the Clerk writes down as Minutes. 'Tis an hard Construction to make this Evidence. Were you present when Mr. Oates was there and said this?

Lydcot. No, my Lord. All I say, is this, This is a Copy of the Record in the Lords House.

L. C. J. Did Mr. Oates set his Hand to that Record?

Lydcot. Yes, in some Places. 'Tis Titus Oates set in diverse Places as his Hand to Examinations.

L. C. J. But is Mr. Oates's own Hand set to the Record?

Lydcot. I know nothing of that.

L. C. J. This is the Objection. It will be hard, that

that if a Clerk takes the Depositions of Oates or any one else, and takes them as near as he can, but he never subscribes it, and you prove only is a Copy of what the Clerk wrote, That cannot be allowed as Evidence.

Lydcot. 'Tis a Copy in most Places of what is under Mr. Relf's own Hand.

L. C. J. But you can't Swear the Clerk writ true?

Lydcot. No, that I can't.

L. C. J. It may be an Entry of what the House of Lords did upon the Examination; That is not Evidence here.

Mr. Just. Pemberton. If you can produce any one that heard Mr. Oates give in his Information, you say well.

Sir Geo. Wakeman. I believe there is a Difference between the Entry-Book, and the Book of Records; and I hope you will look upon the Book of the House of Lords as the highest Evidence, beyond any Verbal Averment. My Life is in your Hands, I ask you whether it be not so, or no?

L. C. J. North. If there be a Record in any Court of Record, that such a Man appear'd in Court, 'tis an Evidence that he was in Court, and a Record for it; but when there is an Examination in a Court of Record, these not passing the Examination of that Court, but being taken by the Clerks, we always in Evidence expect there should be some body to prove, that such an Examination was sworn, and subscribed to.

L. C. J. Have you any Witnesses here, that were by, and heard what Mr. Oates did then depose, and can testify what Mr. Oates said when he was called in, and particularly what Answer he made to that single Question of my Lord Chancellor's, how he came to know it was your Hand?

Sir Geo. Wakeman. I can bring none but these Records, or the Lords themselves, and I can't expect it from them. And that which they call a Record, I am not able to judge whether it be a Record or no.

L. C. J. Were there not others called with him into the Lords House?

Sir Geo. Wakeman. No, there were none but the Lords themselves.

L. C. J. You should have had the Clerks here that made the Entry, or saw him set his Hand to the Examination.

L. C. J. North. This is nothing, but as he says, a Transcript out of the Journal.

Lydcot. I believe it is written most under Mr. Relf's own Hand. There is a great deal of it that contains the whole Narrative that Oates gave in.

L. C. J. North. You desire to give in Evidence what Mr. Oates said at the Bar of the House of Lords to what my Lord Chancellor asked him; if you have any Witnesses that can prove it, they shall be heard.

Sir Geo. Wakeman. My Lord, I have no Witnesses, only the Record.

L. C. J. This is only a Copy of a Narrative.

Sir Geo. Wakeman. If you will not allow it to be a Record, I can't help it.

Mr. Recorder. This is no Part of the Record of the House of Lords, it can't be allow'd.

L. C. J. Well, have you any other Witnesses to any thing else?

Sir Geo. Wakeman. I desire you would examine Sir Philip Lloyd once more. [*Who was called, but answered not.*]

Mr. Recorder. He is gone out of the Court.

L. C. J. Well, what say the rest? *Mr. Corker,* have you any Witnesses in the first Place?

Corker. No, my Lord.

L. C. J. Mr. Marshal, have you any Witnesses, Answer that first, before you enter upon your Defence; you shall be heard afterwards.

Then Sir Philip Lloyd came into Court again.

Mr. Recorder. Sir George, here is Sir Philip Lloyd here now, what would you ask him?

Sir Geo. Wakeman. Sir Philip Lloyd, I desire to know concerning the last Examination of Mr. Oates and Mr. Bedlow, before the Council; (you were there present, as I am informed) pray will you tell what you know.

Sir Philip Lloyd. To what Point, Sir?

Sir Geo. Wakeman. To their whole Evidence.

Sir Philip Lloyd. I suppose what they have given in lately, they have acquainted the Bench with already. It was some Day this very Month, but I would know what it is Sir George would have me speak to?

L. C. J. What was there relating to Sir George Wakeman?

L. C. J. North. But pray consider, whether it be a Question fit to be asked of the Clerk of the Council, what was done in Council without leave of the Board. I don't think he is bound to Answer the Question.

Mr. Just. Pemberton. Sir George, if you would ask him to any one particular Question, it were something.

Sir Geo. Wakeman. I have done with him; I hope he will excuse me, I have put him to this Trouble.

L. C. J. Then Mr. Marshal, have you any Witnesses?

Marshal. I cannot say I have any direct positive Witnesses.

L. C. J. Think not that you shall be concluded, we are not in haste, you shall have time to say what you will; but if you would use any Witnesses, call them.

Marshal. For the present I shall have no use of any.

L. C. J. Well, Mr. Rumley, have you any Witnesses?

Rumley. I think I have.

L. C. J. I can't tell of any Need you have of any, for there is but one Witness against you.

Corker. But he desires that his Witnesses may be heard, 'tis but short.

Sir Rob. Sawyer. There is no need of it, Mr. Rumley, we can't insist on it against you, you must be acquitted.

Mr. Recorder. Will he have his Witnesses called? If he will, he shall, tho' there is no need of it.

Rumley. No, my Lord.

L. C. J. Then, Sir Robert Sawyer, would you say any thing more for the King, before the Prisoners make their Defence?

Sir Rob. Sawyer. My Lord, there is one thing which I would have answered, that is, the variance between what Mr. Oates said before the Council, and what he says now, upon the Testimony

mony of Sir *Philip Lloyd*, who says, that he gave no Testimony of this Letter, under Sir *George Wakeman's* Hand; but being asked, whether he knew any thing of his own Knowledge, he said, he had only met with a Letter from *White to Fenwick*, wherein it was said, So much was proposed to, and accepted by Sir *George Wakeman*: And that he should then declare that he could say no more; and lifting up his Hands, affirm with a Protestation he knew no more. Gentlemen, We hope to give you Satisfaction in this Matter, for it was after a long and tedious Examination; and we shall prove to you that he was in great Confusion, being almost tired out with Examination, which is not impossible to happen to any Man, tho of the strongest Constitution and Memory, after two Nights waking, and continual hurrying up and down. We shall call Sir *Thomas Doleman* to prove, that he was under great Confusion, and that the King and Council were so sensible of it, that some of them would have had him gone away a great while before he did go away. Swear Sir *Thomas Doleman*. [*Which was done.*]

Sir *Rob. Sawyer*. You hear what hath been objected and said by Sir *Philip Lloyd*, will you tell your Knowledge of this Matter?

Sir *Tho. Doleman*. My Lord, Mr. *Oates* did appear before the King and Council, I think on the *Saturday*, before which was *Michaelmas Eve*. The Council sat long that Morning, the Council sat again in the Afternoon, and Mr. *Oates* was employed that Night, I think, to search after some Jesuits, who were then taken, and that was the Work of that Night. The Council, I think, sat again *Sunday* in the Afternoon, Mr. *Oates* was then examined, the Council sat long, and at Night he was sent abroad again to search the Lodgings of several Priests, and to find out their Papers, which he did seize upon, and one of the Nights in that Season was a very wet Night; he went either with a Messenger, or with a Guard upon him. On *Monday* Morning the Council sat again, and he was further examined, and went abroad; and *Monday* Night Mr. *Oates* was in as feeble and weak a Condition as ever I saw Man in my Life; and was very willing to have been dismissed for that time; for he seem'd to be in very great Weakness and Disorder, so that I believe he was scarce able to give a good Answer.

Sir *Rob. Sawyer*. Was that the Time Sir *Philip Lloyd* speaks of?

Sir *Tho. Doleman*. I think he was call'd in on *Monday* Night.

Sir *Geo. Wakeman*. I receiv'd the Summons on *Saturday*, by a Letter from Sir *Rob. Southwell*.

Sir *Tho. Doleman*. You were call'd in on *Monday* Night, the Night before the King went to *New-Market*.

Sir *Geo. Wakeman*. I appeared upon *Sunday*, and was dismissed by Sir *Philip Lloyd*, who came out and let me know that the King said, he would have the hearing of it himself, the next Day.

Sir *Tho. Doleman*. Then, Sir, you were call'd in, and you gave your Answer; and the whole Council was amazed at the Manner of it: For you did not, in my Opinion, or in the Opinion of several others, deny it so positively as one that was Innocent could, but used many great Expressions of your own great Fidelity and Loyalty to

the King, and of your Family, and the Services they had pay'd the Crown, and did require Satisfaction, and Reparation for the Injury done to your Honour.

Sir *Geo. Wakeman*. My Lord, I will give you a brief Account of it; I leave it to you, whether I behaved my self ill or no; I confess, I think I might have behav'd my self more submissively; there was nothing of Duty wanting in my Mind, but I will give you an Account of what I said, *verbatim*. My Lord Chancellor told me, that I was accused of the blackest of Crimes; that I had undertaken to poison the King. I asked him who was my Accuser, he pointed to Mr. *Oates*, and told me Mr. *Oates* was my Accuser. Says I, Mr. *Oates*, do you know me? Did you ever see me before? Mr. *Oates* said, No. Why then, said I, how come you to be my Accuser? Said he, I will tell you: I was at *St. Omers*, where there was a Consult of the Jesuits, at which Mr. *Asby* the Rector of the College at *St. Omers* did preside; and in that Consult it was debated who was the fittest Person for that horrid Undertaking of Poisoning the King, and unanimously it was agreed upon at that Consult, that you were, Sir *George Wakeman* by Name: And now he says it was debated here in *England*. Then, my Lord, (said I to my Lord Chancellor,) Here is no Proof, therefore I hope there is no need of any Defence. Said he, There is no Smoak, but there is some Fire. My Lord, said I, if you understand by that, there can be no Accusation without some Guilt, I should be sorry I should not understand both Sacred and Prophane History better than to think so. Then he pressed me to know what I could say for my self. Said I, My Lord, I come of a Loyal Family, my Father had suffer'd very much, to the Value of eighteen Thousand Pounds and more for the Royal Family. My Brother raised a Troop of Horse for the King, and served him from the beginning of the War to the end. He was Major to the Marquis of *Worcester*, at *Worcester* Fight, and lost his Life by the Wounds he received in the King's Service. As for my own Part, said I, I travelled very young, and came over when *Ireton* was Lord Mayor, and both by my Religion and my Name, was suspected to be a Favourer of the Royal Party, and therefore was imprisoned, and did not come out till I had given great Security: and the second time I was committed, was, when I entered into a Plot, the only Plot I was guilty of, I conspired with Captain *Lucy* and several others to attempt something for his Majesty's Restoration, when few durst appear for him. I was seized on in my Bed; there were several Arms found in my Apothecary's Cellar, and we were both committed to Prison; and we should both have suffered Death certainly, if his Majesty's happy Restoration had not prevented it. When my Lord prest me still to say what I could say for my self, as to what was charged on me; I told him, my Lord, I am under the most foul and false Accusation that ever innocent Gentleman was, and I expect Reparation; and upon that they were offended, and I was bid to withdraw. And I added this beside, my Lord, that there was not a Family in *England* that was so much instrumental in his Majesty's Restoration as that Family was; that Colonel *Charles Gifford* was my near Kinsman, so was Colonel *Carlos*; and

and that the *Pendrels* were Menial Servants to the Family; and I hope they deserve some Favour.

L. C. J. What have you to say, Sir George, in your present Defence here? Make what Observations you will now, upon the Testimony hath been given against you.

Sir Geo. Wakeman. My Lord, I say this, if it had been allowed me, to make use of the Records of the House of Lords, it would have made all things so evident and clear, as nothing can be more; for then, when he was called to that Bar, to give an Account what he had declared to the House of Commons concerning me, he gave an Account of this Letter.

Mr. Just. Pemberton. Sir George, you must not make mention any more of these things, that could not be given in Evidence.

Sir Geo. Wakeman. Then, my Lord, I have no more to say.

L. C. J. What say you, Mr. Corker?

Corker. My Lord, I hope the Court will not require that I should bring any particular Evidence in Confutation of what is here alledged against me; for, before I came to this Bar, I did not know any particular Accusation that was against me; and therefore I could not be ready to answer it, and make my Defence, or bring particular Witnesses to evidence and shew my Innocency. Besides, my Lord, it is a known general Maxim, That a positive Assertion is as easie to be made, as to prove a Negative, is oft-times hard, if not impossible. Men may easily devise Crimes, and frame Accusations against innocent Men in such a manner, that the contrary cannot possibly be demonstrated. No mortal Man can tell where he was, and what he did and said every Day and Hour of his whole Life. Therefore, I think, 'tis not only Positive bare Swearing, but 'tis Probable Swearing, that must render a Man guilty of a Crime. Otherwise, my Lord, it would be lawful, and in the power of *Oates* and his Companions here, to hang, by turns, upon bare Oath, all the Innocent Men in the whole Nation, tho never so Innocent, and that for Crimes never so ridiculous and absurd. And I say this further, he that Swears against another, first, ought to be himself a Credible Witness; and then, secondly, strengthened by Probable Circumstances; Circumstances that bring along with them some Probable Evidence distinct from the Witnesses themselves: Otherwise, I think, that the Party accused, without any Proof of his side, ought to remain in the Possession of his own Innocency. Now, I think, my Lord, there will be never an one of these two necessary Conditions to be found in the Evidence against me; for, First, the Witnesses against me, are Persons that are, or at least formerly have been, of scandalous Lives.

L. C. J. You should Prove it, before you Say it. You shall have all things allow'd you that are fit; but you must not heap up Contumelies upon Men unproved, or call Men Names, when you have proved nothing against them. If you can prove any thing, of God's Name do it; prove them as fully as you can.

Corker. I do only say this, They have been reported, and owned by themselves, as Men that have been of scandalous Lives.

L. C. J. If the Jury know it of their own Knowledge, I leave it to them; but you have proved nothing.

Corker. Well, my Lord, but then, in the next place, neither will the positive Oaths of Men formerly Infamous, be any convincing Arguments of our Guilt: And then next, as to the other Circumstances that should render me Guilty, Mr. *Oates* does not here make me Guilty alone of this Grand Conspiracy; but he involves the Nobility, Gentry, and the whole Body of the Catholics, in this Treason. Now, my Lord, I refer it to the Judgment of the Court, whether so many Persons as he names, and those of such eminent Quality, and of such considerable Estates in their Countries, Persons settled under so good a King, in so peaceable a Kingdom; so Quiet in Condition; Men of Good and Virtuous Lives, and Unblemished Conversations, before this Hour, should hazard their Honours, their Lives, their Families, their Bodies, their Souls, their All in such a Design!

L. C. J. What is this to your Case?

Corker. My Lord, if this be not probable, I hope I am free of the Plot.

L. C. J. But what is this to your Case? Pray hear; you are now making a Speech against Mr. *Oates* and Mr. *Bedlow*, That they do accuse People of great Honour and Quality; he hath given no Accusation against any as yet, that you are to take Notice of. You ought to make use of nothing as an Argument to the Jury, but of the Evidence that hath been given to the Jury. If you can make use of any thing, that Mr. *Oates* or Mr. *Bedlow* hath said here to contradict them, or invalidate their Testimony, you have said well. But to talk of such a Story, of accusing Noblemen, and such like, when there is nothing of that before you; you must first prove what you will infer from.

Corker. My Lord, this I take to be of very great Concern to my self, that since the Truth of this Evidence does depend upon the Certainty of the Plot, and this pretended Conspiracy against His Sacred Majesty; if there be no such Plot and Conspiracy, and if, by Circumstances, I can render it improbable, I hope the Jury will take it into Consideration.

L. C. J. Ay, ay, I am of that Opinion, if thou canst but satisfy Us and the Jury, that there is no Plot, thou shalt be quitted by my Consent.

Corker. I will, my Lord, shew you the Improbability of it.

L. C. J. Ay, do but give us one probable Argument, (you being a Learned Man, and a Priest) why we should believe, there is no Plot.

Corker. My Lord, I would have endeavoured to have shewn you the Improbability of it, but yet I would not urge it, because it may not be so grateful to your Lordship. But to me, 'tis not probable, that so many Honourable and Virtuous Persons should be involved in a Plot so Dangerous, so Horrid and Detestable in it self; wherein, my Lord, as he says, so many Thousands of People, and even a whole Nation, were to be overwhelmed: of which, if a Discovery had been made by any Person, it would have prevented the utter Ruin of so many Millions. 'Tis not Rational or Probable, that such vast whole Armies should be raised, and Foreign Nations concerned in the Plot. All which, not-

withstanding all the Evidence that can be made out of this Plot, is but only their positive Swearing.

L. C. J. Just now you made your Objection, that it was a strange thing that such a Design should be communicated to so many; now you make it a Wonder why so few should know it, only *Oates* and *Bedlow*. Your Argument before was, that it was a wonderful thing, that so great a Concern should be communicated to any one, and now you wonder more, that none should know it but they two.

Corker. Therefore, my Lord, I from thence argue thus, that since there is no other Evidence, nor further Proof of it, than from Mr. *Oates*, and Mr. *Bedlow*, I infer there is no such thing at all.

L. C. J. Yes, as for your Army, there is more than so; Do you remember what Mr. *Dugdale* and what Mr. *Prance* say?

Corker. Yes, my Lord, considering these Persons, what they are, their vile Oaths, and the Encouragement they have met with, by such Endearments and Caresses, as they have found, their Credit is not much to be weighed. Now, my Lord, I apply to the Accusation that is against my self.

L. C. J. Ay, ay, that is your best way, for it would have been an hard Task for you to prove, that there was no Plot. We were in great Expectation what Arguments you would bring us for it.

Sir Geo. Wakeman. My Lord, will you give me leave to observe one Thing more to your Lordship and the Court? Mr. *Oates* does mention in his Narrative, of at least Thirty or Forty Pages, and all this upon Oath, (so he saith in the end of his Narrative) but I would observe, that there is not a Letter dated in *France*, or in the *Low-Countries*, or received here, but he swears positively as to the Date of it, and Reception of it; but now, when he comes to mention any Thing wherein a Man's Life is concern'd, he will not tie up himself to a Month.

L. C. J. Yes, he does, and to part of a Month. He tells you, it was the beginning, or middle, or latter end; and he speaks punctually as to the Twenty first of *August*.

Sir Geo. Wakeman. But in all his whole Narrative, he speaks to a Day.

Mr. Recorder. As my Lord says, he speaks punctually to the Twenty first of *August*. And as to the Letters, he took the Date of them in his Memorial.

Corker. My Lord, I would only take Notice, that at the first, Mr. *Oates* thought to take Advantage of some Words of mine, at my Examination; he told you, that I had gone into *France*, but that I denied it when I was Examined before the Justice of Peace. My Lord, I deny all this; for the Justice of Peace Examined me where I had lived —

L. C. J. We have nothing of this Matter here before us.

Mr. Just. Pemberton. You are to answer what he says now.

Corker. 'Tis what Mr. *Oates* says now, for I knew nothing of it till now. Now my Lord, as to that, I say, I did not deny it before the Justice of Peace that Examined me; for I told him, I lived with a certain Lady Twelve Years, till she died; and during that time, I never was

beyond the Sea but once, which was five Years since, for the Cure of a Quartane Ague that I had, and I went over to *France*; otherwise, during all that Time that I was with my Lady, I did not go beyond Sea. Upon this, the Justice began to ask me other Questions; whereupon, my Lord, I recollected my self, and said, Sir, I told you I had not been beyond Sea during the Time I had been with my Lady, but that Time, five Years since; but my Lady being Dead, I went over last Summer in *August* to perfect the Cure of that Ague; for I had it seven Years, Spring and Fall. And this I told him of my self, without asking. The last Summer I went over, and there I staid till two Days before *September*; therefore I did commit no Mistakes in what I said, or used any Cloke to cover it. Now, my Lord, he says, I went to *Lampspring*, which is in the farther End of *Germany*.

L. C. J. He says, you said so.

Corker. Pray ask him how he knows it? he says, by my Letters: Sure if this Man were privy to those great Conspiracies which he charges me to be a Partner in, it is not probable but that I should tell him where I went; and then, if I did tell him so, I must go thither and back again in six Weeks Time, which was morally impossible to do, to go thither, and to return; for I was but six Weeks out of Town.

L. C. J. How you argue, Sir! He says, you told him, you went to *Lampspring*: Say you, Certainly I would tell him true, because he was engaged with me in Conspiracies; but this can't be true, because of the length of the Way. Is this a way of Arguing? May not you tell him, you go to one Place, and indeed go to another?

Corker. What Reason or Motive had I to tell him a Lye?

L. C. J. It is a hard matter for us to give an Account of Jesuits Answers, even one to another.

Corker. I am not a Jesuit, I won't say the least Untruth to save my Life. Then as to my being President, as he calls it, of the Congregation; all the Congregation, and all that know us, know that *Stapleton* (formerly Chaplain to the Queen) is and hath been for Twelve Years, President of that Order. And I am confident that all Catholicks, and most of the Court, do likewise know it to be true, and by Consequence, it is likewise untrue, that there was an Agreement made by the Jesuits and *Benedictine* Monks, when I was at *Paris*, to which I was not privy, but could not go on till I was acquainted with it, and consented to it. Now, my Lord, if I be not President of that Order, that must be a Flam and a Story.

L. C. J. You say that, Prove who is.

Corker. Mr. *Stapleton* was, as 'tis well known.

L. C. J. Call who you will to prove it, if you can.

Corker. Here is one of the Lay-Brothers of the Order.

L. C. J. Who is that?

Corker. Mr. *Rumley* here.

L. C. J. He cannot be a Witness for you, or against you, at this Trial.

Corker. My Lord, since I did not know of it before, I could not bring any Body.

L. C. J. You put it upon your selves.

Corker. My Lord, I say then I never was at any Consult where any such Sum of Money was

proposed or agreed, nor was it requisite or necessary that I should be so much privy to it, for I was not Superior of the Order, nor President of it, by reason of which my Consent should be necessary, or any such Letter be writ to me, or any such received from me. And then, my Lord, Secondly, I must take Notice again, he accuses me of being Bishop of *London*, and that I did consent to this Agreement of paying so many Thousand Pounds; if I were Guilty of this, and likewise of contriving the King's Death, and especially consenting to *Pickering's* Murder of the King, when that *Pickering* was taken, I should have been taken too, or I knowing my self Guilty, should have fled.

L. C. J. You excepted against *Pickering*, and thought him not a convenient Man, because he was one of your Order.

Corker. I hope he does not positively say I consented to the King's Death; he says indeed I knew something of it; now I was near him when he was taken. All the Officers that came to take Mr. *Pickering*, came to my Chamber. Mr. *Oates* says he was there at the taking of *Pickering*; if I were Guilty of all these Things, being Superior and Master to this *Pickering*, 'tis a strange thing that he should neither know me, nor own me, nor accuse me, nor take me, nor apprehend me, until almost a Month after; all which Time I had my Liberty; but then taking Notice of my going down there, and having further Information of me that I had lodged there, he took me into his Catalogue of Bishops, and he came to take me. But if I had been Guilty of these heinous Things, there is no Reason but they should have apprehended and taken me when *Pickering*, and *Grove*, and *Ireland*, and Sir *George Wakeman* were taken.

L. C. J. I will tell you what for that: If you were now arraigned for being a Priest, you might well make use of that Argument, That when they took *Pickering* and *Grove*, if they knew you to have been a Priest, they should have taken you too, and yet for all that you were a Priest, you could not have denied it. But would it have been an Argument, because you were not then taken, you were not so? So you might be in the Plot, and not be taken, and 'tis no Argument from your not being taken, that you were not.

Corker. I say, my Lord, if he came to discover the Plotters, it had been his Duty to have taken me before, if I had been one in the Plot.

L. C. J. So it had been his Duty to have taken you as a Priest.

Corker. But I was, as he says, equal in the same Crime with *Pickering*, and therefore he should have taken me, when he took him.

L. C. J. Have you any thing more?

Corker. Besides, my Lord, I find he undertook to tell the Names of all those that were engaged in this Conspiracy, but among them all, my Name is not, therefore 'tis a new Invention of his.

L. C. J. That is not said here, you go off from what is said here.

L. C. J. North. Can you prove that? then first do it, and then make your Observations upon it, if you can prove what he said before the Lords by Witnesses; but otherwise you must not discourse upon what you have not proved.

L. C. J. Here is nothing of that before this Jury.

Corker. I cannot prove it otherwise than by the Record. I desire it may be looked upon, and I refer it to the Consideration of the Jury, whether if he did say he did not know any thing else of any Man whatsoever, but what he had then declared, and I am not there accused; whether this Accusation be now to be believed?

L. C. J. That hath been answered already.

Mr. Just. Dolben. But it is not proved by them.

Corker. I leave it to the Jury, whether they will believe it or no.

L. C. J. You say well, if you refer it to the Jury, let them consider it.

Corker. I say, they ought to take it into their Consideration, they are not rashly to give a Verdict against me; and, Gentlemen, I believe I may refer it to your Consciences, whether you do not know what I say to be true in this Business?

L. C. J. Mr. *Marshal*, what say you to it?

Marshal. Truly, my Lord, what I have to say for my self is this. About a Month ago I was told the Time of my Trial was at Hand, and being then full of good Hope, I did endeavour to provide for it, and I had a great Confidence, my Lord, that it would succeed; but truly, upon the ill Success of the late Trials, either my Hope or my Heart failed me, and I did resolve to cast my self upon God and his Providence, and however my Silence might have been interpreted, I did resolve, with Silence and Submission, to resign up my self to whatsoever your Lordship and the worthy Jury should be pleased to decree upon me. But, my Lord, since your Lordship is pleased to fling forth some Encouragement, and to hang out the White Flagg of Hope, for your Lordship hath been pleased to use many gracious Expressions, and so, my Lord, upon this, I shall, contrary to my former Determination, now endeavour to make Defence for my Life as well as I can: But, my Lord, not being so well able to do it, or of so quick Capacity as that Learned and Wise Counsel which we have here of Counsel for us, to wit, the Honourable Bench of Judges; for, upon Enquiry, why, by Law, we were allowed no Counsel? I was told, that the whole Bench of Judges were always of Counsel for the Prisoner; and indeed, they look upon it as an Obligation upon them, as far as Truth and Justice will permit them, to plead for us. Now, my Lord, with an humble Heart, I would suggest some Heads of Defence to this Learned, Wise, and Honourable Counsel, and leave it to them to manage my Cause for me, according to Truth and Justice, which they are better able to do for me than I for my self. My Lord, I have, I thank God, no Spleen nor Hatred in my Heart against the worst of my Enemies, nor shall be desirous of Revenge, I leave them and their Proceedings to God; neither am I willing to charge Mr. *Oates* and Mr. *Bedlow* with worse than the Necessity of my Defence will occasion me to say of them. Now, my Lord, the best of Men may be mistaken in a Person, and if I prove Mr. *Oates* is mistaken in the Person in me, then I charge Mr. *Oates* with no great Crime, and yet make my own Defence. Now, my Lord, I offer these Things for that Defence, and I hope your Lordship will appear my great Advocate, and what I suggest in a few Heads, you will, I hope, put it into a Method, and manage it better than I can my self. My Lord,

Lord, when I was first brought before Mr. Oates (as truly all that were with me do know) I carried my self with a great deal of Courage and Confidence, for I was certain that he did not know me, and I did believe it would be only my Trouble of going thither and coming back again.

L. C. J. To go whither?

Marshal. To Westminster. And pray take Notice of this: When I was first apprehended, I was never sought for, nor named as a Traitor in this Business; but coming accidentally into an House to ask for one, where they were actually Searching, tho I saw the Constable at the Door, and Lights in the House, yet I went in and asked, if such an one was within? I think this Confidence will not rationally suppose me Guilty, the House being under Suspicion.

L. C. J. Here is no Proof of all this.

Marshal. All that were there know it: Sir William Waller, which took me, knows it.

L. C. J. Sir William Waller, is this so?

Sir William Waller. My Lord, when I came to search the House, I placed one at the Door, and him I ordered to let whoever would come in, but no Person whatsoever go out. When I was searching, this Person comes and knocks at the Door, but did not know, I suppose, of any Person searching in the House; for when the Door was opened, and he let in, and understood it, he presently endeavoured to get away again.

Marshal. By your Favour, my Lord, I am very loth to contradict what Sir William Waller says in any thing, I would willingly believe him a just Person, that would say nothing but the Truth; but God Almighty is my Witness that I never knocked, the Door was open, and I came in of my own Accord, both in at the first and the second Door. This the Constable will testify.

L. C. J. And you would not have gone away again if you could, would you?

Marshal. I will give you better Proof of it: While they were searching in an interior Room (and this is well known by them all that were there) I was in an outward Room by my self, this Sir William Waller knows, and when they came back and found me there, the Constable and the rest wondered I was not gone. I was left alone by the Door, by my self; the outward Door I found open, and there is another Door which leads out into an Alley, which any Man can open in three Minutes time, and I know how to do it. Now I could not learn it since I was taken, for I have not been permitted to go abroad, but been under close Confinement. But if it be worth the while, and you will give me leave to go there, I can shew you how 'tis opened in less Time than I can speak Three Words.

L. C. J. Would you have the Jury stay here while you go and shew us the Door? If you have any Witnesses to prove it, call them. Come, to the Purpose, Man.

Marshal. My Lord, I say, if it were worth the while, that it might be made appear, that if I would go away, I could, but I did not get away, but stayed with a great deal of Confidence, my Lord; therefore I urge this to the Point, that Mr. Oates is mistaken. After I had been there a while before Mr. Oates, Sir William Waller wished me to withdraw, and after I had

been absent a while and came back again, Sir William Waller wished me to pluck off my Perriwig, and turn my Back to him and Mr. Oates; I did not then well understand the Meaning of it. But afterwards Sir William Waller, out of his great Civility, came to see me at the Gate-house, and brought with him two very worthy Persons, Sir Philip Matthews and Sir John Cutler. Sir Philip Matthews upon Discourse hearing me declare that Mr. Oates was a perfect Stranger to me, said, That Mr. Oates, in Testimony that he knew me, had given such a certain Mark behind in my Head. I told Sir Philip Matthews, if he pleased to pluck off my Perriwig, he should see whether there was any such Mark or no; but he being an extraordinary civil Person, told me, he would not give me the Trouble. I desire Mr. Oates to declare now beforehand, what that Mark was behind my Head, and if there be such a Mark, 'tis some Evidence that his Testimony is true; but if there be no such, then it will appear to this honourable Court and the Jury, that he did not know me, but was mistaken in the Man.

L. C. J. I suppose he does not know you so much by the Mark behind your Head, as by that in your Forehead.

Marshal. But why did he then speak of the Mark behind my Head?

Mr. Recorder. How does that appear, that he did give such a Mark?

Sir William Waller. I shall give your Lordship a short Account what was done: When I brought him to Mr. Oates, I did desire indeed to see his Perriwig off, to see if there were any Appearance of a shaven Crown. After that I had done that, I caused him to withdraw till I had taken Mr. Oates's Examination upon Oath, and after I had taken that, I desired him to come in again, and I read it to him, and taxed him with it, to which he gave a general Denial to every Particular, and thereupon I committed him to the Gate-house.

L. C. J. What is this to the Business of the Mark?

Sir William Waller. I do not know of any Mark; but this I do know, that as soon as ever he came in, Mr. Oates called him by his Name.

Marshal. I desire Sir Philip Matthews may be called.

Mr. Recorder. He is not here: What would you have with him?

Marshal. To ask, if he did not know in particular, that the Mark was such a Spot behind my Head? Hath he not been here to-day?

Mr. Recorder. I can't tell that.

L. C. J. But he called you by your Name, before ever you plucked off your Perriwig; so saith Sir William Waller.

Marshal. That which I was to shew, if I could, and truly all my Defence lies upon it, is, that Mr. Oates is a perfect Stranger to me, and consequently hath nothing against me. Now if Mr. Oates did give a false Mark to know me by, and there is no such Mark, I think 'tis a Proof that he is mistaken.

L. C. J. Sir William Waller says the contrary, he called you by your Name, and there was no Mark mentioned; but if you will suppose what you please, you may conclude what you list.

Marshal. Sir William Waller plucked off my Perriwig, and bid me turn my Back to him.

L. C. J. That was to see whether you were shaven, or no.

Marshal. Sir *William Waller* had not so little Knowledge, as to think that the Priests go shaven here in *England*, where 'tis Death for them, if they be discovered. Besides, my Lord, it was put in the Common News-Books which were dispersed abroad in the Country, that it was a white Lock behind. Well, if there be any thing of Favour or Inclination to Mercy in the Court, I shall find it; but if there be none, it will not succeed, tho I spoke ten thousand times over; nay, tho it were spoken by the Tongue of Men or Angels it would do me no good; therefore I inforce it again to the Jury to take Notice of, that there was a particular Mark given.

L. C. J. That you have not proved.

Marshal. My Lord, I would beseech you to take Notice of what every Man knows, and 'tis against Reason to believe, that Sir *William Waller*, knowing the World so well as he is supposed to do, should think we went with shaven Crowns in *England*.

L. C. J. And therefore Dr. *Oates* must look for another Mark, must he; how does that appear?

Marshal. All *England* know, that those who go over to any Seminary or Cloister, never come over again to *England* till their Hair be grown out, that it may be no Mark or Testimony that they are such Persons.

L. C. J. Do you think all Mankind knows that?

Marshal. All that is rational does.

L. C. J. Well, you hear what Sir *William Waller* says.

Marshal. I always looked upon Sir *William Waller* as a very learned upright Person, and did rely upon what he should testify for my Defence, and he knows when Dr. *Oates* brought in his first Testimony against me, I did beg that what he said should be written down by him. Said Sir *William Waller*, it shall not be written down, but I will promise you to remember what he says. Now I hope Sir *William Waller*, as an honest and worthy Gentleman, will keep his Word, and I desire him to do it, as he will answer it before God at the Great Tribunal.

L. C. J. Ask him what you will. You adjure him, and yet you wont ask him.

Marshal. Now, my Lord, I'll tell you how Mr. *Oates* came to know my Name (which is another Proof that he is a Stranger to me.) When I came first in, I asked Mr. *Oates* if he knew me? and looking seriously upon me, he asked me what my Name was? Now we knowing no more of a Man's Thoughts but what his Words discover, it may seem by that very Question that Mr. *Oates* was a perfect Stranger to me. Now when I told him my Name was *Marshal*, he was pleased to answer, You are called *Marsh*. But my Lord, I should consider that which hath been before offered to your Lordship, but that I do not much insist upon, that if Mr. *Oates* had a Commission to search for Priests and Traitors, he was as well bound to tell you I was a Priest as a Traitor; that is an Argument for me, I say. If he had a Commission to apprehend Priests, I conceive, if he knew us to be Priests, he should by Force of such a Commission have seized upon us.

L. C. J. He needed no Commission to do that, he did search to find out Traitors.

Marshal. He heard us particularly named,

looks upon us, goes away, denies that he knows us, gives us leave to sleep out our Sleep, and if we would to be gone. Therefore 'tis without any Likelihood or Probability that he had any thing to say against us.

L. C. J. You have not proved one Word of all this.

Marshal. He owned it himself, that he had searched the *Savoy* for Traitors, and did not take us. I speak this out of his own Mouth, therefore it is incredible, and I hope the Jury will take Notice of it: He was searching for Traitors, and knowing me to be a Notorious Traitor, as he would have me to be, that he should find me in Bed, have His Majesty's Officers with me, and not seize upon me.

Mr. Just. Pemberton. It does not appear to us, you have not proved it.

L. C. J. Sir *William Waller*, did he say first, Do you know me? and then *Oates* ask his Name?

Sir William Waller. I speak solemnly, as in the Presence of God, there was not one Word of all this.

Corker. I beseech you, may I speak one Word?

L. C. J. Have you done, Mr. *Marshal*?

Marshal. Truly my Lord, I am astonished, I protest and confess before God I am astonished. There is Mr. *Gill* the Constable who owned this, and promised to be here to attest it, for there was a dispute about it between Dr. *Oates* and me: for said I presently, if you took me in Bed and knew me to be a Traitor, why did you not seize me? he answered me again expressly, before Sir *William Waller*, I had no Commission then to seize you: but said I, you acknowledge I was then a Conspirator, and such your Commission was to seize. You might have declared to the Officers you knew me to be a Traitor, and have bid them take charge of me: 'tis impossible that you should so well know it and not do it, sure.

L. C. J. Was there any such thing as this, Sir *William Waller*?

Sir William Waller. Really my Lord, I do not remember any thing of it.

L. C. J. Mr. *Marshal*, call your Witnesses.

Marshal. Is Mr. *Gill* the Constable here, he owned it. I think I had as good make an end, I may leave it here, for what I shall say I find will be to little Purpose.

L. C. J. You do not prove what you affirm.

Marshal. My Lord, I do not go as Mr. *Oates* and Mr. *Bedlow* do, who bring no Circumstance of Probability or Likelihood; they only say they were such a time amongst such and such Persons, and such and such things were agreed, but shew no Probability of it. But I instance in such things as do carry a Probability in themselves, and I name those that were by.

L. C. J. And have no Proof of it in the World. And what you call Sir *William Waller* for, he says the contrary, there was no such thing.

Marshal. I say, my Lord, what he says is to my great astonishment. Do you remember, Sir *William Waller*, this, that Mr. *Oates* said there, when he was asked if he saw me last Summer, I saw you not only in *August*, but in *June* and *July*?

Sir William Waller. I remember something of that.

Marshal. I humbly thank you, Sir, for acknowledging that.

L. C. J. What use do you make of that?

Marshal.

Marshal. I shall make use of that. The Dispute was so eminent betwixt us that it was impossible to forget it.

L. C. J. Well, have you done, Mr. *Marshal*?

Marshal. No, my Lord, tho I had as good hold my Peace. I could not have Witnesses to disprove Mr. *Oates* in particulars of Time and Place, because I could not foresee what Time or Place he would name. My Lord, I had Witnesses here at the time of my last Trial to prove and swear, if they might be admitted, that I was here neither in *June*, nor *July*, or *August*, but spent some Months at a Place called *Farnborough* in *Warwickshire*.

L. C. J. Can you prove this?

Marshal. I can prove that I had such as would have proved it then. Now, my Lord, this is that I say, if the Court be inclined to any Favour or Mercy: Life being a thing of such concern, I hope some little Stop may be allowed to have some time to bring such People; but if there be no inclination to Mercy, it would be the same thing if the Proof were here.

L. C. J. The Court will do you all Justice here, and that is their Mercy.

Marshal. I am confident I shall have great Justice done me, I would not have said one Word in my Defence if I did not believe so. I took heart by what your Lordship had said, and I have already done that which I thought most material for it. I have urged first the false Mark that he gave to know me by. And then his taking me in Bed and disowning to know me. Besides Mr. *Oates* hath been positive in his Testimony about the 21st of *August*, I could not now have Witnesses to disprove that, because I knew it not before, but I can have several Witnesses to prove, that I had then Witnesses to prove it, sufficient Witnesses from *Farnborough*, who were sure and certain that I was that very Day there, and would instance in some particular Reasons why I was there that Day. And then these Witnesses will swear that I was never from thence for three Months at any distance, but twice at a Neighbour's House, and they can tell the Places where I was then.

L. C. J. You come and tell us what other Folks could tell, why have you not them here? Can the Jury take notice of this?

Marshal. I hope you will not throw away my Life, when in three Days time I could bring Witnesses to prove it.

L. C. J. Then we must throw away the Lives of the Jury, for they must be kept fasting all those Days till they give in their Verdict; for they must be shut up till then.

Marshal. My Lord, with your leave, there have been those that have been upon their Trials, and sent back to Prison before the Jury have given a Verdict, and after tried again.

L. C. J. North. Ay, if they be discharged quite of you.

L. C. J. I tell you the Jury must be kept together close, till they give their Verdict.

Marshal. The Jury was not kept up when Mr. *Whitebread* and Mr. *Fenwick* were Tried, and they were afterwards Tried again.

L. C. J. The Jury were wholly discharged of them.

Marshal. If you have any regard of my Life you may discharge them of me.

L. C. J. Truly this is as reasonable as any

thing you have offered.

Marshal. If your Lordship believe what I say is true, you throw away my Life unless you grant me this time. I should be a very infamous Man if I did not prove it then.

L. C. J. If the Jury believe it, I am satisfied.

Marshal. My Lord, I should then come full of Shame, if I did not prove what I say; therefore I hope the Court will allow me time to prove what I affirm, that that particular Day, and the Day before, and the Day after I was in the Country, and stirr'd not. And then as to the Day before the *Assumption* which he charges upon me, and the Day after, I can bring Witnesses to prove I was those three Days at another House almost 50 Miles off *London*; so there is nothing in all that is said against me by Mr. *Oates* which comes to be determinative and positive in his Testimony, but I can disprove it if time be allowed me, but if that cannot, I can bring such Proof as can testify, that I had before those that could Evidence it.

Corker. I told your Lordship, I think, that the Constables and other Persons that came there to take *Pickering*, said they knew nothing of me, and had nothing to say to me. Your Lordship tells me, this I ought to prove. I must confess I could not expect that, when there were so many, an hundred People at least, that all those People coming in I should be put to prove it. But here is a Servant that was in the House then, that will tell you the same, that will attest they said they had nothing to say to me.

Mr. Just. *Pemberton.* Call any of your Witnesses that you have.

Mr. Just. *Dolben.* Mr. *Corker*, you remember that the last time you were here at the Bar, you desired time because you had not your Witnesses; it is now above a Month ago, and therefore you have no Reason to say your Witnesses are not ready. Let us see them, that we may see you did not abuse us.

Mr. Recorder. Who were the Persons that were then at *Tunbridge*?

Corker. I tell you sincerely, my Lord, I did not know what they would say, but then I did take notice when my Accusation was read against me, That there was a time mentioned of the 24th of *April*, that I conspired the Killing of the King. Now I could prove the contrary of that I thought, for I did remember, and so my Friends know very well, that always in the Spring time I go once or twice, most commonly about Thirty Miles out of Town to take the Air. So my Lord, from that Observation I did really believe I was actually there at that time; and from this belief I did then tell your Lordship, that I thought I could bring Witnesses that would prove I was at that Place then. According to your Lordship's Order I sent for the Gentlewoman that kept the House, and she coming up I asked her, Mistress, said I, can you tell when I was at *Tunbridge*; said she, I believe you were there about or near *April*; but that is not the thing, said I, I ask you, can you positively say that it was either before or after the 24th, can you give me any determinate Circumstance of it. She could not swear, nor durst, what Day I was there exactly; then said I, go back again; for I resolved to die in my Innocency without Proof, rather than my Witnesses should speak what was false or doubtful.

Marshal. I desire that one *Thomas Summer* may be

be called. He was the Man that went down to fetch up the Witnesses from *Farnborough*.

Mr. Recorder. What is your Witness, *Mr. Corker*?

Corker. My Witness's Name is *Ellen Rigby* [*Who stood up.*]

L. C. J. What is it you ask her?

Corker. I desire she may be asked, whether she knows that I was in the House when the Search was in the *Savoy*, when *Mr. Pickering* was taken? and whether then they charged me, or said I was a Person that they had nothing at all to do with.

Marshal. And me the same.

L. C. J. Do you hear the Question?

Corker. Was not I in the *Savoy* when *Pickering* was taken?

Marshal. And I?

Rigby. Yes, you were both in Bed then.

Corker. Are you ready to swear it, if my Lord will permit you?

Rigby. Yes. And the Company that came in never asked for you, but when they saw you, said they had nothing to do with you.

L. C. J. Who said so?

Rigby. The Company that came and searched the House for *Pickering*.

L. C. J. Was *Mr. Oates* there?

Rigby. Yes, my Lord, *Mr. Oates* was there.

L. C. J. Did he say that he had nothing to say to them?

Rigby. Several of them did say so, and he among them. They asked me who were in the House, I told them several. They said they had nothing to do with any but with *Mr. Pickering*.

L. C. J. North. Who did you tell were in the House?

Rigby. I told them there was *Pickering*, *Marsh*, *Heskett*, *Corker*, *Smaydon* the Porter and his Wife, two Children, &c.

Corker. Now 'tis incredible he should search for Traitors, and, as he says, knew us to be such, and should not ask for us: Nay, when he saw us, leave us there, and never bid the Officer secure us.

Mr. Justice Pemberton. Who did ask you the Question?

Rigby. There were five or six, *Mr. Oates* and *Mr. Bedlow*.

Corker. I desire to know this of you, Have you not heard all along that *Mr. Stapleton* is President of the *Benedictines*, and how long he hath been so, for she was Housekeeper?

Marshal. Who is President of the *Benedictines*?

Rigby. *Mr. Stapleton*.

Corker. How long hath he been so?

Rigby. Four Years and a quarter, for any thing I know to the contrary.

L. C. J. In his absence, who was?

Rigby. I know not who,

L. C. J. Did not *Corker* officiate?

Rigby. Never in his life.

L. C. J. Do you know who did?

Rigby. I can tell he did not.

Corker. Pray ask her if she knows of any Consult of the Jesuits in the *Benedictine* Convent?

L. C. J. How should she know that? was she one?

Corker. Because there can none come to the House, but she must entertain them; there was no other Servant at all but she.

Marshal. Now, my Lord, since she is here, let her see *Mr. Oates* and *Mr. Bedlow*; ask her whether ever she saw them in the House in her life.

Rigby. I saw *Mr. Oates* in the House; he came a begging to *Mr. Pickering* for Charity.

L. C. J. What was the time?

Rigby. This Summer was Twelvemonth: And *Mr. Pickering* bid me shut the Door, and never let that Man come in again.

Marshal. That was in the very heat of the Plot, the very nick of time when he was employed to carry on the Conspiracy, as he says; and that then we should suffer him to be in such Necessity; and sent away with a Flea in his Ear, when he could gain such Advantages by discovering us: Is it likely that we would trust him with the whole Plot, and yet suffer him to want? I appeal to your Lordship and the Jury whether that be probable?

Then Sumner appeared and stood up.

L. C. J. What say you to him?

Marshal. I desire he may be asked, whether he does not know that here were Witnesses to testify I was then at *Farnborough*.

L. C. J. That is not a Question to be asked, what another Body can Swear.

Marshal. He was sent down, my Lord, to fetch the Witnesses up.

L. C. J. Well, to satisfy you we will ask the Question, tho' it be improper: Were you sent down for Witnesses?

Sumner. Yes, my Lord.

L. C. J. Why did not they come?

Sumner. They did come?

L. C. J. Why are they not here? The last Sessions was adjourned particularly to a certain Day, and you knew when you were to be tried.

Mr. Recorder. For this very Reason, That all might take notice of it, it was adjourn'd to the 16th Day at this place.

Marshal. Your Lordship does suppose we have a better Purse than we have: Would you have them leave their Employments, and come up, and be at great Charges; 'tis not in the Capacity of every one to endure it?

L. C. J. What would you have us do in this case?

Marshal. What is but Reasonable, Give me but three or four Days time, and I can have my Witnesses up.

Mr. Just. Dolben. I pray ask them whether they were not told of the time of their Trial?

L. C. J. Why did not you send for them before, when you knew what Day it was to be?

Mr. Just. Dolben. You knew as much before as you do now. If you did not, what did you send for them up for then, more than now?

Corker. There was no Certainty at all of the Time when we should be tried. We were told it was near, but not the very Day; some said the 12th, some the 14th, some the 16th, some not all.

Mr. Recorder. You must not say so; for notice was publickly given here that it should not be till the 16th, and the Sessions was adjourned till then.

Marshal. I was told it would be two or three Days after last Term. I confess God Almighty hath been pleased to give me a long Imprisonment to prepare for my last Close. I do not fear

Death,

Death, tho it should appear in far more frightful Shapes, than that we may be like to suffer. So, my Lord, it is not so much a Concernedness for my own Life, as for the Honour and Justice of the Court, that I plead for a Respite to have Witnesses that may positively and particularly disprove the Testimony of Mr. Oates. And all the World will think it an hard Case when I do attest and call to Witness such as have a great Probability to prove what I say to be true; when I can have such a numerous Train of Witnesses to prove that I was that particular Day threescore Miles out of London, and would positively swear it, if permitted. It will be hard, and will, I fear, draw an heavy censure upon this Honourable Court, if some time be not allowed.

L. C. J. It cannot be allow'd you, for then we must tie up the Jury, and make them fast all the time.

Marshal. You may discharge them of me.

L. C. J. We cannot do it now.

Mr. Just. Pemberton. There is no reason for it now, for you had time for your Witnesses before. What, do you come here to make a great Harangue about Witnesses which you had, and did not bring them?

L. C. J. Did you know they would come to prove, to any Day?

Marshal. I know they could prove such a Day.

L. C. J. Why then were they not here?

Marshal. Pray, my Lord, give me leave. I hope I shall not speak more than is reasonable and just, and then I care not how it succeeds. Every Judge is as much obliged to follow his Conscience, as any Formality in Law.

L. C. J. Pray teach your own Disciples, don't teach us: You come and talk here what regard we are to have to our own Consciences, as if we did not know that better than any Papist or Priest in the World.

Marshal. I suppose that, and 'tis rational too. And I do suppose that this Bench is infinitely just and merciful, and upon that supposition I plead. Then if there be great reason to believe that I can disprove Mr. Oates in his positive Testimony, then there is great reason to believe that I can save my Life. And if there be reason to believe that I can save my Life, I suppose there will be more regard to this than to any Formality of Law. Be pleased to ask him, whether he were not to fetch Witnesses that could attest this.

L. C. J. What can you say?

Sumner. I went down into the Country for Witnesses.

L. C. J. Why did you not bring them up against this time?

Sumner. I had no Order for this time.

Marshal. We did not know when we should be tried.

Cl. of the Peace. My Lord, I did tell the Messenger when the Sessions was.

L. C. J. Did the Officers here acquaint you when the Sessions was?

Sumner. I had order from Captain Richardson at first, I did ask leave to go down to fetch his Witnesses; says Captain Richardson, you have order to do what he shall direct, to provide him his Witnesses; that was for the last, not for this.

L. C. J. How far were the Witnesses off?

Sumner. Threescore Miles.

L. C. J. Why, you have had notice long enough of your Trials, to get up Witnesses threescore Miles.

Mr. Recorder. Capt. Richardson, Did not you tell the Prisoners when their Trials would be?

Mr. Just. Dolben. They had all notice of the Sessions by the Adjournment, and should have provided for it.

Capt. Richardson. Ever since the last Sessions they have all of them had the Permission of any People to come to them in order to the preparing for their Trials.

L. C. J. As when?

Capt. Richardson. As for this Sessions.

L. C. J. First you did know that the Sessions did begin on Wednesday; if you had prepared your selves against Wednesday, you had been delayed but for two Days.

Marshal. But how could I prepare Witnesses for that which I did not know would be testified against me?

L. C. J. Why did you prepare them for the last Trial? why had you not the same Witnesses you had then?

Marshal. Because it was upon somewhat he had said upon my taking, that he saw me in June and July, I did provide Witnesses for it.

Mr. Just. Pemberton. He holds to the very Day he said first, and this is but plain trifling.

L. C. J. Truly, if the Merit of your Cause be no better than such weak Assertions, your Defence is but very poor.

Marshal. But that I humbly offer, is this, whether you will believe I can have such Witnesses, and therefore stay till they be sent for.

Mr. Just. Dolben. We have no Reason to believe you.

Mr. Just. Wyndham. We have no Reason to believe you, when you have had time to prove it, and have not got them.

L. C. J. Why were they not here now?

Marshal. My Lord, I do give you a double Reason. Then, my Lord, I offer this, that my Name is in no List, Paper, nor Narrative that ever was put forth; and if I had been Guilty, as he says, would not he have named me amongst the other Conspirators?

L. C. J. No, I think he should not, it would have given you Notice, and too much Opportunity to have gone away.

Marshal. He gave me leave, when he left me in my Bed.

L. C. J. But yet for all that it does not prove your Innocency. All People that are Guilty, don't run away for it, for you have abundance of Priest-holes, and hiding-holes. Well, have you any more Witnesses? if you have, Call them.

Corker. Call Alice Broadhead [but She did not presently appear;] then I desire Mrs. Eliz. Sheldon may be called; [Who being in the Gallery, answered and came down.]

Marshal. I do desire to know whether she knows who is President of the Benedictine Monks?

L. C. J. Who is President of the Benedictines, Mistress? Sheldon, Mr. Stapleton.

L. C. J. How many Years hath he been?

Sheldon. A great many Years, my Lord, to my Knowledge.

L. C. J. How many?

Sheldon. Four or five Years.

Mr. Recorder. Where is Dr. Oates? call him.

L. C. J.

L. C. J. But if he were absent did not Mr. *Corker* officiate in his place?

Sheldon. Never, my Lord.

Corker. Mr. *Stapleton* was actually at *Paris* when I was there, and therefore I could not officiate in his stead; there is another that can testify the same, that is *Alice Broadhead*, [*Who appeared then.*] Pray ask her the same Question.

L. C. J. Who is President of the *Benedictines*?

Broadhead. Mr. *Stapleton*, I have known him for many Years, and there hath not been for a great many Years any other.

Corker. Then I do desire that I may observe this, That Mr. *Oates* doth seem to accuse me positively of nothing, but only of consenting to the *Benedictines* Contribution of 6000*l.* which he says they could not do without my leave, because I was their President; but I have brought three Witnesses which say, and are ready to swear, that Mr. *Stapleton* is President, was so these many Years, and I never was so in my Life.

Mr. *Recorder.* Here is Dr. *Oates* again now.

[*But he was not Examined.*]

L. C. J. Have you done now, all Three?

Sir *Geo. Wakeman.* I say, my Lord, I find that it was imputed to me, at least as a sin of Omision, that when I was before the Council, I did not sufficiently detest, and abominate, and abhor this Crime that is laid to my Charge. I now detest, abhor, and abominate the Fact charged on me. I call God to Witness, I never was in any Consultation about it in my Life, I never received any Bill for any Money upon this account, nor did ever receive any Money.

L. C. J. Had not you Two Thousand Pounds?

Sir *Geo. Wakeman.* No, my Lord, I wish I may never enter into the Kingdom of Heaven, if I received one Farthing for any such thing.

Corker. He says, that I was employed in distributing Moneys; and I profess before God, I never distributed any Money upon such Account; all that I had was an Annual Annuity which I gave amongst the Poor. I protest before God, I never in my Life did deliver or hold it as a matter of Faith or commendable Doctrine, That it was lawful for the promoting of the Catholick Religion, to Murder the King, or destroy my Country. And I renounce and detest it from the bottom of my Soul. And this is all can be expected from a good Christian upon that account; and I hope the Jury will have no prejudice against me for that; and neither Pope or any breathing upon Earth can dispense with me from that Obligation.

Marshal. And if no Door can be opened for a merciful Sentence upon any Consideration offered by the Living; at the loud Cries of the dying, I hope there may; and all the earnest Vows, and all those solemn Protestations of Innocency by such as were lately Executed for the Crimes we stand here charg'd with, left behind them as sacred Testimonies of their Loyalty and unviolated Faith to the King. And I beg leave to put before the Eyes of this Honourable Court, and this whole Assembly, this Landskip of Horror, wherein may be seen those Caves of Darkness, those Baths of glowing Sulphur, such Men must be eternally judged to be condemned unto, if what they then spoke had not the Characters of the fairest Truth found instamped upon it. Now if a right Survey be taken of this Landskip, and it be well observed what these Men so solemnly

signed and sealed to with their last Breath, it must be confessed they either conspired finally to damn their own Souls, or were not Conspirators against the King, nor were they Guilty of what was charged upon them. Present Content, where the Enjoyment is like to continue, works with a strong Influence upon humane Nature, and chains it fast to the present World. But, my Lord, with the approach of Death, Reformation of Conscience does offer to advance, and we do observe those who have lived a very ill Life, frequently to make a good End; but, my Lord, it is a thing scarce ever heard of or known, that those who have lived all their Lives well, should die ill. Nor can such as were looked upon while they lived as Persons of much Integrity, great candor of Spirit, and unquestionable truth in all their Attestations, Dying, should become Prophanes to Blasphemy, become Irreligious even to Sacrilege, and false even to the worst of Atheism. My Lord, this cannot readily be believed, or easily imagined; nor will be, tho it be possible; and yet all that will not believe this, must own an Innocency where Guilt is so strongly supposed. And if there be great Cause to doubt whether those that were lately executed, and were supposed to be Leaders in this Conspiracy, were Guilty upon the Consideration of those solemn dying Protestations they have made to the contrary; I humbly conceive it may be much more rationally doubted, whether others brought in only by the by, as I am, as a Letter-Carrier, and only as Marginal-Notes to the great Conspirators, may not be wholly innocent. Now, my Lord, if no Credit be to be given to the Protestations of Men dying, that have ever been judged sober and just; how can Faith be reposed in the Testimony of such Living Persons as know no God nor Goodness? And if the reputed just Man at the very point of Death can be judged rationally false in his Protestations, tho Death be in his Eyes, and Hell threatening to engulf him; may not he, my Lord, who hath owned himself a Villain in print, be thought false in his Testimony, while Preferment tickles him, Rewards march before him, and Ambition beckons to him, which he greedily follows, tho God and Conscience tell him 'tis unjust.

England is become now a Mournful Theater, upon which such a Tragedy is acted, as turns the Eyes of all *Europe* toward it; and the Blood which hath been already spilt, hath found a Channel to convey it even to the remotest Parts of the World. And tho it inspires different Breasts with different Resentments, yet it may speak a Language that none who are Friends of *England* will be willing to understand. Our present Transactions here, are the present Discourse and Entertainment of foreign Nations; and without all doubt will be chronicled and subjected to the Censure of ensuing Ages. Now my Lord, I have great Reason to believe, That not any one of those Honourable Persons that now sit Judges over us, would be willing to have their Names writ in any Characters, but those of a just Moderation, of a profound Integrity, of an impartial Justice, and of a gracious Clemency. And tho we would not be all thought to be well-wishers to the *Roman* Catholick Religion, yet we would be all thought Friends to Religion; and tho we exclaim against Idolatry and new Principles of Faith, yet we all stand up for old Christianity;

Christianity; whereas if the Testimony of Living Impiety be applauded and admitted of, and the Cries of Dying-honesty scoffed at and rejected, what will become of old Christianity? And if any Voice, Cry, or Protestation of Dying Men may pass for Truth, and obtain Belief, where is now our new Conspiracy? The Question now seems to come to this, the belief of Christianity now in *Roman* Catholicks, and the Appearance of their Innocency, are so fast linked together by those solemn Vows and Protestations of their Innocency, made by the late Executed Persons, that no Man can take up Arms against the Latter, but must proclaim War against the Former. Nor can our Innocency bleed, but our Christianity must needs by the same Dart be wounded. Nor can any Tutelar Hand stretch it self forth —

L. C. J. North. You speak *ad faciendum populum*, and should not be interrupted, but only I think you lash out a little too much.

Marshal. I speak this to add the Testimony and solemn Vows of the Dying, to what we say Living for our own Defence. And I desired they may be put in both together, and weighed in the Scales of an impartial Judgment. Now, my Lord, I say, the Question seems not so much whether *Roman* Catholicks are Conspirators, as whether indeed they be Christians. Nor is it the great Doubt now whether they designed to kill the King, but whether they believe there is a God. For whoever grants this last, the belief of a God, of a Heaven, and an Hell, and considers what Asseverations they made at their Death, what solemn Protestations they insisted upon, does with the self-same breath proclaim them Innocent.

Mr. Just. Pemberton. But *Mr. Marshal*, will you go on to affront the Court in this manner, to vouch for the Truth of their Speeches, which they made at the Gallows, and affirm them Innocent after they have been found Guilty, and executed according to Law?

Marshal. My Lord, I do not avouch them Innocent, I only desire there may be consideration had, and that the Words of such Dying Men may be thought of. If they did believe a God and a Judgment-Seat that they were going to, could they be Innocent and Christians too?

L. C. J. I was loth to interrupt you because you are upon your Lives, and because 'tis fit you should have as much Indulgence as can be allowed. Your Defence hath been very mean, I tell you beforehand; your Cause looked much better before you spoke a Word in your own Defence, so wisely have you managed it.

Mr. Recorder. But really for your particular Part, *Mr. Marshal*, you abound too much in your Flowers of Rhetorick, which are all to no Purpose.

Marshal. I hoped it would be no Offence to insist —

L. C. J. But I will tell you, and I'll be heard as well as you, Sir; Because of the Protestations of these Men, which you make so much a stir about. If you had a Religion that deserved the Name of a Religion, if you were not made up of Equivocation and Lying, if you had not Indulgences and Dispensations for it, if to kill Kings might not be meritorious, if this were not printed and owned, if your Popes and all your Great Men had not avowed this, you had said something; but if you can have Absolutions either

for Money, or because you have advanced the Catholick Cause as you call it, and can be made Saints as *Coleman* is supposed to be, there is an end of all your Arguments. There is a God, you say, and you think we shall go to that God because he hath given us the Power, we can let our selves in and turn the Key upon Hereticks. So that if they kill a King, and do all the Wickedness they can devise, they shall go to Heaven at last; for you have a Trick, either you can directly pardon the killing of a King, or if you excommunicate him he is no King, and so you may kill him if it be for the Advancement of Religion. But it will be in vain for you or any Priest in *England* to deny this, because we know you Print it and publickly own it, and no body was ever yet punished for any such Doctrine as this. Therefore all your Doings being accompanied with such Equivocations and Arts as your Religion is made up of, 'tis not any of your Rhetorick can make you be believed. I do believe it is possible for an Atheist to be a Papist, but 'tis hardly possible for a knowing Christian to be a Christian and a Papist. 'Tis hardly possible for any Man of understanding, setting aside the Prejudices of Education, to be a Papist and a true Christian, because your Doctrines do contradict the Foundations of Christianity. Your Doctrine is a Doctrine of Blood and Cruelty, Christ's Doctrine is a Law of Mercy, Simplicity, Gentleness, Meekness and Obedience; but you have nothing but all the Pride that ever a Pope can usurp over Princes: and you are fill'd with Pride, and mad till you come again into the Possession of the Tyranny which you once exercised here: insomuch that 'tis strange to me, but that Princes abroad think you more conducing to their Politick Interest, else sure they could not endure such Spiritual Tyranny to Lord it over their Souls and their Dominions. Therefore never brag of your Religion, for it is a foul one, and so contrary to Christ; that 'tis easier to believe any thing, than to believe an understanding Man may be a Papist. Well, Sir, if you have any more to say, speak it. You have provoked me to this: and indeed I ought to do it, because you have so much reflected on the Justice of the Court: but if you have any thing to say in your Defence, speak it, or to your own particular Case. As for your Religion, we know what it is, and what merciful Men you are: and if we look into the bottom of you, we know what you were ever since *Queen Mary's* Days: and if we look into the Gunpowder-Treason, we know how honest you are in your Oaths, and what Truth there is in your Words, and that to blow up King, Lords and Commons, is with you a merciful Act, and a sign of a candid Religion; but that is all a Story with you: for it is easier for you to believe, that a Saint, after her Head is cut off, did go three Miles with her Head in her Hand, to the Place where she would be buried, than that there was a Gunpowder-Treason. [*At which the People gave a Shout.*]

L. C. J. North. You must not meddle any more with the Speeches of those that died.

Marshal. I did not intend, my Lord, to call any thing of Justice in question.

L. C. J. What, do you think we will be imposed upon in this manner? Perhaps you have Tricks enough to gull your own Party, but you have not to deceive Protestants; they can look

thro all your Arts; nay, I never saw such Men of weak Parts, as your Priests generally are; so that I wonder you should have any Disciples, but silly Women, or Men without Learning.

Marshal. If we were guilty of this Conspiracy, we should gull only our selves.

L. C. J. Go you on with one Harangue, I warrant you I will give you another; you shall not be hindred to say any thing that is pertinent; but this is not at all so. We have a Bench of Aldermen have more Wit than your Conclave, and a Lord-Mayor that is as infallible as your Pope. Have you any thing more to say for your selves?

Marshal. 'Tis not proper to contradict your Lordship, but 'tis a Wonder you should know our Religion better than our selves; for I know not of any such Doctrines owned amongst us.

L. C. J. No! then I believe you have not read your own Books; I suppose that your Business is not now to read, but to seduce silly Women, or weaker Men. What, don't you publish them all over the World? Is there any *Index expurgatorius*, into which you have put these Doctrines? Surely you know not any thing, if you know not this.

L. C. J. North. If you have any thing more to say in the proper Defence of your Trial, pray speak it now.

Corker. As to those damnable Doctrines, we profess our selves innocent of them. I desire that the Jury may not go upon such a Prejudice, that I entertain such Principles of Religion, as Matters of my Faith. They are horrid Crimes, I protest against them, and own them not. I desire the Jury to take notice of it.

Marshal. I have this further to offer to your Lordship, that Mr. *Bedlow* owned before the Lords that he knew no more to be guilty than he had declared, and among all those I am not named; and this was a Month or six Weeks before I was taken.

Mr. Just. Pemberton. There is no such thing at all proved here, or given in Evidence, and therefore why do you insist upon it?

Marshal. In this I appeal to the Knowledge of you Lordship: and if you know it, I hope you will be pleased to acquaint the Jury with it.

L. C. J. I do not know for my own particular, what Answer was made; I was not in the House, nor do I know it.

Judges. None of us know it.

Marshal. I desire the worthy Jury to take notice, that among all the Persons named, there is no such Name mentioned as mine.

Mr. Just. Pemberton. There is no such Thing prov'd here.

Marshal. They deny all the Lords Records.

L. C. J. Well, have you done? Look you, Gentlemen of the Jury——

Marshal. I desire but one Word: These Things I have insisted upon as far as I can for my self; but the main Matter I rely'd upon was, that Mr. *Oates* did not know me, neither as to my Calling, Conversation, Words nor Actions. He can bring no Person, Man nor Woman, that ever saw him in my Company, nor took notice of our meeting together, nor *Bedlow* neither; he can name no Place where he saw me, none but the *Savoy*, against which no Proof can be found. And then at the Searching of the House, I desire the Jury to take notice, that at that Time

he disowned us, and said he did not know us. A sufficient rational Cause cannot be given, why he should say now he knows me, and did not then take me.

Mr. Just. Pemberton. You have said all this before.

Marshal. Then, my Lord, for a Conclusion, I have been told, and I will only desire the Jury to take notice of it, that every Jury that finds a Man guilty of Death, upon the Testimony of Witnesses that come in against him, do take it solemnly upon their Consciences, that what such Witnesses swear is true.

L. C. J. That they believe they swear true: For we have no Infallibility with us: 'Tis one thing to say 'tis true, and another thing to say we believe it is true. Look you, the Jury may give a Verdict that is false, and yet go according to their Consciences. Do you understand that, Priest?

Mr. Just. Pemberton. You need not teach the Jury what they are to do.

Marshal. But considering in case an Oath be false, and the Jury have reason to doubt what the Prisoners say in their own Defence, upon what they hear or have learnt of their own Knowledge, if they find such Doubt grounded upon that double Matter, then they are in great Danger to bring the Fault to their own Doors, and make the Crime of Perjury their own.

Mr. Just. Pemberton. What, do you go over Things again and again?

L. C. J. All this signifies but little; if you had Popery here, you would get but little by it. We should hardly part with our *Peter Pence* for all your Speeches. We all know what Things are, 'tis not a Parcel of Words patch'd thus together, will do your Business.

Marshal. I wish all Thoughts were as open-fac'd as ours are.

L. C. J. Look you, Gentlemen of the Jury, here are four Prisoners; as to one of them, that is *Rumley*, the Truth of it is, there is but one Witness against him, and by the Law there ought to be two; so I cannot say, but you ought to discharge him: We do not find, that there is Testimony sufficient, according to the Law, to condemn him, and therefore you ought to acquit him. As to the rest, here is Sir *George Wakeman*, Mr. *Corker*, and Mr. *Marshal*; there hath been two sorts of Evidence given, I will repeat them as well as I can, and as short as I can. There hath been a general Evidence, and a particular Evidence: There was a general Evidence given by Mr. *Dugdale*, of the Plot in general, and by Mr. *Prance*, and something of Intimation by Mr. *Jennison*. These of *Dugdale*, *Prance*, and *Jennison*, do not mention so much as the Names of the three Gentlemen that are upon their Lives; but I'll tell you why it was necessary, and answers a great Objection that they seem to make: for you are to believe Men, say they, and to believe Men upon probable Circumstances, something to guide you besides the Positiveness of an Oath; and that is well enough said. Now here is something besides, and that is the Plot; that there was a Conspiracy to introduce Popery, by the likeliest Means, which was to kill the King; and that such People as these Men were to do it. Now that there was such a general Design to do it, is a circumstantial Evidence, (as to these Men I call it so.) And these are Circumstances which
may

may answer the Objection they make, when they say, You are not to give Credit to positive Oaths, without any thing to govern you by; for you have this to govern you by, besides the Oath, that there was a Plot.

The Testimony of Mr. *Jennison* does go more particularly to the Business of *Ireland*, which I would observe, by the way, for the sake of that Gentleman that stands so much upon the Innocency of those Men, and would have them to be believed upon their own Assertions, because he says they dare not die with a Lye in their Mouths. I believe it is notorious enough, Mr. *Jennison* that comes here is a Man of Quality, and one against whom there is no Objection, and he is justified by one or two more. He says, he saw Mr. *Ireland* the 19th of *August*, when he, to his Death, took upon him to aver he was then in *Staffordshire*, and brought several of his own Religion, who would outface it to the Court, that he kept them Company so many Days, and was in the Country all the while. There was a Maid, before this, that came and testified that she saw *Ireland*, and saw him at his own Door, in *August*, but this Gentleman comes and proves it upon him more particularly, and tells you when, the Day of the Week, and of the Month, that he was with him at his own Lodging, that Night he came from *Windsor*, that he was pulling off his Boots, and pretended to come Post from *Staffordshire*, and so that he was in *Staffordshire* is true, because he came thence Post, but he hath always constantly deny'd that he was here, and that may serve for the Integrity even of their dying Oaths. And you are not going, according to your own Doctrine, so immediately to Hell, I hope you suppose a Purgatory, where you may be purged from such Peccadillo's as this of dying with a Lye in your Mouths.

As for the Testimony of the particular Evidence, first, against Sir *George Wakeman*, Mr. *Oates* says, he saw a Letter subscribed, *George Wakeman*; and it was writ to Mr. *Ashby*, and therein, among other Expressions, was this Particular, That the Queen would assist him to kill the King. He was asked, How he knew it was his Hand? He said, He had never seen his Hand before, but afterwards he saw him writing, (as he thinks, writing,) in a writing Posture, and there he looked upon that Paper when he was gone from it, while it was wet, and that Character, to his thinking, was just the Character of the Letter. Now I must observe this to you: First, Supposing it to be true, yet it is somewhat hard, for a Man that had never known a Man's Hand in his Life, to see a Hand to-day, and some time after to come and see his Hand to a Bill of Physick, and to recollect the Character so much backward, as to know, this is that, or that, Man's Hand, that I saw before. 'Tis one thing to know Hands we are used to, but 'tis another thing, if we see a Hand that we never saw before in our Lives, and then by Reflection at another Time, and by comparison of Hands, to say this is the same, that is hard; but that is supposing it to be true. Sir *George Wakeman*, as all People will that are accused, does deny the Fact, and says there was no such thing. Against him besides, he says he saw, in a Book that the Jesuit Priests kept among them of their Transactions and Affairs, he saw, in *Harcourt's Chamber*, a Book, wherein was written, *This Day*,
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(and there was a certain Day in *August* named, but he cannot tell what Day,) *This Day* agreed with Sir G. W. for 15000*l.* to which he consented. And under was written, *Receiv'd 5000 l. part of 15000 l. by Order of Mr. Coleman. George Wakeman.* This he says he saw, and he believes that to be the very same Hand that he saw before, so it is by a Comparison of Hands. He does not charge Sir *George Wakeman*, to the best of my Memory, with any positive Thing of his own Knowledge, more than as I tell you of this Matter.

Sir *Rob. Sawyer*. Yes, my Lord, he says he saw his Commission.

L. C. J. Indeed he does say, he saw a Commission in his Hands, to be Physician-General of the Army that was to be raised. And that he denied 10000*l.* and would have 15. The Truth I leave with you, Gentlemen. Look you, Gentlemen, we will shew our selves what we ought to do, let them be as they will; we would not, to prevent all their Plots, (let them be as big as they can make them) shed one Drop of innocent Blood, therefore I would have you, in all these Gentlemens Cases, consider seriously, and weigh truly the Circumstances, and the Probability of Things charged upon them. There is an additional Evidence against Sir *George Wakeman*, by *Bedlow*: He says he saw him have a Note for 2000*l.* which was said came from the Queen, there were Discourses of doubtful Words, but whether they be plain enough to satisfy your Consciences, when Men are upon their Lives, I leave to you. That Sir *George Wakeman* should say, *Are you ready for me? Why am I drill'd on thus, in a Matter of this Concern?* This he would have to imply the poisoning of the King; but there is but one Thing that sounds any thing plain to the Matter, and that was this, said he, *If they miss* (speaking of killing the King) *if they miss at Windsor, and you miss your Way, then it shall be done at New-Market.* This he did swear directly, and then Sir *George Wakeman* reply'd, He would be ready. Now if you believe this, then there are two Witnesses against Sir *George Wakeman*, for the Matter of the Bill alone would do nothing, but when he says he saw such a Bill, it must be for something; and if he did say so, *If they miss killing him at Windsor, and you miss your Way, we will do it at New-Market;* and he reply'd, *I will be ready*, the Thing is made plain; I leave it to you; and this is all the Evidence against Sir *George Wakeman*, as I remember: I hope my Brothers, if they remember more, will repeat it to you. I cannot undertake to repeat every Word; I remember so much as is material, and my Brothers I hope will help me out, in what they have better observed.

As to Mr. *Corker*, *Oates* says, that he saw a Letter under his Hand, that is, his Name, I suppose, was to it, wherein he consented to the raising the 6000*l.* which was to be raised out of the *Benedictines* Estates, and was in order to the carrying on of this Plot. I do not find that he does prove that he did know Mr. *Corker's* Hand. And he says of him further, he was their President, and so it was necessary to have his Consent for the raising the 6000*l.* and particularly he says, that he did except against *Pickering's* being designed for the Murdering of the King; for, said he, *He is a Man that waits at the Altar, and methinks you should chuse some fitter Person.* For
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that, says Mr. Corker, which he says, That I was President; I was not President; and he makes it necessary for me to set my Hand, because I being President, it was supposed it could not be done without me; and Dr. Oates does intend such a Thing by his enforcing of it too: But he does produce to you two or three Witnesses, that do say, Mr. Stapleton hath been President for four or five Years; and, said he, *If I were not President, what needs all this ado about my Consent?* So he contradicts him in that Particular, that he was not President, and it is not only a bare immaterial Thing, because his being President made his Hand more necessary to the raising the 6000*l.* And for that Matter of his saying, that he did except against Pickering, and they might have chose another, he does not charge him to be actually at the Consultation, but he says he knew of it, because he said Pickering was not a fit Man to do it. And he said, they had better chuse a Layman. He proves no Fact, but only these Words. And Mr. Bedlow he speaks against him, and what he says is rather less than what Oates says. For 'tis, that he talked with *Le Fevre* the Priest about the Plot in general Words. It may be, he was talking with some body else, and yet he could hear that they talked together in general about it. That is all against him.

Against Mr. Marshal, 'tis rather less than against Corker, that is, that he did consent to the 6000*l.* that should be raised among the *Benedictines*, he being a *Benedictine* too, and that he took Exceptions against Pickering, as Corker did, that it was not convenient to employ him in Killing the King. And this is that Oates says, and that he was a Carrier of Letters up and down, and a Factor that Way. And Bedlow says, that he knew that he carried Letters, and was at the Consult where they were read and answered, and when they asked him, Where? He said, At the *Benedictine* Convent in the *Savoy*. And names in particular, a Letter to Sir Francis Radcliff, and that there was a Discourse concerning the Plot, in his hearing.

They say for themselves, they cannot answer any more than by Circumstances, 'Tis a very strange thing, if Dr. Oates knew this of us, why did not he take us before? And says Sir George Wakeman, Why did not he accuse me of this Letter that he talks of, before the King and Council? He makes an Answer (which to me indeed is a very faint one) as if he were so weak and tired, that he could not speak any Word farther. When the Council asked Sir George Wakeman what he had to say for himself, and he behaved himself ruggedly, they call for Oates again, What, said they, do you know any thing of your own Knowledge? No, said he, God forbid; I know nothing more; as Sir Philip Lloyd says, and as the Matter speaks: For if he had charged him that he had seen that Letter, the Lords would infallibly have committed him. If he had but said, *I saw a Letter with his Name to it, which by the Character I believe was his, because I saw his Writing elsewhere.* And 'tis wonderful to me; I don't know, if a Man be never so faint, could not he say, *I saw a Letter under his Hand*, as well as, *I knew nothing more of him?* There are as few Words in one, as in the other. If he had said, *I beg your Lordships or His Majesty's Pardon, I am so weak I cannot recollect my self*, it had been something; but to make a great Protestation that

he knew nothing of him. This is that that is said by Sir Philip Lloyd, on his Behalf.

These other Gentlemen say, that Oates did not know them, and the Woman does say, that she did tell them, when they came to search, that Corker and Marshal were there, and Dr. Oates and they said, they had nothing to do with any but Pickering. They make Answer now and say, that they had no Commission to take any but him. But 'tis strange indeed, if they were there, and they did see them, that they did not apprehend them. For what Defence they make about what Talk was had at the *Gate-house*, 'tis all contradicted by Sir William Waller. And indeed, if it were possible, they have almost undone themselves in their own Defences, by making weak Observations, and insisting upon trivial Things; improper for the Court to hear, and impertinent for them to urge. But I deal faithfully with you, I will discharge my own Conscience to you. It lies upon the Oaths of these two Men. Tho there was a Plot in general proved, yet that does not affect these Men in particular, but was only used to answer that Objection, that it should not be believed upon positive Swearing, Hand over Head, without something else. Here was something else, the Plot in general, and their being Priests, is another Circumstance to me, who are mad to bring in Popery, and would do anything to get their Tyranny again established amongst us. And there is more than probable Evidence of that, I assure you.

Sir Tho. Doleman did indeed say Mr. Oates was very weak, so that he was in great Confusion, and scarce able to stand; weigh it with you how it will, but to me 'tis no Answer. I tell you plainly, I think a Man could not be so weak, but he could have said, he saw a Letter under his Hand. It was as short as he could make an Answer, and 'tis strange that he should go and make Protestation that he knew nothing. And so I pray you weigh it well. Let us not be so amazed and frightened with the Noise of Plots, as to take away any Man's Life without any reasonable Evidence. If you are satisfied with the Oaths of these two Men, so; I have observed to you what Objections they make for themselves, and those Objections are material: What Sir George Wakeman says about his not accusing him before the Council, and what these Men say that he did not apprehend them. And 'tis very strange, they should have so little Knowledge and so little Acquaintance with Oates and Bedlow, and so great a Matter as they speak should be true. And 'tis well enough observed, that he was a begging there; 'tis very much that such a Man should know of such a great Design on Foot, and they should use him in that manner. These are the things that I remember, worthy of your Consideration. These Men's Bloods are at stake, and your Souls and mine, and our Oaths and Consciences are at stake; and therefore never care what the World says, follow your Consciences; if you are satisfied these Men swear true, you will do well to find them Guilty, and they deserve to die for it: If you are unsatisfied, upon these Things put together, and they do weigh with you, that they have not said true, you will do well to acquit them.

Bedlow. My Lord, my Evidence is not right summ'd up.

L. C. J. I know not by what Authority this Man speaks.

Cl. of Cr. Make way for the Jury there; who keeps the Jury?

Then an Officer was sworn to keep the Jury: The Judges went off the Bench, leaving Mr. Recorder and some Justices to take the Verdict. And after about an Hour's Space the Jury returned, and the Foreman coming up to the Table, spoke thus to Mr. Recorder.

Foreman. Sir, the Gentlemen of the Jury desire to know, whether they may not find the Prisoners Guilty of Misprision of Treason?

Mr. Recorder. No, you must either convict them of High-Treason, or acquit them.

Foreman. Then take a Verdict.

Cl. of Cr. Gentlemen, answer to your Names, Ralph Hawtrey.

Hawtrey. Here, &c.

Cl. of Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Our Fore-man.

Cl. of Cr. Sir George Wakeman, hold up thy Hand. [*Which he did.*] Look upon the Prisoner. How say you, is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Fore-man. Not Guilty.

Capt. Richardson. Down on your Knees.

Sir George Wakeman. God bless the King and the Honourable Bench.

And in like manner were the other Three acquitted.

After the Verdict was Recorded, the Court adjourned till 5 in the Afternoon.

LXXXV. The Trial of CHARLES KERNE, at Hereford Assizes, for High-Treason, being a Romish Priest. Aug. 4, 1679. 31 Car. II.



ON Monday the Fourth Day of August, Charles Kerne was brought to the Bar, and being Arraigned, he pleaded Not Guilty to the Indictment: Then the Court (after the usual Formalities performed) proceeded to the Trial as followeth.

Cl. of Arr. Gentlemen of the Jury, Look upon the Prisoner, and hearken to his Cause. You shall understand that he stands Indicted by the Name of Charles Kerne, late of the Parish of Weobly in the County of Hereford, Gent. For that he being born within the Kingdom of England, the Twenty Ninth Day of April, in the Thirty First Year of the Reign of our Sovereign Lord King Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. Then being a Seminary Priest, made, professed, and ordained by the Authority and Jurisdiction challenged, pretended, and derived from the See of Rome, the said Twenty Ninth Day of April, in the Year aforesaid, within this Kingdom of England (*viz.*) at Weobly aforesaid, in the County aforesaid, Traiterously did come, was, and did remain, against the Form of the Statute in that Case made and provided; and against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Upon this Indictment he hath been Arraigned, and thereunto pleaded Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High-Treason whereof he stands Indicted, or Not Guilty: If you find him Guilty, you are to

enquire what Lands, Goods or Tenements he had at the Time of the Treason committed, or at any Time since; if you find him Not Guilty, you are to enquire whether he did flee for the same: If you find he did flee for the same, you are to enquire what Lands, Tenements or Goods he had at the Time of such Flight, or at any Time since; if you find him Not Guilty, nor that he did flee for the same, you are to say so, and no more; and hear your Evidence.

Cl. of Arr. Call Edward Biddolph. [*Who was Sworn.*]

L. C. J. * Give the Jury Pen, Ink, and Paper.

L. C. J. Biddolph, do you know Mr. Kerne?

Biddolph. I do not know him now: I did know such a Man about six Years ago; I have seen him once or twice at Mr. Somerset's at Bollingham, about six Years ago.

L. C. J. How long is it ago since you saw him last?

Biddolph. About a Year.

L. C. J. Had you any Discourse with him?

Biddolph. No, I never had any.

L. C. J. Look on the Prisoner, can you say that is the Man?

Biddolph. No, my Lord, I cannot.

L. C. J. Can you say you ever saw or knew him?

Biddolph. I cannot.

L. C. J. Set him down. Call another Witness.

Cl. of Arr. Swear Margaret Edwards. [*Which was done.*]

L. C. J. Do you know Mr. Kerne?

Edwards.

Edwards. Yes, my Lord, I do.

L. C. J. How long have you known him?

Edwards. Five or six Years.

L. C. J. Where did you know him?

Edwards. At *Sarnsfield*, at *Mrs. Monington's*.

L. C. J. Were you a Servant there?

Edwards. No, I went thither about Business.

L. C. J. Where did you first see him?

Edwards. At *Mr. Wigmore's* of *Luſton*.

L. C. J. Had you any Discourse with him there?

Edwards. No.

L. C. J. How came you to see him at *Mrs. Monington's*?

Edwards. My Lord, one *James Harris's* Wife being very sick, I was desired by him to go to *Mrs. Anne Monington* to seek some Remedy for her: He desired me the rather, for that she being a Papist, and I of the same Religion, he believed for that Reason she would be the more kind to her.

L. C. J. Were you a Papist then?

Edwards. Yes, my Lord.

L. C. J. Well, what said *Mrs. Monington* to you?

Edwards. My Lord, she told me she was glad that they had sent me, for that she did not care to discourse the Distempers of a Woman to a Man.

L. C. J. Well, go on.

Edwards. My Lord, after she had discoursed to me concerning the sick Woman, she desired me to go with her, which I did; and she brought me into the Chappel, where I saw *Mr. Kerne* in his Robes.

L. C. J. Were there any more in the Room besides him?

Edwards. Yes, my Lord, four or five: He was in his Robes and Surplice, and was at the Altar, and gave the Sacrament to the rest, but I did not receive it.

L. C. J. What did you see him do?

Edwards. I saw him give the Sacrament.

L. C. J. What did he say?

Edwards. He said *Corpus Christi*, or some such Words.

L. C. J. Did you see him deliver the Wafers?

Edwards. Yes, my Lord.

L. C. J. To how many?

Edwards. To Four.

L. C. J. You swear positively to Four: Did they confess to him?

Edwards. Yes, I believe they did.

L. C. J. Did you ever see him since?

Edwards. No, my Lord, I never saw him between that and this.

L. C. J. Did you ever receive the Sacrament before, and of whom?

Edwards. Yes, I received several times: The first time was of *Mr. Duffres*, next of *Mr. Kemble*, then of *Mr. Rowenhill*, *Mr. Standish*, *Mr. Morgan*, *Mr. Trindal*; I have received from *Mr. Draycot* at *Mr. Berrington's*; I have received at *Mr. Blount's*; but the last time was from *Mr. Jennings* at *Mr. Wigmore's* House.

Pris. My Lord, I desire she may be ask'd whether she came to *Mrs. Monington's* of her own accord, or was sent for Physick?

Edwards. I was sent.

Pris. Did the Man send you, or his Wife?

Edwards. The Man.

Pris. Have a care what you say, *Harris's* Wife is here to trapan you.

L. C. J. Give good Words; you begin to triumph too soon. Woman, was it *Harris* or his Wife sent you?

Edwards. It was *Harris* himself that desired me to go, because I might have more Favour, being a Papist.

Pris. Where did that *Harris* live?

Edwards. At *Lempster*.

Pris. I am satisfied, 'twas a Mistake, I thought it had been *Harris* of *Lawton* she had meant.

L. C. J. Will you ask her any thing else?

Pris. I desire to know the Time when she saw me at *Mrs. Monington's*?

Edwards. It was in last *May* was Twelve-month, the twenty ninth Day, to the best of my Memory.

L. C. J. Do you take it to be certain, or do you believe it only that it was that Day?

Edwards. My Lord, I am certain it was that very Day; for the Woman died that Day, and that Day is writ on the Grave-Stone.

Pris. I desire to know of her whether she was ever ask'd upon her Oath, whether she was ever at *Mrs. Monington's* since that Time?

Edwards. I was not there since, nor ever ask'd the Question, to the best of my Knowledge.

L. C. J. What a Question is that?

Pris. 'Tis very remarkable, for she was ask'd by a Juryman last Assizes, it was not upon the Trial, but before the Grand Jury, and she denied then that she was ever at *Mrs. Monington's* in her Life.

Edwards. I have been there above Twenty times.

Pris. Call *Roger Hyet*.

L. C. J. By and by your Defence will be proper, in the mean time, what will you ask her more?

Pris. I desire to ask her what Discourse she had with *Mary Jones*, the other Witness, for she has been instructing her what to say; and that they may be examined asunder. [*Which was granted.*]

L. C. J. What Discourse had you with the other Woman?

Edwards. My Lord, she told me that she had never in all her Life been before a Judge or Justice of Peace; and that she was afraid of coming before one, for she did not know how to behave her self.

L. C. J. Did you tell her what she should say?

Edwards. No, my Lord.

L. C. J. What did you say to her?

Edwards. I told her, that she would hear her Name call'd, and then she must answer: And I bid her have a care that she spoke what she knew, and no more or less than the Truth.

L. C. J. Did she tell you what she could say?

Edwards. She did.

L. C. J. What?

Edwards. That she liv'd at *Mr. Somerset's*, where *Mr. Kerne* usually was, and that several People used to come thither, and go up Stairs into the Chamber; and she went once to hear-ken, and she heard *Mr. Kerne* say something in *Latin*, which she said was *Mass*.

Pris. Here is a material Question to ask this Witness. I desire to know where this Woman saw me first?

Edwards.

Edwards. At Mr. *Wigmore's* of *Luton*, as they told me it was him, for I did not know his Name.

Pris. I would know if the Man she saw at Mrs. *Monington's*, was the same Person she saw at *Luton*?

Edwards. To the best of my Knowledge it was.

Pris. I never was at *Luton* in all my life.

L. C. J. Call the other Woman: You shall now see how these Women agree.

Cl. of Arr. Call *Mary Jones*. Cryer, swear her.

[Which was done.]

Pris. I desire they may be examined apart.

L. C. J. Let the other Woman go out.

L. C. J. When was the first time you saw *Margaret Edwards*?

Jones. Yesterday, and again to-day.

L. C. J. Did she tell you and instruct you what you should say against the Prisoner?

Jones. No, my Lord.

L. C. J. Did you tell her what you could say against him?

Jones. No.

L. C. J. Did not you tell her that you liv'd at Mr. *Somerfet's*, and that several People used to come thither and go up stairs into the Chamber, and that once you went up to hearken, and heard Mr. *Kerne* say Mass?

Jones. She did say so to me, but I did not answer her any thing.

L. C. J. Did she ask where you saw Mr. *Kerne*?

Jones. Yes.

L. C. J. Where, at *Bollingham*?

Jones. I did tell her that I saw him at *Bollingham*, and that I heard him say somewhat aloud, I think it was *Latin*.

L. C. J. How you answer: I ask'd you but just now, whether you told her that you saw Mr. *Kerne* at Mr. *Somerfet's* House, and that you went up to hearken, and heard him say somewhat in *Latin*? And you then said you did not, and now you say you did.

Jones. She spoke to me first about it, and I did but answer.

L. C. J. What, did she ask you what you could say against Mr. *Kerne*?

Jones. Yes.

L. C. J. And what did you tell her you could say?

Jones. I told her, that one Sunday Morning several People came to *Bollingham*, out of the Town and out of the Country, and went up after him, and he said somewhat aloud that I did not understand.

L. C. J. Did you not tell *Margaret Edwards* that you heard him say Mass?

Jones. No, my Lord.

L. C. J. Call *Margaret Edwards* again. *Margaret Edwards*, Did *Mary Jones* tell you that she heard Mr. *Kerne* say Mass?

Edwards. Yes, my Lord.

L. C. J. Now, *Mary Jones*, what say you? Did not you tell her that you heard the Prisoner say Mass?

Jones. No, I am sure I did not; for I never heard the word before, nor do not know what it means.

L. C. J. The one Witness says she did not name Mass, for she did not understand what it was; the other says she did; so they contradict one another in that.

L. C. J. *Mary Jones*, when did you see Mr. *Kerne*?

Jones. Seven or eight Years ago.

L. C. J. Where?

Jones. At Mr. *Somerfet's* at *Bollingham*, he lived there half a Year.

L. C. J. What did you see him do?

Jones. One Sunday Morning I was busie a washing the Rooms, and I saw several People follow him into the Chamber.

L. C. J. Did you see him do any thing?

Jones. No, I heard him say somewhat aloud which I did not understand.

L. C. J. How near were you to him?

Jones. There was only a Wall between.

L. C. J. Did you ever see him give a Wafer, Marry, or Christen?

Jones. No, my Lord: There was a Child Christened in the House.

L. C. J. Who Christened it?

Jones. I cannot tell: There was no one there but my Master and Mistress, Mr. *Lachet* and his Wife, and Mr. *Kerne*: I was in the next Room, and I heard words spoken by the Voice of Mr. *Kerne*.

L. C. J. What can you say more?

Jones. I wash'd a Surplice.

L. C. J. Whose was it, the Prisoner's?

Jones. I cannot tell, because I did not see it on his Back.

Pris. How could you know a Voice?

Jones. Very easily, there was but a Wall between.

Pris. Was there no Room between?

Jones. No, there was not.

L. C. J. The Woman speaks sensibly: If you have done asking Questions, you had best call your Witnesses.

Pris. Call Mr. *Hyet*.

L. C. J. Mr. *Hyet*, you cannot be sworn, but you must speak the Truth as much as if you were: Well, what can you say?

Hyet. I ask'd *Margaret Edwards* if she had been at Mrs. *Monington's*; she said she had: I ask'd her if she knew Mr. *Kerne*? She said she did not.

L. C. J. Was she upon her Oath when you ask'd her this?

Hyet. No, my Lord.

L. C. J. Have you any more Witnesses?

Pris. Call Mr. *Weston's* Maid.

L. C. J. What can you say?

West. M. I saw those two Women talking together, and that Woman instructed the other what she should say.

L. C. J. What say you to this?

Edwards and Jones. My Lord, we did not.

L. C. J. Look you, they both deny it on their Oaths.

L. C. J. How often between the first time and the twenty ninth of May was Twelve-month, did you see Mr. *Kerne*?

Edwards. Twice or thrice in *Weobly*.

L. C. J. What can you say for your self?

Pris. My Lord, I am very happy that I receive my Trial before your Lordship.

L. C. J. Come, setting aside your Apologies, tell what you have to say; if you have any more Witnesses, call them.

Pris. My Lord, here are several Witnesses who will prove that that Woman was never at Mrs. *Monington's*.

L. C. J. That's very improbable; but call whom you will.

Pris. My Lord, here's Mrs. *Monington*, the Person

Person she pretends shew'd her up, will swear she never saw the Woman in her life; and upon my Salvation I never saw either of them before.

L. C. J. Mrs. *Monington*, the Law will not allow you to be sworn, but I presume that a Person of your Quality will speak the Truth, as much as if you were upon your Oath. Do you know *Margaret Edwards*?

Mon. My Lord, I do not.

L. C. J. Woman, tell Mrs. *Monington* from whom you came.

Edwards. I came from *James Harris* of *Lempster*.

L. C. J. Mrs. *Monington*, do you know *James Harris* of *Lempster*?

Mon. My Lord, I do not.

L. C. J. Do you remember that about *May* was *Twelvemonth* this Woman came to you for Physick for a Woman that was sick?

Mon. A great many People come to me on that Errand, so that it is impossible for me to remember any particular Person.

L. C. J. Did you ever take up that Woman to hear Mass?

Mon. That I am sure I did not, for I never took up any Stranger in my Life.

L. C. J. Did Mrs. *Monington* know you by Face, or by Name?

Edwards. I had been at the House several times, but this time I was carried up to Mrs. *Monington* by *Mary Lewis* her Maid: Mrs. *Monington* told me that she was very glad that I was sent, for she said she would not give the Man so just an Account, because he was a Man.

L. C. J. Mrs. *Monington*, do you remember this?

Mon. This is frequent.

Edwards. Then she told me that I must put a Plaister of *Diapalma* to the Woman's Back, and give her a Drink of Malt with Raisins, &c.

Mon. As for the Plaister, 'tis possible I may prescribe it, but the Drink is no Receipt of mine.

Edwards. My Lord, the Maid when I came in was making a Cheese in the Dairy, and I ask'd for Mrs. *Monington*, and she told me she was within, and straitway brought me up to her: Mrs. *Monington* in a little time fell into discourse with me about Religion; and understanding what I was, desired me to go into the Chamber with her.

L. C. J. What kind of Chapel was it?

Edwards. I will give an Account of it as well as I can remember. When we came up stairs, we turn'd in at a Door on the right Hand; the Altar stood just before the Door; it was richly adorned, the Altar-Cloth was white, and a fine Crucifix on the Altar.

Mon. What were the Cushions of?

Edwards. As I remember they were Needlework.

L. C. J. What was the Chapel adorn'd with?

Edwards. With abundance of Pictures: I think the Window was on the left hand of the Altar.

Mon. She has fail'd in the first description, for we go not off the Stairs into the Chapel, as she says; neither is it adorn'd in the manner as she says it is, nor is there any Needlework. Here is a Maid that I deliver all my Medicines to, that perhaps can give a better Account whether this Woman were at my House, than I can

L. C. J. Call the Maid. You wait on Mrs. *Monington*: Did you ever see that Woman?

Maid. No.

L. C. J. I'll shew you how you shall remember her; she came to Mrs. *Monington* on the behalf of one *Harris's* Wife, and ask'd if she were within, and you carried her to your Mistress.

Edwards. My Lord, I was there several times besides this, for I carried the Child, Mr. *Thomas Monington*, thither several times.

L. C. J. Do you remember this?

Mon. I do not remember that she ever brought the Child to me, but another.

Edwards. My Lord, I always lay with him, and tended him, and carried him Abroad.

L. C. J. If you have any thing more to say, speak. What say you for your self?

Pris. I hope your Lordship will sum up the Evidence.

L. C. J. That I will: I will tell the Jury all I can remember on both sides; I will not shed innocent Blood, neither will I help the Guilty; for I, by the Duty of my Place, am Counsel for the Prisoner in all things fit and legal.

Pris. I desire the Statute may be read.

L. C. J. Let it be read. What Statute do you mean, that of 27 *Eliz*?

Pris. Yes, my Lord. [*Then the Statute was read.*]

Pris. Now Gentlemen, I desire you to take into consideration, whether my Blood shall be drawn by the Evidence of a Woman that says she saw me give a Wafer; or on that Evidence of the other, who says she heard me read she knows not what through a Wall: My Lord, it is an Oppression that Statutes should be construed otherwise than they are intended. I hope, my Lord, that the Statute will not take hold of a Man for saying Mass, for many say Masses that are not in Order.

L. C. J. It is one of the greatest Evidences to prove a Man to be a Priest that can be; for we cannot think of bringing Witnesses who saw you take Orders; Do any say Mass but Priests? Is it lawful for any one but a Priest to say Mass?

Pris. That of Bread and Wine they do not, but the other they do.

L. C. J. Do any Bury or Christen but Priests?

Pris. Yes they do *in extremis*; and, my Lord, I do acknowledge that I read Prayers sometimes, and sometimes others did it. And I desire your Lordship and the Jury will take notice, that I have taken the Oaths of Allegiance and Supremacy.

L. C. J. Is that all you have to say?

Pris. Yes, my Lord.

L. C. J. Then Gentlemen of the Jury, The Matter you are to try is, whether *Charles Kerne*, the Prisoner at the Bar, be a Popish Priest: An *Englishman* I suppose he does not deny himself to be; the Question is then if he be a Romish Priest? If so, he is guilty of High-Treason by the Statute of 27 *Eliz*. This was a Law made for the Preservation of the Queen, for the Preservation of our Religion, and for the Preservation of all Protestants. The Witnesses are *Margaret Edwards* and *Mary Jones*. *Margaret* says, the first time that she saw the Prisoner was at Mr. *Wigmore's*, who told her it was Mr. *Kerne*; and she says that she hath seen him several times since; twice or thrice at *Weobly*, and the last time was the twenty ninth of *May* was *Twelvemonth*, at Mrs. *Monington's*, where she saw him deliver

deliver the Wafer, which is the Sacrament, to four Persons that were there, but she herself did not receive it; and then she gives you an account of the reason of her coming then to Mrs. Monington's, which was at the request of one Harris, whose Wife was sick, to seek some Remedy from Mrs. Monington for the sick Woman: She tells you how the Maid brought her up to her Mistress, how she acquainted her with her Errand, what Advice Mrs. Monington gave her for the sick Woman, and how that Mrs. Monington understanding what Religion she was of, took her into the Chappel, whereof she gives you a Description. 'Tis very probable she may go on such an Errand, and yet Mrs. Monington not know her; but Mrs. Monington cannot positively say, but believes she was never there: Mr. Kerne, I suppose, will not deny but that he who gives the Wafer is a Priest.

Pris. There is blessed Bread which others may give.

L. C. J. When you give such Bread, do you not say, *Accipe Corpus Christi*?

Pris. We use no such words. [But it appeared, upon his own repeating of the Latin words they used upon the giving the Sacrament, that those were part of the Words.]

L. C. J. The Prisoner made an offer to prove some Disagreement between the Witnesses; 'tis true, they did differ in some small things, as the saying the word Mass, but from hence can no great matter be infer'd against the Evidence; so here is one positive Evidence.

There must indeed be two Witnesses; now the Question will be about the second Woman's Testimony: She says she knew Mr. Kerne about eight Years ago, when she lived at Mr. Somerset's, and that Mr. Kerne lived in the House about half a Year: She tells you that she hath seen several Persons come thither; and amongst the rest, she says, that one Sunday Morning several Persons came thither, and went up with Mr. Kerne, and that she was so curious as to hearken, and did hear Mr. Kerne say something

in an unknown Tongue: Kerne objects that she could not know it was his Voice; but for that, I think Men are easily distinguished by their Voices; but that I must leave to your consideration.

But now the main Question will be, what it was she heard him say? Mr. Kerne says, that in Times of straitness, Persons that are not Priests may read Prayers, and so perhaps he may be then reading the Collects.

But then again: She says there was a Child Christened in the House, and no one there but Mr. Somerset and his Wife, Mr. Latchet and his Wife, and Mr. Kerne, to do it: She did not see him Christen it, and 'tis true likewise what he says, that in their Church they allow others, as Midwives, to Christen *in extremis*; not that he confesses he did Christen.

L. C. J. Call Mary Jones again. Mary Jones, was it a sickly Child?

Jones. No, my Lord.

L. C. J. Then that is answered: So that if you believe that he did Christen the Child, there are two Witnesses against him: I must leave it with you as a tender Point on both sides; I would not shed innocent Blood, neither would I willingly let a Popish Priest escape. There is one positive Witness, and if you believe upon the Woman's hearing his Voice, that he did say Mass, or did Christen, for I must confess she says she did not see him Christen, then you must find him Guilty: So I leave it to you upon the whole matter.

The Jury return'd, and were call'd over.

William Barret, &c.

Cl. of Arr. Jaylor, set up Charles Kerne.

Gentlemen, Are you agreed of your Verdict?

Jury. Yes.

Cl. Who shall say for you?

Jury. The Fore-man.

Cl. Look upon the Prisoner: What say you, is Charles Kerne Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Fore-man. Not Guilty.

LXXXVI. The Trial of ANDREW BROMMICH at Stafford Assizes for High-Treason, being a Romish Priest, Aug. 13, 1679. 31 Car. II.

The Court being sat, they proceeded to the Trial thus.



HE Lord Chief Justice having the Night before charged the Sheriff to Return a good Jury, and the Court being sat, he enquired of him if he had observed his Directions; The Sheriff acquainted his Lordship, that since he had impanell'd the said Jury, he had heard that one Allen, of in the said County, being then returned to serve on the said Jury, had said in Discourse with some of his Fellows, that nothing was done against the Popish Priests a-

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bove, and therefore he would do nothing against them here, nor find them guilty; whereupon his Lordship called for the said Allen and one Randal Calclough, one of his Fellow Jurymen, and another Witness upon Oath, who proving the words against him, his Lordship discharged him of the Jury, and committed him to Prison till he found Sureties for his good Behaviour; and likewise three more of the Jury were discharged upon suspicion of being Popishly affected, his Lordship commanding the Sheriff to return good Men in their places; which was accordingly done, and the Jury Sworn, viz.

6 G

Thomas

Thomas Higgin,
John Webb,
Edward Ward,
Thomas Marshall,
John Beech,
Randal Calclough,

Jur' { Richard Trindall,
James Beckett,
William Smyth,
William Pinson,
Daniel Buxton, and
Richard Cartwright.

Cl. of Arr. Jaylor, set up Andrew Brommich to the Bar: Cryer, make Proclamation.

Cryer. O yes! If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney or this Inquest now to be taken, of any Treasons, Murders, Felonies, or other Misdemeanors, committed or done by the Prisoner at the Bar, let them come forth and they shall be heard.

Cl. of Arr. Andrew Brommich, hold up thy Hand. These good Men that were lately called, and have now appeared, are those which must pass between our Sovereign Lord the King and you upon your Life or Death: If you will challenge any of them you must speak as they come to the Book to be sworn, and before they be sworn.

The Prisoner challenging none, the Jury was sworn, ut ante.

Cl. of Arr. Gentlemen of the Jury, look upon the Prisoner and hearken to his Cause. You shall understand that he stands Indicted by the Name of Andrew Brommich, late of Perry Barr in the County of Stafford, Gent. for that he being born within the Kingdom of England, the Thirteenth Day of January, in the Thirtieth Year of the Reign of our Sovereign Lord King Charles II, by the Grace of God of England, Scotland, France, and Ireland King, Defender of the Faith, &c. then being a Seminary Priest made, professed and ordained by the Authority and Jurisdiction challenged, pretended and derived from the See of Rome, the said Thirteenth Day of January in the Year aforesaid, within this Kingdom of England, viz. at Perry Barr aforesaid, in the County aforesaid, Traiterously did come, was, and did remain, against the Form of the Statute in that Case made and provided, and against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Upon this Indictment he hath been Arraigned, and hath pleaded thereunto Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are: Your Charge is to enquire whether he be guilty of the High-Treason whereof he stands indicted, or Not Guilty: If you find him Guilty, you are to enquire what Lands, Goods or Tenements he had at the Time of the Treason committed, or at any time since: If you find him Not Guilty, you are to enquire whether he did fly for the same, and what Lands, Goods or Tenements he had at the same time of such flight, or at any time since; if you find him Not Guilty, nor that he did fly for the same, you are to say so and no more, and hear your Evidence.

Cl. of Arr. Cryer, call Ann Robinson. [*Who was sworn.*]

* L. C. J. Ann Robinson, what can you say against Andrew Brommich?

A. Rob. My Lord, I can say that I received the Sacrament of him according to the Church of Rome in a Wafer.

L. C. J. When? How long ago?

A. Rob. About Christmas last.

L. C. J. What Company was there? How many were there in Company?

A. Rob. My Lord, I cannot positively tell how many, but I believe there were about seven or eight.

L. C. J. Did they all receive at the same time?

A. Rob. Yes, my Lord, they did all receive at that time.

L. C. J. Are you a Papist?

A. Rob. No, my Lord.

L. C. J. How long were you a Papist?

A. Rob. Several Years.

L. C. J. Who first seduced you?

A. Rob. My Lord, I cannot tell his Name.

L. C. J. Did you ever receive the Sacrament, according to their way, of Mr. Brommich, before the time you speak of?

A. Rob. Yes.

L. C. J. How often?

A. Rob. Four times, my Lord; twice at Mr. Birch's, and twice at Mr. Purfal's.

L. C. J. How came you to give her the Sacrament? [*To the Prisoner.*]

Pris. My Lord, I never did.

L. C. J. Why, she has sworn you gave it her several times, once in particular at Christmas last, and four times more, twice at Mr. Birch's, and twice at Mr. Purfal's.

Pris. My Lord, I cannot help it. I desire your Lordship will take notice of one thing, that I have taken the Oaths of Allegiance and Supremacy, and have not refused any thing which might testify my Loyalty.

L. C. J. That will not serve your turn, you Priests have Tricks to evade that.

Pris. Besides, my Lord, I never absconded.

L. C. J. You never absconded; what is that to giving the Woman the Sacrament several times?

Pris. My Lord, I desire she may prove it.

L. C. J. She does so.

Pris. My Lord, I humbly conceive it was no Sacrament unless I were a Priest.

L. C. J. What an Argument is that? You expect we should prove you a Priest by Witnesses which saw you take Orders; but we know so much of your Religion, that none undertake to give the Sacrament in a Wafer, or say Mass, but a Priest; and you gave the Sacrament to that Woman in a Wafer, therefore you are a Priest.

Cl. of Arr. Cryer, call another Witness; swear Jeoffery Robinson.

L. C. J. What can you say to Mr. Brommich?

Jeof. Rob. I can say nothing against him.

L. C. J. Did you ever hear him say Mass?

Jeof. Rob. I cannot tell, I have heard him say something in an unknown Tongue; but I know not what it was.

L. C. J. Was it Latin that he said?

Jeof. Rob. I cannot tell: I am no Scholar.

L. C. J. Had he a Surplice on?

Jeof. Rob. Yes, my Lord, he had.

L. C. J. Robinson, are you a Papist?

Jeof. Rob. Yes, my Lord.

L. C. J. I thought so, it is so hard to get the Truth out of you.

Cl. of Arr. Cryer, swear Jane Robinson.

L. C. J. Come, what can you say? Did you ever see Brommich give the Sacrament?

Jane Rob. Not to my Knowledge.

L. C. J. Did you ever hear him say Mass?

Jane

Jane Rob. I never saw him do any thing; for I only went up and said my Prayers, I took no notice of any thing.

L. C. J. Did you not see *Brommich* there?

Jane Rob. I cannot tell.

L. C. J. Why, don't you know him?

Jane Rob. No, my Lord.

L. C. J. Your Husband knows him. You *Jeoffery Robinson*, do not you know Mr. *Brommich*?

Jeof. Rob. Not I, my Lord.

L. C. J. That's right like a Papist. Did you not but just now say you heard him say something in an unknown Tongue, and saw him in a Surplice, and yet now you do not know him? You have no more Conscience than what your Priests allow you. But though your Priests can persuade you to take false Oaths, I would not have you think they can protect you from the Punishment due to them here or hereafter.

An. Rob. My Lord, they both took the Sacrament with me at the same time from him.

L. C. J. Look you there, was ever the like Impudence seen? Come Friend, consider you are upon your Oath, and do not bring your self into the Snare of a Pillory. Come *Robinson*, I ask you by the Oath you have taken, did you receive the Sacrament with *Ann Robinson* at the time she speaks of at Mr. *Pursal's*?

Jeof. Rob. Yes, my Lord.

L. C. J. How hard is the Truth to be gotten out of you! But within this Country, which abounds so with Priests and swarms with Papists, that you get Popery here like the Itch; if they but rub upon you, you catch it.

Jane Rob. My Lord, he's a weak Man.

L. C. J. Who gave it you?

Jeof. Rob. I do not know.

L. C. J. He'll say no more than his Wife and Priest will give him leave.

L. C. J. Look you Gentlemen of the Jury, here are two Papists that are Witnesses; you are to consider how far they tell the Truth, and how far they conceal it, how they tell their Tale so as to serve a Turn: For here you see the Man said at first he heard him say somewhat in an unknown Tongue, and that he saw him in a Surplice; after that he denies he knows him; but now you see by this Woman the Truth is come out; he hath confess'd and own'd he received the Sacrament at *Pursal's* with her. We cannot expect more positive Evidence from such People. Come read the Statute.

Anno 27 Eliz. cap. 2.

Whereas divers Persons, called or professed Jesuit, Seminary Priests, and other Priests, which have been, and from time to time are made in the parts beyond the Seas, by or according to the Order and Rites of the Romish Church, have of late come and been sent, and daily do come and are sent into this Realm of England, and other the Queens Majesties Dominions, of purpose (as it hath appeared) as well by sundry of their own Examinations and Confessions, as divers other manifest means and proofs, not only to

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withdraw her Highnesses Subjects from their due obedience to her Majestie, but also to stir up and move sedition, rebellion and open hostility within the same her Highness Realms and Dominions, to the great endangering of the safety of her most Royal Person, and to the utter ruine, desolation and overthrow of the whole Realm, if the same be not the sooner by some good means foreseen and prevented.

For reformation whereof be it ordained, established and enacted by the Queens most excellent Majestie, and the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same Parliament, That all and every Jesuits, Seminary Priests, and other Priests whatsoever, made or Ordained out of the Realm of England, or other her Highness Dominions, or within any of her Majesties Realms or Dominions, by any Authority, Power or Jurisdiction, derived, challenged, or pretended from the See of Rome since the feast of the Nativity of St. John Baptist, in the first year of her Highness Reign, shall within forty days next after the end of this present Session of Parliament depart out of this Realm of England, and out of all other her Highness Realms and Dominions, if the wind, weather, and passage shall serve for the same, or else so soon after the end of the said forty days as the wind, weather and passage shall so serve.

And be it further enacted by the Authority aforesaid, That it shall not be lawful to, or for any Jesuit, Seminary Priest, or other such Priest, Deacon, or Religious, or Ecclesiastical Person whatsoever, being born within this Realm, or any other her Highness Dominions, and heretofore since the said feast of the Nativity of St. John Baptist in the first year of her Majesties Reign made, ordained or professed, or hereafter to be made, ordained or professed by any Authority or Jurisdiction derived, challenged or pretended from the See of Rome, by, or of what name, title or degree soever the same shall be called or known, to come into, be or remain in any part of this Realm or any other her Highness Dominions, after the end of the same forty days, other than in such special cases, and upon such special occasions only, and for such time only as is expressed in this Act. And if he do, that then every such offence shall be taken and adjudged to be High Treason, and every person so offending shall for his offence be adjudged a Traytor, and shall suffer losse, and forfeit as in case of High Treason.

And every person which after the end of the same forty days, and after such time of departure

departure as is before limited and appointed, shall wittingly and willingly receive, relieve, comfort, aid or maintain any such Jesuit, Seminary Priest, or other Priest, Deacon or Religious, or Ecclesiastical person as is aforesaid, being at liberty, or out of hold, knowing him to be a Jesuit, Seminary Priest, or other such Priest, Deacon or Religious, or Ecclesiastical person as is aforesaid, shall also for such offence be adjudged a Felon without benefit of Clergy, and suffer death, losse, and forfeiture, as in case of one attainted of Felony.

L. C. J. Come, what have you more to say?

Pris. I desire that there may be Notice taken what *Robinson* and his Wife said upon their Examinations before the Justice of Peace.

L. C. J. We are to take Notice only of what they say here.

Pris. My Lord, they said here they did not know me.

L. C. J. No: Did not *Robinson* say he heard you say something in an unknown Tongue; that he then saw you in a Surplice? Did we talk of any one but you? Come Jesuit, with your Learning, you shall not think to baffle us: I have of late had occasion to converse with your most learned Priests, and never yet saw one that had either Learning or Honesty.

L. C. J. Have you any Witnesses? Have you any more to say?

Pris. No.

L. C. J. Then Gentlemen of the Jury, the Question you are to try, is, Whether *Andrew Brommich* be a Popish Priest or not: To prove that he is, here is a Woman, one *Ann Robinson*, that swears she received the Sacrament of him in a Wafer once at *Christmas* last, and twice at *Mr. Birch's*, and twice at *Mr. Pursal's*, and that he gave it to several others at the same time. There needs not much to persuade you that he who gives the Sacrament is a Priest, for in their

Church they allow no one but a Priest to give the Sacrament, so there is one expresse Evidence against him: And now I must satisfy you in one thing, that you are to give a Verdict not that he is a Priest, but that you believe him in your Conscience upon the whole Evidence, to be a Priest. To make you do this, here is one positive Evidence.

The other Man, when I came to examine him whether he ever heard the Prisoner say Mass; he answered, that he heard him say something in an unknown Tongue, and that he was in a Surplice. This is as much as we could expect from one of their own Religion, who dare say no more than their Priests will give them leave to do. So Gentlemen I must leave it to you, whether or no you will not believe the Testimony of this real positive Witness, and the circumstantial Evidence of the other Man: For you see in what Dangers we are; I leave it upon your Consciences, whether you will let Priests escape, who are the very Pests and Dangers of Church and State; You had better be rid of one Priest than three Felons; so Gentlemen, I leave it to you.

The Jury having staid some time, returned to the Court to give their Verdict.

Cl. of Arr. Gentlemen of the Jury, have you agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say it for you?

Jury. The Fore-man.

Cl. of Arr. Jaylor, set up *Andrew Brommich* to the Bar.

Gentlemen, do you find *Andrew Brommich* Guilty of the High Treason he hath been Arraigned of, or Not Guilty?

Jury. Guilty.

L. C. J. Gentlemen, you have found a good Verdict, and if I had been one of you, I should have found the same my self.

Afterwards he receiv'd the usual Sentence as in High-Treason.

LXXXVII. *The Trial of WILLIAM ATKINS, at Stafford Assizes, for High-Treason, being a Romish Priest, August 13, 1679. 31 Car. II.*

Cl. of Arr.



AYLOR, set up *William Atkins* to the Bar: Cryer, Make Proclamation.

The Jury were called and Sworn.

Cl. of Arr. Gentlemen of the Jury, Look on the Prisoner and hearken to his Cause. You shall understand that he stands Indicted by the Name of *William Atkins*, late of *Wolverhampton* in the County of *Stafford*, Gent. for that he being born within the Kingdom of *England*, the Fifth Day of *December*, in the Thir-

tieth Year of the Reign of our Sovereign Lord King *Charles* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. Then being a Seminary Priest, made, professed, and ordained by the Authority and Jurisdiction challenged, pretended, and derived from the See of *Rome*; the said Fifth day of *December* in the Year aforesaid, within this Kingdom of *England*, viz. at *Wolverhampton* aforesaid in the County aforesaid, Traiterously did come, was, and did remain, against the Form of the Staute in that Case made and

and provided; and against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Upon this Indictment he hath been Arraigned, and thereunto pleaded Not Guilty; and for his Trial he hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High-Treason whereof he stands Indicted, or Not Guilty: If you find him Guilty, you are to enquire what Lands, Goods or Tenements he had at the time of the High-Treason committed, or at any time since; if you find him Not Guilty, you are to enquire whether he did fly for the same; if you find he did fly for the same, you are to enquire what Lands, Goods or Tenements he had at the time of such flight, or at any time since; if you find him Not Guilty, nor that he did fly for the same, you are to say so and no more, and hear your Evidence.

Cl. of Arr. Cryer, call the Witnesses; call William Jackson, Francis Wilden, Jo. Jarvis, &c. Swear Jackson. [*Which was done.*]

L. C. J. Come Friend, what can you say concerning Atkins the Prisoner being a Priest?

Jackson. My Lord, I can say nothing at all. I was there when he was apprehended, and bound over to prosecute him.

Cl. of Arr. Cryer, Swear Francis Wilden. [*Which was done.*]

* *Sir William Scroggs.* *L. C. J.** What can you say concerning Atkins being a Priest?

Wilden. My Lord, I have seen him at Prayers.

L. C. J. Was he in a Surplice then?

Wilden. Yes, my Lord.

L. C. J. Did you ever see him say Mass?

Wilden. I cannot tell.

L. C. J. In what Language were his Prayers?

Wilden. In an unknown Tongue.

L. C. J. Were they in Latin?

Wilden. I cannot tell, my Lord. I am not a Scholar good enough to know.

L. C. J. Are you a Papist?

Wilden. I have been a Protestant since Christmas.

L. C. J. 'Tis the Principle of a Protestant to tell downright Truth, and the Principle of a Papist is to equivocate; come speak Truth, and your Conscience will be lighter: Did you ever see Atkins deliver the Sacrament in a Wafer, according to the manner and way of the Church of Rome?

Wilden. My Lord, I never received it of him my self, but I have seen him give it to others.

L. C. J. Where?

Wilden. At Mrs. Stanford's, at Wolverhampton.

L. C. J. To how many?

Wilden. To seven or eight at a time.

L. C. J. Was he in a Surplice then?

Wilden. Yes, my Lord.

L. C. J. I do not know whether the Prisoner can hear what the Witness says; 'tis fit he should know. [*The Prisoner being told, he reply'd, he knew not the Witness.*]

Cl. of Arr. Swear John Jarvis.

Cryer. My Lord, he refuseth to be sworn.

L. C. J. Jarvis, why will you not be sworn?

Jarvis. My Lord, I was troubled with a Vision the last night.

L. C. J. You mistake Friend, old Men dream Dreams, 'tis young Men see Visions, and you are an old Man: Speak the Truth, and I'll warrant you, you will not be troubled with Visions

any more; this is a Trick of the Priests. Swear him, Cryer. [*Which was done.*]

L. C. J. Come, Jarvis, what can you say?

Jarvis. My Lord, he is a Man that hath relieved me and my Children oftentimes when I was in want.

L. C. J. Did you ever hear him say Mass?

Jarvis. My Lord, I am an ignorant Man; I cannot tell; I have heard him say somewhat in an unknown Tongue.

L. C. J. Did you ever confess to him?

Jarvis. Yes, my Lord, I did.

L. C. J. Did you ever receive the Sacrament of him according to the manner of the Church of Rome?

Jarvis. Yes, my Lord, I have. I must speak the Truth.

L. C. J. How often?

Jarvis. A great many times.

L. C. J. And had he not his Priest's Habit on when he gave it you?

Jarvis. Yes, my Lord, he had.

Cl. of Arr. Cryer, call Joan Wright. [*Who was called, but did not appear.*]

Call Henry Brown. [*Who appeared and was sworn.*]

L. C. J. Come, Mr. Brown, what can you say against the Prisoner? Did you ever receive the Sacrament of him, or hear him say Mass?

Brown. My Lord, I was almost turned from the Protestant Religion to that of the Church of Rome; but I never went further than Confession, and that was to this Man, and then I left them.

L. C. J. Indeed you were the wiser.

Cl. of Arr. Cryer, call Tho. Dudley. [*Who was sworn.*]

L. C. J. What can you say against the Prisoner?

Dudley. I was a little given that way, and have been at Confession with one Atkins, and have seen him perform several Rites of the Church of Rome, at Well-head, at Ham.

L. C. J. Do you believe this to be the Man?

Dudley. Yes, my Lord, I do.

L. C. J. Have you any more to say?

Dudley. No, my Lord.

L. C. J. Read the Statute. [*Which was done.*] Have you Witnesses, Atkins, or any thing to say for your self?

Pris. No, my Lord.

L. C. J. Look you Gentlemen of the Jury, Here is as full and as positive an Evidence as can be against the Prisoner: The two first Witnesses, Wilden and Jarvis, are positive. Wilden swears he heard him say his Prayers in an unknown Tongue; and further says, that he gave the Sacrament to seven or eight according to the manner of the Church of Rome in a Wafer, at Mrs. Stamford's House in Wolverhampton. Jarvis, the other Witness, swears that he hath been at Confession with him, and hath oftentimes received the Sacrament of him. Here are two other honest Men, that speak very full as to Circumstances; so that in the whole you cannot have a more clear Evidence: And Gentlemen, I must tell you, it is to these sorts of Men we owe all the Troubles and Hazards we are in, the Fear of the King's Life, the Subversion of our Government, and the Loss of our Religion. It is notorious by what they have done, that they are departed from the Meekness and Simplicity of Christ's Doctrine, and would bring in a Religi-

on of Blood and Tyranny amongst us. As if God Almighty were some Omnipotent Mischief, that delighted and would be served with the Sacrifices of human Blood. I need not say more to you, the Matter's plain; I think you need not stir from the Bar, but do as you will.

The Jury having considered of the Evidence some Time, gave in their Verdict.

Cl. of Arr. Gentlemen of the Jury, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. The Fore-man.

Cl. of Arr. Jaylor, set up *William Atkins*. [*Which was done.*] Gentlemen of the Jury look on the Prisoner. What say you, Is he Guilty of the High Treason whereof he stands Indicted, or Not Guilty?

Jury. Guilty.

Cl. of Arr. What Lands, Goods or Tenements had he?

Jury. None to our knowledge.

Cl. of Arr. Look to him Jaylor, he is found Guilty of High-Treason.

He received the Sentence usual in Cases of High-Treason.



LXXXVIII. *The Trial of THOMAS KNOX and JOHN LANE, at the Kings-Bench, for a Misdemeanor, Nov. 25, 1679. Mich. 31 Car. II.*

 *N Tuesday* the Twenty-fifth Day of *November, 1679*, at the *King's-Bench* Bar at *Westminster*, *Thomas Knox* and *John Lane* were tryed for the Misdemeanour and Offence herein-after in the Indictment expressed; which Trial was in manner following.

Proclamation being made in usual manner for Information, and the Defendands called to their Challenges, the Jury were sworn, whose Names follow,

Sir *John Kirke*,
Thomas Harriot,
Henry Johnson,
Simon Middleton,
Hugh Squire,
Francis Dorrington.

Jur.

John Roberts,
Rainsford Waterhouse,
Thomas Earsby,
Joseph Radcliffe,
James Supple,
Richard Cooper.

Who being numbred, the Clerk of the Crown charged them with the Indictment thus:

Cl. of Cr. Gentlemen, You of the Jury that are sworn, hearken to your Charge; you shall understand that the Defendands stand Indicted by the Oaths of Twelve honest and lawful Men of the County of *Middlesex*, by the Names of *Thomas Knox* of the Parish of *St. Margaret's Westminster* in the County of *Middlesex* Labourer, and *John Lane* of the same Parish and County Labourer, for that whereas *Edward Coleman*, *William Ireland*, and *John Grove*, and other false Traitors against our Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. to the Jurors aforesaid unknown, the 24th Day of *April*, in the 30th Year of the Reign of our said Sovereign Lord the King, at the Parish of *St. Margaret's Westminster* in the County of *Middlesex*, traiterously amongst themselves had conspired, consulted, and agreed, to bring and put to Death and Destruction our said Sovereign Lord the King, and War against our

said Sovereign Lord the King within this Kingdom of *England* to stir up, and the Religion in the said Kingdom of *England*, rightly and by the Laws of the said Kingdom established, to the Superstition of the Romish Church to change and alter, and the Government of the said Kingdom of *England* to subvert; for which their said most wicked Treasons, and traiterous Conspiracies, Consultations, and Agreements, the said *Edward Coleman*, *William Ireland*, and *John Grove*, in due Manner, and according to the Laws of this Kingdom of *England*, were afterwards attainted, and underwent the Pain of Death for the same. And whereas *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel of Wardor*, *William Lord Petre*, and Sir *Henry Titchbourn Bart.* the 30th Day of *November*, in the 30th Year of the Reign of our said Sovereign Lord the King aforesaid, at the Parish of *St. Margaret's Westminster* aforesaid, in the County of *Middlesex* aforesaid, of the Treasons aforesaid were lawfully accused, and thereupon, according to due Form of Law, were committed to the *Tower of London*, being the Prison of our said Sovereign Lord the King, there safely to be kept to answer for the Treasons aforesaid, whereupon they the said *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel of Wardor*, and *William Lord Petre*, were in Parliament impeached by the Commons in the same Parliament assembled. And whereas *Thomas Earl of Danby*, afterwards to wit the said Thirtieth Day of *November*, in the Thirtieth Year aforesaid, at the Parish aforesaid, in the County aforesaid, of certain Treasons and other Misdemeanors was lawfully accused, and thereupon, according to due Form of Law, was committed to the said *Tower of London*, there to be safely kept to answer for the Treasons and Misdemeanors aforesaid, of which said Treasons and Misdemeanors he the said *Thomas Earl of Danby* is impeached in Parliament, by the Commons in the same Parliament

ment assembled, that they the said *Thomas Knox* and *John Lane*, well knowing the said *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel of Wardor*, *William Lord Petre*, and *Thomas Earl of Danby*, to be accused of the Treasons and Misdemeanors aforesaid; and they the said *Thomas Knox* and *John Lane*, being devilishly affected towards our said Sovereign Lord the King, their Supream and Natural Lord, and devising, and with all their Strength intending the Peace and Tranquility of this Kingdom of *England* to disturb, and to hinder and stifle the Discovery of the said Treasons, by the said *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel*, and *William Lord Petre*, as aforesaid, supposed to be committed, and, as much as in them lay, to elude the due Course of Law, and the Prosecution of Justice against the said *William Earl of Powis*, *William Viscount Stafford*, *William Lord Petre*, *John Lord Bellasis*, *Sir Henry Tichbourn*, and *Thomas Earl of Danby*, to retard, they the said *Thomas Knox* and *John Lane*, afterwards, to wit, the Thirtieth Day of *April*, in the Thirty First Year of the Reign of our said Sovereign Lord the King, at the Parish aforesaid, in the County aforesaid, falsely, maliciously and unlawfully did consult and agree among themselves, *Titus Oates* Clerk, and *William Bedlow* Gentleman, who Informations of the Treasons aforesaid had given, and whom they the said *Thomas Knox* and *John Lane*, the Day and Year aforesaid, well knew to have given Information of the Treasons aforesaid against them, the said *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel*, and *William Lord Petre*, to scandalize, and upon the Trial of the said *William Earl of Powis*, *William Viscount Stafford*, *John Lord Bellasis*, *Henry Lord Arundel*, and *William Lord Petre*, to represent them to be Persons of evil Conversation, and Witnesses not deserving Credit. And that he the said *Thomas Knox* afterwards, to wit, the said Thirtieth Day of *April*, in the Thirty First Year aforesaid, at the Parish aforesaid, in the County aforesaid, in the Names, and with the Consent and Agreement of the said *John Lane*, and one *William Osborn*, to disgrace the Information of the said *Titus Oates* and *William Bedlow*, against them the said *William Earl of Powis*, *William Viscount Stafford*, *William Lord Petre*, *John Lord Bellasis*, and *Henry Lord Arundel*, for our said Sovereign Lord the King, to be given, falsely, maliciously, subtilly, and advisedly, did write and cause to be written three Letters, and those Letters, so written, falsely, craftily, unlawfully, and advisedly, did direct and cause to be delivered to himself the said *Thomas Knox*, by which said Letters falsely, craftily, and deceitfully, it was declared, That they the said *John Lane* and *William Osborn* were greatly troubled in their Consciences by reason of certain things which they well knew, and had concealed concerning the unjust Contrivances of the said *Titus Oates* and *William Bedlow*, in accusing the said *Thomas Earl of Danby*, to be guilty of the Treasons and other Misdemeanors aforesaid, and that the said *Titus Oates* was a Person of a wicked and vicious Life, and made an Assault upon the said *John Lane*, and with the said *John Lane* to commit that detestable Sin called Sodomy before that time had endeavoured. And that he the said *Thomas Knox*,

the sooner and more effectually to perswade the said *John Lane* and *William Osborn* falsely to accuse the said *Titus Oates* and *William Bedlow*, that they the said *Titus Oates* and *William Bedlow* unjustly, and against all Truth, had accused the said *Thomas Earl of Danby*, of the Treasons and other Misdemeanors aforesaid, and so to affirm against the Evidence of our said Sovereign Lord the King, upon the Trial of the said *Thomas Earl of Danby*, for the Treasons and other Misdemeanors aforesaid, to be had afterwards, to wit, the said Thirtieth Day of *April*, in the Thirty first Year of the Reign of our said Sovereign Lord the King aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, advisedly, corruptly, and against the Duty of his Allegiance, unlawfully gave to the said *John Lane* and *William Osborn* divers great Sums of Money, and also further falsely, advisedly, corruptly, and against the Duty of his Allegiance, the Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid, did promise unto the said *John Lane* and *William Osborn*, that they the said *John Lane* and *William Osborn*, within a certain Time, by the said *Thomas Knox* to the said *John Lane* and *William Osborn* propounded, divers other great Sums of Money, and other great Rewards therefore should have and receive, against the Duty of their Allegiance, to the great retarding, obstructing and suppressing of Justice, in manifest Contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity. To this Indictment, the said *Thomas Knox* and *John Lane*, by their Attorney, pleaded that they are Not Guilty, nor either of them is Guilty of the Offence aforesaid, and further withal put themselves upon the Country, and the King's Attorney likewise. And your Charge is to enquire if they are Guilty or Not Guilty, &c.

Cl. of Cr. Make an O Yes.

Cryer. O yes! if any one will give Evidence on the Behalf of our Sovereign Lord the King, against *Thomas Knox* and *John Lane*, of the Misdemeanours and Offence whereof they stand Indicted, let them come forth and give their Evidence.

Mr. Trenchard. May it please your Lordship, and you Gentlemen of the Jury, *Thomas Knox* and *John Lane* stand Indicted for a great and high Misdemeanor, and the Indictment sets forth, that whereas *Coleman*, *Ireland*, *Pickering*, and *Grove*, and other false Traitors did conspire to destroy the King, and change the Religion established by Law, to levy War against our Sovereign Lord the King, and to introduce Popery, and for these Treasons were convicted, attainted, and executed; and further sets forth, that the Lord *Powis*, Lord *Arundel of Wardor*, and others, were accused of the said Treasons, and were committed to the Tower, and afterwards were impeached for the same by the Commons in Parliament assembled; as also that *Thomas Earl of Danby* was impeached of High-Treason and other Misdemeanours; that the Defendants knowing Mr. *Oates* and Mr. *Bedlow* had given Information of these Treasons, to stifle the Evidence, and to scandalize them, did falsely conspire to represent them as wicked Persons, and Men of no Credit. And the Indictment further sets forth, that

that the Defendant *Knox*, with the Agreement of *Lane*, and one *Osbourne*, did cause several Letters to be writ, in which it was contrived to accuse the said *Oates* and *Bedlow*, that they had conspired falsely to accuse the said Earl of *Danby*, and that *Oates* was a Person of a vitious Conversation, and had a Design to attempt an Assault upon the Person of the said *Lane*, with an Intention to commit that detestable Sin of Sodomy; the better to effect which wicked Designs, the said *Knox* gave several Sums of Money to *Osbourne* and *Lane*, and had offered great Rewards unto them. To this Indictment they have pleaded Not Guilty, and you are to try whether they are Guilty or Not, of this Misdemeanor.

Then Sir John Maynard the King's eldest Serjeant at Law, pursued the Charge thus.

Mr. Serj. Maynard. May it please your Lordship, and you Gentlemen of the Jury; this Cause is of great Consequence; and, my Lord, I desire the Jury to observe, that their Question this Day is not to enquire whether the Lords or the other Persons accused and impeached in Parliament are Guilty or Not; but the Question before them, is, Whether the Persons that stand here indicted, are guilty of wicked and vile Endeavours to discountenance and suppress the Evidence, and scandalize their Persons, who were to give Evidence against these Lords; we are not to give Evidence against the Lords, but against these Persons.

*L. C. J. ** You are right, Brother.

Mr. Serj. Maynard. Gentlemen, something I must observe to you, that is an Inducement to this Matter: That there hath been an horrid and abominable Conspiracy against the King, the Nation, the Religion, and the Law, appears (my Lord) by the Proceedings in Parliament, wherein the Lords and the Commons have several times jointly declared so, and, I think, 'tis so publick that no Body will doubt there is such a thing; who is guilty, that is another Matter.

L. C. J. This Court must take notice of that, because some have been tried, convicted, and condemned for it by this Court.

Mr. Serj. Maynard. Your Lordship says right. But, my Lord, the first Discovery of this Conspiracy came from a single Person, one that stood single and discouraged a long time, and that there were Endeavours to discourage his further Discovery, that will appear. My Lord, when it stood so, it happen'd that Sir *Edmund-bury Godfrey* had taken his Examination, and these things will be material in the End of the Cause. Sir *Edmund-bury Godfrey* having taken the Examination of *Oates*, then the Endeavour was to suppress this Examination that he had taken, and that by no less a Wickedness than the barbarous Murder of that honest Gentleman, whom you all knew; and they not only took away his Life, but they did strive to baffle and defame him, when he was dead, and that will appear too, and is publick and known. My Lord, all this while stood *Oates* single; it fell out by the Mercy of God, that a further Discovery was made by *Bedlow*, he was examined, and it is publickly known, and publick Justice hath gone upon it.

The next Attempt was to corrupt the Testimony of *Bedlow* with Bribes and Rewards, and by other Ways; and the Person that transacted it, *Reading*, is attainted of it, *Scelere tutandum est scelus*, when Men have invented and designed any great Wickedness, they are forced to enter upon others to cover and conceal the former. My Lord, it proceeded now, and comes to that which will be the Question this Day. Having gone all these ways, now they return again, to see if they can disgrace and baffle the Evidence *Oates* and *Bedlow* had given, and the way to that is by disparaging and scandalizing them with foul Offences, especially Dr. *Oates*; and that was thus, (as we shall prove to your Lordship) *Lane* had been a Servant with *Oates*, and the other was one of the like Condition, and he was tampered with to accuse Dr. *Oates* of that horrid Sin of Sodomy, and I think if he were such an one, little Credit were to be given to such a Man. This was the Design they were to accomplish. And we shall prove to you, in order to it, there were Letters (written and contrived by *Knox* indeed) written by *Osbourne* who is not now before you, but a Contrivance of them all. And, my Lord, there must be a Pretence; for in truth these Persons had been examined, and had charged him with this Offence, but upon further Examination they had renounced their Discovery.

L. C. J. Had they all given Evidence? Or who did?

Mr. Serj. Maynard. No, my Lord, pardon me, I am not speaking of their Evidence, but only of their Examination before the Lords.

L. C. J. What was it that was there witnessed?

Mr. Serj. Maynard. Then they pretended this Matter, That they were touch'd in Conscience, and now they repent, and must discover the Truth for the Truth's sake, that themselves were false in making of the Charge, and this, my Lord, must be furthered with Bribes and Rewards, as we shall prove to you. We shall make out the Particulars by Witnesses, and then we think we may leave it to your Lordship and the Jury to determine. In truth, my Lord, it happens in this Case as it did long ago, when the first Discovery was of a like Design, and as is told by the Historian; *Multi ob stultitiam non putabant, multi ob Ignorantiam non videbant, multi ob pravitatem non credebant, & non credendo conjurationem adjuvabant.*

Mr. Att. General. † May it please your Lordship, and you Gentlemen of the Jury: I am of Council for the King in this Cause, whose Suit it is. The Evidence hath been opened fully by Mr. Serjeant. I shall only say this, that this is a Counter-part of Mr. *Reading's* Case, only it seems in this to differ, that the Counter-part exceeds the Original; for, I think, that it is of a further Extent than his was. It hath been told you by Mr. Serjeant, and, I know, the Court will tell you, that it matters not whether those Persons that are accused of the Plot, and impeached for it, were Guilty or Not, it is sufficient that they are accused, and that by these Persons. For any body to endeavour to suppress and withdraw the King's Evidence, or to disgrace the King's Evidence, that is not lawful, be the Crime what it will; but it is a much greater Crime in a Case of

* Sir William Scroggs.

† Sir Creswel Leynz.

of this Nature of High-Treason, where the Life of the King, the Government of the Kingdom, the Religion, and the true Worship of God established in it, and the Laws of the Nation are in danger: Some of these Persons are guilty, for Mr. Coleman, and several others, have been found Guilty, and have been executed for it.

The Design in this Case that lies before you, Gentlemen, to try, was to throw a Disparagement upon the Testimony of those Persons by whose Evidence those Traitors were principally attainted and executed. This is, Gentlemen, to affront the Justice of the Nation, and indeed to cast a Disparagement upon it; and that sure is as great an Offence as can be; the Matter of the Evidence hath been open'd to you, I shall only acquaint your Lordship and the Jury, that it hath been design'd a great while, and so long design'd, that one of the Persons here accused, Mr. Lane, one of Oates's Servants, had the Opportunity to get into his Master's Secrets, thereby the more effectually to betray him, and, as it will appear by Witnesses, did carry on the Design till it was discovered, and by that Discovery prevented, as to any Success.

Mr. Recorder †. Your Lordship is pleased to observe in the Indictment that is now to be tried, there are but two Persons that stand Indicted, that is, Lane and Knox. I presume the Gentlemen that are on the other side for each of the Prisoners (for I perceive those that are for the one, are not for the other) may expect that there should be Proof made of what is laid as Inducement in the Indictment, and will not tend immediately to that which will be the Question in this Case: for there is recited in the Indictment the Conviction of Coleman in this Place, and others in other Places, for the High-Treason the Evidence whereof these Persons are Indicted for scandalizing, we have here the Records ready to prove it.

L. C. J. I suppose they will admit that.

Mr. Recorder. If they will not, we have that which will prove it.

Mr. Withins. My Lord, we shall not stand upon that.

Mr. Solicitor General ||. We are ready, if you do.

Mr. Serj. Maynard. And you will admit that Doctor Oates and Mr. Bedlow were Witnesses upon those Trials?

Mr. Withins. Yes, and gave Evidence very considerable.

Mr. Recorder. Then my Lord, we must hint to you, that Lane, who is one of the Persons taken notice of in the Indictment, was a Servant to Dr. Oates; Knox was not in his Service, but Knox is a Man that made use of Lane as a Handle to the Matter he had design'd; therefore Letters are prepared, but by whom? That we shall give you an Account of was by the Direction of Knox, tho' the Letters that will be produced, are directed to Knox himself.

L. C. J. Your Indictment says so.

Mr. Recorder. But we shall give you an Account, that he was Director of those Letters himself; but as your Lordship may observe, there are not only Letters, but some Accusations or Informations. We shall prove to your Lordship whose Hand-writing they were, and who dictated those Informations: For I think that Mr. Knox

is pretended to have the most Brains; and I believe Mr. Knox, in the Consequence, will appear to have the most Malice. And we shall prove in the next Place, that inasmuch as it would be natural in the course of Justice to ask, whether these Persons should not have Money for the Reward of such a Business; we shall prove that there were Treaties with Mr. Lane, and one Mr. Osborne who is not Indicted, (but was likewise a Servant to Dr. Oates, and had thereby an Opportunity of deceiving him) that they had Meetings; how Guineas have been cunningly dropt down, which was to prevent, as I was acquainting your Lordship, any such Question that should be ask'd, what Monies and Rewards they were to have for this great Discovery of any Wickedness that Mr. Oates should be guilty of. Mr. Knox, he prepares them in this manner. At every Meeting, when they were discoursing and pursuing this Business, then by some unlucky Accident or other, Mr. Knox he is to drop a Guinea or two, according as Mr. Lane and the other Person had occasion, or a Desire to have it; but none were to be given, but as by Accident, as if Knox holding his Guineas in his Hand, or in some other accidental way, should drop them; and then Osborne and Lane were to pick them up in a kind of a Jest only, as if Knox had accidentally let them fall, and they had as accidentally taken them up. How this came to be discover'd, we must give you an Account. Matters being thus prepar'd by the Instigation of Knox, and transacted so far by Lane and Osborne, they thought it then fit to put their Design in Execution. Accordingly their Informations are produced before a Justice of Peace, who finding the Matters were improbable, (for I think they had some Scrutiny before the Justice of Peace, and before the Lords Committees of the Lords House) one of them, Gentlemen, tho' now he is pleased to say he is Not Guilty, yet at that Time had a little more Ingenuity, and did confess the whole Matter, and how he was drawn in, and how far he was concern'd, and how Mr. Knox had directed him, and the Money and Rewards he had received, and that besides, divers other Sums of Money had been promised, and great Rewards offered in case this Design had taken effect. We shall call our Witnesses before your Lordship, and give in Evidence the Informations that they had intended to offer; and if we shall prove the Matters that have been open'd to you, I believe the Consequence of this Case will appear as much to concern the Government, as any that hath come to this Bar.

Sir Fr. Winnington. My Lord, if your Lordship please, we shall now go to prove our Case; the Question was ask'd whether they would admit the several Attainders of those Persons that have been Executed for this Plot. I now ask them, whether they will admit the several Impeachments that are also mentioned in the Indictment, both of the five Lords in the Tower, and also of the Lord Danby.

Mr. Withins and Mr. Scroggs. Yes we do.

Mr. Just. Pemberton. All that they will allow.

Mr. Recorder. Then we begin with Mr. Radford. [Who was sworn.]

Mr. Att. Gen. What is your Name, Sir?

Radford. Robert Radford.

Mr. Att. Gen. Come on, *Mr. Radford*, tell my Lord and the Jury what you know concerning this Business, about *Lane* and *Knox*.

Radford. Sir, if it please your Honour, *R. Lane*, Father of *John Lane*, was a Yeoman of the Guard extraordinary, and I am one of his Majesty's Yeomen of the Guard. As he was in waiting, he was telling me a Story —

L. C. J. *Richard* was?

Radford. Yes, *Richard* the Father was telling me that *Dr. Oates* did attempt his Son many times to do such and such things to him, that was in the way of Buggery; said I, *Richard*, I am ashamed of you, that you should cherish your Son in such things as these are; so I went away in Anger, and told him, That if he were my Son, I would correct him severely for it; and said no more, knowing him to be a lying Fellow; and all the whole Guard know him to be a lying Fellow, and that there is no Truth in him.

L. C. J. All who?

Radford. All the Guard; and that is all I can say.

Mr. Just. Jones. When was this?

Radford. Above a Twelvemonth ago. And I knew that he was a lying Man, and I durst not speak of it, because I knew he was so, and was afraid he would have put it upon me.

L. C. J. What, he told you that his Son told him so?

Radford. No, he told me only that his Son was weary of *Dr. Oates's* Service; and I told him that he was come away once before, and why did he go again? He said his Son could not be quiet.

L. C. J. Did he say his Son told him? The Question is plain: Did he speak it of himself, and not that his Son told him?

Radford. He said only, that he had attempted his Son.

Mr. Att. Gen. My Lord, we will call *Thomas Allen*. [*Who was sworn.*]

L. C. J. What is this Man's Name?

Mr. Att. Gen. *Mr. Allen*, my Lord. What do you know of any Application to bring this *Lane* into *Oates's* Service? Tell your whole Knowledge of the Matter.

Allen. My Lord, about the Month of *December* last, when he was gone out of *Dr. Oates's* Service —

L. C. J. Who was gone out of *Dr. Oates's* Service?

Allen. *Lane*; he desired me to intercede for him again and again, and accordingly he was admitted into his Service again.

Mr. Att. Gen. Did you hear any Discourse before this, of any Attempt upon him?

Allen. How Attempt?

Mr. Att. Gen. Did you ever hear of any Complaints made by *Lane* against *Dr. Oates*?

L. C. J. Did you ever hear *Lane* complain that his Master would be uncivil with him?

Allen. No, I remember nothing of that.

Mr. Recorder. Now, if your Lordship please, we shall give your Lordship an Account, that when he was admitted again, he bragg'd he should get a great Sum of Money; and for that we call *Mr. Samuel Oates*. [*Who was sworn.*]

L. C. J. Are you Brother to *Mr. Oates*?

Mr. S. Oates. Yes, Sir.

Mr. Att. Gen. What do you know of any Sum that this *Mr. Lane* did pretend to get, and on what Account?

Mr. S. Oates. My Lord, about a matter of a Fortnight before he went away from my Brother, I was in the Withdrawing Room —

L. C. J. How long is it ago since he went away?

Mr. S. Oates. It was in *April* last, as near as I can remember.

L. C. J. Well, go on, Sir.

Mr. S. Oates. So there were several Servants in the Room, and they were talking and laughing together; and he was wishing, said he, I wish I had a Thousand Pounds; said some of them to him, What would you do with it? Said he, I would take it and fling it upon the Ground, and tumble in it; says one of them, You may wish long enough before you have it; I question not, says he, but ere long to find a way to get a Thousand Pounds.

Mr. Recorder. Do you hear him, Gentleman? This was a Fortnight before he went away.

Mr. S. Oates. I can only speak as to *Osborne*, as to the Thing it self.

Mr. Att. Gen. Did you ever hear him say which way he did intend to get this Thousand Pounds?

Mr. S. Oates. No, I do not remember that; but upon these scandalous things coming out, I was considering what he had said, and how he behaved himself in his Service, and upon Recollection, I did think of this Saying of his.

Mr. Just. Pemberton. Ay, he recollected it afterwards.

Mr. Williams. Speak those Words over again, as near as you can remember.

Then *Mr. S. Oates* repeated his Evidence to the same Effect.

Sir F. Winnington. What is that of *Osborne* that you can say?

L. C. J. What does that signifie to these Defendants?

Sir F. Winnington. Although he is not a Party that does defend this Matter; yet it is all one entire Act that they three were in Combination to corrupt the King's Evidence, and to stifle it; and tho so far as it does relate to *Osborne*, it will not convict him being absent; yet it will enlighten the King's Evidence about the Conspiracy, for he is mentioned in the Indictment.

L. C. J. Well, if you think it material, you may ask what Questions you will about it.

Mr. S. Oates. I was asking *Osborne*, a little after he was let out of the Gate-House, how he came to repent himself —

L. C. J. Who had repented himself?

Mr. S. Oates. *Osborne*.

L. C. J. Had *Osborne* repented himself, of what?

Mr. S. Oates. Of what he had given an Account of before the Committee.

Mr. Just. Pemberton. Do you know any thing of that?

Mr. S. Oates. I know nothing but what they did say upon their Examination.

L. C. J. Were you by and present at their Examination?

Mr. S. Oates. I heard nothing but what they said for themselves; I was at some part of their Examination.

Mr. Just. Pemberton. What did *Knox* and *Lane* say?

Mr. S. Oates. *Osborne* was a saying, That as we walked, said he, in the Cloysters of the Abbey,

Abbey, where he did dictate what we were to do.

L. C. J. This is no Evidence. Shall what *Osborne* says at one time, and apart from the rest, be any Evidence here?

Mr. Recorder. No, my Lord, we offer it only as an Evidence of the general Conspiracy.

L. C. J. *Osborne* is a telling how *Knox* and *Lane* and he did conspire and contrive this Business; is this Evidence against these Defendants? I ask my Brother *Maynard*.

Mr. Serj. Maynard. My Lord, if this were single clearly, it were no Evidence; but if it fall out in the Evidence, that we shall prove *Osborne*, *Knox* and *Lane* were all in the Conspiracy, tho it is not direct Evidence to Convict the other, yet it will enlighten that Evidence we give against them.

L. C. J. Why did you not make *Osborne* a Party?

Mr. Serj. Maynard. He is laid in the Indictment to join with them, but he is run away.

Mr. Just. Pemberton. My Brother intends it thus, that the Business is so interwoven between them all, that to make it be understood, it is necessary to bring in something about *Osborne*.

Mr. Sanders. I pray they may bring something against them first.

L. C. J. Ay, the Counsel say very well on the other side; first prove some Fact against *Knox* and *Lane*, and then prove what you will afterwards.

Mr. Serj. Maynard. It is an Inducement to it: But I beseech you, in all Cases that are Capital, are not the King's Counsel at liberty to prove Circumstances as well as the Substance?

L. C. J. The Court will direct it is no Evidence against the now Defendants, unless you prove the Fact upon them.

Mr. Serj. Maynard. Unless we do bring it down to *Knox* and *Lane* afterwards, that they were guilty, it will not be any Evidence, I know.

Mr. Holt. If it be not Evidence, we conceive, with submission to your Lordship, it ought not to be heard.

L. C. J. Prove something first, Brother, against the Defendants, and then urge this.

Mr. Recorder. They need not labour it on the other side. We agree it is no Evidence against the Defendants, but only circumstantial as of the general Conspiracy.

L. C. J. But pray how can it be circumstantial Evidence, and yet no Evidence? Prove the Conspiracy, or it signifies nothing.

Mr. Serj. Maynard. If it be circumstantial to make good the Evidence of the Fact, it will be material for us to urge it.

L. C. J. But first prove the Fact.

Mr. Recorder. We shall now prove, if your Lordship please, that *Knox*, who is one of the Persons indicted, hath made his Applications to others that had relation to *Dr. Oates*, to endeavour to persuade them to pick out something or other against *Dr. Oates*. Call *Thurston* and *Ray*.

Mr. Serj. Maynard. My Lord, we shall first go to the Substance of the Evidence, and then the circumstantial things will be material, which before were not material.

L. C. J. Now you go right, Brother.

Mr. Serj. Maynard. We shall go this way, to shew that *Lane* and *Osborne* did accuse *Dr. Oates*; and after they had accused him, they were con-

victed in their own Consciences, and did confess they had falsely accused him, and afterward did repent of that Repentance; and that *Knox* had an Hand in all this.

L. C. J. I think you have not opened that clear enough; before whom was that Accusation?

Mr. Serj. Maynard. Before the Lords, and before Sir *William Waller*.

Mr. Recorder. For they were in the Gatehouse, and there they sent for Sir *W. Waller* to come to them, and there did confess the matter to him; whom we desire may be sworn.

[Which was done accordingly.]

Sir W. Waller. My Lord, upon the Twenty ninth of April, during the Sessions of Parliament, there was a Committee of Lords appointed for the taking Instructions about this Plot: Being there attending upon the Lords, this Complaint, of *Mr. Oates* was brought before them of the horrid Abuse of two of his Servants. And the Lords were pleased to order *Mr. Warcup* and myself to take their Examinations.

L. C. J. What two Servants were they?

Sir W. Waller. They did belong to *Dr. Oates*.

L. C. J. What were their Names?

Sir W. Waller. *Osborne* and *Lane*.

L. C. J. What found you upon their Examination?

Sir W. Waller. Upon the Examination of *Osborne* and *Lane*, I did find they did agree together to a Tittle.

L. C. J. Then tell us *Lane's* Evidence first. If they agreed in a Tittle, tell it us what it was.

Sir W. Waller. My Lord, *Mr. Lane* did confess this.

L. C. J. What, upon his Oath?

Sir W. Waller. Yes, upon his Oath, my Lord.

L. C. J. To you?

Sir W. Waller. Yes, my Lord, that he had been induced by *Mr. Knox* to betray his Master, and for to swear several things against him which *Knox* had drawn up and dictated to him. He did not write them himself, but *Osborne* writ them, and he did sign them. There were four Letters that were brought before us; there were three or four Memorials, as they called them, three or four Informations, which were those Papers that they carried to *Mr. Cheyney* to *Chelsey*.

L. C. J. Who carried them?

Sir W. Waller. *Knox* took *Osborne* and *Lane* with him, and carried them thither, as *Lane* swore. And when they came thither, and he was acquainted with the Business, he looked upon it as so foul and notorious a thing, that he would not meddle with it; but he advised them that they should go (because *Knox* pretended the Lord of *Danby* was much concerned in it) to some other Justice of Peace, or some of the Privy-Council that were Friends of my Lord of *Danby*.

L. C. J. *Knox* advised this, did he?

Sir W. Waller. No, they said *Mr. Cheyney* did. They went afterwards (and they did all confess it) to *Mr. Dewy*, and *Mr. Dewy* gave them the same Answer, that he could not meddle with it. And after this, *Mr. Knox* went and took several Lodgings for them, fearing that *Dr. Oates* would hunt after them; and one Lodging, amongst others, was, I think, the *Three Flower de luces* in *White Fryars*. And afterwards they removed to

a place in the paved Alley betwixt *Lincolns-Inn Fields* and *Chancery-Lane*. During which time, *Knox* did bid them stand firm to what they were to do, and they should not want for a considerable Reward, and have wherewithal to maintain them with their Footmen, and live very well. And, my Lord, *Lane* did confess this, that he brought Mr. *Osborne* to *Knox* first into the *Painted Chamber*, and made them acquainted there. And, my Lord, there is one thing that I omitted; Mr. *Lane* did confess to me, that Mr. *Knox* did, at the *One Tun Tavern* I think it was, drop a Guinea upon the Table, and said, I will not give it you, because now I can safely swear that I never gave you any Money; but be sure you stand fast to these Informations, and to what I have dictated to you, and you may be sure you shall be well rewarded for your pains. And he told them this more, *My Lord-Treasurer would never have surrendered himself to the Black-Rod, unless you had promised to stand fast to this Evidence*; that was, to swear to what Evidence he had dictated to them.

L. C. J. Did *Lane* produce the Informations, and those things that *Knox* tempted him to swear?

Sir W. Waller. My Lord, they were produced before us.

L. C. J. What were they? What was the Substance of them?

Sir W. Waller. One part was to swear, that Mr. *Bedlow* should come to Mr. *Oates*, and say to him, That my Lord of *Danby* should offer him a considerable Sum of Money to go beyond Sea.

L. C. J. To whom?

Sir W. Waller. To *Bedlow*. And that was only considerable as relating to Mr. *Bedlow* in any part of the Examination: But as to Mr. *Oates*, they were to accuse him of having a design of abusing his Body; for he sent to me——

L. C. J. Who did?

Sir W. Waller. *Lane* sent twice. Upon his first Examination he did seem to be very shy; but upon the second, he sent one *Rix* to me, one of the Yeomen of the Guard, to let me know, that he was troubled in his Conscience at what he had unjustly done in charging Mr. *Oates*, and that he was desirous to discharge his Conscience of the burden that lay on it, and to wave his own Reputation, that he might acquit the Innocent.

L. C. J. Why, where was the Villany done that he repented of?

Sir W. Waller. My Lord, it was in reference to his swearing against Dr. *Oates*.

L. C. J. Where, before the Lords?

Sir W. Waller. He was brought that very morning before the Lords; but notice being come that the King was come in, and the House was sitting, he was remanded, and afterwards sent *Rix* to me, to tell me, he was sensible of the Injury he had done to Dr. *Oates*, and would make a Confession of all.

L. C. J. Where had he done him Injury?

Sir W. Waller. In reference to those Abuses that he had offered to swear, and I think had sworn, but before whom I don't know; I suppose you will have an Account of that by and by.

L. C. J. So then this is the Substance of what you say as to Mr. *Oates*: That *Lane* sent to you,

and shewed you several Papers and Informations against the Credit of *Oates* and *Bedlow*, and told you that *Knox* did tempt him to justify this, and swear it; and that he went with them to a Justice of Peace in order to do it, but he did not care to meddle with it, and bid them apply themselves elsewhere, and afterwards they came to you; and whether it was sworn or no, you cannot tell, but you say he did confess he had wrong'd Mr. *Oates* in those Scandals that he would have put upon him; and that this was by *Knox's* Advice and Direction.

Sir W. Waller. But there is this thing further: He said truly that Mr. *Oates* would be something hasty and passionate, but that he was very religious, and was very constant in sending his Servants to Prayers; and that what he had accused him of, it was an abominable Falshood, and was done by the Instigation of *Knox*, who had encouraged him to it by the Promises of a great Reward.

Mr. Just. *Pemberton*. And it was he that told you of the dropping of the Guinea, was it not?

Sir W. Waller. My Lord, he did confess that himself, but he said he lent it.

Sir F. Winnington. Pray did *Lane* confess to you from whom this Money and Reward was to be had? For he was not a Person that was likely to bestow so much Money of his own. Was it from any of the Conspirators? Or from whom, that the Rewards, and this Money should come, upon your Oath?

Sir W. Waller. I have examined them many times as to that, but could never learn any thing.

Mr. Just. *Pemberton*. *Sir W. Waller*, was *Knox* ever before you?

Sir W. Waller. Yes, my Lord, I took his Examination, and it was only to excuse himself, that he received the Letters from them, which they said they writ out of trouble of Conscience, and would have him to take their Examinations and to go along with them before a Justice of Peace.

L. C. J. That was *Knox's* Defence? Said he, they came to me, and I did not go to them, but they desired me to go along with them to a Justice of Peace.

Mr. Just. *Pemberton*. Did you let him know what they had said to you?

Sir W. Waller. No, my Lord, I kept that private: But there is one thing very material. That Morning we took *Knox's* Examination, we were so long about it, that we could not dispatch it in the Forenoon, and therefore ordered *Lane* to be brought before us in the Afternoon; and then did *Knox* write a Note, and sent it up by a Woman that was a Nurse there in the Prison, and there was a Paper convey'd thro the Door to him to this purpose, *We paid our*——

L. C. J. Who writ that Note?

Sir W. Waller. *Knox* did, and confessed it to me.

L. C. J. To whom was it convey'd?

Sir W. Waller. To Mr. *Osborne* from *Knox*; and it was, *We always paid our Club*——

Mr. *Sanders*. How do you know it was from *Knox*?

Sir W. Waller. He confessed it.

Mr. *Sanders*. Did he shew it you?

Sir W. Waller. No, I did not see the Note, but he confessed it.

Mr.

Mr. Just. *Pemberton*. Pray Mr. *Sanders* don't interrupt them, they are in their Evidence.

Mr. Serj. *Maynard*. They must do that, for that is the best part of their Defence, for ought I know.

Sir *W. Waller*. The Words, my Lord, were these, *We always Clubb'd, and you paid two Shillings at the Sugar-loaf. Tear this.*

L. C. J. Why, what could this be?

Sir *W. Waller*. Why, I will tell you, my Lord, it was upon this Account, that he should not gainsay what he had confessed and agreed to, that so they might not be in two Stories.

Mr. Serj. *Maynard*. My Lord, *Osborne* and *Lane* had formerly accused, and given some Informations against Dr. *Oates*; afterwards you see what happened before Sir *W. Waller*, they renounce what they had done, and then, my Lord, was *Knox* imprisoned, and thereupon he writes this Note, *We always club'd together, and you paid two Shillings at such a Place*: The Circumstances will come out by and by. They met at several Places, and we shall prove that *Knox* bore their Charges, and paid for them, though by this Note he would make it, that they bore their own Charges.

Mr. Just. *Pemberton*. The succeeding Evidence will open it.

Sir *W. Waller*. My Lord, here is one thing more that I had forgot: *Lane* did confess, that for the preventing of any Discovery of this horrid Fact, it was agreed amongst them, that if any one should make a Discovery of it, the other two should murder him.

Mr. Sol. Gen. We desire that the Jury may observe that.

Sir *W. Waller*. He did likewise declare, that the Lords in the *Tower* would not be wanting to acknowledge the Kindness in disparaging the King's Evidence.

Mr. Just. *Pemberton*. That was *Lane* and *Osborne* did confess that?

Sir *W. Waller*. Yes, both *Lane* and *Osborne* swore it positively.

Sir *F. Winnington*. If you have done as to *Lane*, pray acquaint my Lord and the Jury what you know of the Confession of *Knox* upon his Examination.

Sir *W. Waller*. *Knox* confessed not any thing, but stood stiff to it, that the Papers and Letters were written by them, and contrived by them.

Mr. Just. *Pemberton*. And that what he did was at their Request?

Sir *W. Waller*. Yes, but the rest did both confess, that what was done was wholly by the contrivance of *Knox*.

L. C. J. Did you ask *Knox* if he had drop'd a Guinea?

Sir *W. Waller*. My Lord, he confess'd he had drop'd a Guinea, but it was only to lend them, and they promised to repay him; and that one morning he drop'd ten Shillings upon the Bed, and they took it up.

L. C. J. *Knox* said he only lent it?

Sir *W. Waller*. Yes, but they positively swore both the one and the other.

Mr. Just. *Pemberton*. What said *Knox* to that?

Sir *W. Waller*. He lent them only.

L. C. J. Well, go on, Sir.

Sir *W. Waller*. And *Lane* did positively confess, that at all the Places, and the several Lodgings, and the Treats and Entertainments they

had been at, they were all at *Knox's* Charge, except twice, which might amount to about eighteen Pence, and that he paid.

L. C. J. What said *Knox* to it?

Sir *W. Waller*. He deny'd all.

Mr. Just. *Pemberton*. As to the Manner of it, what said *Knox* to the dropping of it?

Sir *W. Waller*. He confess'd he dropp'd it, but only lent it them.

Sir *Fr. Winnington*. You say *Lane* was a Servant to Dr. *Oates*, pray whose Servant was *Knox*?

Sir *W. Waller*. He did belong to my Lord *Dunblane*. And moreover, Mr. *Knox* did confess to me, that the Papers so drawn up and deliver'd into his Hands, had been in the Custody of my Lord *Latimer* for a long time.

Sir *Fr. Winnington*. Did he so, I hope the Jury will believe him then.

L. C. J. Sir *W. Waller* does swear, that *Knox* confessed that all those Scandals raised against Dr. *Oates*, had been by his Hands deliver'd into the Hands of my Lord *Latimer*, and were there for some time.

Sir *W. Waller*. Yes, my Lord.

Sir *Fr. Winnington*. I did not well hear you, Sir, one thing you were saying in the beginning of your Evidence, that these Gentlemen spoke of my Lord of *Danby's* not surrendring himself, pray let us hear that over again.

Sir *W. Waller*. Mr. *Lane* said this, that my Lord of *Danby* would not have surrendred himself to the *Black-Rod*, but that he did depend upon their standing to what Informations they had given in.

L. C. J. Upon your Oath *Lane* did say this?

Sir *W. Waller*. Yes, my Lord.

Mr. Serj. *Maynard*. My Lord, now we will call another Justice of Peace, that took their Examinations, and we shall then particularly apply our selves to Mr. *Knox*, that seems to make these Excuses for himself. Call Mr. Justice *Warcup*. [Who was sworn.]

Mr. *Warcup*. I must beg the Favour of the Court, because my Memory is bad, that I may refer to the Informations that were taken before me.

Mr. Just. *Pemberton*. You may look upon them for the Refreshment of your Memory.

Mr. *Warcup*. I answer to every Part of this that hath my Hand to it, I desire it may be read.

Mr. Recorder. No, that can't be, you must not read them, but only refresh your Memory by them.

Mr. *Warcup*. This *John Lane* did confess he liv'd with Dr. *Oates*, and about the Seventh of *April* he left him, and while he liv'd with him, he said, he sent his Servants daily to Prayer in the Morning to the Chapel, and left but one at home to dress him, and whilst he was with Dr. *Oates*, he was never charg'd by his Master with the opening of any Letters, and that the Informations marked 1, 2, 3, 4 and 5.—

Mr. *Williams*. Pray Sir acquaint the Court as far as you can by your Memory.

Mr. *Warcup*. *Lane*, my Lord, before me deny'd all that he had said, that is, that what he had said before the Lords was true, but that particular Examination before Sir *W. Waller* was by him alone.

Sir *Fr. Winnington*. Was he upon Oath before you?

Mr. *Warcup*.

Mr. *Warcup*. Yes, I find he was.

L. C. J. Did you examine him after Sir *William Waller*, or before?

Mr. *Warcup*. To the best of my Remembrance it was before.

Mr. *Just. Jones*. He was upon his Oath there too?

Mr. *Warcup*. Yes, and I must acquaint you I find it at the bottom to be (*Jurat.*) He was brought before the Lords of the Committee for Examinations, and did there likewise at first swear the things in these Notes contained, and did afterwards come to the said Committee, and beg their Pardon, and God's Pardon for what he had sworn, for it was false.

L. C. J. Who did?

Mr. *Warcup*. *Lane* did.

L. C. J. Did you hear him?

Mr. *Warcup*. Yes.

Mr. *Just. Jones*. Was he upon his Oath the last time, when he said this to the Committee?

Sir *W. Waller*. Yes my Lord, I was by too, I heard him.

L. C. J. So he swears backwards and forwards.

Sir *Fr. Winnington*. Such People us'd to do so.

Mr. *Warcup*. That particular of the Note, that Mr. *Knox* sent up by the Nurse, I was by and did hear him confess it.

Sir *W. Waller*. But he did declare there to the Committee, that it was his Voluntary Repentance, and that he was exceeding sensible of the Abuses he had offered to Dr. *Oates*, in this Design of accusing him in such a manner.

Mr. *Just. Jones*. What, before the Lords?

Sir *W. Waller*. Yes, my Lord.

Mr. *Warcup*. Mr. *Knox* did say he sent such a Note up to *Osborne*, and the Words were, as I remember, *We always club'd, and you paid two Shillings at the Sugar-Loaf, Tear this.*

L. C. J. Look you, the use I see that would be made of this, is, that *Knox* in a secret way should give Intimation to this *Osborne*, that he should not own that he had been treated by him, or any Money spent upon him, and this Note is the cunning way of insinuating that Matter, as I understand it.

Mr. *Warcup*. I shall humbly acquaint your Lordship with one thing further; *Knox* did confess that he had lain with these People in several private Places, for there were Warrants out for the apprehending them, upon the Information given by Dr. *Oates* of this Contrivance, that he had lain with them at *White Fryars*, and *Charing-Cross*, and at other Places.

Mr. *Just. Pemberton*. That he had obscured them when they were in danger.

Mr. *Warcup*. That he had lain with them at that time.

Sir *Fr. Winnington*. Pray, upon your Oath, when he had told you he had lain with them in any private Lodging —

Mr. *Just. Pemberton*. Did he say he had advised them where to lie?

Mr. *Warcup*. He said he had been with them, and advised them where to lie.

Mr. *Just. Pemberton*. Did he say he had taken Lodgings for them?

Mr. *Warcup*. Yes, he did.

Sir *Fr. Winnington*. Your Question, Sir, hath prevented mine; but I would ask him a Question further. Did he confess to you he paid for those Lodgings?

Mr. *Warcup*. Truly, my Lord, unless I read the Information, I cannot tell.

Sir *W. Waller*. My Lord, I perfectly remember this, That *Knox* did confess he had paid for their Lodgings, but they were to pay him again; but both *Osborne* and *Lane* did positively swear he did pay for all, and several times at several Taverns where he treated them, he bid them call for what they would, and they should have it.

Mr. *Sol. Gen.* What do you know of being at the *Sugar-Loaf* at any time?

Mr. *Warcup*. I tell you what I find here he confess'd, that they complaining they knew not where conveniently to lodge, this Examinant told them he would endeavour to find them a Lodging, and the very self-same Day, he went by the Direction of one of my Lord *Dunblane's* Servants, a Coachman, to the *Sugar-Loaf* in *White-Fryars*, and took Lodgings as for himself and two of his Friends, and lay there with them to the time of his going from the same Lodging, which was five or six Days.

Mr. *Just. Pemberton*. And he did it by the Direction of my Lord *Dunblane's* Coach-man?

Mr. *Warcup*. Yes, my Lord, it is so in the Information.

Mr. *Serj. Maynard*. Is that Information true?

Mr. *Warcup*. Yes, my Lord, I am sure he said it, or I should not have writ it down.

L. C. J. Mr. *Warcup*, Had *Lane* recanted what he had said against Mr. *Oates* at that time when the Lodgings were taken?

Mr. *Warcup*. My Lord, it was before they came to the Lords that they took these Lodgings.

Mr. *Just. Pemberton*. Ay, that's clear, it was before all came out.

Mr. *Warcup*. I was commanded by the House of Peers to give my Warrant for the apprehending of them.

L. C. J. The Lords sent to apprehend them upon the Slander of Mr. *Oates*, and then he concealed them.

Mr. *Recorder*. My Lord, Sir *W. Waller* speaks of one *Rix* that was sent by *Lane* to him to make a Discovery, this is the Gentleman. [*Who was sworn.*]

Rix. May it please your Lordship, There was one *Osborne* that was concern'd with this *Lane*, who is since run away: *Osborne* came first upon the Guard to me, and desir'd me to get him into Service. He desir'd to come into my Lord-Treasurer's Service, and what he desir'd of me was to frame him a Petition to my Lord-Treasurer. We had no Answer till two Days after, and I being upon the Guard with Dr. *Oates*. I did suppose I might get him into his Service, I spoke to Dr. *Oates*, and he entertain'd him; and after he had entertain'd him a while, this *Lane* then being a Servant with him, they both told me they were going off now from Mr. *Oates*.

L. C. J. Who told you?

Rix. *Lane* and *Osborne*, and that they should get Preferment; they were sworn Brothers together, if one did go, the other would go. I ask'd them why they would go away? Oh, said he, I shall keep my Man my self. Say you so, said I, I have been in Town so long, and I could get no such Preferment. Then they told me they should have 100 l. a Year, and 500 l. in Money.

Mr. *Just. Pemberton*. Who told you so?

Rix.

Rix. Osborne and Lane both.

Mr. Just. Pemberton. What, 100*l.* a Year, and 500*l.* a-piece?

Rix. Yes: So I ask'd them how, but they would not tell me, but, said *Osborne* to me, for your preferring me to *Mr. Oates*, you shall be no loser. I met him another time, for *Osborne* came to desire me to lend him a Cravat. Said he, I must come down to your House to-morrow Morning to get a Cravat, I desire I may have a good one, for I am to go before one of the greatest Peers of the Realm to dine with him: Where, said I, to which end of the Town? The other end of the Town, said he to me: But, said I, why do you leave *Mr. Oates*? Oh, said he, let *Mr. Oates* look to himself, for I have enough against him. Then I smelt something of some Design against *Dr. Oates*, and brought it before Justice *Warcup*, and gave in my Testimony, and upon further Inquiry into it, the Lords ordered him to send out his Warrant for the taking of those Fellows, *Knox*, *Lane*, and *Osborne*, which he assign'd over to me; in a short time after they were taken, first *Lane* was taken, and in a day or two *Osborne* and *Knox*, and were examined and taxed with it. *Osborne* he made a Confession before Justice *Warcup*, and they desir'd me to see *Knox* and *Lane* in Prison, and I did see them in Prison, and when they did come there, *Knox* said, where is *Osborne*, why don't he come to Prison as well as I? I am a better Gentleman than he. Oh, said I, he hath confessed; so he was turn'd up into the Prison. Said I to *Mr. Lane*, will you drink a Pot of Beer? said he, I don't much care if I do: and said he, *Mr. Rix*, if I have not gone too far against myself, if you will stand my Friend, I will make an honest Confession. Said I, I am glad there is so much Grace in you, I will then do you all the good I can. Pray, said he, will you please to go and call *Sir William Waller*: Why not Justice *Warcup*, said I, who was first concern'd in this Discovery? No, he would have only *Sir William Waller*. I came and found him in the Court of Requests, so I went with him to *Smith's* the Tobacconist near the Gate, and sent for *Lane*; the Keeper brought him: I think this was about nine or ten in the Morning, and from that time till about six at Night he was in Examination. I went then to *Mr. Oates*, and told him *Lane* had made an honest Confession. I waited on *Sir William Waller* till the Afternoon, and then he made an Order, that he having made an honest Confession, should have the Enlargement of the Prison, and not be confin'd, as others were, which he had. *Lane* sent for me the next Day, I came down in a Day or two after, and his Sister was there with him, they were eating Butter and Radishes, and when I would have paid for the Drink, *Lane* cry'd No, by no means; for *Knox* hath sent me in Three and twenty Shillings the other Day, and that will serve me, I hope, till I come out: But now, said he, I have made a Confession, I believe I shall have no more Money from him; and I desire you would speak for my Enlargement. I came down to him another time, and he told me he had receiv'd a Note, which Note was put up from a Gentlewoman in the Street,

That if he would stand firm to his Text, he should have Five hundred Pounds; nay, he should not

want One thousand Pounds; but in case they would not stand firm to their Text, the Lord Treasurer would never have come in; and if yet they did not stand firm, he would lose his Head.

L. C. J. Who came that Note from?

Sir W. Waller. He told me this, That there was such Word brought to him by the Nurse, and she told him, That a Gentlewoman very well clad came to her, and desir'd her to speak to him to stand fast, and that *Osborne* and *Knox* would be sure to stand fast, and that they two should be too strong for the other, he being but a single Evidence; and more than that, he should not want a Thousand Pounds, if he had occasion for it. I ask'd the Nurse what the Gentlewoman's Name was, she told me, she had ask'd, but she would not tell her.

L. C. J. Where is this Woman, this Nurse?

Sir W. Waller. She was Nurse to the Goal, and was turned out upon this Discovery by the Goaler.

Mr. Just. Pemberton. You had this from *Lane*, *Sir William Waller*?

Sir W. Waller. Yes.

Rix. My Lord, after this was done, *Lane's* Father and Mother told me this at my own House, That had it not been upon their Son's Account, my Lord-Treasurer would never have come in; and they told me that one *Hest* should come and tell them so: And *Lane* himself told me, he thanked God that now he had made an honest Confession, that now his Heart was very light; he had a Burden upon him before, but now he had confessed and his Heart was light.

L. C. J. What did he confess?

Rix. He did confess, That my Lord-Treasurer would never have surrendred himself, if he had thought they would not have stood firm, and if they did not stand firm, he should lose his Head.

Mr. Williams. You say *Lane* confessed this as of himself?

Rix. Yes, and afterwards his Father and Mother told me so, and he did say as of himself, that he had a Note put under the Door.

L. C. J. But from whom had he that Note?

Rix. From a Gentlewoman in the Street, he told me so.

Mr. Just. Pemberton. What did he say as to *Knox*?

Rix. He told me he was set on by *Knox*, and he drew up all the Writings for him; and *Knox* told him, if you come to be examined at such or such a thing, make a stop, and turn this way and that way.

Mr. Williams. Pray acquaint the Court and the Jury, did *Lane* tell you how he was drawn into this, and who drew him in?

Rix. *Knox* was the Man that drew up the Writings, and promised him those Rewards, he said.

Mr. Just. Pemberton. You say he told you that *Knox* promised them? How far *Knox* will be concerned in this Evidence, will be consider'd afterwards.

Mr. Serj. Maynard. Now we come to *Knox's* own particular Actings. What hath been said already, hath been out of other People's Mouths, now we come to him himself, and we call *Richard Slightam*. [*Who was sworn.*]

Mr. At. Gen. Pray *Mr. Slightam* will you tell my Lord and the Jury what you know of this *Knox*, what Offers have been made you, by whom, and when, and for what?

Slightam.

Slightam. I was offered Money to carry Notes from the one to the other.

Mr. Sol. Gen. Why, what Office had you there?

Slightam. I was a Prisoner there my self, and Under-goaler too, and I was offered Money to carry Notes between the one and the other, that they might not betray one another.

Mr. Recorder. By whom?

Slightam. By *Knox*.

L. C. J. What did they offer you?

Slightam. I had Three half Crowns given me at one time by *Knox*, and he promised me he would give me a considerable Sum.

L. C. J. But he did not name the Sum?

Slightam. No.

L. C. J. What did he desire you to do for that Money?

Slightam. He desired me to carry Notes from the one to the other, that they might not betray one another.

Mr. Att. Gen. Between whom? Name them.

Slightam. *Knox*, *Lane*, and *Osborne*.

L. C. J. What did you say, that they might not betray one another? Why?

Slightam. Yes, that they might not betray one another, for they were fearful that they should, because they could not speak together, to lay their Stories together.

Mr. At. Gen. And hark you, Sir. What Messages did you carry between them?

Slightam. None, I never carry'd any.

L. C. J. No, what had you your Money for?

Slightam. I told them of it below, and they would not let me carry any.

L. C. J. But you got your Money?

Slightam. Yes, I got some Money.

Mr. At. Gen. *Knox* you say gave you the Three half Crowns. Did you speak with *Lane* and *Osborne*?

Slightam. *Lane* I spoke with every day, and *Lane* said, he hoped that the Lords would not put him in the Pillory, for all he had sworn falsely.

L. C. J. What Lords?

Slightam. My Lord *Shaftesbury*, and my Lord *Privy Seal*.

Mr. Smith. What did *Knox* say to you after *Osborne* had confessed?

Slightam. That is nothing, said he, if we do but stand firm together, what *Osborne* hath given in Evidence will signifie nothing.

Mr. Smith. Why?

Slightam. For two, he said, were better than one.

Sir Fr. Winnington. I think you say you had Three half Crowns given you by *Knox*, pray who was the first that offered you Money to carry the Notes?

Slightam. It was *Knox*.

Sir Fr. Winnington. Ay, he carried the Purse.

Slightam. Yes, I suppose he did.

Mr. Just. Jones. They were both in the Gate-house Prisoners at that time.

Slightam. Yes, so was I. But they were lock'd in several Rooms, and none could come at them.

L. C. J. But you carried no Note nor Messages, upon your Oath?

Slightam. No.

Mr. Williams. Pray call *Mr. Dewy*. [*Who was sworn.*] Pray *Mr. Dewy* will you acquaint the Court and the Jury, what Discourse you had

with *Knox*, who he came from, what he came about, and what Recommendations he brought with him, and from whom?

Dewy. My Lord, some time in the sitting of the last Parliament that began in *March*, about ten a-Clock at Night a Message was sent in to me that one would speak with me from my Lord *Latimer*: I was either in bed or going to bed; and I did not think there was really any such Message, because my Lord *Latimer* did not know me, nor I him. They were very pressing to come in, insomuch as my Man could hardly keep them out. I told them there was nothing sure of so much haste, but what might be done to-morrow, or some other time: So I spoke not with them that Night. Either the next Day, or some short Time after, as I remember, *Mr. Knox* came to me with another Gentleman, and he brought Papers in his Hands ready written; he told me that they were Informations of one *Lane* and *Osborne* (as I remember those were the Names he mention'd then) and they were against *Mr. Oates*. Then I began to look upon it as something extraordinary, the Parliament being then sitting, and the Committee of each House having the Examination of this Business. Said I, *Mr. Knox*, you have been a Justice of Peace's Clerk (for I knew him so) and you know 'tis very unusual to take Informations against a Person without the Party's being present, if he may be had, to cross-examine the Witnesses upon Interrogatories, as the Case may be: And besides, this looks as if it were to take Informations against the King; which we never do upon Oath. So I dismissed them, and directed them to the Committee of Secrecy of the House of Commons, for whom it was most proper. This is all I know of this Business.

Mr. Williams. Did *Mr. Knox* tell you any thing what was contained in those Examinations?

Dewy. Yes, he did give me some Information, that *Osborne* and *Lane* did repent of something, but I can't give you Information particularly.

Mr. Williams. Pray tell the Substance of it.

Dewy. I can't remember what the particulars were, but *Lane* and *Osborne* were the Parties to be examined, and I shifted them off as well as I could.

L. C. J. Did they come along with *Knox*?

Dewy. They were not in my Room, but they were without, I believe.

L. C. J. And did he tell you at the same time that they had recanted?

Dewy. Truly, my Lord, I can't well remember; but he said they repented of what they had falsely accused my Lord-Treasurer of.

L. C. J. Did they say they had falsely accused *Mr. Oates*?

Dewy. No, they did charge *Mr. Oates* with some Crime; and they did speak something of false accusing, I can't remember what.

L. C. J. Did not they say, *Mr. Oates*?

Dewy. I remember it now; it was as if *Mr. Bedlow* and *Mr. Oates* had made a Conspiracy against my Lord of *Danby*.

Sir Fr. Winnington. I think you say, you knew *Mr. Knox* a Justice of Peace's Clerk: Pray Sir, you are an ingenuous Man, from whom did he pretend to come to you?

Dewy. He came to me from my Lord *Latimer*, as he said.

Sir Fr. Winnington. Did he say so, that the Lord Latimer wished him to go to you?

Dewy. Yes; and I wondered at it, because I did not know my Lord, nor my Lord me.

Mr. Withins. When was this?

Dewy. It was the latter end of April, or the beginning of May, as I take it; I do not very well remember: But the Substance of it I remember was, that they had over-heard Mr. Oates and Mr. Bedlow conspiring against my Lord of Danby.

L. C. J. Mr. Dewy, can you remember whether they did come to give you Information against Mr. Oates for abusing their Bodies, or Oates and Bedlow's Conspiracy against the Earl of Danby?

Dewy. Truly, my Lord, I can't be positive in it; for the Parliament was then sitting, and I shifted them off.

Mr. Just. Pemberton. You never looked into the Information at all?

Dewy. No, I did not, I thought it not proper for me.

Mr. Recorder. Call Henry Wiggins and his Mother. [*Who were both sworn.*]

Mr. At. Gen. Come on Mr. Wiggins, what do you know of any Endeavours of Knox or Lane, or any of these Persons, to take off or scandalize Mr. Oates's or Mr. Bedlow's Testimony?

L. C. J. What is this Man's Name?

Mr. At. Gen. Henry Wiggins.

Wiggins. About the latter end of February last, Mr. Knox and I met at Charing-Cross, and we went in and drank together; and he proposed several things to me; first he desired that I would get for him a Copy of the Papers my Master had.

L. C. J. Who is your Master?

Wiggins. Mr. Bedlow. And especially what concerned my Lord-Treasurer; as also to take a Journal of all my Master's Actions, and the Names of the Persons that came to him; for, said he, my Lord hears that my Lord of Shaftesbury and the Duke of Buckingham do cabal with him against my Lord. But if my Lord could but find out his Enemies, he would oppose them, and strive to baffle them. My Lord, to encourage me to this, he told me he would carry me to his Lord, though it were at Midnight, to discourse with him.

L. C. J. What Lord?

Wiggins. My Lord-Treasurer: And he said he should give me Encouragement to go on. Said I, Does my Lord know of this? Yes, said he, I told my Lord I had a Friend lived with Mr. Bedlow, and he gave me Encouragement to go on and treat with him. And he said moreover, my Lord, Mr. Oates and Bedlow were two great Rogues; that the King believed not a Word they said; and as soon as he had heard all they could say, they should be hanged.

Mr. Williams. Pray did he propose any Reward to you?

Wiggins. He told me his Lord should give me Encouragement.

L. C. J. What should you do?

Wiggins. He desired me to give my Lord the Papers, and then my Lord should tell me what I should do about my Master.

Sir Fr. Winnington. What did he say of Oates and Bedlow, Sir?

Wiggins. He said, That Oates and Bedlow were

great Rogues; and that the King knew them to be so; and when he had heard what they could say, he would hang them.

Mr. Williams. Pray upon your Oath, did he offer you any Money, or any Reward?

Wiggins. He offered me not any particular Sum, but he told me I should have Satisfaction and Reward, or any Place in my Lord's Disposal I should be entertained into, if I went away upon this Business.

Mr. Williams. Did he say any thing to you, to invite you, or encourage you to swear against your Master?

Wiggins. No, But he told me my Lord should give me Directions how to go on.

Mr. Recorder. What say you as to Lane and Osborne?

Wiggins. I did not know them at that time.

Mr. Recorder. What time after was it that you did know them?

Wiggins. I met with them a little while after, and they were discoursing all together, but I had no Discourse with them.

Mr. Recorder. Did Knox at any time speak to you, to bring him into the Company of Lane and Osborne?

Wiggins. No, Sir.

Mr. Recorder. This was the first time you met with him about this Matter?

Wiggins. Yes, it was.

L. C. J. What did you promise Knox you would do?

Wiggins. I told him I would do him any Service that lay in my Power, but nothing that would be to my Master's Prejudice; and I was appointed by him to meet him at my Lord-Treasurer's.

L. C. J. And what other Meetings had you besides?

Wiggins. I was but twice with him.

L. C. J. You never agreed to any thing?

Wiggins. I told it my Master, and it was discovered soon after, so that the Lords came to hear it.

Mr. At. Gen. Where is Mrs. Wiggins? What do you know of any Endeavours to corrupt this Evidence?

Mrs. Wiggins. I know no more than what my Son knows; he first came to my House.

L. C. J. Who?

Mrs. Wiggins. Mr. Knox; and asking me where my Son was, I told him he lived with Mr. Bedlow: And he said, he very much rejoiced at it, and desired to speak with him. I told him, No, he could not, for his Master had so much Employment for him, that it was very seldom I my self could get a sight of him. Said he, I have a little Concern with him; and he living with Mr. Bedlow, may do my Lord-Treasurer great Service, and doing my Lord-Treasurer Service, he does his Majesty Service; for his Majesty loves my Lord-Treasurer above all things in the World. And he would not be contradicted, but he would see him. Then the next day I told him he should come, and we appointed to go to him, but he should not see him alone without me, I told him; he told me he desired it not. He came according to the Appointment, and I carried him to Charing-Cross to an Ale-house, and there sent a Porter for my Son, and he came: And the first thing he said to him was, I am mighty joyful to know you live

live with Mr. *Bedlow*; you may do my Lord great Service: In what? says my Son. In letting my Lord know what Company your Master keeps, and what Lords they are that daily and hourly keep Company with your Master, and cabal against my Lord. Said I, Mr. *Knox*, that is the way to bring my Son's Neck to the Stake; that he shall never do. But, says he, I will tell him a way how he shall do himself no harm at all: And then he up and told him, he desired him to write him Letters when he found any thing of Secrecy, and set no Name to it; and if he came at Twelve a-Clock at Night, he would let him into my Lord-Treasurer's, and no body should take Notice of it: And he would have had him taken a Coach to have gone to my Lady *Danby* presently, to have an Assurance from her Mouth of Encouragement, and that he should have any Place in her Lord's Disposal.

L. C. J. Were you ever with my Lady *Danby*?

Mrs. *Wiggins*. No, we deny'd it; and it was discover'd. And besides, my Lord, I told him, if he would lay down my Son a Thousand Pounds he should not do it; he should not betray his Trust. And then he said, that the King knew Mr. *Oates* and Mr. *Bedlow* to be two great Rogues; and when he had got what he could out of them, he would hang them.

Mr. *Williams*. Have you had any Offers of late not to come here as a Witness in this Case?

Mrs. *Wiggins*. No, my Lord; but there have been Persons three times at my House to know whether I were *Subpoena'd*, yea or no, as from Mr. *Knox*.

Mr. *Williams*. Did ever any Body perswade you not to come to give Evidence?

Mrs. *Wiggins*. No.

L. C. J. When was this you speak of?

Mrs. *Wiggins*. In February, the latter end.

Mr. *Serj. Maynard*. Mr. *Dewy*, who came in company with Mr. *Knox* to you?

Dewy. One Mr. *Blayden*.

Mr. *Serj. Maynard*. Who is that?

Dewy. Steward to my Lord of *Danby*, I think.

Mr. *Serj. Maynard*. Here is *Slightam* again, my Lord.

Mr. *At. Gen.* What have you to say more?

Slightam. Mr. *Lane* told me they had many Treats, and had so much Money, a Guinea, as I think he told me, to swear against Mr. *Oates*.

L. C. J. Who gave it him?

Slightam. Mr. *Osborne*, or Mr. *Knox*, I can't tell which.

L. C. J. Where did *Lane* tell you so?

Slightam. In Prison.

L. C. J. In what Prison?

Slightam. In the Gate-house.

Mr. *Williams*. Call Mr. *Palmer*. [*Who was sworn.*] We call him to corroborate what that young Man *Wiggins* hath said.

Palmer. What he hath told here, he discovered first to me, and I discovered to his Master, that Mr. *Knox* would have had him to take a Journal of his Master's Actions, and to give it him every Day. My Lord, I am one of the Yeomen of the Guard, and I waited upon Mr. *Bedlow*, and he desired me to help him to a Clerk: and I helped him to *Wiggins*, this young Man. He had not been there three Weeks, or a very little time, when *Knox* came to him to tempt him; and being a Stranger to his Master,

he knew not how to discover it to him, and told me, Such a thing is offered to me, but I am a Stranger to my Master, and I know not how to break it to him.

L. C. J. The use you make of this, is no more, but only to corroborate what he hath said, that he told it him while it was fresh, and that it is no new Matter of his Invention now.

Mr. *Recorder*. It is very right, my Lord, that is the use we make of it. Call *Thomas Dangerfield*. [*Who was sworn.*]

Mr. *Williams*. Pray, Sir, give an Account what you know concerning Mr. *Knox* and Mr. *Lane*, and what Designs they have had against Mr. *Oates*, and who supported them and maintained them in it.

Dangerfield. My Lord, all that I have to say in this Case, is this: I do think it was in the Month of June I was at my Lord *Castlemain's*, and he asked me, if I had been employed in a Business of *Knox* and *Lane*, that were Prisoners at the Gate-house: I told him, Not. His Lordship then wrote a Letter to my Lady *Powis*, and desired I might be employed in it: And she did tell me that it was a thing of material Consequence, and that I should be furnished with Money for the getting of *Knox* and *Lane* out. I took all Opportunities for the doing of it that were necessary. I went to the Gate-house, made Enquiry after *Lane*, and took Care with his Mother to relieve him, for I heard he was in an indigent Condition at that time.

L. C. J. Did you give his Mother the Money?

Dangerfield. Yes, my Lord, Twenty Shillings, and I had that Money from Mrs. *Cellier* by my Lady *Powis's* Order. After that time there was one Mrs. *Airy*, who used to carry Money to the Catholicks in Prison, she said that it was possible, as she had been informed from some of the Priests in the Gate-house, that some things might be had under the Hands of *Knox* and *Lane* that would be very material against Mr. *Oates*: She said, she had been informed so. I then desired that Mrs. *Airy*, that Pen and Ink might be conveyed to them, that they might have the Convenience of giving it under their Hands, which she promised, and they did convey Pen and Ink under the Door to this Mr. *Lane*.

L. C. J. How do you know that?

Dangerfield. As Mrs. *Airy* told me. Then she came again, and withal told me, that it was Mr. *Knox's* Desire that *Lane* should do something to signify to him, or satisfy him that he did stand fast; then *Lane* wrote a little Note, and that Note was to this effect. *I will die before I will comply with that Villain Oates; and if any good People will do me the Kindness to get me my Liberty, I will do the Catholicks the greatest Service imaginable in discovering what I know about Mr. Oates. This I write from the bottom of my heart, and shall die in it. So help me God.*

L. C. J. How came you by the Note?

Dangerfield. This Note was written by *Lane's* own Hand, and given from under the Door to one Mr. *Parsons* a Priest in the Gate-house. This *Parsons* gave the Note to Mrs. *Airy*, and she gave it to me.

L. C. J. Do you know *Lane's* Hand?

Dangerfield. Yes, very well, as I shall shew you anon.

L. C. J. What became of the Note?

Dangerfield.

Dangerfield. My Lord, I don't know what became of the Note, for the Countess of Powis had it afterwards.

L. C. J. Do you believe it was of Lane's own writing?

Dangerfield. I am very well satisfied of it, my Lord, according to the Judgment I am capable to give of Hands; indeed I was not acquainted with his Hand then, but that was the first, to my Knowledge, that ever I saw of it; but after I having parted with the Note, and seeing some of his Hand-writing, upon Recollection I can say I believe it was his own Hand.

L. C. J. Did you ever see the Note again?

Dangerfield. Never afterwards. And then, my Lord, my Lady Powis was exceeding glad upon the hearing of it, and, as I was informed of it afterwards, she was the greatest part of the following Day upon her Knees giving God Thanks for the great Advantage and Strength that was come to their Cause.

L. C. J. What! for having a Villain to come over to her side that swore backwards and forwards?

Dangerfield. Afterwards I received Money several times, and gave his Mother more to furnish and relieve him. And several times afterwards I received Money from Mrs. Cellier by Order of my Lady Powis, for the doing of Lane's Business, that is, for his Liberty; and I had the Papers from one Lawson an Attorney that had been employed in the same Business before; and, as I was informed by him, a Motion or two was made at this Bar for their Liberty, but however he began to despair of it, and I was to undertake it; but withal he said, he was glad he was rid of it, for he had been often employ'd in the Business of the Catholics, and it had impair'd his Credit very much, and very freely deliver'd the Papers to me, which indeed were not many. After that, my Lord, I retained Mr. Sanders, as I think it was he, but there was a Motion about it, and with great Difficulty I did get Lane out upon Common Bail; and when I had done so, according to my Lady Powis's Order, I brought him to Powis House; and then my Lady Powis ordered, that he should go by the Name of Johnson; because if any of the Servants should talk of one Lane being in the House, it might come to Oates's Ear, the House might be searcht, and if he were found there, it might be prejudicial to the Lords, and all their Business. And then, my Lord, Mr. Wood came a little after with the same Command from his Lord, and he had some Order —

L. C. J. Who is Wood?

Dangerfield. That Wood is my Lady Powis's Gentleman: And he came and ordered that my Lady Powis gave particular Command to the Porter of the House, in my hearing, that he should give order to all the Servants, to have a particular Eye and Care that he did not go from the House, for they were very dubious of him, having made so many Equivocations before; for they feared Mr. Oates might find him, or he might go voluntarily and make a Discovery of himself, and so contradict all he had given an Account of there. For, my Lord, before this, as soon as ever Lane was gone out, they were very desirous to have what he had to say put in Writing; but they had not opportunity then, but we let it alone to some other time. Then,

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my Lord, soon after, about three Weeks or a Month after; I cannot be positive in the time, because I had a great deal of Business upon my Hands; but I suppose it was about three Weeks or a Month after, my Lord Powis sent for me to the Tower, and told me, he was informed that Mr. Oates was then making search after Lane, and if he found him at his House, it would be very prejudicial to their Business; and he desired me to take care, and to send him out of the way, that Mr. Oates might not find him; which I did; and thinking of several Places, I could not find any so convenient as Grays in Essex, by the Water-side. I came to Lane, and told him that he should be furnished with Money and Necessaries for his Journey, and, in order to it, that very day I took him and gave him a Pair of Shoes and Ten Shillings in his Pocket, and sent him to Grays. I received two Letters afterwards from this Lane, by which Letters I am very well satisfied, that that Note that he wrote before, that was given under the Door, was his Hand. So then I received a third Letter (I think) my Lord, and in the Letter he told me that some Person of Mr. Oates's Acquaintance had been in that Town and seen him, and he thought it was not material that he staid any longer there, and desired to be removed. So then I shewed my Lady Powis the Letter, and I suppose my Lord Powis had an Account of it also; but I cannot be positive in that, but I had order to remove Lane, and by my Lady Powis's means I sent down one on Horseback, and he discharged some Debts Lane had contracted in the House, and sent him away to London; and after his return to London he continued three days more at my Lord Powis's House; at which time, he says, he was forced to lie upon the Chairs, for at that time were the St. Omer's Witnesses removed from Mrs. Cellier's, because they were afraid of being taken up by Sir William Waller, who was in search for them. So having some other Business, I did not send him away presently, but I had particular order to send Lane into some other place; and I did advise with Mrs. Cellier where to send him, and she said, I think it will be necessary to send him to Peterley, at one Mr. Waite's House in Buckinghamshire; for, said she, they are Catholics, and will be sure to take a particular care of him: But I told her it would be too far, and I would think of some place nearer; and then I thought it would be necessary to send him to Tottenham, to the White Hart; and there he staid, I suppose, four or five Days, or a Week. This was after the Trial of the five Jesuits, as I remember. My Lord Powis sent to me, and told me; says he, I am in several Doubts about this Lane, and if it should be known that he is countenanced by me, or any of our People, it would not be well; so I leave him wholly to you, do what you will with him; but I advise you to send for him up to Town, and give him Ten Shillings a Week to live upon. So when I was at leisure I sent for him again from Tottenham, and I told him; Mr. Lane, it will be very necessary that you do take some care for a Livelihood about Town; it is not safe nor adviseable for you to be about Powis House; and at that time I took care he should come there no more, and that if my Lord Powis's Servants should meet him, they should take no Notice of him; which they did perform,

perform, I suppose, and as I was told. But before this, and before I sent *Lane* into the Country the second time, as near as I can remember, *Knox* was at Liberty. I had been endeavouring, as soon as I had got *Lane* out of the *Gate-House*, to get *Knox* out also; but I found I could not, and I left that. But I have been informed by Mr. *Knox* himself, that one Mr. *Nevil*, alias *Paine*, was furnished with Money from the Lords in the *Tower*, for the getting of *Knox's* Liberty; and this *Nevil* himself did say, as Mr. *Knox* told me, that he did it by their Order; and from this *Knox*, by Mrs. *Celier's* Persuasion, I received several Papers, which were Informations against *Oates*; or at least, those Papers that they had drawn up before they were in Custody. These Papers were sent by me to the *Tower*, and from thence to Mr. *Nevil* to enlarge upon, I suppose, as he thought fit; and after to my Lord *Castlemain*, and afterwards they were re-sent to me by Mrs. *Celier*, who order'd me to draw up an Affidavit according to those Directions, and get *Lane* sworn to the same; which I did, and took *Lane*, and asked him, said I, Mr. *Lane*, here is an Affidavit, can you swear it? Yes, said he, I can swear it, before I read it to him.

L. C. J. I believe so.

Dangerfield. Nay, said I, you know not what it is; so I read it to him; said I, Do you know this to be a Truth? Yes, said he, I do know it to be all true: Said I, I will read it again to you, because you are to make Oath of it, and I would not have you do any thing, but what is safe; and then we went to Sir *James Butler*, but he was not at home then, to have it sworn.

L. C. J. What was the Purport of that Affidavit?

Dangerfield. My Lord, I cannot well remember the Words, but it was about accusing Mr. *Oates* of Sodomy.

L. C. J. On whom?

Dangerfield. It was for attempting Buggery on the Body of this *Lane*.

L. C. J. That was the Substance of it?

Dangerfield. Yes, my Lord: And I did take this *Lane* to Sir *James Butler*, and he did make Affidavit that it was true: And it was left there before Sir *James Butler*. I suppose the Affidavit may be in Court, or a Copy of it. So, my Lord, after that *Lane* being gone from *Powis House*, and I having no manner of Converse with him more; but only that every *Saturday* I took care he should have his Money; sometimes I went to his Mother's Lodgings, and left it there for him; sometimes he would come to me for it. After this we were removed from *Powis House* to Mrs. *Celier's*, but he was always certain of Ten Shillings a Week. Sometimes he would pretend that it was too little for him to live upon; and sometimes I would give him Two, or Three, or Four Shillings more of my self; but I had no Order to do that from any Body. This is all, my Lord, I do know of *Lane*, as I remember.

Mr. *Just. Jones*. What do you know of *Knox*?

Mr. *Dangerfield*. *Knox* first delivered to me those Papers that were sent first to the *Tower*, and afterwards to *Nevil*, and afterwards to my

Lord *Castlemain*, and re-delivered to me; and I did deliver them again to *Knox*, after they were enlarged upon: And I believe, after that, *Knox* had prevailed with *Lane* to write them in his own Hand.

L. C. J. Why do you believe so?

Dangerfield. Because being writ in a fair Hand; *Knox* told me when the Papers were delivered; These are the main things that I am to work by, and these must be produced against *Oates*, and be writ over in a fairer Hand; and by that, I believe he prevailed with *Lane* to write it in his own Hand.

L. C. J. Whose Hand were they in?

Dangerfield. It was a strange Hand I knew not, and I do not believe it was *Knox's* Hand, tho' indeed I can't tell, I know it not.

Mr. *Just. Jones*. Did *Knox* ask you who had the Perusal of those Papers? And who had made Additions to them?

Dangerfield. No; he took the Papers, and took no Notice of any Addition or Enlargement.

Mr. *Just. Pemberton*. Pray, Sir, tell the manner of the delivering of those Papers.

Dangerfield. First, by Mrs. *Celier's* Persuasion, *Knox* delivered to me the Papers, which imported the whole Matter of the Charge against Mr. *Oates*. These I sent to the *Tower* by Mrs. *Celier's* Hands; from thence they were sent to *Nevil* to be enlarged upon; from thence to my Lord *Castlemain*, who was also to enlarge upon them; and from thence they were sent to Mrs. *Celier* again, and from her delivered to me, and I delivered them to *Knox* again. I found by his Discourse, and every thing else, that Mr. *Knox* was desirous of my Correspondence, but yet seemed as if he were shy of any body's taking notice of it. Said I to Mr. *Knox*, there is one Mrs. *Downing* that lives at *Lambeth* over the *Water*, where Mr. *Oates* and Dr. *Tongue*, and several other Persons used to meet, where I had been informed by some of the Catholics, by *Parsons*, my Lady *Powis*, and several others, that Mr. *Oates*, Dr. *Tongue*, my Lord of *Danby*, and others, did meet at the *Alms-Houses* there, where the Plot was contrived and formed, for they pretended to me there was no such thing really. So, said I, if you will go with me, we will discourse with her about the Matter, for I heard she talked very freely in several Matters nearly concerning Mr. *Oates*, and my Lord of *Danby*, and other Persons. So, as I said, I told him, if you will go along with me, I have not been there yet, I will go and discourse with her, and put down what she says in Writing. Then Mr. *Knox*, my Brother, and my self, did go over to this Mrs. *Downing*, and had much Discourse with her, where she did repeat many Transactions that were very agreeable to the Story that I had received from my Lady *Powis*, and several other Persons before. *Knox* did seem to be very well satisfied about it, and promised to take cognizance of it, and said, it was very material; but we did not put it down in Writing. I did not, I know not what he did afterwards. We promised to come again another time, but I do not remember we did ever go afterwards. But Mr. *Knox* solicited me to go with him, and some Business or other did still intervene. That is all that is remarkable of Mr. *Knox*, which I do remember at that time. But I do remember that after we were removed

removed from *Powis* House, when I was at Mrs. *Celier's*, nay, I think both before and after, he was often treating with Mrs. *Celier*; but I know not what was their Discourse, nor was I desirous to know. But Mr. *Knox* came then to me, and began to renew his Correspondence; and withal told me, that he had some Likelihood of bringing *Osborne* over to their Party. Said he, I find he is gone again to his Master, but he shall do his Business (meaning, as I suppose, Mr. *Oates*) for he had, as I understood by him at that time, been tampering with *Osborne*, but he did tell me it was *Osborne's* voluntary Act, that he did own it, and that he did go to Mr. *Oates* again only to do Mr. *Knox* Service. My Lord, some time after this, *Knox* came to me at Mrs. *Celier's*, and told me he had done the Business; expressing the greatest Joy that could be. What Business, said I? *Osborne* is come over, said he, and I have had an Account from the Beginning to the End of all the Transactions of his Master *Oates*; and I have not only an Account of it, but it is put into Writing; and I took *Osborne* before a Justice of Peace, and he hath made Affidavit of it. When I heard this, I thought it would give great Satisfaction to the Lords in the *Tower*, and desired Mr. *Knox* to let me have a Copy of that Affidavit. He told me, No, he thought it would not be material to let me have a Copy, for by that means it might become publick, and be discovered. And, said he, I have some further Design in this; Mr. *Oates* is going down to my Lord *Lovelace's* in *Oxfordshire*, and *Osborne* is going with him, and he hath promised me to be a Spy upon his Master's Actions, and to give me an Account of all. And this will be material; but I do not think fit to let you have a Copy of the Affidavit at present. Some time after this, I told Mrs. *Celier* the Story, who I suppose went to the *Tower*, and gave the Lords an Account of it. And the next time I had the Honour to see my Lady *Powis*, she was pleased to say, she liked it very well, but did not, as I remember, say any thing of the Copy; but being desirous to see what *Osborne* had sworn, and whether it were agreeable to *Lane's* Affidavit, that I spake of before, I did desire *Knox* to let me see it, but he had it not about him at that time. Some time after that, as near as I can remember, I was at *Proffor's* Coffee-House at *Charing-Cross*, and Mr. *Knox* came thither, whether by my Appointment or his, I can't well tell; but there we met, and one *Bedford* was with me. At that same time Mr. *Knox* desired we would go into a Back-Room; and now, said he, I will give you Satisfaction, and drew out of his Pocket an Affidavit; it was a Sheet of Paper, if not written of every side, I believe of three sides; it was very long; and he read it, my Lord, and I did find by the Contents of it, that it did imply the same thing that *Lane* had sworn before Sir *James Butler*; that is, That Mr. *Oates* should attempt upon *Lane's* Body, to commit Sodomy, or something very agreeable to it. I told him, Mr. *Knox*, said I, this is very material, this will do you a great deal of Service. The Term is coming on, you would do well to get an Indictment drawn up against Mr. *Oates*. Said he, I will do his Business, and will advise with Persons able to instruct me in it; and I don't doubt but to carry on the

Business effectually. And to that purpose I desired him to let me have a Copy of the Affidavit; he promised me I should, and said he would bring it several times; and he came several times to my Lodging, but did not bring it; but I having it read to me, and remembering the Contents of it, the next time I saw my Lady *Powis*, I gave her an Account of it. Said she, this Man is very diligent, and deserves to be encouraged; and, as I believe, gave the Lords in the *Tower* an Account of it too; for then she was lodg'd at the *Tower* with her Lord, and so her Ladyship told me. And, said she, do you know whether this Man be in a Condition to prosecute this Business against Mr. *Oates*? Said she, I believe he is put upon this by my Lord of *Danby*, and he, I believe, takes care of him to furnish him with Money. Said I, I have endeavour'd to trace him out in that thing, and by all his Correspondents I could never find, but only by one, that Mr. *Knox* was ever acquainted, or held Correspondence with my Lord of *Danby*, and that Person is Mr. *Netterville*, who is a worthy Gentleman of my Acquaintance in the *Pall-Mall*: And being in his Chamber, *Knox* came in, and speaking merrily after his manner to him, said he, *Knox*, when were you at the *Tower* with my Lord of *Danby*? Said he, I hold no Correspondence with him. Yes, said Mr. *Netterville*, 'tis plain you do; and I believe a Friend of mine saw you go in the other Day: But *Knox* did positively deny it; that was all that ever I heard of his Correspondence with my Lord of *Danby*. After this, when her Ladyship came to me to ask me what Condition he was in to prosecute the Trial; I told her, I believed his Condition was very mean, and it would be very acceptable, if he might or could be furnished with Money. Well, said she, I will take care of it, and give an Account of it to my Lord, and he shall be furnished. And in the mean time, if Mr. *Knox* wants Money, be sure you take care and furnish him; but you need not let it be very considerable, till you see what is raised. Some time after this, Mr. *Knox* came to Mrs. *Celier's* House to ask for me, I was then in my Chamber, but not ready; he came up to me, and told me, said he, Really I am very poor, I am going to pawn my Sword; or something to that purpose; Can you lend me Five Pounds? Really, Mr. *Knox*, said I, I will tell you, the Affidavit that you read to me, I have given an Account of it to my Lady *Powis*, and I suppose some other Persons of Honour have had an Account of it also; I am satisfied they are; and that the Lords in the *Tower* will take care that Money shall be raised for your prosecuting of Mr. *Oates*. He seem'd to smile at this; But, said he, if this should be known, it would be very prejudicial to the Business, and spoil it; but yet however if you can furnish me with Money at this time, you will do me a great Kindness, for I have very great Occasion. I told him, said I, I have not so much Money by me; you come at an unreasonable Time; though indeed I told him a Lye; but I thought it not safe to part with Money without further Order. Mr. *Knox* went away, and I gave an Account of it to Mrs. *Celier*, who went either every Day, or every other Day to the *Tower*. I told her what Mr. *Knox* said, and I do believe (as she told me afterwards) she told my Lady *Powis* of it, and

Mrs.

Mrs. *Celier* seem'd to be angry that I did not let him have the Money, and order'd me that at what time soever after that Mr. *Knox* should come to me, I should let him have what Money he wanted. Some time after this, Mr. *Knox* did come to me, and said his Condition was very mean, and you told me, said he, that Care should be taken by the Lords in the *Tower* to furnish me with Money. Said I, Mr. *Knox*, I can let you have 30 or 40 s. if that will do you any Kindness. I have no Order for any Sum at present; but as soon as it comes, it must come to you through my Hands; and it must pass as if I lent it you; and you shall give me a Note for it to repay it, lest any thing should come to be discovered, and coming to Mr. *Oates's* Hearing, should prejudice the Business; though I had been too forward before in giving Mr. *Knox* an Account that the Lords in the *Tower* would contribute to this Business. At that Time I went up Stairs and fetch'd down 40 s. and gave it him. He came afterwards, and would have borrow'd more of me at other times, once or twice after that, but I did not furnish him, for I had received no Order to furnish him any further. And this, my Lord, is all the Correspondence I had with him, and, as near as I can remember, I have given nothing in but what is a very true Account of the Transaction.

Sir *Fr. Winnington*. My Lord, I crave one Question of him, if he have done. After the Papers were corrected and written fair, and enlarged upon by the several Persons, did you read them? And what were the Contents of them?

Dangerfield. My Lord, I did not read them, nor did I draw them, but I do believe that the Contents were the same for Substance with the Affidavit that *Lane* made before Sir *James Butler*.

Mr. *Williams*. Sir, you mention several Sums of Money that you paid to *Knox*, and paid to *Lane*; pray where had you this Money?

Dangerfield. The 40 s. that I gave to *Knox*, it was my own Money; but if I must give an Account where I had it, I believe it came originally from the *Tower*.

Mr. *Williams*. The Ten Shillings a Week, whence came that?

Dangerfield. Sometimes from the Hands of my Lady *Powis*; at other times from Mrs. *Celier*; sometimes from Mr. *Wood*; and sometimes from my self, and I placed it to Accompt.

Mr. *Serj. Maynard*. If your Lordship please, we will now proceed to another Part of our Evidence.

Mr. *Williams*. About what time were they to Indict Mr. *Oates*? Was not this Project on foot when the Presbyterian Plot was on foot?

Dangerfield. My Lord, I don't know what time; but it was by my Advice to be done this Term, and so did *Nevil* advise too.

Mr. *Serj. Maynard*. My Lord, I would read some of the Memorials or Informations, that they were to swear against Dr. *Oates* concerning the Business that you have heard.

L. C. J. Wou'd you have them read, Brother?

Mr. *Serj. Maynard*. Yes, my Lord.

L. C. J. Who proves them?

Then the Justices of Peace swore them.

Mr. *Just. Pemberton*. Sir *William Waller*, Did he confess he left them with my Lord *Latimer*?

Sir *W. Waller*. These are the Papers that were confessed to be carry'd to my Lord *Latimer*.

Mr. *Warcup*. *Osborne* did swear, That the Informations marked 1, 2, 3, 4, and 5, were all of his own Hand-writing, and were dictated by the said *Knox*.

Mr. *Just. Pemberton*. And he did confess, That these were the Informations that he had deliver'd to my Lord *Latimer*.

Mr. *Warcup*. Yes, he did so.

Mr. *Serj. Maynard*. It will lie on his Part, to prove that they were true.

Mr. *Just. Pemberton*. Which will you have read, one, or all of them?

Mr. *Serj. Maynard*. One, or Two; take *Knox's* first.

[Which was delivered to the Clerk of the Crown, who read it in hæc Verba.]

[Numb. 1.] The Information of *Thomas Knox*, sworn before me this Day of 1679.

THIS Informant doth upon his Oath declare, That on the first of this present April, there came one *William Osborne* to the Informant in the Painted Chamber in Westminster, and told to him the said Informant, that he had something of Moment to reveal to him; and did also desire the Informant to go with him into the Abby, and he would reveal it to him: Upon which the said *Osborne* and the Informant being together, the said *Osborne* did tell the Informant, that his Conscience was mightily troubled, for that he found the Lord-Treasurer was maliciously prosecuted by Mr. *Oates* and Mr. *Bedlow*; for that he having been a Servant to Mr. *Oates*, and had often heard Mr. *Oates* and Mr. *Bedlow* consult together, in Mr. *Oates's* Chamber in White-hall, and resolve how they might contrive a Way whereby to destroy my Lord-Treasurer: And that he had chosen to reveal this Secret, and ease his Conscience to the Informant, rather than to any one else, because he thought he would keep it secret, for his own sake, because he had already suffered by endeavouring to serve the said Lord-Treasurer; and thereupon the said *Osborne* shewed to the Informant some Papers written, as he told the Informant, all in his own Hand, and which were relating to the said Lord-Treasurer. Upon which the said Informant told the said *Osborne*, that he was no Servant of the said Lord-Treasurer's, and did not therefore desire to meddle in it; and that particularly, because he had never spoke with the said *Osborne* before, and desired to be excused; upon which the said *Osborne* did press the Informant, and withal did tell him, that if he did not assist him in this Affair, it was resolved both by him, and one Mr. *Lane*, that they would come in on the Day of the said Lord-Treasurer's Trial, and declare the Truth concerning what they knew, concerning the malicious Design of the said Mr. *Oates* and Mr. *Bedlow*, against the said Lord-Treasurer; for that they could not rest for fear he should suffer innocently, whilst they could, with so good a Conscience,

science, as they thought, save him. And the said Osborne did withal declare, that the aforesaid Mr. Lane was resolv'd to speak to the Informant upon the foresaid Matter: And the said Lane did accordingly, upon the said First of April in the Evening, meet the Informant, and shewed him some Papers, wherein he had taken several Memorials relating to His Majesty, the Queen, my Lord-Treasurer, and several other Persons: And did withal declare to the Informant, that his Conscience was so troubled to see the malicious Proceedings of the said Mr. Oates and Bedlow against the said Lord-Treasurer, that he could not rest in his Bed, until he had disburdened it, by telling the Truth; and if he had not met with this Informant, he was resolv'd to declare it speedily to some one else; or come himself at the Day of the said Lord-Treasurer's Trial, and there declare all that he knew relating to that Affair. And did withal conjure the Informant, as also the said Osborne, to keep all they had told him secret; for if it should come to the Ears of the said Mr. Oates and Bedlow, they would endeavour to poison or murder them, the said Osborne and Lane, the first time they should see them.

Tho. Knox.

Then a Second was offered to be read; but there appearing scandalous Matter to be in it, reflecting on the King, the Court thought not fit to suffer the same to be read through.

Mr. Serj. Maynard. My Lord, I think it appears by the Evidence sufficiently, how they did design to accuse Mr. Oates.

L. C. J. Ay, Brother, come let us hear what they can say to it on the other side.

Mr. Withins. May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel for the Defendant Knox, and for Knox only.

Mr. Williams. Pray Sir, hold; my Lord, we have here two Witnesses more, that will fortifie Mr. Dangerfield in what he hath said. Call Susan Edwards, and Mrs. Blake.

Then Mrs. Blake appeared, and was sworn.

Mr. Williams. Pray, Mrs. Blake, what can you say of any Reward Lane was to have, for accusing Mr. Oates? Or any Promises were made to him?

Blake. All that I can say of Lane, is this; That Lane did say once to me, I am here; and I was Dr. Oates's Man, and he would have buggered me: And he did make Complaint for want of Linnen; and spoke to me to wash him some Linnen. Said he, Here I have no Linnen, neither will they let me have any; and his Boy here will not stir to look for any, unless Willoughby speak to him. Then the Boy was spoke to.

L. C. J. What is all this? What says the other Woman?

Mr. Williams. He is call'd Willoughby sometimes, and sometimes Dangerfield; for he went by both Names: But I ask you what Money you know was given to him?

Blake. He told me, he was to be allow'd Ten Shillings a Week.

L. C. J. This is only to strengthen his Evidence.

Blake. He never said to me, from whom it was.

Then Mrs. Edwards was sworn.

Mr. Serj. Maynard. What do you say, Mistress?

Edwards. May it please you, I don't know Lane; I never saw him in my Life, but only when he was sent for by Mrs. Celier, to get an Habeas Corpus for Willoughby, who was then in Newgate; and he did come the next Day, and gave his Answer to me.

L. C. J. She says nothing, but only he was desired to get an Habeas Corpus for Willoughby.

Mr. Sol. Gen. Yes, my Lord, she is called to shew you, whether Lane had not Money from Mrs. Celier.

Edwards. That was the first time I saw him, and the next Morning I saw him again: And when he came to the Door, he told his Errand to me. He said, he could get no Habeas Corpus; for he was such a Rogue, no body would meddle nor make with him.

Dangerfield. I would fain have her ask'd this Question, my Lord, if you please: Did you ever see Mr. Knox at Mrs. Celier's House?

Edwards. If I see him, I can tell.

Then the Defendant, Knox, was shewn to her.

Edwards. I cannot say, this is the Man: I have heard much talk of Mr. Knox, and that he hath been there; but I cannot swear this is he.

Dangerfield. My Lord, if your Lordship pleases, when Lane was first brought to me to the Countess of Powis's House, he was very meanly Equipag'd, and the Countess of Powis was informed of it, and did desire me to take some particular care to cloath him, and that I should put him into a Disguise; but at that time I had a Suit of Cloaths that were lin'd with blue, which I gave to him; and I also advised him to cut off his Hair, and to put on a Peruke, which he did, and hath worn it ever since, as I believe.

L. C. J. Well, let us hear what they say to it.

Mr. Withins. May it please your Lordship, I am of Counsel in this Case for Mr. Knox; there are two Persons here made Defendants: As for Mr. Lane, I have nothing to do with him, nor to say for him; and his Case hath made him appear to be a very evil Man. But, my Lord, I do observe that the Indictment consists of two Parts: The first is, That these two Defendants did conspire together; and this was the Thirtieth of April (and the Proof comes to that Time, for it will be material in our Case) that they did maliciously and deceitfully combine and conspire against Titus Oates, Clerk, and William Bedlow, Gentleman, who had discovered this horrid Popish Plot, and whom they knew to have given Informations of it, to take away their Reputation, and make them Witnesses of no Belief, or Credit; that is one part of the Indictment. The other Part is, That to further the same, Mr. Knox did cause two or three Letters to be written, as from Osborne and Lane to him, purporting those Aspersions to be laid upon Oates and Bedlow: For the last

Part of the Indictment, the Council for the King have not thought fit to proceed upon it, and they have not given an Account of the Letters: But for the first Part, their conspiring to take off the Reputation of *Oates* and *Bedlow*, is the only thing they have proceeded upon, as I conceive. I must needs say, my Lord, that Mr. *Knox*, as well as Dr. *Oates* and Mr. *Bedlow*, have had a very great Misfortune to meet with these Men.

L. C. J. To meet with whom?

Mr. Withins. To meet with *Osborne* and *Lane*; for I do not here pretend to lay any Asperſion, or make any Reflections upon the Credit or Reputation of Dr. *Oates* or Mr. *Bedlow*. I think they have ſerv'd the Nation too well to be vilify'd here. But I ſhall ſay this, that as *Osborne* and *Lane* had a great Deſign to Diſgrace and Diſcredit Mr. *Oates* and Mr. *Bedlow*, ſo they had a Deſign to draw my Client Mr. *Knox* in, to purſue their Malice. I did ſhew you, that they did begin their Evidence, as to Time, in *April*, and they have laid it ſo in the Indictment: We ſhall prove to your Lordſhip, and ſhew you, that before this, and before that Mr. *Knox* knew either *Osborne* or *Lane*, that they had drawn up this Accuſation againſt Mr. *Oates*, and read it to ſeveral Witneſſes, which we ſhall produce. And afterwards, when they came to adviſe how they ſhould proſecute the ſame, they were adviſed firſt to go to Mr. *Thewer*: He told them that it was a dangerous thing to meddle about, and he would not involve himſelf, but bid them take care what they did in it. Upon this they apply themſelves to my Client Mr. *Knox*, he told them the ſame thing; it is a Matter of great Conſequence, I deſire not to meddle with it. Said they, will you not aſſiſt us in this Buſineſs, when we only diſcover this to acquit our own Conſciences, who knew theſe things to be treating and contriving againſt the King and my Lord of *Danby*? For my part, ſays one of them, I cannot leave the Town till I have diſcovered it. Notwithſtanding this, Mr. *Knox* would not undertake to meddle with it, but left them. They come to him the ſecond Time, and Mr. *Knox* being a young Man, and it ſeems being a Servant in the Family, enter'd into a Correſpondence with them, to proſecute what they had deſign'd to do. There is nothing appears (and this I would obſerve, if your Lordſhip pleaſe) in the whole Evidence, that Mr. *Knox* was to ſwear any thing againſt Dr. *Oates* or Mr. *Bedlow* (as I remember) but he was indeed engaged to carry on the Proſecution, theſe Witneſſes informing him of it; and that it was a Truth, I muſt obſerve to your Lordſhip upon their Evidence, they did inſinuate, as if Mr. *Knox* had been at the Charge of maintaining *Lane*: But I think, that Mr. *Dangerfield* hath pretty well cleared whence that Maintenance came that he gave to Mr. *Lane*; that it came thro' none of the Hands of my Client, Mr. *Knox*.

L. C. J. No, Mr. *Withins*, he is not accuſed for giving him a conſtant Maintenance, but for the Money, the Guineas and Ten Shillings. 'Tis true, it was ſaid, it was to be paid again; but from him they had the Money: And it appears, that he provided Lodgings for them, and paid for their Lodgings.

Mr. Juſt. Pemberton. And pray obſerve this, That what Mr. *Dangerfield* ſpeaks of, is of a Time afterwards, after they had been taken and imprifoned, and confeſſed the Matter.

Mr. Withins. But this you obſerve, I hope, my Lord, from Mr. *Dangerfield*'s Evidence; That *Knox* was very poor, had not any thing to maintain himſelf with.

L. C. J. The Sums indeed don't ſeem to be very great; a Guinea, and Ten Shillings in Silver: But whatever it was, he gave it them, and took Lodgings for them, and paid for them.

Mr. Withins. I did intend to obſerve to your Lordſhip, That 'tis a pretty ſtrange thing, that there ſhould be a Deſign to corrupt Perſons to commit this foul and horrid Offence; and nothing of a Reward or Corruption prov'd, but two Guineas and ten Shillings.

Mr. Juſt. Pemberton. What ſay you to the Promiſes of 500*l.* and 100*l.* a Year a-piece?

Mr. Withins. That was *Lane*'s own Evidence. *Lane* and *Osborne* might brag what they would of what they were to have, and from whom; but I believe not one in the Court believed a Word they ſaid. For it does appear, that *Lane* did forſwear himſelf backwards and forwards, as the Wind blew. So that, as for what *Lane* hath ſaid, it weighs not: But we ſhall call two Witneſſes, to whom *Lane* declared this Matter in *February* and *March*, before the Time that *Knox* was concerned: So that if we make it appear, that the Contrivance was theirs, and there was only a great deal of Weakneſs and Indiscretion in Mr. *Knox* to believe ſuch idle Perſons, againſt Perſons that had ſhew'd themſelves ſo conſiderable in this Diſcovery; I hope it will not be thought ſuch a Crime in us, ſeeing there is nothing in it, but that a young Man was led away; and only his Folly and his Indiscretion drew him in, not any Malice or ill Deſign.

Sir W. Waller. My Lord, Mr. *Knox* did confeſs to me, that he did throw down a Guinea, and then *Lane* and *Osborne* took it up; but they both poſitively ſwore, that he threw it down for this Reaſon, that he might ſafely ſwear he never gave them it.

Mr. Saunders. All that they ſwear is not agreed to be true: My Lord, if your Lordſhip pleaſe, I am of Council for the Defendant *Knox*, and as to that part of the Indictment that charges him with writing the Letters, they do not proceed upon.

Mr. Serj. Maynard. Yes, we do, we proceed upon the whole—

L. C. J. They proceed upon the whole, but you may ſay, if you will, they give no Proof of it.

Saunders. Then, as to that, with ſubmiſſion to your Lordſhip's Judgment, the Defendant is to be found Not Guilty.

Mr. Juſt. Pemberton. You muſt obſerve, theſe are not ſeveral Crimes, but one continued Crime, and therefore the Evidence muſt go to the whole.

L. C. J. You do well to obſerve it for your Client; but if you require it of the Council on the other ſide, it may be they will give you an Answer, if you will undertake to affirm, that they have given no Evidence as to that part of the

the Indictment wherein it says, Mr. *Knox* contrived three Letters to scandalize Mr. *Oates*.

Mr. *Saunders*. We submit it to the Court whether they have or no. For the other part of the Indictment, wherein it is charged, that he should maliciously contrive with *Lane* to lay a Calumny and Scandal upon Mr. *Oates* and Mr. *Bedlow*, the very Point we are to answer to is this, Whether this were a malicious Contrivance or no, and for that we shall give your Lordship this Evidence: That *Knox* was a young ignorant Man, and drawn in by *Lane* and *Osborne* to patronize their Mischief they intended against *Oates* and *Bedlow*; for, my Lord, Mr. *Knox* was not acquainted with them, or had any thing to do with them, till that they had contrived this matter among themselves: For, my Lord, we shall call you Witnesses to prove, that before *Knox* had to do with them, they would have had another Person to prosecute this Business for them. And if we satisfy you that he was drawn in, I hope it will acquit us; notwithstanding I will observe to your Lordship and the Jury, whether *Lane* be guilty or not guilty does not affect us, if we were only drawn into the Contrivance.

L. C. J. Wherever *Lane's* Testimony stands singly against *Knox*, it is no Evidence.

Mr. Just. *Jones*. But if he was not in the Plot at the beginning, but was drawn in, and did after proceed with them, as *Dangerfield* proves, I doubt it will not acquit him.

Mr. Just. *Pemberton*. Consider a little your Case; you say here was a Contrivance of two, that *Knox* was not in the beginning, but they offered it to others with whom it would not take. Why, let *Knox* come in when he will, if he does come into the Contrivance, and takes the Papers, and manages the business to fix these Scandals, and encourage them to carry them on, *Knox* is as guilty as all the rest.

Mr. *Saunders*. But if these Men come and tell him these things are true, and we can swear them, and so is drawn in, it takes away the Malice of the Contrivance.

L. C. J. This is the Use the Defendant *Knox* his Counsel make of it: At first *Knox* was not acquainted with the matter; and when he did come to understand it, he thought it to be true, as they affirmed it was true, and, said they, we will go before a Justice of Peace and swear it: He was willing, there being a Discovery of several Conspiracies against his Lord's Life, as they said, he being his Servant, he was willing to prosecute the Business; and this is the Use they make of it.

Mr. Just. *Pemberton*. Come, let us hear your Witnesses.

Mr. *Scroggs*. Call *Frances Lane* and *Mary Lane*.

L. C. J. But I'll tell you what; it will be necessary to clear your selves, as well as you can, of those Papers that were delivered by *Knox* to *Dangerfield*, and went about to the Lords in the Tower, and afterward to *Nevil*, and by him amended, and after delivered to *Knox* again by *Dangerfield*: This does shew as if you were concerned in the whole Affair, and in all the matter of the Information, before it was cook'd and after it was dress'd. You must give some Account of that, for that sticks strongly upon you.

[Then Mrs. *Frances Lane*, and her Daughter *Mary Lane*, were Sworn.]

VOL. II.

Mr. *Scroggs*. Mrs. *Lane*, are not you Mother to *Lane* the Defendant?

Frances Lane. Yes.

Mr. *Withins*. Pray will you give an Account what your Son said to you in February last?

Mr. Serj. *Maynard*. We pray they may ask their Questions in general.

Mr. Just. *Pemberton*. Don't you point her to a Time.

L. C. J. Answer me: What hath your Son said to you at any time concerning *Oates*?

Frances Lane. He spoke it about March.

L. C. J. What did he say?

Frances Lane. He used him uncivilly, he had no mind to stay with him.

L. C. J. What said you?

Frances Lane. I desired him to stay longer.

L. C. J. How often did he tell you this?

Frances Lane. Several times.

L. C. J. He had left his Service once, had he not?

Frances Lane. Yes.

L. C. J. Was it before or after he left his Service?

Frances Lane. Before and after too.

L. C. J. If he complained he had so used him before, why would he go to him again?

Frances Lane. Because the Times were hard, and I persuaded him.

L. C. J. Ay, but would you persuade him after such an Abuse of your Son as that?

Frances Lane. I thought then he would not do so again.

Mr. Just. *Jones*. When was the first time he complained to you?

Frances Lane. It was about Christmas.

Mr. Just. *Jones*. Was it before Christmas?

Frances Lane. It was after.

Mr. Just. *Pemberton*. Consider here you bring *Lane's* Mother to accuse him to excuse your self.

L. C. J. But is this material?

Mr. *Scroggs*. It is material to our Client Mr. *Knox*, who was drawn in here by a couple of Rascals. We prove, that before this time which Justice *Warcup* and Sir *William Waller* have in their Informations, they offered the same Discovery to others.

L. C. J. Call them and prove it, but you will never have the better Name for calling them ill ones.

Mr. *Scroggs*. We lay all upon *Lane* and *Osborne*, who inveigled *Knox*.

Mr. *Saunders*. Pray, Mrs. *Lane*, tell the Court and Jury how and when your Son came acquainted with Mr. *Knox*.

Frances Lane. May it please you, my Lord, *Osborne* brings a Paper to our House, and would have had my Son have read it, but he could not, so he read it himself; and there were some desperate things in it.

L. C. J. What were they?

Frances Lane. I can't tell, they were concerning the King and the Queen and my Lord Treasurer.

L. C. J. When was this?

Frances Lane. In March last, at our House, and I desired them they would not meddle with such things, for I said they were things beyond them. My Son promised me he would not meddle with it, but let *Osborne* alone with it; but said I, pray go to one Captain *Thewer*, he is a good civil Man, and a Man of Understanding. So they did go as I directed them.

Mr. Just. Pemberton. Who went?

Frances Lane. Osborne did.

Mr. Just. Pemberton. Who went with him? for you say They.

Frances Lane. John Lane, my Son.

L. C. J. Was there any thing particular in those Papers concerning Mr. Oates being guilty of Sodomy?

Francis Lane. I cannot say in particular, it is a great while ago, but he went to Captain Thewer, and he wish'd him, after he had read it, said he, don't meddle with any of these things, for it will be the worse for you.

L. C. J. As your Son told you, you were not by.

Frances Lane. Yes, they both told me so. With that says Mr. Osborne, I'll find out one Mr. Knox, who had been some Acquaintance of Mr. Wiggins, Mr. Bedlow's Clerk; and so, said he, I will ask Mr. Wiggins if he be acquainted with Mr. Knox.

L. C. J. Did your Son at that time know Knox?

Frances Lane. No, my Lord, he had never seen him at that time; so my Son went, and they found Mr. Wiggins and Mr. Knox walking in the Abbey.

L. C. J. Was Lane with him then?

Frances Lane. He went with Osborne, and came and told me, Knox would not meddle with them.

L. C. J. Who came and told you so?

Frances Lane. Osborne came and told me so, and my Son.

L. C. J. You were not by?

Frances Lane. No, not I; but, said he, as he told me, I will go to him again; and afterwards he did meet him again, as he said, and delivered them to him.

Mr. Withins. Did you ever see Knox in your life?

Frances Lane. I had never seen him then.

Mr. Withins. Did you ever hear your Son say, he did know Knox before that time?

Frances Lane. Never in my life.

Mr. Just. Pemberton. But you do not prove that they were not acquainted.

L. C. J. Do you believe Osborne said true, Mr. Saunders?

Mr. Saunders. Not when he spoke to Sir William Waller to accuse my Client of the Contrivance.

L. C. J. In that case, when 'tis against your Client he did not, but in other cases he might; well, go on.

Mr. Withins. Which is Mary Lane?

Mary Lane. I am she, Sir, I can say no more than my Mother hath said, I was by at the same time.

Mr. Saunders. Do you know when John Lane came acquainted with Knox? Was it before April last, or after?

Mr. Just. Pemberton. How is it possible that any one can swear a Negative?

Mr. Saunders. If we can't prove the Negative, nor they the Affirmative, it will be presumed they were not, because it is not known.

Mr. Just. Pemberton. Nor do you prove any Informations before given to any one.

Mr. Saunders. Yes, To Thewer.

Mr. Withins. We will ask the Daughter about that.

Frances Lane. She can only prove it by hearing it, for she was sick.

Mr. Withins. Young Mrs. Lane, what was there in that Paper that Osborne brought to your House?

Mary Lane. There was concerning the King, and the Queen, and my Lord-Treasurer.

L. C. J. Was there any thing in it concerning Mr. Oates?

Mary Lane. Yes, there was concerning his Beastliness.

Mr. Just. Pemberton. Who read it?

Mary Lane. Osborne I did hear read it.

Mr. Saunders. Your Brother was not acquainted with Knox then?

Mr. Just. Pemberton. How can they tell that? 'tis impossible.

L. C. J. The Nature of the thing is such, that it can be proved no otherwise. But it seemed to them that they were of no Acquaintance; it is hard to prove when an Acquaintance begins.

Mr. Saunders. And further than this we cannot go in such a Case; for that thing of the great Sums of Money, certainly it was as little a thing as could be; there was no more in the case than a Guinea, and ten Shillings, and three half Crowns, as proved, and he was cheated of them, it seems, for they would not do the Work.

Mr. Scroggs. 'Tis an improbable thing that he should be so poor as to sell the Handle of his Sword, and yet be engaged in the Management of such a Plot, and not have Money for it.

L. C. J. There is no great store of Money appears to be given to Lane, but he was kept upon a mean Maintenance.

Mr. Just. Jones. But it was not without Expectation of a Reward.

Mr. Just. Pemberton. He tells you the Wages was to be paid when the Work was done.

L. C. J. And when the Roguery was discovered, they had no more Money then.

Mr. Just. Pemberton. When the Business came to be controverted thus, they had no reason to give it.

Mr. Saunders. Though Lane had Maintenance, yet our Client Knox was not taken such care of; still there was Provision made for him, but none for us, because we were drawn in and did not contrive it.

Mr. Just. Pemberton. But remember, Mr. Saunders, by the same Hand there were forty Shillings given at one time.

Mr. Withins. Well, my Lord, we have done: We say, that we had no part in the Malice of the Contrivance, and therefore ought not to be punished with them.

L. C. J. Well, Mr. Holt, what say you for Lane?

Mr. Holt. My Lord, I am assign'd of Counsel for the Defendant Lane. I have no Witnesses at all to examine, but only shall make some little Observations upon the Evidence that is given for the King. As for the Indictment itself, though it is not several Crimes, but one complicated Crime; yet the Evidence that is given is only to one part thereof; and therefore I submit it to your Lordship, if the Proof be proportionable to the Charge, and whether the Defendant ought not to be found Not Guilty. There hath been great mention made of the writing Letters, yet it would be hard that the Defendant should be found Guilty of such an Offence, when the Proof

Proof does not come up so high; that would introduce a severer Punishment than the Crime proved would justify.

Mr. Just. *Pemberton*. Pray, Mr. *Holt*, don't go away with that; I must set you right a little there: The Crime that is laid is, To discountenance the King's Evidence, and to make them that they should not be believed. The Means are several, partly by casting of Crimes upon them, partly by writing Letters; that Crime is another thing, and therefore if they do not find them Guilty of every one of the particular means, yet the Crime must be found.

L. C. J. You are in the right thus far, Mr. *Holt*; they have laid the Indictment, That they endeavouring to disparage the Credit of *Oates* and *Bedlow*, have, for Money's sake, and by Promises and Contrivances, and writing of Letters, wherein was scandalous matter against *Oates* and *Bedlow*; they thereby did attempt to discredit 'em. Now say you, if this matter be not proved, that there was any scandalous matter concerning *Oates* and *Bedlow*, then the Contrivance is not proved: But what though all the Facts in the Indictment are not proved, yet if there be enough to prove your Contrivance to Discredit them; and if you suppose the Evidence true that is given, it rests, I think, plainly upon your Client, and you cannot get off from it: But if there be not sufficient Proof to maintain the Indictment for the Crime of endeavouring to discredit *Oates* and *Bedlow*, unless they prove the Letters also, you say something; but there is the Business that sticks on you, they have proved enough without that.

Mr. *Holt*. If the Jury do not find them Not Guilty generally, may they not find them Not Guilty of writing the Letters?

L. C. J. No: For if the other part of the Evidence did not amount to a Proof of a Design of Disparaging their Testimony, you had a very strong Objection of it: But if they lay five things, and they prove but one of them upon you; if that one serves to the Disparaging of *Oates* and *Bedlow*, which is the Substance of the Indictment, that maintains the Indictment.

Mr. *Holt*. It does so, my Lord; but not the Aggravations.

L. C. J. All that you say then is in mitigation of a Fine; but if all be true that is proved upon your Client, as I see no reason to doubt it, you will save but little by this Defence.

Mr. *Holt*. My Lord, as to the Matter, it all depends upon the Credit of the Witnesses, and Credibility of the Circumstances in themselves, and one with another. Some of the Evidence is but very slight, and sure were but produced to spend Time.

L. C. J. Indeed there was a great deal of it to little purpose: for ought I see, this Trial needed not to have been above an Hour.

Mr. *Holt*. As for his saying he should have a 100*l.* a Year, and the bettering of his Fortune, it was but his Vanity and Extravagance.

L. C. J. Mr. *Holt* does argue as much for his Client as the Case will bear.

Mr. *Holt*. They have endeavoured to lay all upon us; now if so be we are affected with any severe Evidence, I think the same Evidence (to requite them) does affect them.

L. C. J. This is a kind of Battle-Royal, where every one hath two Enemies to oppose.

VOL. II.

Mr. *Holt*. Here is Mr. *Dangerfield*, he comes, and in his Evidence tells you, That my Lady *Powis* was so long upon her Knees to thank God that her Party was so much strengthen'd by the Accession of *Lane*: My Lord, I desire the Quality of Mr. *Lane* may be taken notice of; a Footman and a young rash Fellow, one that both for Age and Quality could not be very considerable.

L. C. J. But two Witnesses are better than one, Mr. *Holt*; do you remember that? *Knox* used that Expression, If *Lane* do but keep firm, we shall be too hard for *Osborne* alone, for two Witnesses are better than one; but by that he counted *Lane* worth something.

Mr. *Holt*. You must consider, what he was to swear, they could scarce get an Evidence so proper for what they would have him swear.

L. C. J. Mr. *Williams*, what Answer can you give to all the Transactions that Mr. *Dangerfield* tells you of about *Knox*? Besides, take notice of this; you would have this to be a Contrivance by *Lane* and *Osborne*, to be between themselves, and that your Client must be a Stranger to it; and when he comes to know it, he knows it only as a Remorse of Conscience that they tell him they have, and desire him to go with them before a Justice of Peace to swear it, and he hearing something that might affect his Master the Earl of *Danby*, and believing that all was true, did encourage that matter only for his Master's Service, and thought he did a good Act in it. But your subsequent Behaviour shews it was a Conspiracy rather; for, first, your secret ways of sending your cunning Notes, *We all club'd together, and you paid two Shillings at the Sugar-loaf; tear this*; which shews, and does to my apprehension signify, as if he would never own that he spent any thing upon them, and that he was bountiful to them. And then the giving of Money to the Man to convey Notes, that they might not betray one another; do not all these subsequent Actions, especially those *Dangerfield* tells you of, and receiving the Papers after they were enlarged upon, speak it a Conspiracy? What can you say to all this?

Mr. *Williams*. My Lord —

Mr. Just. *Pemberton*. Stay a little, and answer all together. Do but consider with your self, those Informations your Client Mr. *Knox* did own he took, and before they were sworn, and carried them to my Lord *Latimer's* Lodgings, and he himself owns, that he took Lodgings for them, and lay with them, and when the Lords were in pursuit of them.

L. C. J. And then does he steal them from place to place, and takes Lodgings for them, and pays for them.

Mr. Just. *Jones*. He brings one of them to make Affidavit, and will keep it by him, is shy of shewing it: afterwards does shew it, this makes him a Contriver too, as well as an Executor.

Mr. *Saunders*. If your Lordship please —

Mr. Just. *Pemberton*. Consider too the Papers that were put in too of Caution, that *Knox* and they should not be found in several Tales; for *Knox* had been examined before they were: what was the meaning of those Instructions?

L. C. J. If you have any Witnesses to wipe your selves clean from the matter of receiving the Papers from *Dangerfield*, and taking Lodgings

for them when they were under that Accusation, do.

Mr. *Saunders*. I have a word to answer upon the Testimony of Mr. *Dangerfield*.

Mr. Just. *Pemberton*. Consider this, that he attempted another Man upon the same Account; your Client did tempt *Wiggins* to do the same thing to his Master.

Mr. *Saunders*. That was in *February* before, and all that he said was, that he would have had out of Mr. *Bedlow's* Servant, what Company his Master kept, and what he did.

L. C. J. You do observe right.

Mr. Just. *Pemberton*. And to have betray'd his Papers to him.

L. C. J. That does not reach this Indictment indeed; but that thing that he would have tempted him to, was to have discovered, and to have a Transcript of all the Papers that concern'd my Lord of *Danby*; that he should watch his Company, and know what Lords were with him, that he might make his opposition as well as he could, and that he should have what Place he did desire under my Lord. It does not affect the Case of the Indictment, but it shews you are a Tempter of Men, and that you are a Cautioner, that you would hire a Man to betray his Master's Papers, which is not fair, let the Master be who he will.

Mr. Just. *Pemberton*. It facilitates the belief of this.

L. C. J. Yes; Ay, ay, it is to make the Jury more apt to credit what the Evidence of this particular Fact is.

Mr. *Saunders*. My Lord, let me offer this Word, and I submit: Mr. *Dangerfield* himself does swear, that *Lane* brought him a Paper containing the same matter that he did falsely accuse Mr. *Oates* of, and he read it over three times to him, and then he swore it before Sir *James Butler*. My Lord, I will put my Cause upon that Point, Whether Mr. *Dangerfield* did not believe it to be true at that time.

Mr. Just. *Jones*. Your Client is the more mischievous Man, to contrive it so, as to make the thing to be believed when it was false.

L. C. J. The use of the Argument he makes is this; That as Mr. *Dangerfield* might be deceived into a belief that the Information was

true, so might Mr. *Knox* as well, when he saw one ready to swear it: But hath *Dangerfield* done those subsequent Acts which he hath done in the Confederacy, for which he is now Indicted?

Mr. *Saunders*. He swears in his Information, that they came to his Hands from *Lane* and *Osborne*.

L. C. J. Well Gentlemen, you of the King's Council and of the Jury, you need not any summing up of the Evidence, I think the thing is evident.

Mr. Just. *Pemberton*. Gentlemen, 'tis a very clear Case, as clear as the Day; I think you need not go from the Bar; but do as you will.

[Then the Jury laying their Heads together, agreed without delay, and without moving from the Bar.]

Cl. of Cr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Fore-man.

Cl. of Cr. How say you, are the Defendants Guilty of the Offence and Misdemeanour whereof they stand Indicted, or not Guilty?

Fore-man. Guilty.

[At which the People gave a great Shout.]

Mr. Serj. *Maynard*. My Lord, I pray the Verdict may be Recorded.

Mr. Just. *Jones*. Let it be so. Come, where are these two young Fellows? Let us see if they can shew their Faces now.

[And they were brought into the middle of the Court.]

Knox. Will your Lordship give me leave to speak one Word for my self?

Mr. Just. *Jones*. No, no, there's no speaking now; take them into your Custody, Marshal.

[Which was done, and the Court broke up.]

They were afterwards sentenced: *Thomas Knox* to a Fine of 200 Marks, a Year's Imprisonment, and to find Sureties for his good Behaviour for three Years. *John Lane* to a Fine of 100 Marks, to stand in the Pillory for an Hour, and to be Imprisoned for one Year.



LXXXIX. *The Trials of* LIONEL ANDERSON, *alias* MUNSON, WILLIAM RUSSEL, *alias* NAPPER, CHARLES PARRIS, *alias* PARRY, HENRY STARKEY, JAMES CORKER, WILLIAM MARSHAL, *and* ALEXANDER LUMSDEN, *with the Arraignment of* JOSEPH KEMISH, *at the Old Baily, for High-Treason, being Romish Priests, Jan. 17, 1679. 31 Car. II.*

Cl. of Cr.



KEEPER, set David Joseph Kemish to the Bar.

[Which was done.]

David Joseph Kemish, hold up thy Hand. [Which he did]

Thou standest Indicted by the Name of David Joseph Kemish, of the Parish of St. Giles's in the Fields, in the County of Middlesex, Clerk; for that thou being born within the Dominions of our Sovereign Lord the King, and being a Priest, made and ordained by Authority derived from the See of Rome, after the Feast of the Nativity of St. John Baptist, in the first Year of the Reign of Queen Elizabeth, and before the Fifteenth of November, in the Thirtieth Year of the Reign of our Sovereign Lord the King that now is, The Laws and Statutes of this Kingdom of England not regarding, nor the Penalties in the same contained any ways fearing, the said 15th day of November, in the 30th Year of the King aforesaid, at the Parish of St. Giles's in the Fields, in the County of Middlesex aforesaid, traiterously, and as a false Traitor of our Sovereign Lord the King, thou wast and didst remain and abide, against the Form of the Statute in this Case made and provided, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. How sayest thou, David Joseph Kemish, Art thou Guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Kemish. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be Tried?

Kemish. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Kemish. I cannot speak, I am not able to stand upon my Legs a quarter of an Hour.

* L. C. J. What does he say?
* Sir William Scroggs. Capt. Richardson. He says he is so ill and weak he is not able to stand.

L. C. J. Then he must have a Stool.

Kemish. I am not able to speak in my own Defence, and I have had no Time to prepare myself.

L. C. J. Captain, He shall speak softly to you, and you shall report it to the Court again.

Capt. Richardson. You may speak softly to me, and I will give an account what you say.

L. C. J. How will he be Tried? Ask him.

Kemish. I would desire my Trial might be deferred till I be in a Condition to answer for myself.

L. C. J. What say you, Brothers, I think his Request is very reasonable; he appears not to be in a Condition of taking his Trial now, and Mr. Attorney is willing he should be set aside till next Sessions.

* Mr. Att. Gen. 'Tis, I think, very fit, if your Lordships please. * Sir Creswel Levinz.

Mr. Just. Dolben. He must Plead first. Have you recorded his Plea?

Cl. of Cr. Yes, 'tis recorded.

L. C. J. Why then look you, Capt. Richardson, you must take him back; the Court does think fit, and Mr. Attorney does think fit, by reason of his extraordinary Infirmary, that it is not seasonable to Try him now. And that the World may not say we are grown Barbarous and Inhumane, we are all contented he should be set by. Therefore let him be returned back, and in the mean time you must take care that he have that reasonable looking to as is fit for a Man in his Condition to have.

L. C. Baron. Acquaint him with what the Court says to you.

Capt. Richardson. I will, my Lord.

Mr. Att. Gen. My Lord, I desire that the Judges may declare their Opinion in it.

L. C. J. They have done so already, we do all consent to it; therefore take him, and go get him a Bed.

Cl. of Cr. Set William Russel, alias Napper, to the Bar. Who was Arraigned upon an Indictment of the same Form, only the Day of the Fact differing, which was laid to be the 27th of November, in 30 Car. 2. To which he likewise pleaded Not Guilty, and put himself upon the Country.

Cl. of Cr. Set Henry Starkey to the Bar. Whose Indictment was the same, only the Time differing, which was the 26th of January, 30 Car. 2. And he also pleaded, Not Guilty, and put himself upon the Country.

Cl. of Cr. Set William Marshal to the Bar. Who being Arraigned upon a like Indictment, and the Time mentioned to be the 15th of January, 30 Car. 2. And being asked, Whether Guilty, or Not Guilty, answered thus:

Marshal. My Lord, I do find by this Indictment, That I am Arraigned for the same Crime for which I was Tried before: I do humbly desire to know, Whether, according to Law, I can be tried twice for the same Fact?

L. C. J.

L. C. J. No, according to the Law you cannot be tryed twice for the same Fact, nor are you; for before you were Indicted for having an Hand in the great Conspiracy, for being a Conspirator in the Plot, and now you are tryed for being a Priest, and abiding in *England*.

Marshal. I was tryed before your Lordship as a Traitor.

L. C. J. You were so.

Marshal. Now I am tryed for a Priest.

L. C. J. Which is another Treason.

Marshal. If I am tryed for a Priest, I conceive I cannot be tryed unless as a Criminal Priest: And I conceive I cannot be tryed as a Criminal Priest, unless it be as a Priest that hath had some Attempt or Design against the Government.

L. C. J. Nay, you mistake there: There may be Priests that have had no Hand in the Plot; if you were acquitted for the Plot, yet you remain a Priest still. Do you suppose then that every Priest had a Hand in the Plot?

Marshal. My Lord, I humbly conceive, that Priesthood, as Priesthood, is no Crime at all.

L. C. J. That is no Crime at all.

Mr. Just. Dolben. Come, you must plead without more ado; and you must not use any more Speeches.

L. C. J. You must be governed in all things by the Direction of the Court.

Marshal. I do submit to the Direction of this Honourable Bench: But, my Lord, give me leave to say, I suppose I am Indicted upon 27 *Eliz.* Now if it be made appear, that according to that Statute Priesthood alone is not Treason —

Mr. Just. Dolben. Then you must speak it afterwards, but now you must plead.

Marshal. But if it be at least made doubtful, then it becomes matter of Law; and I have just occasion to insist upon it, and pray Council.

Mr. Just. Dolben. You must plead to the Indictment first.

Marshal. Why, can I ask Council after Plea pleaded?

L. C. J. Yes, you may, if matter of Law arise, and you may have Council as to that matter.

Mr. Just. Atkins. The Court is of Council for you in such a Case.

L. C. Baron. But you must plead first.

Mr. Just. Pemberton. You cannot be heard at all till you have pleaded to the Indictment.

L. C. J. Pray take the Directions of the Court.

Marshal. I have a great deal of reason to submit to this Honourable Court that hath been so full of Mercy and Clemency, and therefore I do answer, That I am Not Guilty.

Cl. of Cr. How wilt thou be Tryed?

Marshal. By the King and my Country.

L. C. J. No, no, that will not do.

Marshal. By God and my Country.

Cl. of Cr. God send thee a good deliverance. Set *Alexander Lumsden* to the Bar. Whose Indictment being of the same Nature, only reciting the Fact to be 11 *Maui* 31 *Car. 2di*, he pleaded, Not Guilty, and put himself upon the Country.

Cl. of Cr. Set *James Corker* to the Bar; who was also Arraigned for the same Treason, done upon the 24 *Octobr.* 30 *Car. 2di*. And being asked, Whether Guilty or Not Guilty, answered in these Words.

Corker. My Lord, I humbly beg the Judgment

of the Court; I humbly conceive, my Lord, I have been already tryed and acquitted for this Crime.

L. C. J. Look you, that hath been over-rul'd already in the Case of *Marshal* just now, who is in the same Condition: You are not now tryed for the same Fact for which you were tryed before.

Corker. My Lord, I suppose there is something particular in my Case; I was expressly Indicted as Clerk, one that received Orders from the See of *Rome*.

Mr. Just. Pemberton. His Addition was Clerk, that is all.

L. C. J. But you were not charged in that Indictment for this Fact.

Corker. My Lord, I pleaded to that Indictment under that Qualification of Clerk.

L. C. J. So Men do when they say in the Indictment Labourer, plead to it in that Qualification; but if a Man plead by the Name of Gent. the Question is not whether he be a Gent. or no, but whether he be Guilty of the Fact he is Indicted for: And the Question in your Case was not whether you were Clerk or were not Clerk, but whether you had a Hand in the Plot or no.

Mr. Just. Atkins. If the Jury had found you a Priest at that time, it had been a void Finding, more than they were to enquire of.

Mr. Belwood. He was told so at that time, he was not tryed for a Priest.

Mr. Just. Ellis. After you have pleaded, then you may urge what you have to say.

Corker. Then I say, I am Not Guilty. And he put himself upon the Country.

Cl. of Cr. Set *Lionel Anderson*, alias *Munson*, to the Bar. Whose Indictment was for being a Priest, and abiding here the 28th *Jan.* 30 *Car. 2.* And he pleaded Not Guilty, and put himself upon the Country.

Cl. of Cr. Set *Charles Parris*, alias *Parry*, to the Bar. Whose Indictment was of the same nature, for abiding here 30 *Maui* 31 *Car. 2.* And he also pleaded Not Guilty, and put himself upon the Country.

Cl. of Cr. Set all the Prisoners to the Bar that are to be Try'd. *William Russel*, *Henry Starkey*, *William Marshal*, *Alexander Lumsden*, *James Corker*, *Lionel Anderson*, and *Charles Parry*.

Capt. Richardson. They are all on.

Russel. My Lord, I have been confin'd, I have not had my Liberty till within these two or three days.

L. C. J. What then?

Russel. I have not had my Friends to come to me, to advise me upon what Account I was to be Try'd.

Capt. Richardson. He says, he wanted his Friends to advise for what he was to be Try'd.

L. C. J. Why, he knows he is to be try'd for a Popish Priest.

Capt. Richardson. Here is one says he is sick.

L. C. J. Who is that?

Capt. Richardson. 'Tis *Anderson*.

Mr. Just. Pemberton. Then he must have a Chair to sit down on.

L. C. J. We'll try him first that is sick.

Then the Prisoners were call'd to their Challenges, and the Jury of *Middlesex* appearing upon their

their Summons, and none of them being excepted against, the Twelve that were first called and Sworn, were the Gentlemen following:

John Bradshaw,	} Jur'	Anthony Hall,
Lawrence Wood,		Samuel Jewel,
Matthew Bateman,		Richard Bealing,
John Vyner,		Thomas Hall,
Francis Mayo,		Richard Bromfield,
Martin James,		Samuel Lynne.

Then they were number'd, and Proclamation for Information in usual manner was made.

L. C. J. Come, begin with the sick Man *Anderson*; and set away the rest.

Cl. of Cr. *Lionel Anderson*, hold up thy Hand. You that are sworn, look upon the Prisoner and hearken to his Cause. He stands Indicted by the Name of *Lionel Anderson, &c.* Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire, whether he be Guilty, &c.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, *Lionel Anderson, alias Munson*, stands Indicted for High-Treason; and it is alledged in the Indictment, That he being born within the King's Dominions, and made a Priest, and having receiv'd Orders by pretended Authority from the See of *Rome*, he did the 28th Day of *January* last come into the Kingdom of *England*, that is, as 'tis laid, in the Parish of *St. Giles in the Fields*, in this County; and there he did abide contrary to the Form of the Statute. And this is laid to be Traiterously done. To this he hath pleaded Not Guilty, and we are to prove it upon him by the King's Evidence, whom we are now to call.

Anderson. My Lord, for my staying in the Kingdom, I had the King's express Command, and an Order from the Council-Board: In the Year 71, they order'd *Mr. Peter Welsh*, and my self, with four or five others, who had in Writing asserted his Majesty's just Rights over all his Subjects, whether Protestant or Papist, against those so frequently imputed Usurpations of the Court of *Rome*. After this Plot was discovered I came to the King, being afraid of being involved in the general Calamity, and said to him, *Sir, I desire to know what to do?*

L. C. J. Do, Why?

Anderson. Good my Lord hear me out. My Lord *Privy Seal* brought me an Order from the Council-board, and so 'tis Recorded; and I think *Dr. Oates* will be so just to me, as to acknowledge that he hath seen it, and this all that I have to say.

L. C. J. If you have an Order from the Council to protect you, you must apply your self elsewhere; our Business is to try the single Issue, whether you have offended against the Law.

Anderson. My Lord, I that am but a poor little Individuum, who am born with an innate and implicit Obedience to my King, pray judge whether it lye in my power to dispute with him and his Council, whether they can legally do this or no? Or that I ought to obey the King's Command. My Lord, I am put upon a hard Dilemma; if I (notwithstanding his Majesty's Command to the contrary) go out of the King-

dom, then the severe Imputation upon us is urged against me, That I have, with my Religion, renounced my Natural Allegiance: And if I stay, then by the Law (as you tell me) I forfeit my Life.

Mr. Belwood. This is not a Time for him now to insist on this matter.

L. C. J. Reserve your self till the King's Council have done, and the Evidence given.

Mr. Just. Jones. Let him save his Speech till such time as he comes to answer for himself.

L. C. J. Give him a Chair if he be not able to stand.

Sir J. Keling. May it please your Lordship, and you Gentlemen of the Jury, *Lionel Anderson*, otherwise *Munson*, the Prisoner at the Bar, stands Indicted here, for that, he being a Subject born within the Dominions of the King, hath taken Orders from the See of *Rome*, and hath contrary to the Law come into *England*, and staid here as a Traitor: For this Treason he is Indicted, and the Indictment is grounded upon the Statute of the 27th *Eliz.* a Statute made almost an hundred Years since, and it was upon great occasion: For it tells you plainly, That these Priests that had taken Orders from the See of *Rome*, were not only busie in seducing and perverting the King's Subjects to the *Romish* Superstition; but they had made many Attempts upon the Government, raising Sedition and Rebellion, and levying War against their Sovereign; which is evident from the Preamble of the Statute it self. And it is true, the Lenity and Mildness of our Princes hath in a great measure let this Statute lye asleep; they have not been willing to execute the Severity of the Law upon all occasions at all times: But the occasion being renewed at this time, for the remedying of which this Statute was principally made (that is to say, raising Seditions, and Commotions, and Rebellion against the King, the particulars of which I shall not enlarge upon, it hath been notorious in this place) that is the Reason of the present Prosecution of these Persons: Who have not been contented to enjoy the Indulgence of our Princes, (which hath been extended to them, notwithstanding all their former numerous Affronts that they have given) but have rais'd new Commotions, and made Attempts upon the Person of our King, and of our Government, and that is the Occasion upon which these Persons come to be try'd. It is not purely (cho' that is a main Ingredient) that they are try'd *quatenus* Priests, but as Ordain'd by the See of *Rome*, and coming into *England* and abiding here. For a Priest, if he be Ordain'd by the See of *Rome*, if he comes not here, can do no hurt; but it is his coming and abiding here, that makes him the Subject of this Punishment, and hath occasion'd this Man's Prosecution. Now my Lord, we shall prove that this *Anderson* alias *Munson* hath taken Orders from the See of *Rome*, whose Authority constituted him a Priest, and this we shall prove by several Instances and Steps; and then we doubt not but you will take that Care for the Preservation of the Government, and for the Peace and Quiet of the Nation, which becomes you, and give a Verdict according as your Evidence shall lead you.

Mr. Serj. Strode. My Lord, we shall call our Evidence. The Fact is this, That this Person being a Subject of the King's, and having received

ceived Orders from the See of *Rome*, that is, being a Romish Priest, did come and abide here contrary to the Statute; not that his Priesthood is the Crime, no 'tis his being a Subject of the King's, and owning an Authority from Abroad, and thereby denying the Authority of his own Sovereign. To prove this, we shall call Dr. *Oates*, Mr. *Bedlow*, Mr. *Dangerfield*, and Mr. *Prance*. [*Who were all sworn.*] Set up Mr. *Dangerfield* first. Mr. *Dangerfield*, tell my Lord and the Jury what you know of the Prisoner at the Bar, Mr. *Anderson*.

Dangerfield. What I do know against him?

L. C. J. Yes, for being a Priest.

Dangerfield. What, that particularly?

L. C. J. Yes, that particularly.

Dangerfield. My Lord, about the latter end of *May*, or beginning of *June*, when I was a Prisoner for Debt in the *King's Bench*, this Person took occasion to speak privately to me, and desired me to go into his Room: He told me he had receiv'd a Letter from my Lady *Powis*, and that Letter was burnt. But the next Letter that came from my Lady *Powis*, he would shew it me. And he did so; and the Contents of the Letter was, as near as I can remember, just thus: Sir, You must desire *Willoughby* to scour his Kettle; which was, to confess and receive the Sacrament, to be true to the Cause. A little after, that was Saturday, and I think it was the next Day, being Sunday, I went into Mr. *Anderson's*, alias *Munson's* Chamber, and there I went to Confession, and received Absolution. And he sent me to another Person to receive the Sacrament, who was saying Mass at that time. And when I had receiv'd the Sacrament and returned to him again, he did tell me, That he, as a Priest, did give me free Toleration to go and be drunk, and drink with one *Stroude*: and I ask'd him, being something scrupulous in the matter, Whether I might lawfully do it, having but just received the Sacrament? he told me, Yes, he gave me Authority so to do, being for the good of the Cause.

L. C. J. Were you a *Papist* then?

Dangerfield. Yes, I was.

Mr. Just. Atkins. You went to Confession to him, and received Absolution?

Mr. Belwood. What was the good of the Cause that he meant?

Mr. Serj. Strode. If you please, give an Account of the whole Thing.

Dangerfield. That was, as I was employ'd in a general Affair for the *Catholicks*. For I was to use my Endeavour to bring over *Stroude* to be a Witness for the Lords in the *Tower*, concerning the Plot, and to invalidate Mr. *Bedlow's* Testimony.

Anderson. Here I am upon my Life and Death; all the World knows me, that hath heard of my Name —

Mr. Just. Pemberton. Pray make no Speeches, if you will ask any Questions you may.

Anderson. No, I won't. Pray do not interrupt me; I perceive you have a Pique against my Life, and it may be I am as ready to give it, as you are to desire it; I wish that all the Punishments of Hell and Damnation may come upon me, if ever I open'd my Mouth to this Rogue for one Farthing, or about any such Business in the World.

L. C. J. You must not call him Rogue in open

Court. Let us have that Respect shewn us that is fitting, and so shall you have, but this Language we must not suffer.

Anderson. In the first place, I will bring all the Prisoners in the *King's-Bench* Prison to testify, That I desired to be removed to *Newgate*, for here was the greatest Rogue come in that was in *England*.

Mr. Just. Pemberton. This must not be suffered.

L. C. J. If you will ask him any Questions, you may.

Anderson. Well, come Mr. *Dangerfield*, in the first place, Who ever saw you with me? 'Tis impossible but some Body must see you with me, if we were together, as you say.

Dangerfield. My Lord, there is one *Hill*, that is now a Prisoner in the *King's-Bench*, that saw me several times go into his Chamber.

L. C. J. Was there any Body by when you confess'd your self to him?

Mr. Just. Dolben. Confessions use to be in secret.

Dangerfield. No, my Lord, he was not in the Chamber, neither was it reasonable he should, but he saw me go in often.

Anderson. Surely, Mr. *Dangerfield*, you and I could not be so well acquainted, but some Body or other must take Notice, that we spoke together sometimes. Now if you can produce any one Body that will testify it, I will be bound to be hang'd, and say no more.

Mr. Just. Atkins. He is not bound to bring Witnesses to this purpose. He swears the Fact charged upon you positively.

Dangerfield. This *Hill*, my Lord, that is in the *King's-Bench*, hath made Oath of it before Mr. Justice *Foster*.

Anderson. But my Lord, this one thing I have to say against this Rogue; there is a Statute, made since his Majesty's happy Restoration, which judges what shall be Treason during his Majesty's Life: And after enumerating the Crimes, and directing that the Offender shall be convicted by the Oaths of two Lawful, adds, and Credible Witnesses: As if the Prudence of our Legislators, which brings good out of evil, and measures the Subjects future Safety, by past Practices, judges that Clause necessary, and credible.

L. C. J. Pray speak out, Sir, for I cannot hear you.

Anderson. My Lord, I understand the Meaning applicable to me thus, That since the Statute does use the word (Credible) as well as Legal, it does judge that both would be very necessary. Now that he is not a credible Witness I can prove —

L. C. J. Why is he not credible? Certainly if he be legal he is credible.

Anderson. No, my Lord, that does not follow. First the —

Mr. Recorder. 'Tis not his time to make this sort of Defence.

Mr. Just. Dolben. He should have done it before the Witness was sworn, if he would except against his Testimony.

L. C. J. But why is he not a good Witness, pray?

Anderson. My Lord, a Man pilloried twice, that hath broke Prison once, and committed other heinous Offences —

L. C. J. Where is the Record of any of this?

Anderson.

Anderson. My Lord, I'll tell you how I prove it. That worthy Gentleman, Colonel *Mansel*, whom this Villain would have involved in —

L. C. J. You must not do thus, abuse Persons with Words, without Proof.

Anderson. What, to prove it is Day?

Mr. Just. Pemberton. He must not be suffer'd so to do.

Anderson. Why, here is Captain *Richardson*, [Taking him at the same time by the Shoulders.] knows what I say to be true: Come, speak, you have been familiarly acquainted with that Rogue, (pointing at *Dangerfield*.) [Captain *Richardson* laughing, I must not witness.] My Lord, I will do thus no more; indulge a little to my Innocency and Infirmary.

Mr. Just. Pemberton. You don't seem to have so much Infirmary upon you.

Anderson. My Lord, I will produce that worthy Gentleman, Col. *Mansel*, whose innocent Blood was design'd to be shed by that Villain; who stood qualified then (as he doth now) with that magnificent Title of the King's Evidence; but as soon as Colonel *Mansel* urged, that he was Pillory'd twice, &c. our worshipful King's Evidence was clap'd up, and Col. *Mansel* left at Liberty.

L. C. J. Have you that Record here?

Anderson. I have not.

Sir John Keling. We pray we may go on then.

Mr. Ser. Strobe. Set up Dr. *Oates*. Dr. *Oates*, will you tell what you know of this Matter?

Oates. My Lord, he is a Priest. I can in Sincerity say it; I have heard him say *Mafs* my self.

L. C. J. Where?

Anderson. 'Tis very true, I did it; but, my Lord, I will shew you, *Mafs* is no Proof of a Priest: For, 1. The Statute makes a Difference between saying *Mafs*, and being a Priest; in punishing Priests with Death; but saying of *Mafs*, with a pecuniary Mulct of 200 Marks, and a Year's Imprisonment.

Oates. He does execute the Office of a Priest, for I have been at Confession with him as a Priest, and have seen him consecrate the Sacrament, and I have seen his Letters of Orders as a Priest.

L. C. J. Did he wear the Habit of a Priest?

Oates. Yes, at *Mafs*.

Mr. Belwood. Pray, Sir, are you sure you saw his Orders as a Priest?

Oates. Yes, I did.

L. C. J. Of what Order is he?

Oates. A *Dominican* Fryar he is.

L. C. J. What can you say to that?

Anderson. I can say enough; but what can I say against the King's Evidence? Your Lordship sees this makes a very fine Jingle, but there is no Proof of it.

L. C. J. We can go no further than the Evidence. He says, You are a *Dominican* Fryar: That he heard you say *Mafs*: That he saw you consecrate the Sacrament. And I am sure you allow none but a Priest to do that.

Anderson. I understand by the Laws of *England*, that I am try'd upon a Statute which makes Priesthood a Crime. Now I will ask Mr. *Oates* a Question: Mr. *Oates*, can you prove, that I received Orders from the See of *Rome*? You are to prove, by this Statute, three things a-

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gainst me. I am tryed upon a Penal Statute, which ought to be construed most in favour of the Prisoner.

Mr. Just. Pemberton. Ask him any Questions, if you will, but this is not your Time for arguing.

L. C. J. Look you, we must do with you as we have done with others, and will do with the rest. If you mean that this Statute should never have any Effect, that is, that the Priests shall not be convicted as such, unless we can produce Witnesses that saw them take Orders, then you have avoided all the Statute; but if so be it be plainly proved, that you have done the Acts of a Priest, those that none are allow'd of to do, or undertake to do, but a Priest, is not this a Satisfaction, and a plain one too, to your self and all the World, that this Issue, Whether you are a Priest, or not a Priest, is well proved in the Affirmative?

Oates. My Lord, I saw his Letters of Orders.

Anderson. My Lord Chief Justice, I would speak a little to what you say.

Mr. Just. Pemberton. Look you, Sir, you must not have such Liberty as this granted to you. You may, if you will, ask Questions, but it is not your Time to dispute.

Mr. Just. Jones. You must not invert the Order of Trials. When a Witness is call'd, he must give his Evidence. If you will ask him any Questions, you may do it. But if you will observe any thing, you have time to do it when the King's Witnesses are all heard.

Mr. Just. Atkins. Dr. *Oates*, the Prisoner did not understand sure what you said. Did not he confess to you he had Orders from *Rome*?

Oates. Yes, he did confess so.

L. C. J. You confessed it your self.

Anderson. My Lord, how comes it to pass, that I did not come here in a Yellow Coat, and was arraigned for a Fool, and not for a Traytor? If I am a Priest, that I should tell him I was such an one.

L. C. J. Nay, I can't tell, because you did not put it on. If you would ask him any Questions, do.

Anderson. Yes, Whether you do know me to be an *Englishman*? And whether you saw me take Orders from the See of *Rome*?

Oates. You said you were an *Englishman*, and a Gentleman, and the Son of an *English* Gentleman.

L. C. J. Do you deny you are an *Englishman*?

Anderson. I am not, nor no Man is to be try'd upon a Presumption; 'tis but a Conceit in Law, and penal Laws are to be taken strictly, and in favour of the Prisoner.

L. C. J. Methinks you speak very like an *Englishman*.

Mr. Belwood. My Lord, we call now Mr. *Bedlow*. You know the Question, what it is Sir, concerning the Prisoner's being a Priest.

Bedlow. He is a Priest, and an *Englishman*, if his Mother was honest, and he honestly born; for he is Mr. *Anderson*'s Son of *Oxfordshire*, a Gentleman of 2 or 300*l.* a Year; I know him and his Father very well.

Anderson. My Lord, could I but apprehend that I lay under so great a Guilt, as to have been acquainted with so great a Rogue as this

6 L

Fellow

Fellow is, I would have been my own Executioner, and not have expected my Sentence at this Bar.

L. C. J. Do you know him well?

Bedlow. Very well, both him and his Father; his Father is an *Oxfordshire* Gentleman.

Anderson. Now I think I shall prove the Rogue perjurd: Is my Lord Chief Baron in the Court?

Court. Yes, he is.

Anderson. Why then my Father has the Honour to be well known to his Lordship, who knows this to be false.

*L. C. Baron.** No, no, Mr. *Bedlow*, he is a Gentleman's Son of Quality in *Lincolnshire*.

L. C. J. You are mistaken, you are mistaken, his Father is a *Lincolnshire* Gentleman.

Anderson. And yet this Rogue is upon his Oath; but indeed all his Life is full of such Mistakes.

Bedlow. I don't know, my Lord Privy-Seal's Nephew told me so.

L. C. J. But what say you to him, as to his being a Priest?

Bedlow. I have heard him say Mass.

L. C. J. Did you ever receive the Sacrament from him?

Bedlow. Never. But I have seen him administer the Sacrament, and he was in a Priest's Habit.

L. C. J. Where?

Bedlow. I think it was at the *Venetian* Resident's; I am sure it was at some of the Ambassadors Houses.

Anderson. This Matter is so unlikely, I know not what to say to it.

Mr. Just. Pemberton. Will you ask him any Questions?

Anderson. Upon my Salvation I never saw him before.

Mr. Just. Dolben. It is a strange thing, that you should take upon you to say upon your Salvation you never saw him: How many might come into a Room, and you not see them while you are at Mass?

L. C. J. He might see you, tho' you did not see him: He might come in, and you not see him.

Mr. Just. Atkins. Is that any Argument, or any thing to the Purpose, or does that contradict the Evidence? Does the Minister, or ought he to know all his Congregation whilst he is in preaching?

Anderson. I never saw him, I say. My Lord, I'll give you but one Argument, which is call'd *Argumentum congruentie*.

Mr. Just. Jones. Will you ask him any Questions?

Anderson. To what purpose will it be for me to ask him?

Bedlow. When he was first taken I was not stirring; but while I was making ready they told me, There was one suspected to be a Priest. I heard him speak in the next Room, and I knew his Voice, and said, That is Mr. *Anderson*. I presently knew his Tongue before I saw him.

L. C. J. You knew him very well then?

Bedlow. I never had any great Converse with the Man: When he was taken they asked me, If I knew any thing of this Man about the Plot? I told them, No; but he was in Orders

from the Church of *Rome*, for I heard him say Mass at such a Place. He told me, said he, I have been in Orders, but I revok'd them, and turned Protestant.

Mr. Belwood. Set up Mr. *Prance*. Pray, Sir, tell what you know.

Prance. My Lord, I have heard him say Mass several times at *Wild-House*; and he hath given the Sacrament there, and I have seen him take Confessions——

L. C. J. How often?

Prance. Several times.

L. C. J. Then you know him very well?

Prance. Yes, very well.

Anderson. I never saw him in my Life.

L. C. J. But he hath seen you.

Anderson. My Lord Chief Justice, I will bring Witnesses to prove, That I did never say Mass at *Wild-House*, nor went to the Chapel: For some (forsooth) would needs have me to have been Excommunicated for writing for the King's Temporal Jurisdiction over all his Subjects (independant of the Pope) as appears by a Letter of the Bishop of *London* on my behalf to Sir *Clement Armiger*.

L. C. J. How long have you known him?

Prance. Seven Years.

L. C. J. How often have you seen him say Mass?

Prance. A dozen times.

Anderson. It may seem strange that I should have the Impudence to deny what this worthy Gentleman says. Mr. *Prance*, dare you say you know me?

L. C. J. Why, were you never there?

Mr. Just. Jones. Well, well, will you ask him any Questions?

Anderson. Who did I give the Sacrament to?

Prance. A whole Rail-full hath been at the Sacrament at a time; several People I have seen receive it from him.

L. C. J. Did he deliver the Sacrament to you?

Prance. No, he did not, I commonly received at *Somerset-House*.

Mr. Serj. Strode. We have done, my Lord.

Mr. Just. Jones. The King's Council have done with their Evidence, and now you may say what you will.

Anderson. My Lord Chief Justice, may I speak now?

L. C. J. Yes, you may.

Anderson. My Lord, all the World knows me, and I am known to most of the dignified Clergy in *England*: My Lord Bishop of *London*, and Dr. *Lloyd*, and the Bishop of *Durham* sent to me to tell me, that if they knew of my Trial they would be here. My Lord, I have lain under an ill Censure for Scribbling and Writing against the Temporal Power of the Church of *Rome*. I never said Mass in any Popish Church, I am confident, these ten Years; that I have said Mass, I won't deny. I would not tell a Lye to save my own Life; nay, nor would I tell a Lye to take away the Life of the greatest Villain upon Earth; no, not that Rogue [*Pointing to Dangerfield*.] But, my Lord, I protest there is not one Word true that hath been sworn against me, but what Dr. *Oates* hath said concerning my saying Mass. Oh! my Lord, I would not deny it if I were to be hang'd presently; and is not that a great Evidence of my Innocence and Sincerity?

But

But this does not prove that I am guilty of what I am accused for; for I am Indicted upon a Penal Statute, and three things must be proved strictly to bring me within that Law: First, that I am an *Englishman* —

L. C. J. 'Tis proved you are an *Oxfordshire* Man.

Anderson. No, my Father is *Lincolnshire*, and my Lord Chief Baron knows him.

L. C. Baron. I do know a Gentleman of that Name there.

Bedlow. I was told he was *Oxfordshire*.

Mr. Just. Dolben. He speaks himself to be an *Englishman*. All the World knows it by your Speech.

Anderson. I know my Father is so.

L. C. J. Why do you deny it your self?

Anderson. 'Tis one thing to deny it, and another thing to have it proved so: I am not to prove it, they are.

L. C. J. He says you are so.

Anderson. He talks like a Parrot: These things are to be proved strictly; no Man's Life is to be taken away by Presumption; which is but a Conceit in Law, and ought not to overthrow that Maxim of Law, that Penal Laws ought to be taken most strictly in favour of the Prisoner: And I ought to be proved, *ad literam*, within the Law; and that according to the Statute made since his Majesty's happy Restoration, by two lawful Witnesses; and not only by two lawful, but by two credible Witnesses too. I suppose the Gentlemen of the Jury being apprized of these my Exceptions to these Witnesses, notwithstanding give Credit to them, whom perhaps they would not trust for 6d. in their Shops, and make themselves their Compurgators; and, as in waging Law, do take it upon their Conscience, that what these Rogues say is true.

L. C. J. So they do.

Mr. Just. Dolben. If these things are not well proved, nothing will be proved.

Mr. Just. Atkins. Have you any Witnesses that you would call?

Mr. Just. Pemberton. If you will call any, you may.

Anderson. How shall I call them, when I did not know of my Trial.

* Sir George Jefferies. Mr. Recorder *. If you will send for any Witnesses the Court will stay, if they be to any thing material.

Anderson. My Lord, I have against this Gentleman, Mr. Dangerfield, almost all the Prisoners of the *King's-Bench* for Witnesses.

L. C. J. Call them, and name them.

Anderson. Mr. Adderly, Mr. Puller, who can say that I never drunk a Pot of Ale with this Man while he was there.

L. C. J. Who would you send for?

Anderson. Those Persons, to prove that I had a Grudge and Prejudice against this Man, and that I desired to be removed to *Newgate* for that very Reason.

Mr. Just. Dolben. But the Question is, Whether you be a Priest, or no? And you can't send for any one that knows you, but will say, That he hath taken you for a Priest all along.

Anderson. But still 'tis but a Presumption, not a Proof.

Mr. Just. Dolben. The Jury is to be Judge of that, how far that goes.

L. C. J. What do you expect for Proof?

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Do you imagine there should be no Proof to convict you upon that Statute, unless we produce some Witnesses that actually saw you take Orders?

Anderson. Yes, I suppose so, my Lord, because Penal Statutes are to be taken strictly.

L. C. J. Look you then, How vain would you make a Statute of *England*, the Laws of your Country? How idle a Thing were it to expect any Possibility of Proof, such as to convict a Priest, if this be the Interpretation of the Law, That no Man should be convicted by a Jury upon this Statute, but one against whom two Witnesses should swear they saw him take Orders? Where can we find such a Witness?

Anderson. Admit that this Law were thus evaded, yet there would be no Inconvenience, and I will prove it to your Lordship by Authority: It was the Opinion of all the Judges, delivered about nine Years ago to the King and Council, upon a Question about Laws against the *Romish* Recusants; they all agreed, That this Law was only made *in terrorem*.

Mr. Just. Pemberton. Look you, Sir, you must not talk so, it is not to be permitted.

Mr. Just. Dolben. Will you go to Arraign the Judges here?

L. C. J. No, no; the King's Council did verily honestly and prudently upon that Matter: For said Sir *John Keling*, 'Tis very true, our Kings have not, since this Law was made, put the Statute in Execution unto Rigor, 'till you your selves occasioned it: But still the Law was a good Law, and absolutely necessary at its making, as necessary as the Preservation of the Queen's Life, and the Quiet of her Dominions; and now 'tis become as necessary for the Preservation of the Protestant Religion, which all your Arts are employ'd to undermine; and more necessary again, for the Preservation of our King's Life, against which your Contrivances are so bent.

Mr. Just. Pemberton. Do you think that you shall be heard here to dispute against the Law, and say it was no Matter for the Law, it is a void Law; and scandalize the Judges, that they gave it for their Opinion, that it was only *in terrorem*?

Anderson. No, I dispute for the Law.

Mr. Just. Pemberton. You must employ your Time otherwise, if you intend to be heard.

Anderson. Then this is that I require; I desire these things may be proved: First, That I am an *Englishman*; and then I took Orders from *Rome*, and then that I abode here contrary to the Statute, which Things in this Penal Statute must be proved.

L. C. J. You have, upon the matter, prov'd the First your self in your Appeal to my Lord Chief Baron, that he knew your Father, who is a *Lincolnshire* Man.

Anderson. I might be bred and born beyond Sea, tho' my Father was so.

L. C. J. If you will give no Proof to the contrary, a little Proof will serve the Jury's Turn, hearing you speak, and knowing your Father was a *Lincolnshire* Gentleman.

Anderson. No Negative can be sworn, they must prove the Affirmative.

L. C. J. That will turn the Proof upon you to the contrary.

Mr. Just. Atkins. A reasonable Proof against you, with such Probability, will put it upon you to disprove it.

Mr. Just. Pemberton. Look you, *Mr. Anderson*, if you have any Witnesses to call for, or send for, the Court will give you Leave to stand by a little and send for them; but if you continue to argue in this manner, the Court will give their Directions to the Jury.

L. C. J. But, *Mr. Anderson*, the Court will do you all the Justice that can be expected. If you have any material Witnesses to be sent for, the Court will have Patience till they come; but then you must be sure they are material Witnesses, for we will not go to lose time upon a bare Surmise. If it be only to prove this Negative, that *Mr. Dangerfield* was never in your Company in the *King's-Bench*, it will signify nothing, for there are three Witnesses without him.

Mr. Just. Pemberton. Have you any Witnesses to prove that you were born beyond Sea, or any thing that is material, we will stay for them.

Mr. Just. Ellis. There is nothing now in question, but whether you be an *Englishman* and a Priest; and if you can prove that you are not so, you say well. But I think you deny not now but that you are a Priest, only you would have us prove that you are an *Englishman*. Your Speech betrays you, and there is so much Evidence against you, that I have not heard in any Case as I know of. And all your Witnesses will be to little Purpose.

Anderson. Only this I desire to observe, That I have been a Man always countenanced by the best of Kings, and his Privy-Council; and if the Parliament had not been dissolved, I had been protected by the Parliament: Now I say, if your Lordships think me worthy of any Consideration (as I have been a Man that have given several Testimonies of my Loyalty, and Obedience to the Government) I desire your Lordships would please to stay till you know the King's Pleasure.

L. C. J. You know where you must apply your self for that; we are barely upon our Oaths, and so is the Jury too, to try the Fact, whether you be a Priest; and this I will tell you, and I must say to you, I dare appeal to your own Conscience, whether this Issue, your being a Romish Priest, is not as plainly and evidently prov'd, to the Satisfaction of all Mankind, as any thing can be?

Anderson. But 'tis all by Presumption still.

L. C. J. Well, Gentlemen of the Jury, the Matter that he insists upon, are two things; First, says he, You have not prov'd me to be an *Englishman*, and yet at the same time he appeals to such as knew his Father to be an *English Gentleman*; and his Language, his Tongue betrays him. 'Tis true, some kind of Evidence is to be given, that he is an *Englishman*, he himself tells you, that he is born of *English* Parents; but 'tis a foreign Matter, that he should be born beyond Sea. And if it were so really, then it comes on his side; if he can produce any Witness, he says something; otherwise we leave it to you, whether you are not satisfied in your Consciences, by hearing him speak, and understanding who his Father was, that he is an *Englishman*. The next thing is for his being a Priest: I do not know, nor can there be expected a plainer Proof than this that hath been given, because he doth those

Acts which none but a Priest amongst them does; he says Mass, he consecrates the Sacrament, he takes Confession, he gives Absolution, and all this proved by four Witnesses.

Anderson. That the Clerk does at Mass, he gives Absolution.

L. C. J. Does or can any but a Priest Absolve?

Oates. My Lord, the Clerk, he that serves at Mass at that Time, gives *pro forma* Absolution to the Priest, without which, the Priest cannot approach to the Altar; after he hath made a general Confession for the whole Congregation, the Clerk absolves the Priest, that he may absolve the Congregation.

L. C. J. Well, the Fact is plain upon you; we must never expect to convict a Priest upon this Statute, if such Proof is not sufficient.

Mr. Just. Dolben. He does acknowledge that *Dr. Oates* hath heard him say Mass.

L. C. J. Go on to the next.

Mr. Belwood. The next we will try, shall be *James Corker*. [*With whom the Jury was charged, as with the other.*]

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury; *James Corker*, the Prisoner at the Bar, stands Indicted for High-Treason, for that being born within the King's Dominions, and made a Priest by Authority from the See of Rome, did traiterously come and abide in England, contrary to the Law. To this he hath pleaded Not Guilty.

L. C. J. Well, call your Witnesses.

Mr. Serj. Strode. *Dr. Oates*, *Mr. Bedlow*, and *Mr. Prance*. [*Who were all sworn.*] *Dr. Oates*, pray tell my Lord, and these Gentlemen, what you know of this *Mr. Corker's* being a Priest.

Oates. My Lord, he hath said Mass at *Somerset-House*; and before the Proclamation and Declaration in 1674, made against the Catholics, he was one of the Queen's Priests, he is a *Benedictine Monk*, and he hath said Mass at *Somerset-House*; and I have heard him say Mass at the *Savoy*.

L. C. J. In a Priest's Habit?

Oates. Yes, I have seen him in a Monk's Habit.

Corker. When?

L. C. J. Have you ever seen him give the Sacrament?

Oates. Yes, I received the Sacrament from him my self.

L. C. J. Where?

Oates. In the *Savoy*.

L. C. J. Did he consecrate the Sacrament?

Oates. Not that that I received; I cannot say whether he did or no.

L. C. J. Do any Administer the Sacrament but Priests?

Oates. They are in Orders first. And 'tis against the Laws of the Church for any but Priests to do it.

L. C. J. None use to do it but Priests, do they?

Oates. I can't tell; but he that I took it from, I always took to be a Priest: Besides, I saw his Patent to be Bishop of *London*; and they don't use to make them Bishops before they be Priests.

L. C. J. Did he shew it you?

Oates. I saw it.

Mr. Just. Atkins.

Mr. Just. Atkins. From whom was that Patent?

Oates. It was from the See of Rome.

Mr. Just. Atkins. Under what Seal was it?

Oates. I can't tell that; but I remember that I saw the Patent.

L. C. J. Well, will you ask him any thing?

Corker. When was it that you heard me say Mass?

Oates. The first time that I heard him say Mass is near upon three Years ago; and then I heard him say Mass about the last Winter was two Years.

L. C. J. How often have you heard him say Mass.

Oates. Several times; a dozen times I believe.

Corker. Was there any body with you when you heard me say Mass?

Oates. I believe there was an whole Church full at *Somerset-house*.

Corker. Can you nominate any in particular?

Mr. Just. Atkins. How can he do that? He says there was an whole Church full.

Mr. Just. Pemberton. Will you ask him any more Questions?

Corker. No.

Mr. Serj. Strobe. Then set up Mr. Bedlow. Pray Sir, will you tell my Lord and the Jury, what you know of Mr. Corker's being a Priest.

Bedlow. I have seen him wear the Habit of a *Benedictine* Monk, before the suppressing of the Convent in the *Savoy*; and I have seen him confessing several People in *Somerset-house*.

L. C. J. And gave them Absolution?

Bedlow. Yes.

L. C. J. Do they use to let them see when they confess?

Bedlow. They confess in publick, but they speak so softly we can't hear; but the whole Chapel sometimes may be full of People Confessing.

L. C. J. When was this?

Bedlow. About four or five Years since, when Father *Lathum* was there.

L. C. J. Did you ever hear him say Mass at Father *Lathum's*?

Bedlow. No, I never saw him say Mass, but only confess.

L. C. J. Did you never see him deliver the Sacrament?

Bedlow. No, my Lord.

Corker. When you saw me in my Habit, was it when you came to Father *Lathum's*?

Bedlow. I judge so, it was several times, with several of them.

Corker. Can you nominate any one that saw me at the same time?

Bedlow. There were a whole Chapel full of Catholics.

Mr. Just. Pemberton. That is no great matter whether he can or no.

Mr. Just. Atkins. 'Tis an immaterial Question, Why do you ask it?

Bedlow. My Lord, what I did was done so privately, that if I went but from *Strand-bridge* to the Monks, I either took a Boat and went by Water, or a Coach and went round about, to avoid suspicion.

Mr. Belwood. Then set up Mr. Prance. Pray Sir tell what you know of this.

Prance. I have heard him say Mass at Mr. *Paston's* in *Dukestreet*.

L. C. J. How often?

Prance. Never but once.

Corker. When, Sir?

Prance. It may be two Years ago.

Mr. Just. Atkins. That is another Place too, Mr. Corker.

L. C. J. Have you any thing to ask him?

Corker. No, my Lord.

L. C. J. What have you then to say for your self?

Corker. My Lord, this I have to say for my self, and I do protest it to be true: I never in my Life did say Mass or hear Confessions at *Somerset-house*.

L. C. J. What say you to Mr. *Paston's*?

Corker. No, nor at Mr. *Paston's*; nor ever was in the Company of that Man, nor ever saw him there in my Life, to my knowledge.

L. C. J. That may be.

Corker. I likewise protest, that I never said Mass in any publick Place since I was born.

L. C. J. It may be you count not Mr. *Paston's* a publick Place.

Corker. If it be a private Place, then I should know who were in the Company, and who were admitted there.

L. C. J. No, you were not two or three Years ago so nice and cautious whom you admitted to see you in the Exercise of what you call your Religion; because the Execution of the Law was not so strict as now-a-days it is. And therefore 'tis very probable, and may very well be, that you were at Mr. *Paston's* House, and yet not know all the Company.

Corker. But, I say, I never did say Mass there.

Mr. Just. Pemberton. Here are three Witnesses against you, and do you think your bare Word will be taken against their three Oaths?

Mr. Recorder. What say you to the *Savoy*, Mr. Corker? I ask you, because I would know whether you can speak Truth in any thing.

Corker. I would not tell a Lie, tho I should thereby save my Life: And I do again protest before God and the Court, I never in my Life said Mass or heard Confessions at *Somerset-house* Chapel, nor at Mr. *Paston's* in *Dukestreet*. And as to the *Savoy*, seeing I will be sincere, I shall only say, that as my Denial will not clear me, so I beg I may not be my own Accuser.

L. C. J. Here is one hath swore it.

Corker. 'Tis only Oates, my Lord.

L. C. J. Well Gentlemen of the Jury, you hear what is proved against him by three Witnesses, that they heard him say Mass and receive Confessions, and deliver the Sacrament. They tell you what Order he was of, and that they saw him do the Acts of a Priest.

Corker. I appeal to all the World that ever came to *Somerset-house*, whether ever any one heard me say Mass there.

L. C. J. Here is one hath.

Mr. Serj. Strobe. We will try *William Marshal* next. [*Who was charged upon the Jury as the others.*]

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury, *William Marshal*, the Prisoner at the Bar, stands Indicted for High-Treason. The Offence is not for being a Priest barely; but that he being born an *Englishman*, within the King's Dominions, and having received Orders from *Rome*, did, against the Laws of the Kingdom, come and abide here.

Mr. Serj. Strobe. Swear Dr. Oates and Mr. Bedlow.

Bedlow. [*Which was done.*] Dr. Oates, pray stand up.

L. C. J. What can you say to Mr. *Marshal's* being a Priest?

Oates. I have heard him say Mass in the *Savoy*, and I have seen him in that Posture that the Priests are in when they give Absolution.

L. C. J. Have you seen him in a Priest's Habit say Mass?

Oates. Yes, in his Habit as a *Benedictine* Monk.

Mr. Just. *Jones.* Did you ever see him give the Sacrament?

Oates. Yes, and consecrate the Host.

Mr. Just. *Jones.* Well, have you any thing to ask him?

Marshal. When was this?

Oates. I have known him these three Years to be a Priest.

Marshal. That is a Year longer than you knew me at the Trial.

Oates. It is a great while since that Trial.

L. C. J. Ay, that is a good while ago.

Marshal. But where, Mr. *Oates*, and when?

Oates. At the *Savoy*.

Marshal. When?

Oates. Within the compass of three Years, several times.

Marshal. How does that afford me any occasion of Defence? I can make no Plea, unless he ascertains Time.

Mr. Just. *Pemberton.* 'Tis good Evidence, without confining himself to precise time.

L. C. J. He says a dozen times within that compass.

Marshal. But why does he not name some particular time; for unless he name the time, how is it possible for us to disprove him?

L. C. J. He tells you many times in three Years.

Marshal. But when?

L. C. J. Why, within three Years.

Mr. Just. *Dolben.* What if he could tell you when?

Marshal. Let him name the Day, then we could disprove him; and let him name the day, and if I do not disprove him, I'll be hang'd.

L. C. J. 'Tis an improper Question that you ask.

Mr. Just. *Pemberton.* He is not bound to name the Day.

Oates. Well, I will pitch upon a Day now.

Marshal. When was it?

Oates. Several times last Summer was Twelve-month.

Marshal. What, before the Plot?

Oates. Several times in that Summer before the Plot was discovered; and several times the Winter before, when I came over from *Spain*.

Marshal. Did you hear me say Mass before you went over to *Spain*?

Oates. Yes I did.

Mr. Just. *Dolben.* Call another Witness.

Mr. *Belwood.* Mr. *Bedlow.*

Mr. Serj. *Strode.* Pray will you tell what you know of Mr. *Marshal*.

Bedlow. I know a great deal of him.

L. C. J. What of his being a Priest?

Bedlow. I have seen him in his Habit of a *Benedictine* Monk in the *Savoy*.

L. C. J. Have you heard him say Mass?

Bedlow. No, my Lord, I have not: But he hath been preparing to go to take Confessions.

L. C. J. Did he own himself to be a Priest?

Bedlow. He was in the Habit of a Priest, but I never saw him execute any part of the Office of a Priest.

Mr. Just. *Pemberton.* Did you hear him declare, that he hath been going at any time to take Confession?

Bedlow. The Monks have said when he hath been gone, that he went to take Confessions.

L. C. J. Upon your Oath, Have you ever heard him own himself to be a Priest, or ever say, that he was going to take Confession?

Bedlow. No, my Lord; but I have seen him in a Monk's Habit, and within half an hour he was in a secular Habit: For when they went abroad they took Confessions in their secular Habit.

L. C. J. How often have you seen him in a Monk's Habit?

Bedlow. I do not know whether it were more than once; and I asked then, Where is our Father going?

Mr. Just. *Pemberton.* And what said they to you?

Bedlow. He was going to take Confessions.

Mr. Just. *Dolben.* Have not you your self been confessed by *Marshal*?

Bedlow. No, my Lord.

L. C. J. What say you to him, will you ask him any Questions?

Marshal. I do not, I think, need to ask this Witness any Questions.

L. C. J. That shall be observed for you, if it be to your advantage. If you have any thing to say for your self, pray speak it.

Marshal. If there be but one Witness, what need I make any Defence?

L. C. J. What say you to Mr. *Oates's* Testimony?

Marshal. As for Mr. *Oates*, if your Lordship will but promise, that it shall not prejudice me, as to the point of having but one Witness, I have much to say for my self: But I think I need not trouble your Lordship with it.

Sir *John Keling.* Were not you here when *Marshal* was tried for the Plot?

Bedlow. Yes.

Mr. Just. *Pemberton.* You must not ask him any Questions about that.

Marshal. My Lord, I say, if your Lordship will but grant, that the Witnesses may have free Access, and go away safe —

Bedlow. I believe the Court, upon his Trial, was satisfied that he was in Orders, received from the Church of *Rome*.

Sir *John Keling.* Swear Mr. *Prance.* [*Which was done.*] What did you hear him say at his last Trial?

L. C. J. This is hard Evidence truly.

Mr. Just. *Jones.* If he would do it voluntarily of himself, he might, we did not ask him the Question.

Prance. My Lord, I stood just by him when he stood at the Bar, and I heard him say this to the other Man Mr. *Corker*, *Though we are Priests, this does not reach us.*

L. C. J. But is this good Evidence?

Prance. I did hear him say he was a Priest.

Mr. Just. *Pemberton.* We did all hear him say so, I believe.

Mr. Just. *Atkins.* I dare say none of the Court asked him the Question.

Marshal

Marshal. My Lord, I was not asked, nor had any occasion, and certainly I should not pick an occasion to condemn my self: If I did it, I did it without occasion. Besides, my Lord, I humbly conceive, that there must be Proof against a Man, or his Confession won't make him Guilty.

Mr. Just. Pemberton. I would not have you too sure of that.

Marshal. Certainly if a Man do confess at another time, without Proof against him that will not do.

Mr. Just. Pemberton. I believe the Jury will take your own Confession.

L. C. J. Don't be over-confident of that, for we have Memories too as well as you.

Mr. Just. Pemberton. You are not bely'd by *Mr. Prance*, I believe, *Mr. Marshal.*

Mr. Just. Ellis. If he have confess'd it, that is sure Proof enough.

Sir John Keling. Swear *Mr. Dugdale.* [Which was done.] You were at the last Trial, Sir: I only ask of you, Can you remember any thing of this?

Dugdale. To the best of my remembrance, I heard him own that he was a Priest.

Sir John Keling. Then say what you can for your self.

Marshal. My Lord, I have only one material Witness against me. They say that I said so; if I did say so, I must say it to the Court; and if it was to the Court, it must be upon some Question asked me.

L. C. J. You must not say so; I am afraid if you appeal to the Court, it will do you no good.

Mr. Just. Dolben. It is plain that you are so free of your Discourse, that you might say things that were not pertinent.

L. C. J. 'Tis not proper for the Court to give Evidence; if we did we should do you little Service in this matter.

Marshal. I do believe I shall receive all Justice from the Court. And I have experienced it so already. Now as to the present Testimony against me, I conceive that only *Mr. Oates* is a material Witness; no one else swears that they ever saw me officiate or perform the Duty of a Priest. As for *Mr. Oates*, he says he heard me say Mass several times the last Summer before the Plot. And *Mr. Oates* did say he was present in *June*, *July*, and *August*. *Sir William Waller*, tho he was pleased to forget other things, yet did remember that, and did testify that he saw me in *June*, *July*, and *August*. Now then I humbly conceive, if he heard me say Mass at any time in that Summer, it must be in one of those three Months. Was it in any one of them?

Oates. My Lord, I came over in *April* from *St. Omers*, and I did, as I remember, hear him say Mass one time before I went again, and heard him say it several times after, which was about the middle of *June*, I think.

Marshal. Now I say, if this Honourable Court will but please to promise, that the Witnesses that come hither shall come and go safe, I believe there are Witnesses that may contradict *Dr. Oates*.

L. C. J. What can your Witnesses prove? you must not make Bargains with the Court.

Mr. Just. Pemberton. Why should you suspect that your Witnesses should not go free?

Marshal. Because some have received great Abuses.

Mr. Just. Atkins. It was so said, but not made out.

Mr. Just. Pemberton. There was only one Person that came here, and affirmed so, but he did not prove it.

Mr. Recorder. And the Court did say that they should be punished that did it.

L. C. J. The Witnesses none of them, that I know of, were abused.

Bedlow. It was only the King's Witnesses that have been abused.

L. C. J. What can your Witnesses prove?

Marshal. He came over the 24th of *April*, and I can prove that from the beginning of *April*, to the end of *July*, I was not within three-score Miles of *London*.

Oates. As to his Officiating as a Priest, I cannot speak positively as to the Time, but I think in last Summer was twelvemonth.

Mr. Just. Dolben. He says, he thinks he did once in that time, but he is sure, that he did see you several times that Summer.

Marshal. But what part of the Summer?

Oates. From the time of my coming over again, to the time of the Discovery of the Plot.

L. C. J. When was it that you heard him first?

Oates. When I heard him first was in the Year 1677, before I went into *Spain*: I went away in the Month of *April*, and I am sure he said Mass before I went into *Spain*; and when I came back again in the Winter, I came in *November*, and stay'd in Town about ten Days, and then went to the *Savoy* and heard him say Mass.

Marshal. What *November*?

Oates. Before the Summer I came out of *Flanders*.

L. C. J. He says he went into *Spain* in *April*, (77.)

Marshal. And he heard me say Mass before he went over?

Oates. Yes.

Marshal. Pray look, my Lord, *Mr. Oates* will confess himself, he was but newly reconciled to the Church of *Rome* a little while before he went.

Oates. I was reconciled to the Church on *Ash-wednesday*, and I went in *April* following.

Marshal. Where did you hear me say Mass then?

Oates. In the *Savoy*, at that time, before I went into *Spain*.

Marshal. Do you pretend to have known the *Savoy* ever before your coming back again?

Oates. Yes, I do.

Mr. Just. Pemberton. He does swear it.

Marshal. So he does, but he can't prove it. *Mr. Oates* came over in the Company, as he says, of *Mr. Thimbleby* and *Mr. Hitchcock*, and by his Means he did get to be commended to be received into the Order of the *Benedictines*, and he was then sent to *Mr. Pickering* in order to it; Now, my Lord, is it credible that *Mr. Oates* having no acquaintance with the *Savoy* before he had acquaintance with *Mr. Hitchcock*, which was when he came from *Spain*, should hear me say Mass before he went thither?

Mr. Just. Pemberton. All this is but a Story to the Court.

L. C. J.

L. C. J. What a wild Inference do you make from this unintelligible Business?

Marshal. Mr. Oates says so himself.

Mr. Just. Dolben. We all know you said Mass so openly in the *Savoy*, that any People whatsoever might come, and you did not know who they were.

L. C. J. Though he was not one of your Order, yet he might know you.

Marshal. To my knowledge there were never three Masses said in the World at the *Savoy*.

Mr. Just. Dolben. The World knows the contrary.

Marshal. Let Mr. Oates be positive in any thing, and we will disprove him.

Mr. Just. Pemberton. He hath gone as near it as is necessary; he tells you, after his Reconciliation, before he went over into *Spain*.

Marshal. But I say, he could not be at the *Savoy* before he was acquainted there, and I can bring Witnesses to prove, that I was not then at the *Savoy*; but I pray, my Lord, will these Witnesses do me any good?

L. C. J. What will they prove?

Marshal. That all the Summer, from the beginning of *April* to the end of the Summer, I was in the Country, threescore Miles from *London*.

Oates. I am not so positive in that, my Lord, but as near as I remember, before I went into *Spain* again. Your Lordships all know that I was not so positive as to any one time; but the Summer before the Plot broke out, I heard him say Mass several times in the Summer.

L. C. J. Now he is positive that he saw you say Mass in the Summer before the Plot was discovered. The Substance of his Deposition was your saying Mass, the Time is not material: He tells of a many times within that Compass.

Marshal. How shall I disprove that?

Mr. Recorder. He hath given you one particular time from *Ash-wednesday*, when he was reconciled to *Rome*, till he went to *Spain* in *April*.

Marshal. If he names Times, then I am able to disprove him: And he did name one, but when he saw me offer to prove by Witnesses, that I was not then in Town, he goes off from it.

Mr. Just. Pemberton. 'Tis impossible for Witnesses to be positive to a Day, a Week, or such a thing.

Mr. Just. Ellis. How is it possible to be so, unless it be a thing that he had taken such particular notice of, as to intend to swear to it, and give Evidence about it afterwards: Now, I believe Dr. Oates at that time had no thoughts of giving Evidence as to any such matter; but this he is positive in, That he did hear you say Mass at the *Savoy*.

Marshal. My Lord, if Mr. Oates had said he had seen me Officiate at *Somerfet-house* or *Wild-house*, it might have been something like; but at the *Savoy* it is known, that none are let in but Friends, nor could Mr. Oates come in, but upon a particular Acquaintance.

L. C. J. How does that appear so?

Marshal. By those that live in the House.

Mr. Just. Pemberton. You must not spend the Court's time in this manner of Discourse: If you have any Witnesses that you think in your self are material, the Court will suffer you to call them, and pray call them presently.

Marshal. Here is the House-keeper her self

that will witness that she never saw Mr. Oates there.

L. C. J. If the Great *Turk* had come there with a pair of Beads and a Crucifix, you would have let him come in: But in the mean time, Mr. Oates, you have given him a pretty compass of time, whereby he hath an opportunity of disproving what you say: And you give him one particular short time; but can you give any time afterwards in the Summer you speak of, within any month, or two, or three; because you say at several times?

Oates. I cannot be positive, but I will tell you, one time was the *Sunday* before they held their Conspiracy, which was, I verily believe, the *Sunday* before the 21st of *August*.

L. C. J. Do you believe it was in *August*?

Oates. Yes I do, and confine my self to the Month of *August*.

Marshal. Then call *Ellen Rigby*.

Oates. I was acquainted with Mr. *Pickering* soon after my being reconciled; and being acquainted with him, I went along with him several times to the *Savoy*.

Mr. Just. Pemberton. What do you talk of one *Hitchcock*, and I know not whom; he was acquainted with *Pickering* before.

Marshal. When, my Lord?

L. C. J. Presently after he was reconciled.

Marshal. Well, but you pretend now, that since you came over here you were in the *Savoy*; Had you a Key to get in?

L. C. J. He was reconciled on *Ash-wednesday*, he went in *April* to *Spain*.

Marshal. Here is *Ellen Rigby*.

L. C. J. Well, what would you have with her?

Marshal. I ask, Did she ever see Mr. Oates in the Summer before last?

Mr. Just. Pemberton. Don't you lead your Witness with such Questions.

L. C. J. Do you know Mr. Oates?

Rigby. I have seen him when I saw him come to ask Charity of Mr. *Pickering*.

L. C. J. How often?

Rigby. Twice or thrice.

L. C. J. What time in the Summer?

Rigby. I cannot say; but I saw him in Summer was Twelvemonth.

Oates. Why then did not this Woman, when she knew this Evidence that would lay a blemish upon me, come and give it for *Pickering*, to have saved him?

Mr. Just. Dolben. Will you give me leave to ask this Woman this Question; Whether she ever heard you say Mass?

Marshal. Ay, my Lord, with all my heart; and if she says she hath, I will be hang'd without any more ado.

Mr. Just. Dolben. Then you are sure your Protestants will say any thing you would have them?

Marshal. I my self am a perfect Stranger to the *Savoy*, in a manner.

Mr. Just. Pemberton. Is he not acquainted with the *Savoy*?

Rigby. Yes, he was there one month when *Pickering* was taken.

Marshal. Pray ask her whether ever, before Mr. Oates went over, she saw him in the *Savoy*.

L. C. J. You shall have your Question ask'd; but do you think you can build upon that; if she did not see him, he did not see you? Did you

you ever see Dr. Oates there betwixt *March* and *April*, before he went over into *Spain*?

Rigby. No, there was no body in the House but Mr. *Pickering*.

L. C. J. Was there never Mafs said in the House?

Rigby. Yes, while her Majesty's Servants were in the House.

L. C. J. But was there Mafs never said since in the House?

Rigby. Never since I came out of it, which was a Twelvemonth ago.

Mr. Just. *Pemberton*. Was there not Mafs said in three or four Years time there?

Rigby. Not in our House, I lived but in one House.

Marshal. I call her to know, whether Dr. Oates was there? And, my Lord, here is that which I insist upon; That none is let in there to hear Mafs, but those that have some particular Acquaintance and Intimacy in the House.

L. C. J. She only speaks to one particular part of the House; she can't say but Mafs was said in the other parts.

Rigby. There was no Mafs said there, that I know of.

L. C. J. Why, was there no Mafs said but in that particular House you liv'd in?

Rigby. I can't say that.

L. C. J. But the Question is, whether ever you, Mr. Oates, saw him say Mafs in this Woman's House?

Oates. I do not know that I ever saw this Woman in all my Life, before the Trial.

Marshal. He came there under a disguised Name.

L. C. J. He tells you he went along with *Pickering*.

Oates. *Pickering* serv'd the Mafs.

L. C. J. Well, call your Witnesses, if you have any other.

Marshal. I can prove that I was out of Town the whole Summer, from the beginning of *April* to the end of the Summer: But if Mr. Oates will not stand to any time, I cannot be able to disprove him: But then I'll only offer one or two things more.

L. C. J. When did you come to *London*? in *August*?

Marshal. I will tell you as near as I can to a day. I came in the middle of *Bartholomew Fair*, which begins the 24th of *August*.

L. C. J. So it was the latter end.

Mr. Just. *Pemberton*. Well, if you have any Witnesses, call them, and do not spend the Court's time in vain.

Marshal. My Lord, I have something very material, I think, to offer: The only material Witness that is now against me, was a Witness against me in my last Trial: Now I do conceive, that I being found Not Guilty at the last Trial, that Witness ought to be look'd upon as perjur'd: And I appeal to the Court, whether it were so or no.

Mr. Just. *Atkins*. That's a false Collection, Mr. *Marshal*.

L. C. J. 'Tis a strange inference you make: Do you think that every Witness is perjur'd, because the Jury don't find according to what he says? He is not perjur'd, for he may swear true, and the Jury not believe him.

Marshal. I ground it, my Lord, upon what

my Lord *Jones* said to the Jury that sat upon *Coleman*; who at their going out told them, either they were to find him Guilty, or bring in two Men perjur'd. Thus it was his Opinion, that the finding of the Jury contrary to the Evidence, did make them perjur'd; and there was none of the Court did oppose him.

Mr. Just. *Jones*. What then?

Marshal. And if this were the Sense of the whole Court, That a Man must either be found Guilty, or the Witnesses perjur'd; that is my Case, and he is not to be believ'd.

L. C. J. See how unconsequentially you talk: The Court might say, that you must believe these Men perjur'd, if they swear a positive thing and you find it not: But if you make use of it thus, that therefore they are perjur'd, 'tis false, for they are not so till they be Convicted upon Record: And tho' the Jury don't believe them, yet they may swear true.

Marshal. 'Tis true.

L. C. J. Then you make no inference from it.

Marshal. My Lord, I am before the same Court that I was try'd by before, and before the self-same Judges, who know that upon my Trial he was not believed, and therefore is perjured.

Mr. Just. *Pemberton*. You must consider, that sometimes the Jury will go against the Direction of the Court; but if the Witness be not believed by them, that does not argue that he does not swear Truth, or is perjur'd: I tell you my Brother *Jones* might say, You must find this Man Guilty, or think these Men perjur'd: Many times a Judge will say so, but the Jury often find against the Direction of the Court; shall these Men be perjur'd then presently?

Mr. Just. *Jones*. There were two positive Witnesses, as positive as could be in the World, and nothing at all to contradict them.

Mr. Recorder. Will you give the Jury leave to believe you, Mr. *Marshal*? For you your self said you were a Priest.

Marshal. Yes, if I said so, I humbly desire the Jury to take notice of it, that they are the self-same Witnesses that brought such a positive Testimony the last time; which if the Jury had believed, they must of necessity have brought me in Guilty; I would not spend the time of the Court, but I would observe this; it was all sworn positively, That I did consent to the King's Death, and other things.

L. C. J. You had the better luck.

Marshal. Then they are not to be believed now.

L. C. J. This is to no purpose, neither is it to be suffer'd: For you break in contrary to all the Laws of Practice, if we suffer this as an Argument, That because an Evidence was not believed in one Case, therefore he is perjur'd: And the Jury gave in a Verdict contrary to the Witnesses, that therefore he is perjur'd in another Case.

Marshal. This does invalidate the Testimony sure of such a Witness.

L. C. J. You have said it often enough, come pray conclude.

Mr. Just. *Pemberton*. No, Mr. *Marshal*, you must not be suffer'd in these Harangues to impeach the Witnesses; if you have any thing material against Dr. Oates, or if you can shew any

Record of his Conviction of Perjury, it may be something.

Marshal. My Lord, it is for my Life, and 'tis the second time that I plead for my Life, much beyond my expectation; and therefore I hope I may have the freedom to speak: And though I confess this Jury is not obliged to proceed according to the Verdict of the former Jury; yet this Jury, as well as that, is obliged to proceed according to the appearance of Truth: And his being found false in his Testimony the last time, should make him of no Credit here.

Mr. Just. Dolben. It is not so, they are not to take Notice of it, unless you bring them a Record of Conviction.

Mr. Just. Pemberton. He gave a good Evidence then no doubt of it, though they would not believe it.

Mr. Just. Atkins. Upon what Grounds that Jury went, is unknown to us.

Marshal. Then, my Lord, another thing is this: The Law does except against all Witnesses who are strongly or rationally supposed to have a Spight or Malice against the Prisoner, much more where there is a manifest Sign that he hath a Malice. Now I will endeavour to shew how it comes to my Case: Mr. Oates accused me last time of Treason, and that in the highest nature; if this had been true, he had shewn himself a good Subject, and me Disloyal: And the Jury not believing him, I was found the good Subject: Now he pursues his malice.

L. C. J. You shall not go on in this manner, and make such notorious false inferences; that because it was not found according to his Testimony, therefore he is perjur'd: The Jury did not believe it, might not he speak true for all that? Hath not many a Witness sworn true, yet the Verdict gone against their Evidence? And therefore you don't mind: Ye are all giddy-headed, if you once get a thing into your Heads, you can't get it out again.

Mr. Just. Atkins. If the Jury did not believe it, a great many others did.

L. C. J. All you build upon is but a false Conclusion; because the Jury found you Not Guilty, therefore they found him perjur'd.

Marshal. My Lord —

Mr. Just. Pemberton. Pray Sir, if you will speak any thing that is material and modest, the Court will admit of it; but if you only go to throw dirt upon the King's Witnesses, Men of good Reputation, and Men that have shew'd themselves honest, and that have spoke Truth all along; ne'er a one of their Testimonies but what is confirm'd by another's; so that not one of them stands single, and for you to say they are ill Men.

Marshal. My Lord, I do not say they are ill Men, I speak of Matter of Fact.

L. C. J. You conclude falsely; and if you did but mind it, you would never repeat it over and over again: That because the Jury did not believe his Evidence, therefore he is perjur'd: Do you suppose then that any other Jury should never believe him?

Marshal. My Lord, I reckon his Evidence is not so good; and if I am found Not Guilty, there must be Malice in him to accuse me.

L. C. J. Look you Gentlemen, The single Question is, Whether he be a *Romish* Priest or no? It is proved by Mr. Oates, that he hath se-

veral times heard him say Mass, that he hath seen him deliver the Sacrament, and seen him Consecrate the Host. He insisted upon it how often; Mr. Oates says, ten or a dozen times, in what time he cannot charge himself particularly with a Month or two; but at last he did tell him positively, because *Marshal* said how is it possible I can make my Defence to generals, unless you fix some time? Therefore says he, I was reconciled to the Church of Rome on *Asb-Wednesday*, and afterwards between that and *April*, when I went into *Spain*, I heard him say Mass, that was once; but I heard him say in the Summer several times: being asked, what part; he says, I cannot say exactly, but I think in the Month of *August*; if he had said any thing as to the particular time between *Asb-Wednesday* and his going into *Spain*, it had been something, but against that he makes no pretence, as to his saying Mass in the *Savoy*, that can contradict it. If he can still he shall call his Witnesses that can prove he did not say Mass between the *Asb-Wednesday* and the *April* he went into *Spain*: He does indeed say, that he was a great part of the Summer in the Country, in *June* and *July* to *Bartholomew Fair*, threescore Miles off; but to that Mr. Oates says it was some time in *August*, and so he might be in the Country till then, and yet say Mass after; he might come to Town the 26th, or 27th, or 28th, and he might be here in *August*: So you hear no Evidence that contradicts, supposing it proved true, what he imagines his Witnesses can say; the last time that he charges him to have said it in the Summer, may be true according to his own Word and Confession when he came to Town. Then there is Mr. *Bedlow*, he only tells you he saw him in a Priest's Habit, but he did not see him execute the Office of a Priest, but he looked upon him as a Priest, called him Father: and that is all that he charges him with; that is concurring Evidence, and backs Mr. Oates, but alone perhaps it would be very weak. But they set up here *Prance*, and he says directly, that at the Trial he did confess himself to be a Priest; and he seems to deny it, and would appeal to the Court; but his appealing to the Court would not help him in that Case. So I leave this to you upon this Evidence; if you believe Mr. Oates, that swears he saw him before he went into *Spain*, and after, say Mass, with the concurring Evidence of Mr. *Bedlow*, that saw him in his Habit, and with the subsequent Evidence of those two more that do swear that he did say so, you must find him Guilty; and a Man's own Confession is Evidence against himself; and if Mr. *Marshal* will recollect himself, he would not be too positive in that Point. If all these Particulars satisfy your Conscience, I say, that he is a *Romish* Priest, you must find him Guilty; if you are unsatisfied, you must acquit him.

Cl. of Cr. Set *William Ruffel* to the Bar. *William Ruffel*, alias *Napper*, hold up thy Hand: You that are sworn, look upon the Prisoner and hearken to his Cause, &c.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury, *William Ruffel* alias *Napper*, stands Indicted for High-Treason: The Offence charged in the Indictment is, That being born within the Kingdom of *England*, and having received Orders from the See of *Rome*, he

he did come and abide here. To this he hath pleaded, Not Guilty.

Mr. Serj. Strode. Swear *Dr. Oates*, and *Mr. Prance*. *Dr. Oates*, Will you tell my Lord and the Jury, what you know of *Mr. Russel's* being a Priest?

Oates. My Lord, this *Russel* went by the Name of *Napper*, and is a *Franciscan Fryar*, and I heard him say Mass several times at *Wild-house*.

L. C. J. What, in his Habit?

Oates. In Priest's Habit.

L. C. J. When was this?

Oates. The last Summer before the Plot; I have heard him twenty times sing Mass.

Mr. Just. Jones. Did you ever see him give the Sacrament?

Russel. Where pray was this?

Oates. At *Wild-house*.

Russel. What is his Name?

L. C. J. *Oates*.

Russel. I do not know him, I say, my Lord.

L. C. J. Did he do it publicly?

Oates. Yes, in the Chappel.

Mr. Just. Jones. Did he give the Sacrament?

Oates. I did receive the Sacrament from him.

Russel. Why, first of all, I say I do not know him.

L. C. J. It may be so, more know *Jack Pudding*, than *Jack Pudding* knows.

Russel. Well then if one Witness must stand, I have no more to say.

L. C. J. Will you ask him any Questions?

Russel. He says he heard me a Month ago.

L. C. J. No it was last Summer was Twelve-month.

Russel. Then he must prove it.

Capt. Richardson. He does prove it, he swears it.

Russel. Well, I can make it appear, last Summer was Twelve-month I was in the Country.

Oates. And I heard him say Mass, November 1677, he was then one of the Chaplains of *Wild-house*.

Russel. Give me leave to recollect my Memory.

Mr. Belwood. Set up *Mr. Prance*. You hear the Question: Sir, Is the Prisoner at the Bar a Priest?

Prance. Yes, I have heard him say Mass twenty times in his Habit.

L. C. J. Did he give the Sacrament?

Prance. Yes, I saw him give the Sacrament to several, and he did hear Confessions; he had a great many People about him.

Russel. When was this?

Prance. Two or three Years ago.

Russel. Where?

Prance. At the *Spanish Ambassador's*, at *Wild-house*.

Mr. At. Gen. My Lord, here is *Sir William Waller*, that took him, with his Vestments and all his Trinkets. [Who was sworn.]

L. C. J. Come, what say you, *Sir William*?

Sir W. Waller. That Morning I took him, as soon as I came into the Room, I asked him his Name: He told me his Name was *Russel*: I asked him, if he ever went by any other Name? He deny'd it for some time, but looking amongst some of his Papers, I found some Letters directed to him by the Name of *Napper*; and then he did confess his Name was *William Russel Napper*. Searching among his Cloaths, I found some Religious Habits; I asked him, if

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they were his, and he confessed and owned 'em to be his.

Russel. It was in my Custody; it was none of mine.

L. C. J. Why did you say so then?

Russel. I kept it for another.

L. C. J. But you told him it was your own, What say you to that?

Russel. I do not remember that.

Mr. Just. Dolben. Well, he swears it.

L. C. J. Here are two positive Witnesses against you, what say you to it? What say you to his saying, He hath heard you say Mass twenty times?

L. C. Baron. What say you to the saying Mass at the time *Dr. Oates* speaks of?

Russel. I believe he is mistaken, as to the Time and Year: I was entred into the House in — 78.

Mr. Just. Pemberton. Then you think it was at another time?

Russel. He could not hear me at that time, for I was then in the Country.

L. C. J. Have you any thing to say? It shall be allow'd you, it was at another time, but it seems it is true. Look you Gentlemen, you have a very plain Business of it; here are two Witnesses that swear they saw him give Absolution, deliver the Sacrament, and heard him say Mass, and one says twenty times: And *Sir W. Waller*, who says, that he confest the Priest's Habit to be his own.

Russel. Consider my Circumstances, and give me a little time; I have not had any time to get my Friends near me, or to prepare my self.

L. C. J. I do not see any Good Time would do you: I think the best use you can make of your time, is to repent.

Oates. My Lord, the Court here is pester'd with Papists; here are a great many about here.

L. C. J. If they be Witnesses, we can't keep them out.

Mr. Bedlow. Some of them may be Witnesses, but all are not; and if they be, they come to catch Advantages.

Mr. Just. Dolben. I don't understand why they should be turn'd out.

Mr. Just. Pemberton. Let them alone: Be at quiet.

L. C. J. No, no, they will revile us, that they had not an open and a fair Hearing; we won't have it said, that we do any thing in Huggemugger; what we do is done openly and honestly.

Cl. of Cr. Set *Charles Parris*, alias *Parry*, to the Bar. Hold up thy Hand: You that are sworn, &c.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury; the Offence for which the Prisoner at the Bar stands Indicted, is High-Treason, the same Offence for which the rest have been Indicted —

L. C. J. Then call your Witnesses.

Mr. Serj. Strode. *Dr. Oates* and *Mr. Prance*.

[Who were sworn.]

L. C. J. What can you say against the Prisoner, as to his being a Priest?

Oates. My Lord, he is a reputed Priest, and hath said Mass several times: I have heard him say Mass at *Wild-house*, not in the publick Chappel, but in another Room.

L. C. J. Where do you say?

6 M 2

Oates.

Oates. Once at *Wild-House*.

L. C. J. Where else?

Oates. At Mr. *Pafton's*.

L. C. J. When was this, Winter or Summer?

Oates. Within the Compass of a Year reckoning—77 and—78; it was on a *Saturday* one time, and twice at Mr. *Pafton's*, and once or twice, I can't tell which, at the other Place.

L. C. J. And in the Priest's Habit?

Oates. Yes, in the Priest's Habit.

L. C. J. And did you see him consecrate the Host?

Oates. Yes.

L. C. J. And give the Sacrament?

Oates. Yes.

Parry. My Lord, as to that he speaks of—77, or—78, what Month of—78 I desire to know.

Oates. I cannot confine my self to a Month; I knew him to be a Priest, but I was little acquainted with him, but he was a reputed Priest.

Mr. Just. Jones. But you are sure this is the Man?

Oates. Yes, this is the Man.

Parry. Am I the Man? What is my Name?

Oates. You went by the Name of *Johnson*.

L. C. J. Did you never go by that Name of *Johnson*?

Parry. No, my Lord, but by this Name of *Parry*; *Parry* is my Name, and by that Name I went, and never by any other Name than *Parry*, whatever he says.

L. C. J. Why by that same Name you are Indicted, and you are the Man that he saw.

Mr. Just. Pemberton. Will you ask him ever a Question?

Parry. I have ask'd him already what I would ask him.

Sir John Keiling. Then set up Mr. *Prance*.

L. C. J. What do you say as to Mr. *Parry*?

Prance. I know he is a Priest, and have heard him say Mass at the *Venetian Ambassador's*, and at Mr. *Pafton's*, and he went by the Name of *Johnson*.

Mr. Recorder. Did you go by that Name?

Parry. No, I never went in my Life but by my own Name, *Parry*; that is my Name, whatever he says, and I am not ashamed of it.

L. C. J. How often?

Prance. Once at *Pafton's*, and two or three times at the *Venetian Ambassador's*.

L. C. J. And you saw him give the Sacrament?

Prance. Yes.

L. C. J. In his Habit?

Prance. Yes.

Parry. At what Time?

Prance. I believe it might be half a Year before the Plot: And I know you by another Circumstance: You brought a Chalice to my House, and it was whole, and you broke it, and told me, I must not touch it until it was broke, and so you defaced it.

L. C. J. That was an holy Vessel, was it not?

Prance. Yes; and he told me I must not touch it till it was broken in pieces.

L. C. J. If you had not been a Priest, he had been as holy as you, and he might have touch'd it as well as you.

L. C. Baron. His breaking was to defecrate it.

Prance. He bought some Oil-Boxes of me about that Time.

Parry. I do not know this Man.

Prance. You were several times with me.

L. C. J. Why, have you forgot the Chalice you brought to his House?

Parry. I have no reason to forget my self, for I never did any such thing, for I never bought, or sold to him any Chalice, or any such thing; and beside, suppose I had, that doth not argue that I am a Priest.

L. C. J. No, but if he were so holy as to touch the Chalice, he would be a Priest. But there is no great Stress laid upon that, but to shew you that he knows you, he did not mistake the Man. The Stress of the Evidence lies, that he heard you say Mass at the *Venetian Ambassador's*, and at *Pafton's*, and then Dr. *Oates* speaks of *Wild-House*.

Parry. I was never in my Life at the *Venetian Ambassador's*, nor at Mr. *Pafton's*, nor at *Wild-House*.

L. C. J. Can you swear that he is the Man?

Bedlow. No.

L. C. J. Then set him aside.

Bedlow. I had Order to send for two Witnesses out of *Monmouthshire*—

L. C. J. Here is Proof enough.

Mr. Just. Pemberton. What have you to say for your self?

Parry. I have this to say, and can shew it evidently, that is, I have Witnesses to prove, that I never was at *Wild-House* to Officiate in the Years 77 and 78 before the Plot: And for these six or seven Months that Mr. *Prance* does alledge I was in *London*, I was in the Country.

L. C. J. When?

Parry. Six or seven Months before the Plot.

L. C. J. He did not confine himself precisely to any six or seven Months.

Parry. My Lord, I desired him to fix upon a Month.

Mr. Just. Pemberton. He cannot do it.

L. C. J. If he can, let him; we will ask him the Question; When was it that you saw him do thus?

Prance. My Lord, I am not certain what time it was, but about two, or two Years and an half ago, I am not certain, 'tis impossible for me to remember it.

Mr. Just. Pemberton. You must take him in what he says; this he is sure of, he did hear you say Mass and give the Sacrament, but as to the Time, he believes it to be about this time, but he is not positive, nor can be in it.

Parry. He only believes it now, because he knows I have Witnesses for that time: He hath sworn it positively, it was six or seven Months before the Plot, and I have Witnesses to produce, can prove how long before the Plot I was in the Country.

L. C. J. Call your Witnesses.

Parry. Call *Lanscroon* and *Jacob*.

L. C. J. How long was it before the Plot, as near as you can tell the Time, Mr. *Oates*?

Oates. I have heard so many Priests, that I cannot possibly give an Account of the Day.

Parry. I desire to know of Mr. *Oates*, who was Ambassador at *Wild-House* at that Time when he says he heard me.

Mr. Recorder. Were you never at *Pafton's*?

Parry. No.

Mr. Recorder. Nor at the *Venetian Resident's*?

Parry. No.

Mr. Recorder.

Mr. Recorder. Mr. Parry was not, but Mr. Johnson was.

Parry. I know not Mr. Johnson, my Name is Parry; I hope it is not just I should be hang'd for another Person.

Mr. Recorder. I mean Mr. Johnson, alias Parry.

L. C. J. Mr. Prance, you are sure that is the Man?

Prance. Yes, and I heard him confess himself to be a Priest.

Parry. 'Tis false.

L. C. Baron. And this is the Man that brought the Chalice to you.

L. C. J. Why, did you never go with a Chalice to this Man, and break it?

Parry. My Lord, I never bought any thing of him, nor sold any thing to him, nor had any Converse with him.

Sir John Keiling. I do never wonder at their denying any thing. I would feign know whether he would not deny the Sun shines now or no?

Parry. And then for the private Room, what Room of the House was it?

Prance. I took him up in the middle of Cheap-side, and therefore I must sure know him.

Parry. He did not know me, but only took me on Suspicion at Random, because I was in the Company of a Roman Catholick.

Then the Witness Lanscroon stood up.

L. C. J. What would you have this Man asked?

Parry. About the Year 77 and 78, wherein Mr. Oates alledges he heard me, let them answer to that, how long I was at Windsor? And whether I did not dwell constantly there?

L. C. J. Well, you hear the Question. How long was he at Windsor?

Lanscroon. From what Time do you ask?

Mr. Just. Pemberton. Nay, you must not be led into an Answer. How long was he at Windsor?

Lanscroon. From Christmas 77, to Alhallantide 78.

Mr. Just. Ellys. And was he never at London all that Time?

Lanscroon. No.

Mr. Just. Pemberton. How can you tell that?

Mr. Just. Atkins. Was he always in your Sight all the Time?

Lanscroon. Yes, he was there always.

Mr. Just. Atkins. Were you there always yourself?

Lanscroon. Yes.

L. C. J. What are you?

Lanscroon. A Painter.

L. C. J. And was you and he always together at that Time?

Lanscroon. Yes.

L. C. J. What, in a Room?

Lanscroon. Yes.

L. C. J. Can you affirm, that for a Twelve-month together, you saw him every Day?

Lanscroon. Yes.

Mr. Recorder. How many Years ago do you speak of?

Lanscroon. From 77 to 78.

Mr. Recorder. I don't ask you that, but how many Years ago 'tis?

L. C. J. When came he down to Windsor?

Lanscroon. Christmas (77.)

L. C. J. The Testimony of Mr. Oates goes to November, and he speaks of Christmas following.

Mr. Recorder. How many Years ago was it, I ask?

Lanscroon. A Year ago last Christmas.

Mr. Recorder. That is 78 and 79.

Mr. Just. Pemberton. Your Witness is understood, Mr. Parry.

Then stood up the other Witness Jacob.

L. C. J. What say you about Mr. Parry's being at Windsor?

Jacob. He was a Gentleman that came along with me in the Coach to Windsor.

L. C. J. When?

Jacob. Before Christmas (77.)

L. C. J. How long before?

Jacob. Ten Days. He came there to take Air for his Health, he was not well.

L. C. J. How long staid he there?

Jacob. He staid at Windsor till Alhallantide after, he staid there a Year.

L. C. J. Did you see him there every Day of that Year?

Jacob. Yes.

L. C. J. Why, what Reason had you to see him every Day?

Jacob. He dined every Day at our House.

L. C. J. Your House? What House?

Jacob. The Painter's.

Mr. Just. Dolben. However, that is but from Christmas, and he speaks of November before.

L. C. J. Did he dine there all that Time?

Jacob. Yes.

L. C. J. Did he dine there every Friday constantly?

Jacob. Yes.

L. C. J. Did he never keep a Fast in all that time?

Jacob. No.

L. C. J. Did he dine a Wednesdays and Fridays?

Jacob. Yes.

L. C. J. There was one Good-Friday in that Time.

Oates. Pray ask this Witness if he never heard him say Mass?

Mr. Just. Dolben. Then he must be sworn, and may be he will deny it.

L. C. J. Did he dine of Ashwednesday and Good-Friday?

Jacob. Yes, my Lord.

L. C. J. So, he says you eat of Good-Friday and Ashwednesday; the Pope shall know it.

Mr. Recorder. What say you? Did he eat Flesh upon those Days?

Jacob. Yes, he did.

L. C. J. You can tell what he did eat, can you?

Mr. Recorder. Did he eat Beef, or Mutton?

Mr. Just. Dolben. Go, you talk like an idle Boy.

L. C. J. He tells you, that you eat Meat too, that is more.

Parry. My Lord, we eat Fish, and such things all Catholicks do.

Mr. Recorder. Ay, the Priests do, but their Pupils do not, they will not allow it to them.

L. C. J.

L. C. J. Well, have you done, have you any more Witnesses?

Parry. I would ask Mr. Oates, and desire him to answer me to it, what did he depose against me before my Lord *Shaftsbury*, viz. That he heard me say Mass in *Wild-Chapel*, and there heard Mr. *Collins's* Confession, and now he says, it was in a Private Room; now I have it to shew that I did not officiate there, nor frequent the House.

L. C. J. Who is it that will prove that you did not come to the House?

Perry. The Ambassador's Servants.

L. C. J. I do not understand what you mean.

Parry. I am to ask of Mr. Oates, and desire he should answer to it, What he did depose before my Lord *Shaftsbury* and the Committee of Lords, touching Mr. *Collins*?

L. C. J. He cannot remember, it may be.

Mr. Just. Pemberton. You must not ask such Questions as these are, it does not refer to this Matter.

Parry. He did give in, that I heard Mr. *Collins's* Confession, I ask, Why he does not give it in now?

L. C. J. That is a foreign Matter, what have we to do with it now?

Mr. Just. Pemberton. If you will prove any thing against him, you may, but you may not ask such Questions as that.

Parry. I have proved that I was in 1677, and 1678, in the Country.

Mr. Just. Pemberton. They tell us of ten Days before *Christmas*, and Mr. Oates speaks of *November*.

L. C. J. Look you, Gentlemen of the Jury, here are two Witnesses against him, Mr. Oates and Mr. *Prance*—

Parry. My Lord I have one thing I desire to be taken notice of, that is, this Letter of the Ambassador's, who upon the Examination of all his Family does testify and declare, that I did never officiate in any respect in his Family.

L. C. J. It cannot be read.

Mr. Just. Pemberton. It is not any Evidence.

Parry. How shall I clear my self, if the Testimony of the Ambassador and his whole Family be not admitted?

Mr. Just. Atkins. 'Tis a hard thing for you to clear your self.

L. C. J. Why don't you bring them hither as your Witnesses?

Mr. Recorder. Where is my Lord Ambassador, why does not he come hither?

Parry. He hath left the Kingdom.

Mr. Recorder. Then you may boldly say any thing of him, and we cannot disprove you.

L. C. J. Is all his Family gone with him?

Parry. There is but one remaining, I think he is here.

L. C. J. Call him.

Parry. Monsieur *Rivier*. [*Who appeared, and stood up.*]

L. C. J. What do you ask him?

Parry. Do you know this Hand, Sir?

L. C. J. It must not be read if he do.

Parry. He is one of the Servants to my Lord *Egmond*, and he lived in the House, and he knows that by his Master's Order all his Domesticicks were examined, and all protested they neither knew nor saw me ever in *Wild-House*; all which I have under his Hand and Seal to shew.

L. C. J. It signifies nothing.

Mr. Just. Pemberton. Ask him any Question, but don't tell him what he knows.

L. C. J. Why don't you ask him some Questions? Why, you have not Catechisms in your Church, you don't know how to ask Questions.

Parry. Ask him whether he ever heard me say Mass at my Lord Ambassador's House?

L. C. J. It's to no purpose if he did not, here are some have.

Parry. Then my Lord, he knows that there was a strict Examination at *Wild-House* by my Lord's Orders, whether I did frequent the House, and it was reported by them all I did not; and they must know if ever I did officiate there, for there is none admitted to say Mass there, but by Order.

Mr. Just. Pemberton. Look you, Sir, do you know that Mr. *Parry* ever said Mass at *Wild-House*?

Rivier. No, my Lord, I do not know it.

Mr. Just. Pemberton. It was in a private Room, Dr. Oates says.

Rivier. I never saw him there.

Mr. Just. Pemberton. If you ask an hundred here, they would say the same thing.

L. C. J. Come, when Matters are plain 'tis in vain to contend; here is the Business, Gentlemen, here are Mr. Oates and Mr. *Prance*, two Witnesses against Mr. *Parry*; Mr. Oates says, he hath heard him say Mass, one time at one Place, and twice or thrice at another. Mr. *Prance* hath heard him often, and Mr. *Prance* does tell you plainly, that he cannot err, that he is not mistaken in the Man, for he came to his House with a Chalice, and broke it there, and he knew him so well, that meeting him by chance, he took him up in the Streets; so if you believe them, they swear it positively, and you must find it so.

Then the Lord Chief Justice went away.

Cl. of Cr. Set Henry Starkey to the Bar. Hold up thy Hand, &c.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury, Henry Starkey stands indicted for the like Offence with the other Prisoners; that he having received Orders from the See of Rome, came into England, and this is High-Treason; to this he hath pleaded Not Guilty; we will prove it upon him. Swear Dr. Oates and Mr. *Prance*. [*Which was done.*]

Mr. Serj. Strobe. Pray Sir, will you tell my Lord, and the Gentlemen of the Jury, what you do know of this Starkey's being a Priest?

Oates. My Lord, Mr. Starkey is a Priest, and I once heard him say Mass at Mr. *Paston's*.

L. C. Baron. When was that? How long was it ago?

Oates. It is about three Years ago.

L. C. Bar. Did he give the Sacrament then, or at any other Time?

Oates. None received but himself.

Mr. Belwood. Was he in Priest's Habit?

Oates. Yes.

L. C. Bar. Did he receive the Sacrament, and consecrate the Host?

Oates. Yes, in both Kinds.

L. C. Bar. Will you ask him any Questions?

Starkey. He tells me of Priest's Habits; what are they, Sir?

L. C. Bar. What Habit had he on?

Oates.

Oates. A thing about his Neck, and a Surplice, and a thing about his Arm; he had a Surplice girt about him.

Starkey. I know you not; and I perceive you neither know what a Priest's Habit is, nor the Difference between his Habit and his Ornaments. A Priest's Habit is a Cassock down to the Ground, and a side Cloak; the Ornaments of a Priest are not a Surplice, (as *Oates* says) but an Albe that falls to the Ground, and other things besides that.

Mr. Just. Pemberton. You are well skill'd in it, I see.

Starkey. And how did you know that I said Mass? Did you know that I took Orders? For if I took no Orders, it was no Mass; for it is the Priest makes the Mass, and not the Mass the Priest; and then if I were no Priest, it could be no Mass.

Mr. Just. Pemberton. That is a pretty Argument indeed! Do any but Priests say Mass?

Starkey. I can bring an Instance of a Gentleman in this Town, a private Lay-man, who said Mass about this Town, and he was a Protestant, and at last he stole the Chalice, (his Name was *Gardener*.)

Mr. Just. Pemberton. He did well, did he not? Is that your Use?

Starkey. Yes, with such Priests as he.

L. C. Baron. 'Tis a great Evidence this arguing of yours, if he did not swear it, that you are a Priest.

Starkey. I wonder that this Gentleman should so well remember me, I don't know him.

Mr. Just. Pemberton. Do you think you know every one that hath seen you at Mass?

Sir John Keling. Set up *Mr. Prance*. What say you, Sir, to this?

Prance. My Lord, I heard him say Mass at my Lady *Somerfet's* in *Lincolns-Inn Fields*, and at *Mr. Duncomb's*, that taught School in *Prince's-Street*.

Starkey. As I hope for Mercy from Almighty God, I was never there in all my Life (except *Pantly*) her House in *Gloucestershire*.

Prance. Did you know one *Mr. Duncomb* that is dead?

Starkey. Yes.

Prance. Well, I heard you say Mass at his House.

Starkey. My Lord, I was never at *Mr. Duncomb's* in my Life, but at 3 or 4 a-clock in the Afternoon, and if I said Mass there, it was over a Pot of Ale.

Prance. I have heard him say he said Mass in the King's Army.

Starkey. I know neither of these two Fellows.

Mr. Recorder. Come, I would fain see whether you Priests and Jesuits can speak one Word of Truth or no: Come, *Mr. Starkey*, did you ever say Mass in the Army?

Starkey. I never did: But pray give me leave to speak; I appeared for the King, when he had not above 500 Men in Appearance for him; I am but a younger Brother, (second Brother to *John Starkey* of *Darley* in the County of *Chester*, Esq;) and yet with an Annuity of Seventy-score Pounds a Year, which I bought, and other Monies which I had, I spent above 4000*l.* in the King's Service, (which I bled for before I had it) for I got it in another Monarch's Service; I lost my Leg for him by a Cannon-shot,

and so spent my Estate to that degree, that that Day when I received my Sentence of Banishment, I had but three half Crowns in the World, which were given me that same Morning by two Friends.

L. C. Baron. *Mr. Starkey*, you may urge this to the King, for his Mercy and Clemency, 'tis nothing to the Point here before the Jury to be try'd. Whatsoever you have merited by your Services, you must apply your self to the King for his Mercy, it is nothing here.

Starkey. Pray my Lord, give me leave to add something more: I was banish'd for 14 Years into *France*, because I refused to take an Engagement never to bear Arms again for the King: I did discover to this King a Plot design'd against his Life, State, and Government, I suffer to this Day for it; and I delivered (into his own Hand) eleven Articles of High-Treason against the Plotters and their Abettors.

L. C. Baron. You may be a Priest for all that.

Starkey. But, my Lord, by the Civil Law it is a Conclusion, that although a Man be a Traitor, and in the same Plot, he is to be indemnified for discovering the Conspiracy against his Prince; much more for discovering another, that I was not a Party in.

Mr. Just. Pemberton. We have nothing to do with that here, but whether you are a Priest or not.

Starkey. That I must leave to the Proof.

L. C. Baron. Well then, I'll tell you, Gentlemen, this Person is indicted for being a Priest, and coming into *England*. For the Point of his being a Priest, you have heard two Witnesses depose; and they both tell you, that they have heard him say Mass, as great an Evidence of it as can be, for none say Mass but Priests. *Dr. Oates* tells you at *Mr. Paston's*. *Mr. Prance* says at *Mr. Paston's*, at my Lady *Somerfet's*, and one *Mr. Duncomb's*. If you believe this, you must find him Guilty.

Mr. Just. Atkins. And they speak too, to his receiving the Sacraments in both Kinds.

Starkey. If I was there, sure there was some body else besides my self, I did not say Mass alone; produce but one Witness for you, then I'll submit.

Cl. of Cr. Set *Alexander Lumsden* to the Bar. Hold up thy Hand, &c. Your Charge is to enquire of him as of your first Prisoner, and hear your Evidence.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury, *Alexander Lumsden* the Prisoner at the Bar stands indicted for High-Treason, for that he being a Priest, and receiving Orders from *Rome*, did come here into *England*, and abide contrary to the Statute.

Sir John Keling. Swear *Dr. Oates*, *Mr. Dugdale*, and *Mr. Prance*. [Which was done.]

L. C. Baron. Come, *Dr. Oates*, what say you to this Man?

Oates. I heard him say Mass, he is a *Dominican* Fryar, as I remember. I heard him say Mass twenty times at *Wild-House*.

L. C. Baron. And Consecrate the Host?

Oates. Yes, and I receiv'd the Sacrament from him.

L. C. Baron. And saw him take Confession?

Oates. Yes.

Mr. Just. Pemberton.

Mr. Just. *Pemberton*. Will you ask him any Questions?

Lumsden. What time was this, if it please you, Sir?

Oates. That Summer that was before the Plot broke out. Mr. *Lumsden* knows me well enough.

L. C. Baron. Do you know him?

Lumsden. Truly I do not know that ever I saw him, or conversed with him in my Life.

L. C. Baron. What say you, Mr. *Dugdale*?

Dugdale. My Lord, I was at *White-hall* that day Mr. *Lumsden* was taken; and by the Impor-tunity of some Friends I did go to him, but I did not know him, but by discourse he did confess himself a Priest; I asked if he was a *Franciscan*, he said he was a *Dominican*.

Oates. He is Procurator-General of the Kingdom of *Scotland*.

Mr. *Recorder*. They have such a parcel of People, and such Names for them.

Mr. *Serj. Strobe*. Mr. *Prance*, what do you know of *Lumsden's* being a Priest?

Prance. I know he is a Priest, and have heard him say Mass several times at *Wild-house*.

L. C. Baron. Was he there in the Habit?

Prance. Yes, and consecrated the Host.

L. C. Baron. How long since?

Prance. Two years since. I heard him twenty times.

L. C. Baron. Do you know what Countryman he is?

Prance. An *Irishman*, I think.

Oates. No, he is a *Scotchman*, he will not deny it.

L. C. Baron. What Countryman are you?

Lumsden. A *Scotchman*.

L. C. Baron. Of what part of *Scotland*?

Lumsden. *Aberdeen*.

L. C. Baron. Were you born there?

Lumsden. Yes.

L. C. Baron. You have no more to say, have you?

Lumsden. My Lord, I am not here, I think, to be my own Accuser, I humbly conceive so, and whatsoever is against me must be proved, not simply asserted: They ought to give Proofs and Reasons; but so it is, it is but a simple Assertion what they say; I desire they may prove it.

L. C. Baron. No, they need not; it is sufficient if they prove it by such Circumstances that the Jury are satisfied and convinced that it is true; but it is not to be looked for, that no Proof should be given against the Priest, but by them that saw him receive Orders.

Mr. Just. *Atkins*. 'Tis impossible almost to prove that.

L. C. Baron. But if they prove the Circumstances, that you have executed the Office of a Priest by saying Mass, which none does but a Priest, 'tis enough to guide them in their Verdict.

Mr. Just. *Ellis*. And they have proved that which is next to a positive Assertion.

L. C. Baron. That need not be.

Mr. Just. *Ellis*. But let us not lessen our Proof neither.

Mr. Just. *Pemberton*. You must consider that the Proof is certain; for they have sworn an Assertive positive Thing, which thing is enough to a Jury to prove you a Priest, because none others but Priests may do such things in your

Church as you have done: Therefore it is a good Argument and Evidence to conclude you a Priest, from this Evidence that hath been given.

Oates. I have heard him own himself a Priest twenty times.

Lumsden. The exercise of the Priestly Function is but a Penalty of 200 Marks.

L. C. Baron. Ay, that is, if the King will go no higher: But you are prosecuted upon another Law.

Mr. Just. *Ellis*. 'Tis Evidence, and a great Evidence, that which hath been given; for we must go according to the nature of the thing: 'Tis impossible the Act of Parliament should be put in execution, if they must prove they received Orders from the See of *Rome*: But when they have proved those things done by any man, which none ought to do but a Priest, it hath been in all times allow'd to be a Special Evidence.

Mr. Just. *Pemberton*. 'Tis a plain and sufficient Evidence.

Mr. Just. *Ellis*. But if there were any need of it, and you would have any more, he hath confessed, upon the Question asked him, Whether he was a *Franciscan*; No, he was a *Dominican*.

L. C. Baron. Have you done? Then Gentlemen of the Jury, you must not at this time of the day be insnared by that Argument, That there must be a positive Proof of this Reception of Orders from the Church of *Rome*, because it hath been all along accounted, and is an undoubted Proof for your Satisfaction, if it appear he hath exercised the Offices of the Function; those Offices that are not done but by Priests: Now this hath been proved by two Witnesses, and by the Confession of the Priest himself to Dr. *Oates* and Mr. *Dugdale*: So I must leave it upon the point of Fact to you, whether it be not sufficient Proof. But this Case will differ from all the rest, and the Court is very tender in the case of Life, that it should be without all Question what is determined; therefore as to your Enquiry for him, it must go only whether he be a Priest or no; for the others, you must consider them as *Englishmen*, and enquire of them as such: He is a *Scotchman*, as he says, and they say so too: Now then there are some Words in this Statute whereupon the Court hath conceived a Doubt, whether his Case comes within them; which are the Words about the King's Dominions, which now are far more enlarged than were those of the Queen when the Statute was made; if then you find him a Priest, you must find the other matter specially.

Mr. Just. *Ellis*. Look you, Gentlemen, we are to be of Counsel for the Prisoner; and it being matter of Law, we shall take time to advise upon it before we give our Opinions in it: but for the matter of Fact, I doubt not but you will find that he is a Priest; and then the other matters, that he was born at *Aberdeen* in *Scotland*, and the other matters you may find specially, there needs no more.

Mr. *Recorder*. Swear an Officer to keep the Jury.

Who after the Recess of a quarter of an Hour, return'd into the Court, and having answered to their Names, and appointed their Fore-man to give in their Verdict, he delivered it thus:

Cl.

Cl. of Cr. *Lionel Anderson*, alias *Munson*, hold up thy Hand; look upon the Prisoner, how say you, is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Fore-man. Guilty.

Cl. of Cr. *James Corker*, hold up thy Hand: How say you, is he guilty, &c.

Fore-man. Guilty.

Cl. of Cr. Is *William Marshal* guilty, &c.

Fore-man. Guilty.

Cl. of Cr. Is *William Russel*, alias *Napper*, guilty, &c.

Fore-man. Guilty.

Cl. of Cr. Is *Charles Parry* guilty, &c.

Fore-man. Guilty.

Cl. of Cr. Is *Henry Starkey* guilty, &c.

Fore-man. Guilty.

Cl. of Cr. *Alexander Lumsden*, hold up thy Hand. Look upon the Prisoner; How say you, is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Fore-man. We find he is guilty of being a Priest, and born at *Aberdeen* in *Scotland*.

Mr. Just. *Ellis*. Read the Notes to them.

Cl. of Cr. You find that *Alexander Lumsden* is a *Scotchman*, of 58 Years of Age, born at *Aberdeen* in the Kingdom of *Scotland*, being then under the Dominions of King *Charles* the First, and now under the Dominions of our present Sovereign; and in the Reign of the said King *Charles* the First, and that at the time in the Indictment mentioned, he was a Priest in Holy Orders, by Authority derived from the See of *Rome*, prout in the Indictment: And that he came and was remaining in *England*, prout in the Indictment. But whether upon the whole matter he be Guilty of High-Treason within this Law or not, you do not know, and crave the Opinion of the Court.

Fore-man. Yes.

Cl. of Cr. Then hearken to your Verdict, as the Court hath Recorded it: You say, &c.

Mr. Recorder. Call for the Executioner.

Then the Judges went off from the Bench, and the Court proceeded to Judgment.

Cl. of Cr. Set *Lionel Anderson*, alias *Munson*, to the Bar: *Lionel Anderson*, alias *Munson*, thou standest Convicted of High-Treason; What canst thou say for thy self, why Judgment should not pass upon thee to Die according to the Law?

Anderson. I can say this, I would have gone out of *England*, but the King kept me here, telling me, I should not go; and I had a Protection from the Council-board: The Bishop of *London*, when I was taken first, sent a Letter to Sir *Clement Armiger*, that neither I nor my Books should be meddled with, that I had written for the King and the Government, for which he conceived I might be excommunicated at *Rome*, and that I was then under a special Protection of his Majesty and Council; and when I was again taken and put in Custody of the Horse Guard, the Duke of *Monmouth* sent Sir *Thomas Armstrong* to have me freed again: I begg'd of the King that I might go, said I, I won't expose the King to the worst of Rabbles; but he told me, I should stay in *England*, and Mr. *Peter Welsh* and I had Orders from the Council, he one and I another, to stay.

Mr. Recorder. For that matter you may be assured, I promise it you faithfully and publickly,

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that I will acquaint the King with what you say.

Anderson. I thank you, Sir.

Mr. Recorder. For this Court hath nothing to do with that; the King is the proper Judge of that matter, to determine his own pleasure as he thinks fit: Tie him up.

Anderson. Sir, I had no notice of my Trial but this morning: I sent to my Lord *Bridgwater*, to know when I should be Tried, he told me, I should have Ten days notice of it; now I have Witnesses to disprove Mr. *Prance's* Testimony; for Mr. *Oates*, I own he hath heard me say *Mais*; but for Mr. *Bedlow's* Testimony, as I hope to see the Face of Almighty God, I know him not: When I was taken, said he to me, Mr. *Anderson*, let me see your Protection, and I shewed it him; You have two Names, said he, I do not know whether it be you or no. And then besides, these are not legal Witnesses.

Mr. Recorder. Nay, that must not be allow'd you to say: You have been fairly heard and try'd; they were upon their Oaths, and the Jury, twelve men upon their Oaths, without any Exception made to them, they have Convicted you; therefore this is to calumniate the Proceedings of the Court.

Anderson. I tell you this more; they are not the King's Evidence properly; for they swear for themselves upon the account of Benefit; if any Priest be Convicted, they are to have so much Money.

Mr. Recorder. The Court heard the Evidence that was given, and if you will have it of the Court, the Court does really believe them, and so did the Jury too.

Anderson. I am satisfied.

Mr. Recorder. Tie him up then.

Cl. of Cr. *James Corker*, hold up thy Hand: You stand Convicted of High-Treason; What can you say for your self, &c.

Corker. Nothing, but that I refer my self to God, my just Judge and Saviour.

Mr. Recorder. Tie him up.

Cl. of Cr. *William Marshal*, hold up thy Hand: Thou art in the same Condition, what sayst thou for thy self?

Marshal. I have very little more to say than what I have said already: I thought the Law had not allow'd any man to have been condemned upon the Testimony of one Witness, but required two: Now there was but one positive Witness against me, the rest only said, I had confessed my self to be a Priest; two of them did swear, they heard me confess it at my other Trial; if it had been at this Trial it had been another thing, and there had been some Validity in the Proof; but to say, they heard me confess it at another time, I humbly conceive, according to the Law, bears no force. I have this further to add, his Majesty, some Years ago, put forth a Declaration under the Broad-Seal, for a Toleration of Religion, and Liberty of Conscience, whereby the *Roman* Catholicks had the use of their Religion in their private Houses. Now I have been informed, that according to Law, whatsoever is put forth under the Broad-Seal, must be recalled by something under the Broad-Seal, or it remains in force: which was never done as to this Declaration, and then I lie under the Protection of that Declaration.

Mr. Recorder. As for the first part, 'tis plain, to the satisfaction of every body, that there hath been two sufficient Witnesses, upon whose Testimony you are Convicted: For whether you were asked the Question or not, yet if you will say you are a Priest, that Confession of yours is Evidence against you, tho you might possibly say so without being asked the Question.

Marshal. Is it credible I should do so?

Mr. Recorder. Yes, the Jury believed it so.

Dr. Oates. One of the Jury stood by and heard the Words.

Mr. Recorder. And now, because I will put it out of all doubt, 'tis not the Business nor the Duty of the Court to give any Evidence of any Fact that they know of their own knowledge, unless they will be sworn for that purpose: For tho they do know it in their own private Consciences to be true; yet they are obliged to conceal their own Knowledge, unless they will be sworn as Witnesses. But now you are Convicted, I must take the liberty to tell you, that at your last Trial you did own your self to be a Priest; and I must put you in mind further of something which you may very well remember: When I detained you after your Acquittal, and re-committed you when Sir George Wakeman was discharged, I did then tell you, you have own'd your selves to be Priests, I was bound to take notice of that Confession of yours, and therefore obliged to detain you: Such a Token as that is may perhaps bring it to your memory; but as it was hinted to you before, you are a voluminous Talker, and abundance of things may drop out of your mouth, that you don't consider before they are past.

Marshal. 'Tis for my Life, and therefore I may be permitted to speak sure.

Mr. Recorder. That is as to the first Point: And then as to the King's Declaration, which was the other matter you insisted upon, I presume it does not stick with anybody that knows the matter; but lest it should, I would say this to it: 'Tis very well known in the first place (I do not go now to determine the Law upon it, because you know what Opinions and Judgment it received afterwards) yet this I will adventure to say, That it was never the intention of that Declaration that ever Priests should come and reside here; but it was only intended for tender Consciences, as the very Letter of the Declaration it self does shew, not to countenance Priests and Jesuits, that have cast off all their Allegiance to the King, and endeavour both to destroy him and his Government.

Marshal. Pray Sir, will you give me leave to speak as to that: If so be the use of their Religion were permitted to Roman Catholicks, that Religion not being to be practised without Priests, it is to be supposed, that the Priests are permitted.

Mr. Recorder. But if a Man were to argue with you now in your own way; Pray are there not Priests in *England*, besides those Priests that were born here? You know, of your own Acquaintance there are several Roman Catholick Priests, not *Englishmen* born, that are constantly here, who can perform the Offices.

Marshal. Nay, I don't know that; but this I know, if they be not born in *England*, or have lived in *England*, so as to know the Tongue, Roman Catholicks will be little the better for 'em.

Mr. Recorder. Nay, I don't say much the better, but much the worse for their coming at them: and in case they would only use the *English* Truth, I presume they would not have so many Profelytes, but you gull them with Stuff they understand not.

Marshal. Pray Sir give me leave a little, I have one word more: For all matters of Treason, and treacherous Conspiracy, I was freed before in this Court; now I would observe what the best Lawyers that ever were in *England*, have observed for me; That there is no Crime in Priesthood it self: For my Lord Coke in his 5th Report, 39th Leaf, commenting largely upon the Statute of 27 Eliz. and enlarging upon the Sense and Meaning of that Statute, and calling to mind who the Men were that were formerly executed by force of that Statute, and why, concludes thus: Hence it appears, that no Man yet hath or can be executed for his Function of Priesthood, but because there was annexed to the Priesthood treacherous Designs and treacherous Attempts. And the same Lawyer in the 3d Institutes, 22d Leaf, says, That in this Statute of 27 Eliz. 'twas very wisely and justly done by the Statute-makers, to provide, that the Judges should proceed in their Judgments upon that matter, only according to what is expressed and specified in that Statute. And those Words were a Sanctuary to the Judges, and put in to prevent the shedding of guiltless Blood. Now if so be that so great a Lawyer, in a Discourse about Priesthood and Treachery, does thence conclude, That Priesthood as Priesthood is no Crime, nor no Function belonging to it hath any Crime in it, well may I conclude so too: And indeed, if it had, then a great part of the World would be Traytors; nay, it would bring in Christ himself, who was a Priest, to be a Traytor too: Therefore Priesthood, as Priesthood, hath no Treason essentially link'd to it. And when he says, that they must proceed according to what is specified, he does in the forementioned place shew, that it was not specified at all, that any that were Executed, were for Priesthood Executed: And I am accused of nothing else in the World but bare Priesthood as Priesthood, without any Design or Treachery joyned to it: And if, according to Law, Priesthood be not liable to Condemnation, then I am not to be Condemned.

Mr. Recorder. Now you have been heard.

Marshal. Yes, Sir, and I thank you for it.

Mr. Recorder. This long Speech of yours will signifie but little, when you consider the Act of Parliament upon which you are indicted: 'Tis true, set that Act of Parliament out of the Case, and then to be a Priest is not High-Treason; nay, in case a Man be born out of the King's Dominions, and be a Priest, and remain here, that is not High-Treason within this Statute, because Priesthood it self does not make the Crime (God forbid any one should affirm it) but when all that is granted, when an Act of Parliament hath taken particular notice of the great Mischiefs and Inconveniences that have attended the Government, and the continual Danger that the Supreme Head hath been in, by having Persons which were born within the King's Dominions (as you were) to wave their Allegiance, and to acknowledge a Supremacy in any Foreign Prince or Prelate, as you all do, when

when you take Orders from the See of *Rome*; the Wisdom of the Nation hath thought reasonable that such should be adjudged Traitors: And this Act of Parliament, upon which you stand Convicted, does plainly say, If any one born within the King's Dominions will take Orders from the See of *Rome*, and shall after reside here, he is guilty of High-Treason: And this is not only thought so by us that are here, but by all my Lords the Judges that were present at your Trial; for God forbid we should condemn you for any thing as High-Treason, if you had not been within the compass of the Act of Parliament: And what is Treason, the Act of Parliament particularly describes, which all hath been proved upon you; and because you are pleased to speak it to the Court, and lay it on the Consciences of the Court, I discharge my Conscience; the Jury having Convicted you for High-Treason, I am very ready to pass Judgment upon you according to the Law, and I will clear my Conscience of that presently. Tie him up.

Cl. of Cr. William Ruffel, hold up thy Hand, Thou art in the same Case, what canst thou say for thy self? &c.

Ruffel. I can say this, my Lord, that in my Conscience, I do not acknowledge my self Guilty of what they accuse me for, but I must submit to the Laws as they are made; but I do protest before Almighty God, and this whole Court, that I am innocent of all that is laid upon me.

Mr. Recorder. Why, what were you never at *Wild-houfe*, and said Mass there? I would feign hear, whether you, in the State and Condition you are in (though you Jesuits have a thousand Tricks and Evasions) have Confidence enough to say you never were, nor said Mass there?

Ruffel. I ought not to accuse my self.

Mr. Recorder. You are convicted. But every thing that you say is but an Evasion, and a Trick to catch and insnare the Ignorant, but People of any sort of Sense will not be gull'd so.

Ruffel. For my Witnesses, you are my Witness, I have but one Witness upon that Business.

Mr. Recorder. The Jury have believed them.

Ruffel. 'Tis possible it may be so.

Mr. Recorder. Nay, 'tis beyond possible, 'tis true.

Ruffel. The Witnesses that have deposed against me, for my part, I know them not.

Mr. Recorder. You have heard of *Dr. Oates*, *Mr. Prance*, and of *Sir William Waller* too. Tie him up.

Cl. of Cr. Charles Parris, alias *Parry*, hold up thy Hand. You are in the same Condition, what have you to say?

Parry. What have I to say for my self? I have this to say, That those that did depose against me, did not say one word of Truth as to their Allegations, I take God to Witness for it; I am a dying Man, and thank most heartily the Court for what they are to pronounce against me, and I am as ready to suffer, as any Man may be to have me to suffer, for it is God's Glory and his Cause. Then I insisted upon two Parts, and complained, First, of *Sir William Turner*, that being brought before him by *Mr. Prance*, and shewing him my Protection under an Ambassador, and I professing my self a *Frenchman*, he slighted it, which I held to be a manifest Breach against the Laws of Nations. Secondly, I was wrong'd

by *Sir William Waller*, when (in his Examination of me with Justice *Warcup*) in the *Press-yard, Newgate*, he threaten'd me with Irons, &c. if I did not take my Oath I was not born in *France*, and I refusing, (which none could be compell'd to) for 'twas my Opponent's Part to prove the contrary; and who can prove me to be other than a *Frenchman*?

Mr. Recorder. No body can; we believe you to be an *Englishman*.

Parry. If I be a *Frenchman*, I am not subject to the penal Laws.

Mr. Recorder. Why, no body does. We believe you to be an *Englishman*.

Parry. And if it please you, they are to prove it.

Mr. Recorder. Well, that is over now. Tie him up.

Parry. I am not a Subject, and as not a Subject, am not under the penal Laws.

Cl. of Cr. Set *Henry Starkey* to the Bar. *Henry Starkey*, hold up thy Hand. Thou art in the same Condition with him that went last before thee, what canst thou say for thy self? &c.

Starkey. In the first place, *Mr. Recorder*, here is the Man (pointing at *Mr. Prance*) hath sworn two Lies at one Breath.

Mr. Recorder. I must not hear that, *Mr. Starkey*.

Starkey. Will you please to hear me, Sir?

Mr. Recorder. I will give you all the Freedom you can lawfully desire in the World, but it must be that which will consist with my Duty, and the Reverence you owe the Court. You shall not revile the King's Evidence as long as I am here, by the help of God.

Starkey. If that it were true, that I had said Mass at my Lady *Somerset's* and *Mr. Duncomb's*, yet it is not sufficient to prove a Man to be a Priest, for any Man may take the Priest's Garments, and do the Ceremony and the Office, because there are hundreds, perhaps thousands, that have suffer'd Death for it. And so to do these Acts, is not Evidence of being a Priest.

Mr. Recorder. Indeed I don't understand what makes a *Romish Priest*, nor do I desire it.

Starkey. But you will give me the Letter of the Law.

Mr. Recorder. And the Jury hath found you a Transgressor of the Law.

Starkey. The Letter of the Law is this, That if any one of the Queen's Subjects shall transport himself beyond the Sea, and shall in a Seminary take Orders, by Authority deriv'd from the See of *Rome*, and shall return into England, and shall not present himself here to the Ordinary, or else to such a certain Number of Justices of the Peace within such a Term, but shall seduce the King's Liege People —

Mr. Recorder. No, that is another Act.

Starkey. Then he shall be adjudged a Traitor. Now *Mr. Recorder* I come to this, as I told you before, I had discovered a Plot to the King that was design'd against his Person, State, and Government, and did deliver into his Hands eleven Articles of Treason, which I had writ with my own Hands; (and this he hath own'd, and will own.) So, *Mr. Recorder*, upon this I was threaten'd my Life and Liberty by the Plotters, That the King should not be gone twenty four hours, but I should be imprisoned. When the King went, what must I do? Must I stay there and hazard my Life, or trust to the King's Mercy? I was forced to come along with the King for Protection.

Protection. I came to *Whitehall*, and the King rose up and gave me his Hand to kiss, and so did the Duke of *York*, and told me I was welcome. I went to my Lord Chancellor *Hyde*, who, when he saw me, embrac'd me in his Arms, and said, thou art welcome, I am glad to see thee in *England*. I had occasion to speak with the Bishop of *London*, Dr. *Shelden*, about another Person, and when I came to him, he asked me, What is your Name? My Lord, said I, my Name is *Starkey*, with that he catches me fast by the Hand, and when he had done that, he took me in his Arms, and told me, You are welcome. And Mr. *Recorder*, I do suffer to this Day for the Service I have done the King.

Mr. *Recorder*. Mr. *Starkey*, I can only say this to you, I do promise you faithfully, as I promised the other Gentleman that went before, I'll tell the King what you alledge. He is the best able to give an Account of it, and is the fittest Judge of his own Mercy. But I could recommend to you, Mr. *Starkey*, a thing that would be very acceptable, and then as far forth as 'tis modest for me to speak, I am pretty well assured, I might say, I could prevail for Mercy to you, That is, as you did discover one Plot before, so you would discover this hellish Plot that is now on foot.

Starkey. Mr. *Recorder*, I have wished a hundred times, and wish now, that if there were any Commissions, as is pretended, the first that had delivered one to me, should never have deliver'd a second; for I would either have brought him to Justice, where he should receive his Reward, or else I would have kill'd him in the place; tell the King, Mr. *Recorder*, that I say so.

Mr. *Recorder*. Well, the King is a Fountain of Mercy, and he is the best Judge of the fit Objects of it. I will, as I said, tell him what you say.

Starkey. If the King does not own what I told you, then count me the greatest Knave that ever you spoke withal.

Mr. *Recorder*. You remain now under the Conviction of the Law; what Mercy the King, who is the Fountain of Mercy as well as of Justice, will extend to you, is in his own Power.

Starkey. Mr. *Recorder*, I have here his Majesty's Gracious Pardon of the 25th Year of his Reign.

Mr. *Recorder*. I allow that, but you have staid here since.

Starkey. Why then, Mr. *Recorder*, pray will you advise me what to have done? Nature teacheth all Men to shun Danger; for I was threatened with Life, &c. if I staid in *France*: Whether should I stay there, or return to my native Country with my King? Now, Mr. *Recorder*, I desire to know what you would have had me done?

Mr. *Recorder*. I shall acquaint the King, and will do you all the Kindness I can with him. Tie him up.

Starkey. But how shall I do then, when I am lame? I want a Leg, and I must use my Stick.

Mr. *Recorder*. Then let him alone.

Starkey. But I pray, good Mr. *Recorder*, will you be pleased before you give Sentence upon me, to acquaint the King with what I have to say for my self.

Mr. *Recorder*. No, I cannot do that, the King's Pleasure is to be known afterwards. Set *Lumsden* aside, and set all the rest to the Bar.

Then Proclamation was made for Silence, whilst Judgment was giving.

Mr. *Recorder*. You the Prisoners at the Bar; you have been severally Accused, Arraigned—

Starkey. Mr. *Recorder*, may I speak one Word? I have presented this Year, wherein at the 26th of this Month I have been a Prisoner, several Petitions by my Friends to the King, and desir'd to be Transported; for my Age and Infirmities, and want of a Leg, did not stand well with my being in *England* these troublesome Times. The King, I am told, hath promised I should, but I see no Fruits of those Petitions. And pray consider this, that I should have been imprisoned if I staid out of *England*, and now to be prosecuted in *England* in this manner, and to be drawn, hang'd, and quartered, is very hard.

Mr. *Recorder*. Whether it be true or not, God knows, I shall acquaint the King with it. It only remains with me to take Notice of it for that purpose. And for my part I am sorry with all my Heart to see so many Persons brought to receive the Sentence of Death by my Mouth. But I must say this, you your selves have been the occasion of it, and therefore must blame your selves for it. You have had the Benefit of the best Laws, the Law of *England*, which gives every Subject the liberty to make a Defence for himself, when ever he is accused of any Crime; he hath the liberty to hear the Witnesses what they say against him; to call any Witnesses for him, and to make defence for himself. And not only so, but he hath likewise Twelve Men upon their Oaths, that are his Peers, against whom he hath the liberty to make a Challenge without shewing any Reason, to a certain Number; and if it shall appear that any of them have the least Prejudice or Malice against any Persons that are to be tried for their Lives, to a greater Number. Such, and so great is the Benefit of the Laws of *England*, beyond all the Laws of any other Nation in the World. But all these Forms having been passed, and a Jury of Men, against whom you made no Exception, having found you Guilty of the Offences for which you were Indicted, there remains now nothing more with the Court, but to pass that Judgment of Death upon you, which the Law requires, and which is the Business that lyes upon me now. But before I do that, for I know you may think it a Presumption, or at least a needless and unnecessary thing for me to take upon me, and give any Directions to you, the Business of whose Profession it hath been to give Precepts: However I think it is necessary for the Satisfaction of some Persons that are here present, that I should give them some Account, why I think this Law, and the putting it in execution at this time, is not unreasonable. For it is to be known, that every Subject of this Realm by his being born within the Dominions of the King, does owe an immediate Allegiance to the King, and is to take Notice by the Law, that there is not any Person hath any Superiority over him; for under God he is the Supream Head and Governor. And if any Person born within the Dominions of the King shall so far forget himself, and what he owes to the King by his Birth, and that Supremacy which he should maintain with his Life and Fortune, as to acknowledge any other Foreign Person to be Supream, and to have a Power to Depose the King, and

and dispose of his Dominions (as every one does, that takes Orders from the See of Rome) he cannot but be thought deserving of the greatest Punishment. Wherefore the Wisdom of our Nation, the Parliament, at the time when they made the Law, found that the Religion Established (that Religion which I hope in God will remain, notwithstanding all the Enemies it ever had or shall have) was invaded by such Priests as you; they found the Life of the Queen at that time in great danger, by the Attempts of those Persons whom they had made their Profelytes, into whom they had infused Principles, that it was no Crime for them to depose their Queen, since they had the Authority of their Pope to justify the Fact. And if once Men can preach such Doctrine, and also but prevail with their Hearers to be of such a Perswasion, if Care were not taken, we shall soon see an end of all sort of Government, and of our Religion too. But in as much as these Principles were not so visibly endeavoured to be put in practice till of late times, though you were not permitted, but connived at; yet that is no Reason but the occasion of making the Law being revived, the Execution of the Law should revive with it. I suppose it is not unknown to any of us, that there hath been an hellish Plot against the Life of the King, and to destroy our Religion, I would to God I could say the Plot was at an end. For I must say, some of you, I fear, had too great a Hand in it: And what a sort of Monsters were prevailed upon to compass the same, by you that are Priests and Jesuits, who have wrought them up to such a Belief, that Murder in this World is a certain Way to Saintship in that which is to come. And though you seem to deny it, your Practices are a Proof of it beyond all Contradiction, which is the reason that this Law, which was a good Law at the time of the making, and thought fit to be put in Execution then, though it hath slept some time since, should now be put in Execution against you, who have occasion'd all those Mischiefs to this Nation in these latter Times, which occasioned the making of the Law. And one thing more I should say to that Man, who pretends to merit by the good Ser-

vices he hath done for the Publick, that he should injoyne a Man to scour his Kettle, as he calls it, to receive the Sacrament, and then give him a Dispensation to be drunk, and make another so, to promote a damnable Design, is such a Power of Priesthood, fit only for the Pope and his Imps to put in practice.

But to say no more, in Charity I am bound to compassionate your Condition, which with all my Soul I do, and heartily can say to you, I am sorry to see you in that Misery. It was in your own power to have prevented it; but seeing you have made your selves Obnoxious to the Law, the only thing required of me, is to pronounce the Sentence that that Law hath Decreed: And therefore in the Name of the Court I do pronounce this to be your Judgment—

Starkey. Mr. Recorder, Give me leave to speak one Word: if any one should have held to me that Position, That it is lawful to depose and murder Kings, I would have kill'd him in the place: Tell the King, Mr. Recorder, I say so.

Anderson. It is my comfort, that no one of common Sense can believe it.

Marshal. May I ask one Question, Mr. Recorder, before you pronounce Sentence?

Mr. Recorder. No, Mr. Marshal, you can't speak now; but this is your Judgment, and the Court does award it: That you the several Prisoners now at the Bar, be convey'd from hence to the Place from whence you came; and that you, and every of you, be convey'd from thence on Hurdles to the place of Execution, where every one of you are to be severally hang'd by the Neck; That you be severally cut down alive; That your Privy-Members be cut off, your Bowels taken out and be burnt in your view; That your Heads be severed from your Bodies; That your Bodies be divided into four Quarters, which are to be disposed at the King's pleasure: And the God of infinite Mercy have Mercy upon your Souls.

Parry. *Te Deum laudamus; Te Dominum confitemur.*

Then the Prisoners were carried away, and the Court Adjourn'd the Sessions.

XC. The Trial of JOHN TASBOROUGH and ANNE PRICE, at the Kings-Bench, for Subornation of Perjury, February 3, 1679. Hil. 32 Car. II.



IRST, Proclamation was made for Information in usual Form. Then the Defendants were called, and appearing, were by the Clerk of the Crown advised to look to their Challenges. Then the Jurors that were summoned to try the Cause being called, and appearing, the Twelve that were Sworn, were these Persons following,

Thomas Harriot,
Thomas Johnson,
Charles Umphrevile,
Thomas Earsby,
Richard Pagett,
John Greene,

Jur. { Edward Wilford,
Richard Bull,
Joseph Radcliffe,
Richard Cooper,
James Supple,
George Read.

Cl. of Cr. Gentlemen of the Jury, you that are Sworn, hearken to the Record. The Defendants,

dants, *John Tasborough* and *Anne Price*, stand Indicted by the Oaths of Twelve honest and lawful Men of the County of *Middlesex*; which Indictment sets forth, That whereas one *Thomas White*, alias *Whitebread*, *William Harcourt*, *John Fenwick*, *John Gavan*, alias *Gawen*, and *Anthony Turner*, being Popish Recusants, and false Traitors against our Sovereign Lord, *Charles the Second*, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. the Thirteenth Day of *June*, in the Year of the Reign of our Sovereign Lord the King that now is, the Thirty first, at the Sessions of *Oyer and Terminer*, and Goal-delivery, then held in the *Old-Bailey*, in the Parish of *St. Sepulchres*, in the Ward of *Faringdon without*, *London*, for the City of *London* and County of *Middlesex*, were lawfully indicted for certain High-Treasons in the said Indictment specified; and afterwards were severally Tried by a Jury of the said County, and then and there were Attainted, as appears by the Record thereof to the Jurors aforesaid in Evidence shewn. And whereas also one *Richard Langborn*, Esq; being a Popish Recusant, the 14th Day of *June*, in the Year of the Reign of our said Sovereign Lord the King that now is, the 31st aforesaid, at the Sessions of *Oyer and Terminer*, then held by Adjournment at the *Old-Bailey*, in the Parish and Ward aforesaid, was lawfully Indicted for divers High-Treasons in the said Indictment specified; and being afterwards Tried by a Jury of the County, was then and there thereof Attainted, as appears by the Record thereof, to the Jurors aforesaid in Evidence shewn. And whereas one *Stephen Dugdale*, upon the several Trials of the Indictments aforesaid, was a Witness produced and sworn on behalf of our said Sovereign Lord the King that now is, and then and there in lawful manner did give material Evidence against the said *William Harcourt*, and the said several other Traitors, to prove them guilty of the matters in the said Indictment specified: The said Defendants, *John Tasborough* and *Anne Price*, the Premises aforesaid well knowing, and being Persons devilishly affected towards our Sovereign Lord *Charles the Second*, now King of *England*, &c. their Supreme and Natural Lord, and devising, and with all their Strength intending the Peace and Tranquillity of this Kingdom to disturb, and to hinder and stifle the farther discovery of the said Treasons, and as much as in them lay, the due course of Law to elude, and the Prosecution of Justice in that behalf to retard and obstruct; as also to cause and procure that it should be believed, that the Persons aforesaid Attainted, were unjustly Attainted: The said *Anne Price*, before the Trial of the said *William Harcourt*, to wit, the 10th day of *June*, in the Year of the Reign of our said Sovereign Lord the King the 31st aforesaid, at the Parish of *St. Margaret Westminster*, in the County of *Middlesex*, with Force and Arms, falsely, unlawfully, unjustly, corruptly, and against the Duty of her Allegiance, did solicit, suborn, and endeavour to persuade the said *Stephen Dugdale*, that he the aforesaid *Stephen Dugdale* should not be a Witness nor give Evidence against the said *William Harcourt*, upon the Trial of the said *William Harcourt* for the Treasons aforesaid: And that the said *John Tasborough* and *Anne Price*, afterwards, to wit, the 12th Day of *October*, in the Year of the Reign of our said

Sovereign Lord the King that now is, the 31st aforesaid, at the Parish of *St. Margaret Westminster* aforesaid, with Force and Arms, falsely, unlawfully, unjustly, advisedly, corruptly, and against the Duty of their Allegiance, did solicit, suborn, and endeavour to persuade, and either of them did then and there, falsely, unlawfully, advisedly, corruptly, and against the Duty of their Allegiance, solicit, suborn, and endeavour to persuade the said *Stephen Dugdale*, that he the said *Stephen Dugdale* should retract and deny all the Evidence and Information which he the said *Stephen Dugdale*, as aforesaid, had given against the Traitors and Popish Recusants aforesaid; the said *John Tasborough* and *Anne Price* then and there falsely, unlawfully, unjustly and advisedly, corruptly promising, and either of them promising to the said *Stephen Dugdale* great Sums of Money and Rewards, if he the said *Stephen Dugdale* would retract and deny all the Evidence and Information by the said *Stephen Dugdale*, against the Traitors and Popish Recusants aforesaid, as aforesaid given, and would withdraw and absent himself the said *Stephen Dugdale*, in places unknown and beyond the Sea: And that the said *John Tasborough* and *Anne Price*, their wicked Devices, Practices and Intentions aforesaid to fulfil and accomplish, afterwards, to wit, the said 12th Day of *October*, in the Year of the Reign of our said Sovereign Lord the King the 31st aforesaid, at the Parish aforesaid, in the County aforesaid, by Force and Arms, falsely, unlawfully, unjustly, advisedly and corruptly, and against the Duty of their Allegiance, did produce and shew, and each of them did then and there produce and shew to the said *Stephen Dugdale*, a certain Note in Writing, the Tenour of which Note follows in these *English* Words following: *Being touched with a true Remorse of Conscience, and hearty Sorrow for the great Ill I did in coming in a Witness against the Catholicks, and there speaking things which in my own Conscience I knew to be very far from the Truth: I think my self bound in Duty both to God and Man, and for the safety of my own Soul, to make a true Declaration how I was drawn into this wicked Action. But being very well satisfied, that I shall create my self many powerful Enemies upon this account, I have retired my self to a place of safety, where I will with my own Hand discover the great Wrong that hath been done the Catholicks, and hope it may gain Belief. And likewise I protest before Almighty God, that I have no Motive to induce me to this Confession, but a true Repentance for the Mischiefs I have done, and hope God Almighty will forgive me.* And that the said *John Tasborough* and *Anne Price*, the Day and Year aforesaid, in the Parish aforesaid, in the County aforesaid, with Force and Arms, falsely, unlawfully, unjustly, advisedly, corruptly, and against the Duty of their Allegiance, the said *Stephen Dugdale* the aforesaid Note in Writing, to as aforesaid, to the said *Stephen Dugdale* produced and shewn to sign and subscribe, did solicit and endeavour to persuade, and each of them did solicit and endeavour to persuade, and then and there falsely, unlawfully, unjustly, advisedly and corruptly did promise, and each of them did promise to the said *Stephen Dugdale*, that if he the said *Stephen Dugdale* the aforesaid Note in Writing would sign and subscribe, that then he the said *Stephen Dugdale* great and vast Sums of Money should have and receive; to the evil and pernicious Example of all Persons in the like Case

Cafe offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Duty of their Allegiance. To this Indictment they have pleaded Not Guilty, and for their Trial have put themselves upon the Country, and the King's Attorney likewise, which Country you are: Your Charge is to enquire, Whether the Defendants, or either of them, be guilty of the Trespass and Offence whereof they stand Indicted, or Not Guilty: If you find them or either of them Guilty, you are to say so; if you find them Not Guilty, you are to say so, and no more, and hear your Evidence.

Cryer, make an O Yes.

Cryer. O Yes! If any one will give Evidence on behalf of our Sovereign Lord the King, against the Defendants *John Tasborough* and *Anne Price*, let them come forth and they shall be heard.

Mr. Belwood. May it please your Lordship, and you Gentlemen of the Jury, the Defendants, *John Tasborough* and *Anne Price*, stand Indicted for Subornation of Perjury: And the Indictment sets forth, That whereas *Thomas Whitebread*, *William Harcourt*, and others, were Indicted, and that for Treason, in Conspiring the Death of the King, and other Treasons, and were legally Try'd, Convicted, and Attainted for the same; and that *Richard Langhorn* was likewise Indicted and Attainted for the same Offence: And that upon these Trials *Mr. Dugdale* was produced and examined as a Witness for the King, and did depose materially against the said Traitors: And the Defendants knowing this, and contriving and designing to stifle the Discovery of the Treasons aforesaid, did before the Trial of the said *Harcourt*, solicit, suborn, and endeavour to persuade the said *Mr. Dugdale* not to be a Witness, nor to give Evidence upon the Trial: And after the Trial, did farther solicit him to retract and deny all the Evidence he had given on that behalf, and promised him large Rewards and great Sums of Money for it: And to accomplish this, they did incite him to withdraw and retire himself, and produced a Note which he was to sign, and which hath been read to you, wherein he was to acknowledge that he was in an Error, and had sworn falsely, and therefore had retired himself; and for this they promised him great Rewards: And this Offence is laid to be done falsely, advisedly, corruptly, and against the Duty of their Allegiance. To this the Defendants have pleaded Not Guilty; if we shall prove the Fact upon them, we hope you will find it.

Mr. Serj. Maynard. My Lord, and you the Gentlemen of the Jury, I am of Council in this Cause against the Defendants. For the Fact that is laid in the Indictment, it consists of these Particulars: First, An Attempt to prevent the Evidence before it was given. And Secondly, When it was given, and the Traitors were Convicted and Condemned, then to Disgrace that Evidence, and the Proceedings at Law that hath been against the Traitors; and this in favour of the Catholics. Thirdly, The Means they used to persuade him, which was by corrupt Promises and Engagements to him. And, Fourthly, That they had prepared a Note which hath been read to the Jury; whereby he that had sworn the Truth, should publicly own to the World that he had sworn a Lye: and that

the Catholics had received great injury by him, and that he had withdrawn himself to make this Discovery: And this is the Substance of the Charge upon these Persons. This Practice, my Lord, is not new, it hath appeared here in several other instances: We remember what *Reading* did, and we have not forgotten what *Knox* and *Lane* did; and this is the third Cause of that kind that hath come before you. Our Evidence will be this: We shall produce *Mr. Dugdale*, the Person against whom this Design was laid, and he can testify all this matter. Now he was but a single Person against these two Tempters; and your Lordship remembers what was said in the like Case, two might convince one; and therefore he thought it safe to acquaint, and he did acquaint Persons of Publick Concern and Authority with this Attempt upon him; and he did not only this, but they met several times about it at the Tavern, and there we shall prove what they did. Part of this hath been confessed, for this hath had another Examination in another place: And the Gentlewoman hath confessed, that she did offer him Sums of Money; for it we will call our Witnesses. We shall not now aggravate the Fault, that will come after the Evidence given; but I think it is hellish enough if it be proved.

* *Mr. At. Gen.* My Lord, This Case is of the same nature with those that *Mr. Serjeant* hath mentioned of *Reading*, and *Knox* and *Lane*; but it goes somewhat further: For this must be done in Writing, and subscrib'd by the Party, to be produc'd upon occasion, to defame all the Evidence that had been given before: And the Substance of the Note is to recant all that he had said, and aver it to be false; and so all that have died upon that Account, must have been supposed to have died very unjustly. This was the Design of the matter: And it was not only in this Case that these Persons had been endeavouring things of this nature; for we can prove, if it be necessary, by another Witness, that this Gentlewoman hath been tampering to persuade him to retract his Evidence against another Person, one *Mr. Parsons*, a Priest in Custody; and to bring all about, she did presume upon *Mr. Dugdale's* old Acquaintance with her: They had been Fellow-Servants in my Lord *Aston's* Family, and by that means were of ancient Acquaintance, and she did presume upon these grounds, that she could withdraw him from all his Evidence. And we shall prove, I think, by another Witness which does fortifie this Testimony, that both these Persons have already acknowledged this Fact, and that they personated great Persons in it; that is, they pretended to come in the Name of very great Persons, as you will hear, when they had nothing to do in the thing. They pretended to go to *Windsor* for Pardon and assurances of Protection, and they have acknowledg'd it; and 'tis in Proof that they were never near that Person: That is, *Mrs. Price* did pretend she should go down to *Windsor* and speak with the Duke of *York*, for he was the Person nam'd, though 'tis acknowledg'd, and was in proof by her Companion, that she never came near him, that is, by *Mrs. Harris*, of whom you will hear anon. And *Mr. Tasborough* did pretend the same thing to *Mr. Dugdale*, and did acknowledge it to the Council, but deny'd that it was true. We shall call

* *Sir Crefwel Levinz.*

call our Witnesses, and prove the Fact as it hath been opened.

Mr. Serj. Maynard. We will first prove the Indictments that are recited, and call for the Records of the Convictions.

* *Sir William Scroggs.* * *L. C. J.* Sure they will admit that.

Mr. Serj. Maynard. We must offer our Proof; if they will admit it, so.

L. C. J. What say the Council for the Defendants? Do you admit the Indictments and Convictions?

Mr. Pollexfen. My Lord, I cannot tell in this Case; if we should not stand upon it that all the Proofs be given, our Client perhaps will take it ill. I pray therefore the Evidence may be given according to Law.

L. C. J. Well, if you stand upon it, they must prove it. Produce the Records.

Mr. At. Gen. Give *Mr. Clare* his Oath.

[*Who was sworn.*]

Mr. Serj. Maynard. Put in the Copy, Sir.

[*Which was done.*]

Cl. of Cr. Come, Sir, is that a true Copy?

Mr. Clare. Yes; I examin'd it.

L. C. J. Where?

Mr. Clare. With *Mr. Adderley*, the Clerk of the Peace of *Middlesex*; and this other with *Mr. Tanner*, Clerk of the Peace for *London*.

Then the Copy of the Record of the Conviction of *Whitebread*, &c. was begun to be read.

L. C. J. Let them see it that are for the Defendants.

Mr. Just. Dolben. Don't read it all; if they have any Exception to it, let them make it: Give it over to them.

Mr. Pollexfen. Ay, my Lord, let us see it. Pray Sir, you say you examined this, is this a true Copy?

Mr. Clare. Yes, it is.

Then also the Conviction of *Langhorne* in *London*, was read.

Mr. Just. Dolben. That is the Conviction at *Newgate*.

Mr. Just. Pemberton. Well, go on with the rest now.

L. C. J. Go on with the Evidence.

Mr. Just. Pemberton. Who do you begin with? Who do you call first?

Mr. Belwood. *Mr. Dugdale*, my Lord.

[*Who was sworn.*]

Price. Stand nearer me, *Mr. Dugdale*.

Mr. At. Gen. He stands near enough.

Mr. Serj. Maynard. He will be near enough you by and by, *Mrs. Price*.

L. C. J. Come *Mr. Dugdale*, What say you against *Mrs. Price* and *Mr. Tasborough*?

Dugdale. My Lord, *Mrs. Price* being an ancient Acquaintance of mine (for she was my Fellow-Servant at my Lord *Aston's*, may it please your Lordship) I coming to Town as a Witness for the King, I did send for *Mrs. Price* as one of my ancient Acquaintance; I think it was in *January* was Twelve-month.

L. C. J. Is she a Papist?

Dugdale. Yes, I think she is so now: We used to go to Mass together in the Country.

L. C. J. She was one, but is she?

Dugdale. I suppose she is one; we had Familiarity together, but never till *June* last did she endeavour to take off my Evidence.

L. C. J. When was it she first set upon you?

Dugdale. She began to tamper first the Night before *Harcourt's* Trial.

L. C. J. But she had been before with you in *London*?

Dugdale. Several times: For I sent to her presently after I came to Town; but that was the first time she offer'd to take off my Evidence. And she was then persuading me to be out of the way, and not to give any Evidence against *Mr. Harcourt*, because he was her Ghostly Father.

L. C. J. Who was by?

Dugdale. There was no Body by, but one that was an Acquaintance of mine that heard her.

L. C. J. What is his Name?

Dugdale. *Wright*.

L. C. J. Then you two and *Wright* were together?

Dugdale. Yes, my Lord.

L. C. J. What said you to her when she made that Offer to you?

Dugdale. I told her I could not do it; for that I was to appear the next day, and was to give my Evidence, or I must be forsworn: I said any thing else I told her I would serve her; but that I could not do, because I should forswear my self; and I was sworn next Morning. It continued two or three days, or a pretty while, before I saw her again.

L. C. J. She was angry for a while with you, was she?

Dugdale. She was afterwards well reconciled to me, and after she desired me that I would speak to your Lordship, on behalf of one *Mr. Parsons*, a Prisoner in the *Gatehouse*, that he might be bail'd out; I told her I would; I know not whether I did or no certainly, I suppose I did speak to some of your Lordship's Servants; I do confess it was not done: But I was to go into the Country, into *Staffordshire*, and just as I was going to take Coach, she sent a Messenger to me to speak with me before I went. I said I could not stay to speak with her that Morning, but I would remember her Business when I came to Town again: I supposed it to be this about *Mr. Parsons*. I went into *Staffordshire*, and continued there about six or seven Weeks; I was there at the Assizes with your Lordship. Now she had been several times at one *Mr. Cross's* (where we usually met) to enquire when I came to Town, and did desire she might know when I came, for she had important Business to communicate to me. I think this might be about the 11th of *September* last, my Lord. When I came to Town, I came to *Mr. Cross's* that very Night, and they told me of this, That *Mrs. Price* had been there several times to request them, that whenever I came she might have Notice. I deny'd it that Night; I am very weary, said I, and therefore would not have her sent for. Within two or three Days after, I came there again, and she was sent for: I cannot tell whether by my Direction, or whether they sent for her of their own accord, they can best testify that; when she came to *Mr. Cross's*, the first thing after Salutation from my Journey, she asked me if I had spoken to your Lordship about *Mr. Parsons*? I told her, No, not as yet; but I would go straight up to your Lordship's House, and speak with you about it.

No

No (said she) you need not now do that, for we have a greater Work in Hand; which Work was this: She told me she was come from a great Person, whom she did not then name, to tell me, that if I would retract my Evidence (this was the short of it, there were more Particulars) and go beyond Sea, I should either be in the D. of York's Court, or I should be supported by him.

L. C. J. Did she name the Duke of York then?

Dugdale. Not the first time; she said she was come from a great Person, but named him not: The second time she named him, when I desired to know who the great Person was.

L. C. J. But what said she the first time, if you would retract, what then?

Dugdale. I was to have a Thousand Pounds paid into a Merchant's Hands, to be secured for me till I came back to give Evidence for them. I was to take the Plot off from the Catholics, and to lay it wholly upon the Protestants. I was to swear against some Persons, as Mr. Tasborough told me; that after I was got on Ship-board, I was to do a great deal of more Service, and come to swear against a great Person, a Person of considerable Note, whom yet they did not name.

L. C. J. But before you depart from what Mrs. Price said to you, make an end of her Discourse, when she told you, you should have a Thousand Pounds deposited into what Merchant's Hand you thought fit.

Dugdale. I think not that, but into a Merchant's Hand.

L. C. J. Well, what should you do for it?

Dugdale. I was to retract all my Evidence, and to be no Witness against them; but before I would much encourage this, I went to my Lord that was then President of the Council, my Lord Shaftsbury.

L. C. J. Who was by when this Discourse was? was the third Person by, you speak of?

Dugdale. There were others by afterwards; but there was no Body but we two together, I think at that time: But I went to that Noble Lord my Lord Shaftsbury, and acquainted him and Mr. Hambden, and Mr. Charlton with it: For she threatened, that all the King's Evidence would in a short time be hang'd; and if I would come over to them, it should all be turned upon the Protestants. The Duke had a wise Council, and had contrived it so, that if I would come over to them, there would not be a Papist that should suffer more: but their Religion should be established in half a Year, and all the Witnesses brought to condign Punishment. When I acquainted these Persons I named with this, and communicated it to them, they thought fit I should go on a little with her to trapan her, to see what kind of Plot it was they were designing; and I did give Encouragement; but not so far as to set my Hand to any Paper. But when it did come out, the Contrivance they spoke of did prove Mr. Dangerfield's Plot, as appear'd afterwards. So, as I was saying, I did encourage this to Mrs. Price, to see what I could get out of her; for I knew their Plots were dangerous and barbarous when I was amongst them; but I never design'd to prosecute them at any Bar, but only to know the Depth of their Contrivance. And these Gentlemen thought it very fit I should have some Evidence to testify for my Innocency, if they should prosecute me: And I did get two

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Persons, one Dr. Chamberlain and his Clerk, who were to be in a private place to over-hear what was the Communication between us; and when I had placed them, I asked Mrs. Price, whether I first began the Tampering or she, she answered she did; and I reckon'd up all the Heads of our former Treaties, though not the Particulars.

L. C. J. When did Mr. Tasborough first appear in this Matter?

Dugdale. My Lord, he never appeared but twice, and it was about the 12th of October, I think, the first time. We appointed to meet at the Green Lettice, that was with Mrs. Price, for I never saw the Face of Mr. Tasborough before that time, and from thence we adjourned to the Pheasant in Fuller's Rents.

L. C. J. There was the first time you met with Mr. Tasborough, you say?

Dugdale. Yes, my Lord.

L. C. J. What Discourse had you with him when you first met him?

Dugdale. My Lord, when we came there, Mr. Tasborough was at first pleased to open the Business to me, that Mrs. Price had acquainted him that I would come over to them. I sat a good while and said nothing, and when I did speak, I did rather give Encouragement than speak against it.

L. C. J. What did he tell you?

Dugdale. He said, he was brought there to confirm what Mrs. Price had promised me.

L. C. J. Did he say so?

Dugdale. Yes, because I would not take it upon her Word alone, but desired to have some other sufficient Person; and she told me, he was an honest sufficient Gentleman, and I might confide in him; and he said, what she had promised, should be certainly made good, and that he came likewise from the Duke of York, as he said, to confirm those Promises had been made me of his Encouragement and Protection.

L. C. J. Did he express particularly of what should be made good?

Dugdale. My Lord, in general.

L. C. J. Did he mention the Money that was to be paid into the Merchant's Hands?

Dugdale. In general Words only, all would be made good.

L. C. J. Then he did not say, the Money, but what had been said to you by her should be made good?

Dugdale. We had some Particulars mentioned, but I cannot positively remember which.

Mr. Attorney General. I desire, my Lord, the Jury may take Notice of this, that what she had promised, was, if he would retract his Evidence.

Mr. Just. Dolben. Did he intimate that?

Dugdale. The second time when he came, —

L. C. J. But before you come to the second time, let us make an end of the first: Repeat what he told you, when he came to you. You say, he said I am informed by this Gentlewoman, that you intend to come over to us; what then?

Dugdale. He told me a great many things for my Encouragement; if I did come, that it was a very charitable Act, and it was nothing but what was acted like a Christian; and if I had done amiss, I might have Pardon for it; and he did say, he was encouraged by more than the

Duke of York, that had taken my matter into Consideration.

L. C. J. What, was it in general Words?

Dugdale. It was, if I would come over and retract what Evidence I had given. And he said whatever things had been promised me, should be sure to be made good. Then my Lord, the second time, we did adjourn till *Tuesday* following; and then we met (as I think) at the *Six Cans* in *Holbourn*, and it was pretty late that time we met; so Mr. *Tasborough* and Mrs. *Price* did tell me it was the last time they were to come.

L. C. J. What, the second time of *Tasborough's* coming?

Dugdale. Yes, my Lord, and they offered me this Note. I had the Note before left with me to consider of it.

L. C. J. Who had given you the Note?

Dugdale. Mrs. *Price* gave me the Note.

L. C. J. Did Mr. *Tasborough* leave you before the Note was given you? For look you, when he told you about retracting your Evidence, and that this is nothing but what you may lawfully do, 'tis a Charitable Act. —

Dugdale. That was the first time, my Lord.

L. C. J. Did he produce the Note then?

Dugdale. He and she together did.

L. C. J. Who was it had it?

Dugdale. Mrs. *Price* had it from me, and produced it before Mr. *Tasborough's* Face.

L. C. J. Did she give it to him to read?

Dugdale. Mr. *Tasborough* did read it, and reading it said, this is nothing but what you may lawfully do; there is no Hurt in it.

L. C. J. And then he went away and left you and Mrs. *Price* together; what became of the Note?

Dugdale. Then Mrs. *Price*, after some Impor-tunity, left the Note with me, and I delivered it to Dr. *Chamberlain* to copy out. And Mr. *Tasborough* and Mrs. *Price* at the second Meeting told me, that was the last Time of meeting, and if I did not then sign it, it would be much to my Prejudice; and that they should not be able to do any thing for my Advantage, if I did not sign it before the Duke went into *Scotland*. He was then going, and it should be much for my Benefit if I signed it first; but Mr. *Tasborough* said, he could do me no more Service except I did that.

L. C. J. He said, that that was the last time, and if you would do it, it would be for your Advantage?

Dugdale. Yes, my Lord.

L. C. J. What said you then, did they produce the Note again?

Dugdale. My Lord, the Note was delivered to Mrs. *Price*, and she brought it thither for me to sign it, and laid it upon the Table, and pressed me to sign it.

L. C. J. I thought you had said she had given you the Note?

Dugdale. Yes, but I gave it her again before we met the second time.

L. C. J. And who produc'd it then?

Dugdale. She again the second time. But my Lord, we have missed one thing about Mrs. *Price*. When she was perswading me, she made use of the Duke of York's Name, and said, she would go down to *Windsor* to perswade the Duke that I should have my Pardon: Accordingly she did go, as I believe; for she took Coach at *Charing-*

Cross, and, as she said, did go to *Windsor*, and brought me Word back again, that the Duke did not seem to countenance it much, for fear he should be drawn into a *Præmunire* himself; and then she told me the Duke did wish her to acquaint the *Spanish* Ambassador with it; and she did go and acquaint him with it, as she told me. I asked her when I should go to speak with the Ambassador about it; she told me, that the *Spanish* Ambassador could not speak *English*, and it was not safe to trust an Interpreter that they did not know; and so it was to be deferred a little longer; but she said, that he would protect me, and that all that she said that the Duke had promised for my Reward, and for my safe going beyond Sea, he would be ready to do it; and she told me, that the *Spanish* Ambassador would write Letters into *Flanders*. And so they made use of the Duke of York's Name; but I could never find by any thing, nor can say, though they made use of the Duke of York's Name, that he did countenance any such thing, or ever knew of it.

L. C. J. How long was this before the Duke went away?

Dugdale. It was about the twelfth or fourteenth of *October*. The Duke went the beginning of *November* from hence.

L. C. J. Sir *Thomas Doleman*, do you know when the King came to Town from *Windsor*?

Sir *Thomas Doleman*. No, I do not know.

Dugdale. It was before the Duke went over into *Flanders* that the King was at *Windsor*. For the King and the Duke of York came from *Windsor*, and then the Duke went to *Flanders* again, and then she went, as she said, to *Windsor*, and came home either the Day the Duke came from *Windsor*, or the Day after.

L. C. J. Her Discourse when she went to *Windsor*, was before the Duke went into *Flanders*?

Mr. *Just. Pemberton*. The second Time, you mean.

Dugdale. Yes, my Lord, the second Time. For may it please your Lordship, I do remember now, that the Day when the Duke of York came back again from *Flanders*, I think it was the twelfth of *October*, that was the Time that I saw Mr. *Tasborough* first, and that was the Time they produced the Note, and I shall produce some Witnesses to prove that he had Discourse with me then.

L. C. J. I would only know the Time when she told you she went to *Windsor*, to speak with the Duke of York?

Dugdale. My Lord, to the best of my Remembrance, and as I think, it was the Day before the King came from *Windsor*, that she went down.

Mr. *Just. Pemberton*. He cannot swear to a Day, 'tis hard to put him to that.

L. C. J. He is not asked to a Day, but we would be at some Certainty about the Time, as near as we can.

Dugdale. My Lord, this I dare positively say, she went down of a *Tuesday*, and that was the Day before the Duke of York came from *Windsor*.

Mr. *Just. Pemberton*. He does give us the Time as near as possibly he can.

Mr. *Att. Gen.* Have you a Copy of the Note, Mr. *Dugdale*?

Dugdale. Yes, my Lord, I have.

Mr. *Serj. Maynard*.

Mr. Serj. Maynard. Now we will prove that Note.

Mr. Att. Gen. For the Note it self, your Lordship observes, Mrs. Price had the Original back again, but your Lordship hears Dr. Chamberlain took a Copy of it, and he will prove it.

Then Dr. Chamberlain was sworn.

L. C. J. Did she shew you the Note at the Time that she went to the Duke to Windsor?

Dugdale. The Note was produc'd when the Duke came from Flanders, the Day I think he came, and that was in October.

L. C. J. When did Tasborough and she meet with you?

Dugdale. When the Duke of York came back from Flanders.

L. C. J. When was that?

Dugdale. My Lord, I think it was the Twelfth of October. Mrs. Price had appointed Mr. Tasborough to come to confirm what she had said before, which was the Time that I saw him first.

L. C. J. When was that?

Dugdale. The very Day the Duke came from Flanders, as I think.

L. C. J. Well then, she talked to you of the Duke of York, and going to Windsor, before ever you saw Tasborough.

Dugdale. Yes, my Lord.

Mr. Just. Pemberton. And so his Evidence was.

L. C. J. So then here is the Matter, that the Jury may understand the Evidence: She solicited him the first Day before Harcourt's Trial: Then the next was three or four Days after the Trial; and then she endeavoured to perswade you to retract your Evidence, and go beyond Sea.

Mr. Just. Pemberton. No, my Lord, that was only to get the Man bailed that was in the Gate-House.

L. C. J. Did she not the second Time propose that?

Dugdale. No, my Lord, not till I came forth out of the Country again.

L. C. J. Then you went into the Country before the great Matter was spoken to?

Dugdale. Yes, my Lord.

L. C. J. And then she left word at the House, that she might know when you came, and when she met with you, she began to tamper with you, and said you should have 1000*l.* paid into some Merchant's Hand, and be well look'd upon, and after that she said she would go down to the Duke to Windsor.

Mr. Just. Pemberton. But at that Time she told him, he should have a Place in the Duke's Court.

L. C. J. Did she produce the Note the first Time you saw Tasborough?

Dugdale. Yes, my Lord, the Note was produced the first Time.

L. C. J. And Tasborough read it?

Dugdale. Yes, he read it.

L. C. J. And said you might lawfully do it?

Dugdale. Yes, my Lord.

L. C. J. When was the second Time?

Dugdale. It was within a few Days after, about two or three Days.

L. C. J. You are not asked to a Day, was the Note produced a second Time?

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Dugdale. Yes.

L. C. J. And then he was upon the same Matter still, when you swear the Note was produc'd the second Time?

Dugdale. Yes, my Lord.

L. C. J. And then he said, this is the last Time we must offer it to you, if you do not do it now, I can do you no good.

Dugdale. Yes, my Lord.

L. C. J. But her Discourse was before all this, that she would go down to Windsor and get your Pardon?

Dugdale. Yes, my Lord.

Mr. Just. Jones. Before your Acquaintance with Tasborough?

Dugdale. Yes, before ever I saw him.

Mr. Just. Pemberton. Tasborough was to confirm it.

Dugdale. Yes, for I made some Scruples about it, for they said before the Duke would believe me real, I must subscribe the Note, which I would not do without further Assurance. She promised a Person of good Sufficiency and Quality should engage for the Performance, and one Mr. Perkins, as she said, was to be sent for, and was sent for out of the Country, and 3*l.* 10*s.* expended in sending for him. And I said to Mrs. Price when 1000*l.* was proposed, Lord in Heaven! that is too much Money, 100*l.* is enough to serve me; said she, We must have a care how we manage this Matter; for she told me the Duke of York stood upon a tickle Point, and if it should be known the Duke tampered with the King's Witnesses, it would ruin him; but she said 1000*l.* was prepared for me, if I would go beyond Sea into Flanders, where I should be maintained and protected. But I objected my Fear of the Inquisition in Spain, which I knew to be so cruel a thing, therefore I would not go beyond Sea. Then she asked me if I would be contented with the Protection of a Protestant Earl's House?

L. C. J. Did she tell you his Name?

Dugdale. She asked me if I could not be content to be in a Protestant Earl's House, and not go beyond Sea? But she named no Body.

L. C. J. When you said you were unwilling to go beyond Sea, for fear of the Inquisition, she offered you the Protection of a Protestant Earl's House, and you desired to know who it was, but she named no body?

Mr. Just. Pemberton. And you say when Mr. Tasborough came to you, he told you, if you would retract your Evidence, all the Promises that had been made you by her should be made good?

Dugdale. Yes, my Lord, and without I would sign the Note, the Duke and the rest of the Gentlemen could not be serviceable to me.

Mr. Just. Pemberton. And he pressed you to do it before the Duke went into Scotland?

Dugdale. Yes, my Lord.

Mr. Belwood. Pray Mr. Dugdale, what Discourse was between you and Mr. Tasborough concerning the Trial of Sir George Wakeman?

Dugdale. The last Time, the second Time we were together —

L. C. J. Then you were but twice with Tasborough?

Dugdale. No, my Lord, but that second Time, You may see, says he, what a Progress hath been made

made by the acquitting of Sir George Wakeman, even that the Protestants themselves are at a Stand about their Belief, whether there be a Plot or no, and if you come over to us, it will overthrow all.

L. C. J. Had he any Discourse with you about the *Spanish* Ambassador?

Dugdale. My Lord, I can't tell whether he had or no, she had.

L. C. J. Did she say he would undertake the making good of the Promises?

Dugdale. Said I, Mrs. Price, suppose I should come over to you, what would it advantage you? There is Mr. Oates, and Mr. Bedlow, and Mr. Prance, when I am gone. Said she, Hang them Rogues, so as we do but get you over, we do not care, we can quickly do their Business.

Mr. Sol. Gen. And he said, this I observe by the way, That if he came over, all the King's Evidence should be hang'd, and the Plot turn'd upon the Protestants.

Mr. Just. Pemberton. Yes, he did say so, that he was told by the Gentlewoman, if he would come over, the Plot should be turn'd upon the Protestants, and the King's Evidence be hang'd.

Mr. Scroggs. Mr. Tasborough did not say so.

Mr. Att. Gen. Is this a true Copy of the Note?

Mr. Just. Pemberton. But Mr. Tasborough persuaded him to sign the Note, and Tasborough did say it was a good Act, and confirmed and assured him, that all should be made good to him that she had promised, and desired him to do it before the Duke went, that he might be the abler to serve him with the Duke.

Mr. Att. Gen. Mr. Dugdale, is this a true Copy of the Note?

Dugdale. I have read it so often, that I do believe it is a true Copy: And here is the Doctor and his Clerk, who will swear it was a true Copy, examined with the Note.

Mr. Att. Gen. Swear Dr. Chamberlain and Cleave. [Which was done.] With what did you examine that Copy?

Cleave. By the Paper given me by Dr. Chamberlain.

Chamberlain. My Lord, I received the Paper from Mr. Dugdale, my Lord, and gave him Order to transcribe it.

L. C. J. And that is a true Copy of the Paper you had from Dr. Chamberlain?

Cleave. Yes, my Lord, it is.

L. C. J. Mr. Dugdale, did you deliver that very Note that Mrs. Price delivered to you, to Dr. Chamberlain?

Dugdale. Yes, I did, and received it back again from him.

L. C. J. And you copied it out from that Note Dr. Chamberlain had?

Cleave. Yes, I did.

L. C. J. What is your Name, Sir?

Cleave. Cleave.

L. C. J. Read the Note. [Which was read as in the Indictment.]

Mr. Just. Pemberton. Was this a Copy of the Note delivered to you, that you were to sign?

Dugdale. Yes, my Lord, it is a true Copy: And if I may not be too troublesome, there is one thing more which comes into my Mind that passed betwixt Mrs. Price and me: She was instructing me how I should be convey'd beyond Sea, and she mention'd the way of the Pacquet-

Boat that comes from *Dover*, and goes every *Tuesday* or *Wednesday*. I made a Shew as if I was willing to do it, but the next Time she came, said she, We have thought it not to be so safe as to go in a Merchant-ship, which was the way we sent all our Priests over.

L. C. J. When was this?

Dugdale. My Lord, it was before the Duke came home the second Time, it was while he was in *Flanders*. And being desirous to know, I pressed her to tell me what became of Mr. Ewers, my ghostly Father in the Country: It was a long Time ere she would tell me; but at last she told me that he was convey'd over in those Yachts that carry'd the D. of *York* the first time over into *Flanders*.

Mr. Att. Gen. Then swear Wright. [Which was done.] Mr. Dugdale, is this the Man that you mention'd concerning the Discourse about *Harcourt*?

Dugdale. He hearken'd, as he told me afterwards, but I did not then know it.

L. C. J. Well, what say you, were you present at any Discourse between Mr. Dugdale and Mrs. Price, before *Harcourt's* Trial?

Wright. My Lord, I was walking to and fro in the Room: Mrs. Price, that Gentlewoman, was talking with Mr. Dugdale at the Window, and I was very inquisitive, I did think it was upon the Account of Marriage, or some such Business, and so hearkening, I did hear her say, That Father *Harcourt* had been very kind to her, and that she had visited him before he went to Execution, and he bid her not be troubled, he dy'd in a good Cause; and upon this Account I asked Mr. Dugdale afterwards what her Design was, and he said it was to withdraw his Evidence.

L. C. J. How often were you in the Company of Mrs. Price and Mr. Dugdale? never but that one Time?

Wright. Yes, a dozen times, I believe, I have been with them.

L. C. J. When was the first Time that you heard them talk concerning *Harcourt*? they were always very private, were they not?

Wright. Yes.

L. C. J. Well, what did you hear the first Time?

Wright. It was at the *Horshoe* Tavern in *Chancery-Lane*; and then the great Matter that she did desire of him was, to be kind to *Harcourt*, for he had been her Confessor: But afterwards I remember, when he was condemned, she said she had been with him, and he had bid her be of good Cheer, for he dy'd in a good Cause.

L. C. J. Was this the Time that you were at the *Horshoe* Tavern?

Wright. The first Time I heard no Discourse of *Harcourt* then.

L. C. J. When was this? And what said she when she spoke of Father *Harcourt* the first Time?

Wright. It was to desire him to be kind to Father *Harcourt*, because he was her Confessor. They spoke so softly I could hardly hear them.

L. C. J. Well, how do you know then?

Wright. I asked him when he came out, what it was, and he said it was to take off his Evidence against *Harcourt*; and afterwards she said she had been to visit him.

L. C. J. What more did she say at that Time?

Wright. I could not hear any more, my Lord.

L. C. J. Then all that you did hear was, She said to him, pray be kind to Mr. *Harcourt*, for he is my Confessor; and to that Effect was all their Whispering that you heard?

Wright. That is all I did hear her say at that Time.

Mr. Just. Pemberton. But what did you hear Mr. *Dugdale* say at that Time?

Wright. He said it was upon the Account of taking off his Evidence.

L. C. J. Well, what did you hear her say afterwards?

Wright. After she was saying she had been with him.

L. C. J. How long after?

Wright. I do not know, I cannot say to the Time, for I never minded it, they sent for me sometimes at their Pleasure; but she said she had been to visit Father *Harcourt*, who took her in his Arms and said, Do not cry for me, for I die in a good Cause; and this I told Mr. *Dugdale* of again: And she did further say, If the King should command me to be burnt at a Stake, I would do it, and so would any of the Party. Then said Mr. *Dugdale*, while you give these kind Expressions, yet you would cut off his Head if you could: Said she, you are a Rogue, and I am satisfied.

L. C. J. What, was it before the time that she said, pray be kind to *Harcourt*?

Mr. Serj. Maynard. We call this Witness only in Confirmation of *Dugdale's* Testimony.

L. C. J. But Brother, here is the matter: He says at the time that she told *Dugdale* he was a Rogue, and she was satisfied; afterwards she came to tamper with him to do *Harcourt* a Kindness.

Wright. She said many times, there were not four greater Rogues between this and Hell Gate than the King's Evidence.

L. C. J. What, was it before she talked of *Harcourt*?

Wright. Yes, a great while.

L. C. J. That is the thing, that she should say he was a great Rogue, and yet afterwards tamper with him.

Mr. Serj. Maynard. There was some Love betwixt them, and they did keep Company together.

Mr. Sol. Gen. This is before she began to tamper with Mr. *Dugdale*; but that we call this Witness to prove is, that she did afterwards tamper with him, as Mr. *Dugdale* tells you.

L. C. J. And the thing I say is, Would she go to tamper with one she had that Opinion of? 'Tis not impossible to be so, but it is not likely.

Mr. Sol. Gen. It is not impossible nor improbable at all, with submission; who should she tamper with but a Rogue, or one that she thought would be so?

Mr. Just. Pemberton. She thought as all the other Catholics did, and did desire to withdraw him from his Evidence against them.

Mr. Just. Dolben. And notwithstanding that she called him Rogue; yet still the Witness says, he thought there was matter of Love between them.

Mr. Att. Gen. Then we will call you *Cross*, the Man of the Tavern.

Mr. Just. Pemberton. It was about a matter that concerned the whole Catholick Party, and if you ask them they will call them all Rogues: But afterwards they will begin to tamper one with one, and another with another.

Mr. Serj. Maynard. And they take the same method with every one of them.

Mr. Just. Jones. But this is that that is said in confirmation of *Dugdale's* Evidence, that *Dugdale* did immediately after tell him, that her Business was to get him to retract his Evidence.

Mr. Just. Pemberton. And he overheard so much, that she desired of him to be kind to *Harcourt*, who was her ghostly Father.

Mr. Sol. Gen. Now, my Lord, as we have produced one Witness to confirm one part of Mr. *Dugdale's* Evidence; now we shall produce another Witness to prove the subsequent Discourses, and her Persuasion of him to retract and to sign the Note. And for that we call Dr. *Chamberlain*.

Mr. Att. Gen. We will call *Cross* first to prove the meetings at the Tavern, he is the Man of the Tavern. [Who was sworn.]

L. C. J. Come ask your Question now.

Mr. Belwood. Pray what can you say concerning Mrs. *Price's* Discourses with Mr. *Dugdale*?

L. C. J. Do you know Mrs. *Price* here?

Cross. Yes, I do know her very well.

L. C. J. What say you then to her?

Cross. I never heard any Discourse from them but what was common.

Mr. Just. Dolben. But they have been often there only them two, have they not?

Mr. Just. Pemberton. Did she ever come to your House?

Cross. She hath been there several times.

Mr. Att. Gen. I would ask you this Question, Sir, Whether she used not to come there and send for Mr. *Dugdale* when he hath not been there?

Cross. Yes, she hath been there often to enquire for him.

Mr. Att. Gen. What, frequently?

Cross. Yes, a great many times.

Mr. Att. Gen. About what time of the Year?

Cross. Last Summer, in June, July, and several Months.

L. C. J. What say you to September and October?

Cross. I can't say the particular Months, but she hath been there, and desired me to send for Mr. *Dugdale*, for she had earnest Business with him.

Mr. Att. Gen. Was it presently after he came to Town?

Cross. My Lord, she sent for him before he went out of Town, and after he came to Town; before he went to the Assizes, and since he came from the Assizes.

Mr. Att. Gen. Pray did you ever hear them speak about a Priest, one *Parsons*?

Cross. I have heard somewhat about Mr. *Parsons*, that Mrs. *Price* did speak to Mr. *Dugdale*, that he should not proceed further against him than he had done.

L. C. J. Did you hear her talk about *Harcourt*?

Cross. Yes, I have heard her speak something, but I do not know the Particulars of it.

L. C. J. But you have heard her name *Harcourt's* Name?

Cross.

Crofs. Yes, I have.

L. C. J. You do not pretend this Man was by at the Agreement?

Mr. Att. Gen. No, we do not: But only to prove they had frequent Discourses together, and that she sent for him often about Business.

L. C. J. And 'tis to the same purpose that the other was called for, only in Confirmation.

Mr. Sanders. My Lord, we pray he may be asked, Whether Mr. *Dugdale* did not sometimes send for Mrs. *Price*?

Crofs. Not upon his own Account, as I know of; for I have told you she hath been there, and left word she must needs speak with him, and when he hath come, she hath been sent for.

Mr. Sanders. Do you know she hath been sent for at any other time?

Crofs. Not that I know of: But when he was in the Country, she came to our House, and desired that when ever he came to Town she might speak with him about earnest Business, and she was sent for.

Mr. Scroggs. But he does not say any thing of Mr. *Tasborough*.

L. C. J. No; he came only to the *Pheasant*, and that other Place.

Mr. Att. Gen. Now, my Lord, if your Lordship please, Mr. *Dugdale* did mention a matter that some Persons were by Direction to stand by and hear their Discourse; we have these Persons here, who will tell you how it was, Dr. *Chamberlain* and his Clerk.

Dr. Chamberlain. My Lord, some time in September, Mr. *Dugdale* acquainted me, that there was a Design to draw him off from his Evidence, and he told me that the Duke of York was named in it. I said, if it were so, it were a thing of great moment, and if it could be confirmed it were well. He told me, if I would come to his Chamber some Morning, Mrs. *Price* should be there, and I should hear the Discourse; and accordingly I did come the 22d or 23d of September, and was there about an hour, and went into the Closet with my Clerk, and bid Mr. *Dugdale* speak with an indifferent Voice, to see if I could hear what they said. He did so, and we did hear him. At length Mrs. *Price* came; the Gentlewoman I had never seen, but he called her by that Name, and she answered to it. They had several Discourses, I could not overhear all, but the Sum was, that the *Spanish* Ambassador was unwilling to treat with him, because it was dangerous, and he must make use of an Interpreter, and that the Duke of York would protect him, pardon him, and give him a thousand Pound to maintain him: You know, says he, Mrs. *Price*, that I began not this Intrigue with you, but you proposed it to me. She owned it, that she had proposed it to him.

L. C. J. Now how can you tell this is the Gentlewoman?

Dr. Chamberlain. Nay, I don't know that, my Lord.

Mr. Att. Gen. We don't pretend that, but will prove it by another Witness by and by.

Dr. Chamberlain. It was about the 22d, or 23d of September, a Monday Morning, as I remember.

Mr. Just. Jones. Was *Tasborough* there?

Dr. Chamberlain. No, my Lord, none but them two.

L. C. J. Well, go on, Sir:

Dr. Chamberlain. She did press Mr. *Dugdale* very much to go with her to the *Gatehouse*, he would willingly have excused it, but she pressed him so earnestly, telling him she would not go without him, that they went together, and he came up afterwards to me, where I had staid all the time.

L. C. J. Did you hear her say any thing what she would have him do for that thousand Pound?

Dr. Chamberlain. I cannot tell truly any thing, but only to be gone.

Mr. Just. Pemberton. You could hear that?

Dr. Chamberlain. Yes, my Lord, I did.

L. C. J. Whither?

Dr. Chamberlain. Nay, I don't remember that.

Mr. Serj. Maynard. This was before the Note, my Lord.

Dr. Chamberlain. Yes, my Lord, for that was brought me afterwards.

Mr. Recorder. Call the other Witness, *Cleave*.

L. C. J. How long was this before *Harcourt's* Trial?

Dr. Chamberlain. I don't know that, my Lord, it was in September.

Mr. Just. Pemberton. But the Trial was long before that, soon after *Trinity-Term*.

Mr. Sol. Gen. Pray, what did Mr. *Dugdale* say to her when she pressed him to be gone, did he not make any Objection?

Dr. Chamberlain. Possibly he might, I did not hear all that was said.

Cleave. I was there the 22d of September.

L. C. J. In the Closet with Dr. *Chamberlain*?

Cleave. Yes, my Lord.

L. C. J. Had you ever seen Mrs. *Price*?

Cleave. No, never in my Life, as I know of.

L. C. J. What did you hear then?

Cleave. Before that Mrs. *Price* came, we shut up our selves in the Closet, and desired Mr. *Dugdale* to make a feigned Discourse to see whether we could hear him, and he did so, and we heard indifferently well. We bid him to speak a little loud that we might be sure to hear him. We staid there almost half an hour before she came. Afterwards she came up, and Mr. *Dugdale* saluted her by the Name of Mrs. *Price*, to which she answer'd. He ask'd her, When shall I go to the *Spanish* Ambassador's? [This I heard distinctly; for I could see her Body, but not her Face, she stood with her Back to the Door.] 'Tis not convenient at present, said she, to go; for his Interpreter is out of Town. Then Mrs. *Price* was saying, If so be you will come over to the Church of *Rome*, and take off your Evidence, you shall have 1000*l.* secured to you: But how, said he? Said she, I will bring to you in a Week's time a Person of Quality that shall secure and confirm it to you.

Dr. Chamberlain. That I heard too.

Cleave. That will be well, said Mr. *Dugdale*; I had rather do that way than any other. Said she, you shall have the Duke of York's Protection, and a Pardon not only for your Body, but for your Soul.

Mr. Serj. Maynard. A large Proffer!

Cleave. And afterwards said he, If I should come over again to the Church, what signifies my going out of the way, when there is Dr. *Oates* and others to go on with the Evidence? Said she, We do not care so much for them, for the Duke's Eye is only upon you.

Mr.

Mr. Just. Pemberton. Did you hear that, Dr. Chamberlain?

Dr. Chamberlain. No, my Lord; the Duke was named indeed, but I do not remember that Particular. And she several times desired him to speak softly; and then Mr. Dugdale was so honest, that he repeated it over again, that if we had not heard him before, we might understand him.

L. C. J. Now prove this Gentlewoman to be the Person.

Cleave. She afterwards pressed him to go with her to the Gatehouse, which he seemed unwilling to do, but went; and we have a Man here that stood below the Stairs, that saw her come in and go out.

Mr. Serj. Maynard. Call Holmes [Who was sworn.] What can you say about this Mrs. Price?

L. C. J. Do you know Mrs. Price?

Holmes. Yes, That is the Woman.

Mr. Belwood. Did you see her at Dr. Chamberlain's?

Holmes. I saw her at Mr. Dugdale's that Morning that my Master was there.

L. C. J. What Time do you speak of?

Holmes. The 22d of September I went along with my Master.

L. C. J. Who is your Master?

Holmes. Dr. Chamberlain.

L. C. J. What Day of the Week was it?

Holmes. On a Monday Morning between 8 and 9 a Clock.

Mr. Just. Dolben. That is the same time you speak of, is it not?

Chamberlain, } Yes, my Lord, he went along
and Cleave. } with us.

Holmes. This is the Woman that came down with Mr. Dugdale; I took great notice of her, and know her very well again: There were some Words spoke in the Shop, but I don't know what they were.

L. C. J. Dr. Chamberlain, she went out of the Chamber with him, did she not?

Chamberlain. Yes, my Lord, she did.

L. C. J. How often have you seen her?

Holmes. I saw her go into the House, come out with Mr. Dugdale to go to the Gatehouse, and when they came back again from Westminster, from the Gatehouse.

L. C. J. How often have you seen her besides? You took notice of her when she came down stairs, and when she came back again?

Holmes. Yes.

L. C. J. And this is the Woman, upon your Oath?

Holmes. Yes, upon my Oath.

Mr. Just. Pemberton. She came down with Dugdale, and would have him go along with her to the Gatehouse.

Mr. Att. Gen. My Lord, we say that Mr. Dugdale did acquaint Mr. Hambden, and Mr. Charlton, and my Lord of Shaftsbury with the Business; we desire Mr. Hambden and Mr. Charlton may be called, who promised to be here.

[But they appeared not.]

Mr. Att. Gen. Then, my Lord, here are the Clerks of the Council, they will all give your Lordship an account, that this Woman and the Gentleman did acknowledge this matter before the Council, and there did deny what they had sworn at first.

L. C. J. Who do you swear first?

Mr. Att. Gen. Sir Robert Southwell.

[Which was done.]

L. C. J. Come, Sir Robert, what do you know?

Sir Robert Southwell. My Lord, she, this Gentlewoman, Mrs. Price, was about the 23d of October examined before the Council, and being examined, we were commanded to take Notes, the several Clerks of the Council, and we did take Notes, which were long, and, my Lord, I must refer to those Notes.

Mr. Just. Pemberton. Have you those Notes?

Sir R. Southwell. Yes. 'Tis hard for me to give my Evidence, unless some particular Question be asked me, because they are very long.

Mr. Att. Gen. Then I ask you, Sir, this particular Question, Whether that Gentlewoman did acknowledge the Paper she is charg'd with?

Sir R. Southwell. My Lord, I do remember Mrs. Price, when she was asked who it was that framed the Paper for her (because it seemed to the Lords as if it had been a thing so very well framed, that it was beyond a Woman's Capacity to do it) Mrs. Price said, that she studied it her self, and indicted it her self, and one Mrs. Man, as I think, writ it out for her; but she took it upon her self that she had studied it (that particular Word) and contrived it.

Mr. Att. Gen. What did Mr. Tasborough say?

Sir R. Southwell. My Lord, I do also remember that Mr. Tasborough was cited before the Council-Board; and being asked about this Paper—

L. C. J. Was it shewn him?

Sir R. Southwell. I verily believe it was; it was read to him. Mr. Tasborough did speak very cautiously, and as prudently as he could in the matter: He did not positively say he had pressed Mr. Dugdale to sign it; but did tell Mr. Dugdale, That unless he did sign it, he could not proceed to get him any Favour, for that was to be the Foundation to testify that he was a Man of that Sorrow that he had expressed himself to Mrs. Price.

L. C. J. Did he own that to Mr. Dugdale?

Sir R. Southwell. Yes; and he added, my Lord, further (to do him justice in all he said) in case Mr. Dugdale had sign'd the Paper, he would presently have carried it before a Magistrate.

Mr. Att. Gen. I think we need not trouble your Lordship any further at present; we leave it here till we hear what they say.

Mr. Sanders. May it please your Lordship, and you Gentlemen of the Jury, I am of Council for Mrs. Price, that is one of the Defendants in this Indictment; which, as hath been opened, does set forth, That she did contrive to suborn the King's Evidence before the Trials of those Persons, and to suppress it; and afterwards to retract the Evidence given, and go off from what before he had sworn, to disparage the Justice of the Realm, and to make it be believed, that those Persons who were condemned and executed for this Conspiracy were innocent, and had wrong done them by him. Now for that matter, that which we have to offer for her is this: Mr. Dugdale and Mrs. Price were Fellow-servants in my Lord Aston's Family, and there they did contract a more than ordinary Familiarity; for in truth they did contract a Marriage, and Mr. Dugdale did promise her Marriage; but afterwards Mr. Dugdale having some other Design,

sign, did desert her, and she came to *London* and lived here; but afterwards when he came up to *London*, he thought fit to renew his Suit, and did not only send for her when he first came to *London*; but we have it in Proof, that from time to time he had continually sent for her, and would not be quiet without her; and when she denied to come upon his sending in his own Name, he sent in another Woman's Name, whom he knew to be an Acquaintance of hers: And thus there continued all along a great Intimacy between them, insomuch that several Persons, and among them one of the King's Witnesses, did observe they were speaking about marrying, and did think they did intend to be married in a short time; my Lord, what Discourse might pass between them I don't know; for ought I perceive she is prov'd to be a Papist, and 'tis very like she would solicit one with whom she had that Familiarity, for those of her own Party, as much as she could; but as far as I perceive by this Evidence that hath been given, he under colour of Kindness, and pretence that he would marry her, and sending for her from time to time, at last to rid his Hands of her, hath put this upon her, That she should solicit to suborn him against his Conscience to withdraw his Evidence. She is a kind of weak Solicitrix for matter of Judgment and Reason; I know not what other Prevalency she might have with him by any other thing, but for Judgment I think —

L. C. J. If she pen'd that her self, as she did acknowledge and avow she did, she was a Woman of good Judgment certainly.

Mr. Sanders. I perceive he was of good Judgment, to get rid of one he was weary of, by this means.

Mr. Just. Pemberton. Alas! Alas! This is such a Design indeed of counterproving the King's Evidence.

Mr. Sanders. *Mr. Dugdale* hath sworn, That this was her Intrigue, and she first began with him: If *Mrs. Price* be admitted to swear, who is the Defendant, as well as *Mr. Dugdale*, who is the Prosecutor, she would tell you that *Mr. Dugdale* did contrive this matter himself.

Mr. Just. Pemberton. She would destroy his Evidence that way; that's very well.

Mr. Just. Dolben. *Dr. Chamberlain* and his Clerk both swear, That he told her, *You know it was not I begun this Intrigue, but you.*

Mr. Sanders. And if she had had but so much Wit to have planted Witnesses to have taken Advantage of his Words, she had counter-worked him.

Mr. Just. Pemberton. They will learn such ways soon enough of themselves, you need not teach them.

Mr. Sanders. If you please we will go on with our Evidence, and call Witnesses to prove, that *Mr. Dugdale* had contracted himself to her in Marriage; and this is a very unkind ill thing in him to serve us thus.

Mr. Just. Pemberton. *Mr. Sanders*, you ought to remember, *Publica privatis, &c.* A Man should prefer the publick Good and Safety of the Nation before such a Mistress as this is.

Mr. Just. Dolben. But hitherto the Proof runs, that she sought him, and not he her.

Mr. Sanders. But they were contracted first.

Mr. Just. Dolben. And you hear what the Master of the *Horseshoe* says about her leaving Messages for him.

Mr. Just. Pemberton. He hath very good reason why he should not marry her, for what I can perceive.

L. C. J. 'Tis much they should be contracted, when she told him he was a great Rogue.

Mr. Sanders. It may be she might, I know not what cause he hath now to be displeased with her; but it may be she might be displeased with him then. But I beseech your Lordship and the Jury to observe, that tho' she did tell him he was a Rogue, yet it was afterwards that she did solicit and suborn him.

Mr. Just. Pemberton. And therefore she thought plainly he was fitter for her purpose, because she took him for a Rogue.

Mr. Sanders. But if she had a Purpose to suborn him, she would not call him Rogue to his Face; that was not the way to insinuate into him. I desire *Sir John Nicholas* may be sworn.

[Which was done.]

L. C. J. What Questions do you ask *Sir John*?

Mr. Sanders. I desire, my Lord, *Sir John* would tell us, whether *Mr. Dugdale* in his hearing did not own he was contracted to *Mrs. Price*?

Sir John Nicholas. No truly Sir, that I know of.

Mr. Sanders. Pray Sir, will you please to recollect it; it was when *Mr. Dugdale* was before the Council.

Sir John Nicholas. *Mr. Dugdale* did then own some Proposals of Marriage, but nothing of a Contract.

L. C. J. 'Tis your Women-witnesses are like to do that.

Mr. Sanders. That is all, Sir, you remember?

Sir John Nicholas. Yes.

Mr. Just. Pemberton. Have you put the best foot forwards, *Mr. Sanders*?

Mr. Sanders. Which is *Mary Benwell*? Swear *Mary Benwell*. [Which was done.] We will now prove he sent for us several times; we did not go after him so much. What do you know concerning *Mr. Dugdale's* sending for *Mrs. Price*?

Benwell. He sent for her to my House several times.

L. C. J. Did he lie at your House?

Benwell. No, my Lord, he did not.

L. C. J. Where is your House?

Benwell. In *Brownlow-street*.

L. C. J. What, is it a publick House?

Benwell. It is an Alehouse, the *Green Lettice*.

Mr. Just. Dolben. He told you so himself, that he did meet her at the *Green Lettice*.

L. C. J. What was their Discourse when they met?

Benwell. I know nothing of that, I did not hear him say any thing; but only he would come in and say, Let your Boy go for *Mrs. Price*.

L. C. J. When was this?

Benwell. The last time was Sunday Seven-night before she was taken.

* *Mr. Recorder.* She always came when she was sent for? * *Sir George Jeffries.*

Benwell. Yes, if she was within.

Mr. Sanders. How often did he send for her?

Benwell. Above 20 times.

L. C. J. What great Inference can you make from that? methinks 'tis as much against you as it is for you; for it proves there was a great Familiarity and frequent Meetings between them; and

and if it be so, it shews as if she had that great Confidence in him, as to attempt upon, and attack him in this affair.

Mr. Just. *Pemberton*. Indeed, Mr. *Sanders*, if you would have proved an Inducement to Mr. *Dugdale's* Evidence, you could not have prov'd it better, that she had great Confidence in him; she had an Opinion, and reckon'd he was sure to her, and so had a greater Influence over him than another.

Mr. Just. *Jones*. He sent for her to the *Green Lettice*, she sent for him to the *Horsehoe*; the Master of the House sweareth that she sent for him 20 times, so they might send for one another 20 times apiece.

Mr. Just. *Dolben*. And he never came to seek for her but when she had been there, and left word for him before.

Mr. *Sanders*. Now, my Lord, if you please, we will go on to prove, That when she refused to come, he sent for her in another Body's Name.

L. C. J. What will that do? Or what does that prove?

Mr. *Sanders*. It is not probable then that she should solicit him: And just at the last here are some Witnesses planted, and some Words are taken from her mouth, that it was her Intrigue all along.

Mr. Just. *Pemberton*. Mr. *Sanders*, You do not shew the Time when those frequent sendings and comings were.

L. C. J. It shews that which they have prov'd, that she believed he was fond of her, and she was confident of him.

Mr. Just. *Jones*. I suppose Mr. *Sanders* means, and does drive at this, to shew that it was to drive on the Intrigue on his part that these frequent Messages were sent.

Then another Woman Witness was called and sworn.

Witness. My Lord, at the time that the Proclamation was for the banishing of all Papists out of Town, she came to me and said, If Mr. *Dugdale* come to ask for me don't offer to tell him where I am.

L. C. J. When was this?

Witness. Long before *Easter Term*, before the Papists were banished out of Town.

Mr. Just. *Pemberton*, } This was another part
and Mr. Just. *Jones*. } of the Intrigue.

Witness. So Mr. *Dugdale* came to me, and ask'd me where Mrs. *Price* was? I told him I could not tell; but if you have any Letters I will convey them by a Messenger or some Footboy to her.

Mr. Just. *Jones*. Did he send for her at any time in *September*?

Witness. The last time he sent for her was the *Sunday* was se'night before she was taken.

L. C. J. Did he frequently send for her a month or six weeks before that?

Witness. Yes, several times.

Mr. *Sanders*. Then swear *Bridget Lee*.

[Which was done.]

Mr. *Sanders*. Pray Mistress, you that spoke last, did Mrs. *Price* ever deny her self to him, but that once when she left that word with you?

Witness. Never to me, my Lord, but that time.

Mr. *Sanders*. *Bridget Lee*, Pray tell my Lord,
V o L. II.

Whether Mrs. *Price* did deny her self, and the way he used to get her to him.

Lee. Mr. *Dugdale* came into this Gentlewoman's House, and coming into the House I was in the Passage; he asked me, Sweetheart, let me speak with you; he desired me to tell him where Mrs. *Price* was; I told him I could not tell: I wish, said he, you would fetch her to me; no, said I, I would not do it for 5 s. He clapp'd his Hand in his Pocket, and said he, I will give you 5 s. No, said I, I will not do it if you would give me 5 l. Let every Tub stand upon its own bottom.

L. C. J. What did you mean by those Words, Let every Tub stand upon its own bottom?

Lee. I would not meddle nor make with any thing but my own Concerns.

L. C. J. How long was this before the Trial of *Harcourt*?

Lee. A Quarter of a Year before that.

L. C. J. It was before he went out of Town, the Circuit.

Lee. Yes, my Lord, so it was.

Mr. Just. *Pemberton*. There had been no tampering then, this was before the tampering.

L. C. J. It is no matter when the tampering was, but when Mr. *Dugdale* sent for her, and she refused.

Mr. *Sanders*. I wonder what they did together all the time before, if they were not tampering.

L. C. J. They made Love together.

Mr. *Sanders*. What was the occasion that she refused?

Witness. I understand that Mr. *Dugdale* did find I was fearful of my self; you may venture, said he, for I would not do her the least wrong, nor the least Hair of her Head should not perish.

L. C. J. This was long before he went into the Country?

Witness. Yes, my Lord.

L. C. J. Before the tampering?

Witness. Yes, my Lord.

Mr. *Sanders*. Where is that other Witness, Mrs. *Holland*? [Who was sworn.] What do you know of Mr. *Dugdale's* sending for Mrs. *Price*? I would know the last Time, and where it was.

Holland. My Lord, I do not know what Place it was he sent for her to, nor the last Time, but it was since *Christmas*.

L. C. J. Since *Christmas*?

Holland. No, before *Christmas*, but I do not remember the Day.

L. C. J. How do you know that he sent for her?

Holland. I was told by the People so, That a Messenger was come from him for her.

L. C. J. You did not see him?

Holland. No, I did not.

L. C. J. She says nothing to the purpose.

Holland. I know Mr. *Dugdale* was in her Company one *Sunday* last *Lent*, and was there two Hours.

Mr. Just. *Jones*. 'Tis agreed of all sides they were Acquaintance, and had great Familiarity.

Mr. Just. *Pemberton*. Ay, or she would never have had the Confidence to have attempted upon him in this manner.

L. C. J. Well, have you any more?

Mr. *Sanders*. Here is one more, that is Mrs. *Sheldon*.

L. C. J. What do you call her for?

Mr. Sanders. To prove that there was a Note left to warn her to avoid Mr. Dugdale's Company.

Mr. Just. Pemberton. Why did you not?

Mr. Sanders. It had been better for us if we had.

L. C. J. When was that Note?

Mr. Sanders. Lately.

L. C. J. That will do no good.

Mr. Just. Pemberton. Come, call her however; they will say, their Witnesses were not heard else. [*And she was called, but did not appear.*]

L. C. J. Come, she is not here.

Mr. Sanders. Then, my Lord, we offer this as Evidence, That we had no Design to Suborn him to retract what he had said; the occasion of our being with him we have given you an Account of.

Mr. Just. Pemberton. Why did you write your Note then?

L. C. J. Mr. Sanders, what you have said amounts to nothing to avoid the Evidence that hath been given for the King; for all your Testimony says little more, than what he said at first; That we were Fellow-servants, and well acquainted; we made frequent Visits, and when I came to Town I went to see her, and she came to me: They had no Discourse of this same matter of tampering till the Day before *Harcourt's* Trial; but Sir Robert Southwell does say, She owned that she did study the Note, which is the great Business in the Case: For if she prepared the Note for him to sign, what can be said more?

Mr. Sanders. We can say no more but that Mr. Dugdale might Dictate it.

L. C. J. No, she own'd she Dictated it, and got Mrs. Man to write it for her.

Mr. Sanders. I do not know, my Lord —

L. C. J. But you may know, if you will; for Sir Robert Southwell hath sworn, That she being examined at the Council-Board, the Lords of the Council had so good an Opinion of the Skill of it, that they asked her, Who fram'd it for her? And she answered, She did it her self.

Mr. Just. Pemberton. Mr. Sanders, if you be not satisfy'd, here is another of the Clerks of the Council.

Sir John Nicholas. All that Sir Robert Southwell hath said is true.

Sir Thomas Doleman. All that Sir Robert hath said I can swear to every particular.

L. C. J. Well, What say you, Mr. Pollexfen?

Mr. Pollexfen. My Lord, if you please to spare me a Word for the other Defendant Mr. Tasborough: There is in the Indictment two Things charg'd on the Defendants; One, That they should persuade Mr. Dugdale not to give Evidence against *Harcourt*: For that there is no manner of Evidence against Mr. Tasborough, but he ought to be found Not Guilty for that part.

L. C. J. That is true, of that he must be acquitted.

Mr. Pollexfen. Then for the other part of the Charge, That they should endeavour to persuade Mr. Dugdale to Retract the Evidence he had formerly given, for a sum of Money, and other Rewards: We do reckon, That as this Evidence stands before your Lordships, whatsoever is proved against Mrs. Price, will have no influence upon Mr. Tasborough; for altho' Dugdale and Price

have had Practices and Designs amongst themselves, unless he be a Party to them, if he have not a part in them they will not affect him: Then the next thing is, we must distinguish the Evidence as it stands, or else it may not be by the Jury so well understood how they are differenced one from another; for I would not mince the Evidence, but let it stand as it is: And how far Mr. Tasborough is concern'd in it, and how far may be done by him as an honest Man in this matter, or how far it is an illegal Act, will be to be determin'd by you. Now there is only two meetings that Mr. Dugdale hath had with Mr. Tasborough; and in the next place, there is no other Witness to prove it but Dugdale himself, excepting only what Sir Robert Southwell says of the Confession at the Council, which, I think, will not be very much neither, as I shall shew when I come to that particular. Mr. Dugdale says, that at the first Meeting, the 12th of October, at the Green Lettice in Fuller's Rents, Mr. Tasborough did say unto him, That Mrs. Price had told him, Mr. Dugdale would Retract his Evidence, and he was come to confirm what she had said.

L. C. J. Nay, but what she had promised.

Mr. Pollexfen. Yes, what she had promised; and that he came from the Duke, and that it was charitably done of him to Retract; he goes no further: And that if he had done amiss he should be sorry for it. This is the Evidence, as near as I can remember to repeat it.

L. C. J. Part of it.

Mr. Pollexfen. As to the first Meeting —

Mr. Just. Pemberton. Look you, do not mistake, Mr. Pollexfen, but observe this: For Mr. Dugdale does swear he told him, If you will Retract the Evidence you have given, then all she hath promised shall be made good.

Mr. Pollexfen. That he came to confirm what she had promised. I would repeat it as right as I could, because, my Lord, I hope, as this Case stands, that notwithstanding all that hath been proved, yet Mr. Tasborough hath done nothing amiss. Then I come to the second Meeting.

Mr. Just. Pemberton. At the first Meeting the Note was produc'd.

L. C. J. No, I think not.

Mr. Just. Dolben. Yes, my Lord, it was.

L. C. J. Was it, Mr. Dugdale?

Dugdale. Yes, my Lord.

Mr. Pollexfen. Yes, he does swear so, and that he read it, and press'd Mr. Dugdale to sign it; and that this was the last time, and it must be done before the Duke went into Scotland, or something to that purpose. This, my Lord, under favour, may all stand and be very true, and yet Mr. Tasborough not criminal, with submission. For if so be Mrs. Price were so far in her Inter-course with Mr. Dugdale, that as appears by his own Evidence he did seem to comply and treat, as if he were yielding, and to do what they would have him do, concerning his going beyond Seas, or being kept in a Protestant Lord's House, and she had such Confidence as to tell him how the Priests were sent away, and how he might be convey'd away: All this thus far comes to agree with what Mr. Tasborough says for his own Defence: For Mr. Tasborough says, Mrs. Price did tell me, that Mr. Dugdale was sorry for what he had sworn, and would Retract all the Evidence he had formerly given. Thus he says:

says: I'll apply it to our Case anon; and this appears by Mr. *Dugdale's* own Evidence: For when he does repeat what Mr. *Tasborough* told him, he says, That he said Mrs. *Price* told him of it, and he hath not told you, that he did contradict it for false.

Mr. Just. *Pemberton*. Pray consider; He tells you, that *Tasborough* said, that Mrs. *Price* had acquainted him with what Propositions she had made of 1000*l.* and that he was the Man that was come to confirm the Promises she had made.

L. C. J. That presses you, that is the truth of it: If that had not been in the Case, perhaps you don't talk much out of the way. 'Tis true, your Observation is right.

Mr. Just. *Pemberton*. 'Tis ingenious indeed, but 'twill not hold out.

L. C. J. When *Tasborough* comes into the Company to be acquainted with Mr. *Dugdale*, at that time Mr. *Dugdale* had been advised to comply, or seem to do so to find out the Plot and Design, and what he could get out by it; and without question, to pursue that end, he did shew yieldingness, and as you observe, for ought *Tasborough* knew, he might be sincere: But was it a good way for him to tell him; there is the matter in effect he does tell him so; If you will Retract your Evidence, according to this Note that was produced by her, and read by him, you shall have 1000*l.* for you pains: Can you answer that?

Mr. Just. *Pemberton*. Or can you answer the other, That he should say, She hath acquainted me with what you propose; that is, That you would Retract all, and go out of the way, and be no more an Evidence; and if you would do that, that she hath acquainted me with her Proposition, which I come to confirm, that she would give you 1000*l.* What can be made of that?

Mr. Just. *Dolben*. And withal, formerly there was a Discourse of some Person of Quality that should come to him; he desired that some such one should be a Security for the Money, and afterwards she brought Mr. *Tasborough*, and said, That was the Gentleman she told him of.

Mr. Just. *Pemberton*. Come, Mr. *Pollexfen*, take this too: What had Mr. *Tasborough* to do to use the Duke of *York's* Name? and to say, That he had Authority from him to propose these things; which certainly is a very great wrong to so great a Prince.

L. C. J. That needed not to a penitent Person, that was sorry for what he had done.

Mr. *Pollexfen*. He does indeed say, That Mr. *Tasborough* should be the Man that should secure the Money.

Mr. *Sol. Gen.* And there is one thing farther, to take in all that Mr. *Tasborough* did likewise say to Mr. *Dugdale*; That there is no harm in doing this, that it is a very charitable Act, and that he would do well in it.

L. C. J. But they answer that, by saying, Supposing it to be true, that *Dugdale* had Remorse, then it would be a very good Action; but to talk of 1000*l.* to be given for it, there is the Crime.

Mr. *Pollexfen*. Whether my Answer will take with your Lordship or no, I can't tell; but the Answer I would give is this; There are several things in that Paper, as amongst the rest, That

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he should fall under great Dislike and Danger, and therefore was forced to hide and secure himself, for fear of those whom he should make his Enemies by it, and that was Terror enough to any Man that should run into such a Retraction. Therefore now he must live when he hath done this, and so we should apply the other part of the Discourse, whatever Money she had promised to take off his fears of want, and so his coming there was to make good that part of the Paper, which says, he must be protected and maintained, and preserved, that he may see he hath a subsistence and provision for him, if he did deserve it. And, my Lord, it will be greatly distinguishing in our Case, and turn much upon this Point, with submission, if I give or offer Money to any Man to swear a Falshood or Retract the Truth, 'tis a very great Crime, and if we are guilty of that, undoubtedly our Crime is very bad; but in order to the bringing of Truth to discovery, and to have a Retraction, not of a Truth, but of a Falshood, and to preserve that Witness from perishing, I may promise him Protection and Subsistence.

Mr. Serj. *Maynard*. Then you have found out a better way than the Devil himself could have suggested to uphold Subornation.

L. C. J. Upon my word, if that were a way that were allowable, than woe be to us, we should easily have all the Witnesses tamper'd with by the Temptation of 1000*l.* Reward. Do you think that is a good thing for a Man to say, This thing was rashly said, if you will unsay't, you shall have such a Reward? People would be apt to bite at such a Bait, and we do not live in so virtuous an Age, that 1000*l.* will not Tempt a Man to unsay what he hath said at first, tho' what he said then was true.

Mr. *Pollexfen*. It were an unjust and unfitting thing, if it were as you say.

Mr. Just. *Pemberton*. Nay, Mr. *Pollexfen*, consider these things must not be done by any one; their way, if they had been convinced of the Truth, had been to have carry'd the Complaint to a Magistrate, and there to detect him by what he had said; not to corrupt him, and persist in it, by telling him, if he would do so and so, he should have 1000*l.* By this you let in all manner of Temptations to Witnesses, that we shall never know where we are.

L. C. J. Come, Mr. *Dugdale* (because I will shew you all very fair play, I think very well of Mr. *Dugdale*.)

Mr. Just. *Pemberton*. He hath carry'd himself always well.

L. C. J. Yes truly, I know nothing to the contrary: And pray tell upon your Oath, and tell the Truth: Did Mr. *Tasborough*, when he read the Note, ask of you, Is this true? Did he inquire of you, Whether or no you were really a Convert, and, Whether your Sorrow and Repentance were true?

Dugdale. No, he never did.

L. C. J. Did he ask you, If you could do it with a safe Conscience?

Dugdale. No, nothing of Conscience was ever nam'd in it.

L. C. J. Did he ask you, Whether it was true?

Dugdale. He never nam'd Truth or Falshood: It was only to get me over to Retract what I had said.

Mr. Just. *Pemberton*. What is a Temptation, if this be not?

L. C. J. Truly I ask this Question, That the World may see, we would find out the Truth by all the ways we can; for if he had been solicitous with him, and asked him, Whether he could do this safely, and with a good Conscience, and whether the matter of it were true, it would have gone a great way; but now I have asked Mr. *Dugdale* this upon his Oath, and he says it was only to get him over to them.

Mr. Just. *Pemberton*. And then consider all that is said against Mrs. *Price* is turn'd upon you, except that of the Contrivance to keep him from giving his Evidence against *Harcourt*. A very subtle Invention it was; but whether Mr. *Tasborough* was in the business of the Note, in contriving it, I cannot tell, and it signifies nothing: But she having contriv'd as ill a Note as can be penn'd, he is as much guilty; for he solicits as well as she, and countenances it so far, as to undertake farther, that the Money and the Bribes she had offered, should be paid and made good.

L. C. J. Mr. *Dugdale*, Mr. *Tasborough* talked with you of going away?

Dugdale. Yes, my Lord.

L. C. J. Advised you to be gone?

Dugdale. Yes, he did: He told me I were best to absent my self for a while beyond Sea, and should have convenient Passage.

L. C. J. Did he mention the Duke of York? What said he?

Dugdale. Yes, he said he had acquainted the Duke, and the Duke had given him Orders to press that Note home; for, said he, the Duke will not believe you will be true, if you do not sign this Note.

Mr. Just. *Pemberton*. 'Tis never to be endured, that you should abuse so Noble a Prince.

L. C. J. Did you tell Mr. *Tasborough* then, If I come over, there is *Oates*, and *Bedlow*, and *Prance* still left?

Dugdale. I did say so to Mrs. *Price*, but never to him.

Mr. Just. *Pemberton*. You see then what he would have this Note sign'd for, to strengthen the Catholick Cause.

Mr. *Thompson*. My Lord, Will you please to spare me one Word for Mr. *Tasborough*: I confess the Evidence does seem by Mr. *Dugdale* to press us very hard, and particularly upon that matter of the Money; but as Mrs. *Price* had managed the Business, Mr. *Tasborough* might have been very innocent: But, my Lord, we must make that Defence for our selves that we can in a Case of this nature; and therefore it will be, I hope, no Reflection to say, We must counterprove Mr. *Dugdale*, and disprove him as far as we can, to acquit our selves. My Lord, it is a very great Crime that we are here charg'd with, and the Crime being so heinous, ought to be well proved, and with unquestionable Evidence: Mr. *Tasborough*, if he be guilty of what he is here accused of, is a very ill Man; but Men are not drawn up to great degrees of Illness so soon, as at the first Act to attempt such heinous Offences: And 'tis not probable, that at his first slip he should be guilty of a Fault of so high a Nature, and so very ill as this is. My Lord, we shall call some Persons that shall make it appear to your Lordship, that after Mrs. *Price* had given us In-

formation of this Repentance of Mr. *Dugdale*'s, we did make application to a Person of very great Honour, no less than my Lord Privy Seal, that Mr. *Dugdale* might receive the Discouragement which it was fitting he should in such a matter. My Lord, we must call our Witnesses, to prove Mr. *Tasborough* to be a Man of a very good Reputation, that he never did any such thing before; and I hope we shall give your Lordship such an Account of him, that the Jury will have reason to believe, That Mr. *Tasborough* is not so guilty as he is represented, but was drawn into this matter, whatever it is. Pray call a Witness to shew that Mr. *Tasborough* acquainted any Lord of the Privy-Council.

Then my Lord Chief Justice went off the Bench, to sit on Writs of Error in the Exchequer-Chamber.

Mr. Just. *Pemberton*. If Mr. *Tasborough* be drawn in, 'tis by Mrs. *Price*, but not by Mr. *Dugdale*.

Mr. *Thompson*. Is my Lord Privy Seal in Court?

Mr. Just. *Jones*. You know he is not here.

Mr. Just. *Pemberton*. You toss great Names about, and make great noise with them, when you know they are not here.

Mr. *Thompson*. If he had not fallen ill, sure he would have been here. What say you, Mr. *Tasborough*?

Tasborough. My Lord, I was to attend my Lord Privy Seal Yesterday, and desired him to do me the Honour to be here to-day, because I was to come to my Trial: He told me he had Business that would hinder him from coming; but said he, if the Attorney-General will inform himself of me, I am ready to testify, that you gave me Information first of Mr. *Dugdale*'s Recantation, before it came before the Council.

Mr. Just. *Pemberton*. We will do your Client this Right, Mr. *Thompson*, as to ask whether my Lord Privy Seal was at the Council, and said so much then.

Mr. *Scroggs*. He was not that Day, but we acquainted my Lord Privy Seal before that; but Sir *Robert Southwell* does him this Right, as to say, that he did declare, if Mr. *Dugdale* had sign'd that Note, he would have gone with it immediately to a Magistrate.

Mr. Just. *Pemberton*. How does that appear he said so?

Sir *R. Southwell*. My Lord, he did further say, after he had said, that he would have carried it to a Magistrate in that case, he did say, he had been once or twice with my Lord Privy Seal.

Mr. Just. *Pemberton*. Ay, he did say so; but there was no Evidence but his Allegation.

Mr. Just. *Jones*. Was my Lord Privy Seal at Council at that time?

Sir *R. Southwell*. No, I think not, my Lord.

Mr. *Scroggs*. 'Tis a very strange thing we should be so forward to promise for Mrs. *Price*, if we had not thought Mr. *Dugdale* real.

Mr. Just. *Pemberton*. 'Tis a sign you had a great Inclination to the thing: Well, call your Witnesses.

Mr. *Thompson*. Call Sir *Richard Ashfield* and Alderman *Barker*.

Mr. Just. *Dolben*. 'Tis a fine thing this to make a long Brief with, to no purpose.

Mr.

Mr. Scroggs. We have a swinging Brief here indeed.

Mr. Just. Dolben. Ay, you come with a great Brief, but no Witnesses.

Mr. Thompson. If we do not call the Witnesses nam'd in our Brief, our Client will take it ill; if they do not appear, we can't help it.

Mr. Just. Pemberton. You have forgot what you moved the Court about *Tempest*.

Mr. Just. Dolben. But we have not forgotten, that about ten Days ago you mov'd to put off this Trial, because Mr. *Tempest* was your material Witness; and being ask'd what he could prove, you said it was how you were brought acquainted with Mr. *Dugdale*: But because the Court did not think fit to put off the Trial, Mr. Attorney did say, he would see if he had been examined, and what he had deposed, and report it to us; and afterwards did so, and did consent here that at the Trial you should make use of his Examination if you pleas'd; but we do not see that you make any use at all of it.

Mr. Thompson. We that are of Council must make use of our Client's Witnesses as we have them in our Brief.

Mr. Serj. Maynard. We desire they should call their Witnesses, and not name Names.

Mr. Scroggs. We desire that Examination may be read.

Mr. Att. Gen. Produce it then.

Mr. Thompson. We have it not.

Mr. Recorder. And we for the King do not use it as Evidence.

Mr. Att. Gen. Come, if it be here you shall have it read, though I believe Mr. *Tempest* swears little to your purpose; for as I take it he says he does not know Mr. *Dugdale* at all.

Mr. Just. Dolben. But I told you that Mr. *Tasborough* puts you upon Trifles.

Mr. Just. Pemberton. But whatsoever they put you upon, you should not trifle with us.

Mr. Thompson. Do you desire they should be read, Mr. Attorney?

Mr. Just. Pemberton. We can't read them without the Consent of both Parties. Do you consent to them first for whom they are produced?

Tasborough. I only desire to know by them how I came acquainted with Mrs. Price.

Mr. Just. Dolben. Well, you hear what Mr. Attorney says is in them; will you have them read?

Mr. Scroggs. 'Tis to no purpose then, if that be all.

Mr. Serj. Maynard. I desire to speak but a few words, and I am bound to speak them. —

Mr. Just. Jones. Brother, they have more Witnesses.

Mr. Pollexfen. These we shall now call are to this purpose, to prove Mr. *Tasborough*'s Reputation, that he is a very honest Man.

Mr. Just. Dolben. I don't see but that he may be a fair-condition'd Man in all other things.

Mr. Just. Pemberton. Look you, those that are in their Dealings sometimes honest fair Men, yet when they come to be of that Religion, there they are debauched, and there they are brought to do as wicked things as can be, in favour, and to support that Religion.

Then Alderman Barker was sworn.

Mr. Thompson. Do you know Mr. *Tasborough*?

Barker. Yes, I have known him several Years.

Mr. Thompson. How long?

Barker. Fourteen or Fifteen Years.

Mr. Thompson. How have you look'd upon him?

Barker. I have looked upon him as an honest peaceable Man.

Mr. Just. Pemberton. You have known him to be a Catholick?

Barker. Yes, that I have.

Price. May I beg the Favour of this Honorable Court, that I may speak for my self here?

Mr. Just. Dolben. Well, come Mrs. what will you say? But we must tell the Jury before-hand it signifies nothing for Evidence.

Price. I desire to speak the truth.

Mr. Just. Dolben. But they must not believe a Word you say.

Price. Be pleased to give me leave to speak however.

Mr. Just. Jones. Well, go on.

Price. Sir, Mr. *Dugdale* does here accuse me of suborning him to retract his Evidence. I do protest 'tis so far from it, that he importuned me, and solicited me to go to the Duke of York, and he told me if I would go, he would pay my Coach-hire. Is it not so, Mr. *Dugdale*?

Mr. Just. Pemberton. You must not interrogate him.

Mr. Just. Dolben. The very first thing you have said hath discredited all you would say; for if Mr. *Dugdale* (as you say) had importuned you that you would do this thing for him, how comes it to pass that afterwards you should promise him a Reward of 1000*l.* and bring a Gentleman to make it good?

Price. I assure you, my Lord, I never did.

Mr. Just. Dolben. 'Tis most apparent, *Tasborough* does not deny that.

Price. But that which is the real Truth, that you say must not be believed.

Mr. Just. Pemberton. Did he solicit you to draw your Note?

Price. Yes, he did, upon the word of a Christian.

Mr. Just. Jones. You did confess that you did study it, and draw it your self.

Price. I did so, but he importun'd me to do it.

Mr. Just. Pemberton. How do you prove that?

Price. I desire to know by what Words I took off his Evidence at *Harcourt*'s Trial?

Mr. Just. Dolben. You desired him to be kind, because he was your Confessor.

Price. I desire to ask him the Question, by what Words it was.

Mr. Just. Jones. Well, you may ask him, but 'tis little to the Purpose. Can you remember the Words, or the Effect of the Words that she spoke to you in the Behalf of *Harcourt*? The Night before his Trial, I think it was.

Dugdale. Yes, it was the Night before, to desire me I would not be an Evidence against him, in regard he was her Ghostly Father.

Price. You know you came to me, Mr. *Dugdale*, and told me you rid Post to Town.

Mr. Just. Pemberton. We must have no more of these interlocutory Discourses.

Dugdale. Mrs. Price, I would not do you the least Injury in the World.

Mr. Serj. Maynard. Mr. Justice Jones, I desire a Word.

Mr.

Mr. Just. Jones. If you will produce any Witnesses, do.

Price. I desire I may speak for my self.

Mr. Just. Dolben. 'Tis but Reason she should speak for her self.

Mr. Just. Pemberton. But I hope if she ask unreasonable Questions she is not to be heard.

Price. I only speak the Truth.

Mr. Just. Dolben. But we must not take your Evidence of it, produce your Witnesses.

Mr. Just. Jones. If you have any to prove what you say, call them.

Price. Whether you will take my Evidence or not, pray let me speak for my self.

Mr. Just. Dolben. We cannot believe you, nor must the Jury believe you, I'll tell you that before-hand.

Mr. Just. Pemberton. We tell you, you must not be heard. If you have any Questions to ask, let your Council propose them.

Mr. Just. Dolben. If you apply to the Jury, you are not to tell the Matter of Fact, but to prove it to them by Witnesses.

Price. I desire, however, I may be heard my self.

Mr. Just. Jones. If any thing hath been omitted by your Council, which is material for your Defence, and you have Witnesses to prove it, they shall be called.

Mr. Just. Pemberton. Mrs. Price, you must know the Course of the Court, and the way of Evidence is, we are not to hear the Persons indicted make long Speeches to the Court, or to the Jury, or come with great Confidence to deny the thing that is prov'd against them; if you have any thing material to say, we will hear you by your Council; you must not trouble us.

Price. My Lord, I have Matter enough to say, but it can't be heard.

Mr. Sanders. We desire *Wright* may be call'd again.

Mr. Just. Jones. To what purpose?

Price. To prove that you, Mr. *Dugdale*, would suborn him.

Dugdale. Call him, if you will, if you can prove any Practices upon me.

Price. You have good Practices we know; you are a Man of excellent Practices; you had need commend your Practices. You know very well, Mr. *Dugdale*, that you told me you were perjured.

Mr. Recorder. 'Tis not Language fit for you to give.

Mr. Serj. Maynard. Is that Liberty of Speech fit to be given? She tells Mr. *Dugdale* that he said himself he was perjured.

Mr. Just. Pemberton. You are an impudent Woman to talk so.

Mr. Just. Dolben. Your Mouth must be stopped, if you can use your Tongue no better.

Mr. Just. Jones. What would you ask him when he does come?

Price. I have told my Council.

Mr. Sanders. She says she would ask him whether Mr. *Dugdale* did not offer him Money to suborn him in this Case. You are sworn already, Sir, are you not?

Wright. Yes.

Mr. Sanders. Then pray answer the Court this Question, Did Mr. *Dugdale* at any time offer you any Money to take an Oath, or give Evidence?

Wright. Offer me Money?

Mr. Sanders. Yes, you. Answer upon your Oath.

Wright. No, my Lord.

Mr. Sanders. Or any thing else did he offer?

Wright. No, my Lord. He hath often sent to me to come, and when I did come, hath said, I am glad you are come, I'll do you as great a Kindness; but he did not know of my coming, because his Messengers had not met with me.

Mr. Sanders. Did any one on his Behalf offer you any thing?

Wright. No, I think not; if it was, I think it was in vain.

Mr. Sanders. But did he, or did he not?

Wright. No.

Mr. Recorder. If Mrs. *Price* hath any more such Witnesses, she may call them.

Mr. Serj. Maynard. Sir, under your Favour, here hath been a strange way of Defence. Consider what a Crime we are upon, and in what Times we are. That there is a Plot of a very high and transcendent Nature under Question, that divers Witnesses have been suborned, and Persons tryed in this Place and convicted for it, 'tis undeniable. Now after Trials for so high a Crime in the most publick Way, here come *Price* and *Tasborough*; What to do? She indeed before, but both *Tasborough* and she afterwards, by Rewards, and such Temptations, endeavours to disgrace his Evidence; but there is not only that, but the great thing looked after by their Party, was, the Issue of it; upon this all the King's Evidence were to be hang'd. What hath been said is only to make a Jest, and make the Company merry, that there was a Contract of Marriage between them; but what will be the Consequence of that? He that spoke it, has unquestionably proved the Probability of our Charge, we have made it propable, and he hath proved it; and the Inference drawn by them is, She certainly did not tempt him, because she had an Interest in him, which concludes very naturally. But then for the other, Mr. *Tasborough*, Alderman *Barker* comes in, and swears the Gentleman is a very honest Man; I hope he did hear the Evidence, and then I wonder how he could swear it; but do we come to prove whether he be an honest Man in his Life? 'Tis not at all our Question; if we should have offered to have disparaged him in another way, we had not, I think, done our Duty, and the Court would justly have reproved us for it; but there is one thing, which if it had not been spoken, I would have held my Peace: How is *Tasborough* concerned in the Case? Divers have been questioned and executed for High-Treason, upon Mr. *Dugdale*'s Evidence; and after such an Execution, what is Mr. *Tasborough*'s Duty? It hath been represented as if he had been perswaded by her, and drawn in that way, and he thinking that it was a Falsity that had been sworn before, and that Mr. *Dugdale* repented of the Injury he had done them, he should help to make this Discovery. But what was he concerned? Did he go to a Justice of Peace, or any just way? Did he not contrive with the Devil rather than the Justice? 1000*l.* must be paid to draw off a Man, and corrupt him, to make him own himself perjur'd, in a truth that had been spoken. And this is not the first time that they have done it; for we remember the Case of *Reading* very well. I shall say no more, but

but this, under favour, it is not well to say, That a Man may perswade another to deny his Testimony, that is nothing concerned in the Case, in a Case of this publick Nature especially, and for Money too, that was never meant by the Law, and I hope is not meant ever to be countenanced here. I hope the Court will give that Caution to all that hear it, as will discourage any Attempts of this Nature for the future. And that it shall not be enough to excuse it, for him to say he was perswaded, and thought his Sorrow was real, and thereby to put the King's Witnesses to prove that thing to be true that they had proved already. What had Mr. *Tasborough* to do, as if he were a Judge of the Proceedings of the Court, and Witnesses? Nothing at all, under favour, but is a very ill Man, and as such I hope shall be punished.

Mr. *Just. Jones*. Gentlemen, you of the Jury; these two Persons have been Indicted for a very great Offence. The Indictment sets forth (that which we all know to be true) that *Whitebread*, and divers others, have been Tryed and Condemned for a very Execrable, Hellish, Popish-Plot: That upon these Indictments, Mr. *Dugdale* did give material Evidence; but that, when some other of the Conspirators were to be Tryed, and brought to Punishment, these two Persons did endeavour to make Mr. *Dugdale* absent himself, and retract his Evidence. And not only so, when *Harcourt* was to be brought to his Trial, (for whom it seems Mrs. *Price* had a particular Kindness) but likewise it was endeavoured, he should be gone, and not give any further Evidence at all, and he should have 1000*l.* for a Reward. This is the Indictment.

The Inducement to the Indictment (that is, the Trials of the Conspirators) is all well known: And there have been Copies of the Records produc'd, which have been inspected and perused by the Counsel on the Defendants parts; and they cannot say, but that the Records agree with the matter in that respect: So that there is nothing at all but the bare matter of Fact that you are to enquire into.

I shall distinguish the Persons: Mrs. *Price*, according to the Evidence, hath gone thro' the whole Charge of the Indictment; and indeed, hath committed some further Crimes than have been mention'd in the Indictment.

First, It hath been prov'd to you by Mr. *Dugdale*, That she did not only desire Kindness to *Harcourt*, who was her *Ghostly Father*; but she did design, as much as in her lay, that he should not come in at all to give Evidence against him: This is prov'd by Mr. *Dugdale*, and another Person that was by, that did hear Mrs. *Price* say, She would have him be kind to Mr. *Harcourt*, because he was her *Ghostly Father*: Withal tells you, That immediately after *Dugdale* did tell him, that she did persuade him he should absent himself, and not give Evidence against *Harcourt*.

She is likewise Charg'd (as they are both) that she did treat with Mr. *Dugdale* for to Retract all that he had said, to be gone, and to leave a Paper behind him, which should signify, That there was trouble of Mind upon him, and that he had done wrong in his Testimony given against the Catholics: Therefore he would be gone, and leave a Testimony of it in Writing, when he was gone. And she provides for his

Security abroad, and he should have 1000*l.* Reward.

Dugdale is the Person with whom the first Treaty was: But because he knew, and it was observed, that it was unsafe to deal with Persons that were tampering with him in such a nature as this was, and upon a matter of this kind, he does acquaint Persons of very great Quality, as he swears, my Lord of *Shaftsbury*, and two other Persons: They do advise him that he should get some Persons to be by when they should come to some further Treaties concerning this business; and to that purpose he should hold up a Correspondence, and condescend to a kind of Agreement and Compliance, that he might be able to have further Testimony to confirm his Evidence. Whereupon Dr. *Chamberlain* and his Servant are plac'd in a Closet in Mr. *Dugdale*'s Chamber, in such a Place, that they might hear what was discours'd in the Chamber; in comes Mrs. *Price*, they being in the Closet. Mr. *Dugdale* and she discours'd about the Business so loud, that Dr. *Chamberlain* and his Servant (as both of them tell you) heard their Discourse upon it: The Question was ask'd and put to Mrs. *Price*: Mrs. *Price*, I hope you know you are the Person that first mov'd this Intrigue; it began from you, and not from me: And this was confest by her. So that you have in confirmation of Mr. *Dugdale*, the Testimony both of Dr. *Chamberlain*, and of his Servant, to that part of the Charge against her. And withal, 'tis added, not only that he was to go beyond Sea, to retract what Evidence he had given; but likewise it was thought expedient he should come over again, and swear against all the rest of the Evidence that had been given, or should be given for the King. And when it was said by Mr. *Dugdale*, What will it avail you, if I do retract my Evidence? There is Mr. *Oates* and Mr. *Prance* to testify the same thing: She said, No matter for that; if we get you on our side for the Catholick Cause, to be our Friend, we shall be sure to baffle all they can say or do; and we shall not only save the Catholics, but turn the Plot upon the Heads of the Protestants, and all the King's Witnesses shall be hang'd. That you may remember was testify'd by some of the Witnesses.

Mrs. *Price* deals frequently with Mr. *Dugdale* to this purpose.

Dugdale, that he might know (and 'tis very like with that honest intention, and no other, he did it) and that he might discover the bottom of this Business, tells her, This is a thing of dangerous Consequence, and it is fit that I have better Security than your Promise of this 1000*l.* I will have some substantial Person that shall come and confirm what you promise. And thereupon she tells him, He should have a substantial Person brought, and he should have Thanks from very great Persons, naming the Duke of *York*; for he it was, as they said, that would take care to protect him, and procure a Pardon for him.

Now Gentlemen, this is the Evidence against Mrs. *Price*. In Defence of this what doth she offer, but that she hath been acquainted with Mr. *Dugdale*, and there hath been great Familiarity between them. If there had not been such a Familiarity, would there have been such an Intrigue? Is this a matter to be communicated to a Stranger? If there were a Doubt before, whether

ther there were this Contrivance, Does not this give us a better Assurance that it was so, because there was such an Acquaintance between them?

Then, as to Mr. *Tasborough*: He indeed is not in the beginning of the Design at all: There is no Evidence against him for that part of the Charge, *That he should absent himself, and not give Evidence against Harcourt*. He comes not in at that time; nor can I perceive by Mr. *Dugdale*, that he had any Acquaintance with him at all till the 12th of *October*; and he says he was but twice in his Company.

Now, Gentlemen, What does Mr. *Tasborough* do? First, *Dugdale* is told by Mrs. *Price*, That a Man of Quality should come to him, and confirm all the Promises she had made him. *Tasborough* does come to him, and tells him, He hath had some Discourse with Mrs. *Price*, what she had propos'd; and he is now come to make good and confirm, That all shall be effected that she had propos'd to him. Ay! but it is suppos'd, that Mr. *Tasborough* is a very honest Man, and a conscientious Man, and does come for nothing in the World, but to perswade Mr. *Dugdale* to do the Office of a Christian; it was a charitable thing of him, to take off the Scandal that was upon the Innocent. But you do not hear him charge it upon Mr. *Dugdale's* Conscience, that he had given a false Evidence against any of those Persons, nor urge him much to Repent. But he must be gone; he must give no more Evidence against the Catholics: And, What if he do comply with this desire? Then he tells him he shall have a Reward: What Reward? A Thousand Pound; which was made known before, and Protection, and Pardon, and Security: And he comes to him in the Duke of *York's* Name, to inforce it the more strongly upon him, and make him do it: Whereas, indeed, the Duke of *York* (as he himself and Mrs. *Price* have since confess'd) never knew any thing at all of the Business.

Now, Gentlemen, to move by honest Christian means, any one that hath done an Injury of any sort, to Repentance, and Contrition, and Recantation, that is a very good thing; but to do it with promise of a Reward of 1000*l.* can't be justify'd: What way is there to insinuate into any Person an Intention of doing a Mischief, but such a way as this? Will any one come to another, and say, forswear your self; whereas you know such a thing to be true, swear it to be false, or Retract the Evidence you have given about it, and I will give you 1000*l.* No, but serve the *Catholick* Cause; a great many have suffer'd, and by your Testimony; Retract, be gone, be secure, you shall have a Certainty, that you shall be secure in another Kingdom; or else you shall have it in a *Protestant* Family; tho neither that *Protestant*, nor any *Protestant* was nam'd.

Is not this a Bait to tempt a Man to all the Villany in the World? If 1000*l.* be offer'd, who can resist? Such People as these are will not easily resist such a Temptation.

But Mr. *Tasborough* is a very honest Man in his Life and Conversation; he produceth those that tell you his Reputation is good, and the like: There is no doubt of it, and if he had produc'd 20 Witnesses, do you think he would produce any one that should speak against himself? He chuses out those certainly as would speak as much

in his Favour as they can: But if a Man hath been an honest Man in his Conversation, may he not be intic'd or seduc'd? Especially when it will be told him, If you do this you shall merit Heaven, you shall be Sainted and Canoniz'd, you do the greatest Service in the World to the *Catholick* Cause.

These Temptations may work upon a Man, perhaps, that is morally honest, when he is infatuated with this Principle, That any thing may be done for the *Catholick* Cause; as it is a *Catholick* Doctrine too often instill'd into them, that any thing is become sanctified when it tends to that End; 'tis easy then to prevail upon them in Things of this Nature.

I should have told you (which I omitted before) one Circumstance concerning Matter of Proof against Mrs. *Price* more than *Tasborough*: Two Witnesses said they were in the Closet, and heard a Woman discourse, but neither of them did see her Face; but afterwards it is proved by another, that he was desired to observe who came into or went out of the House; and he swears he saw Mr. *Dugdale* and her come out of the House; That they went to the *Gatehouse*, and he saw her come again from the *Gatehouse* with Mr. *Dugdale*, and he is sure this is the Person. And you remember that part of their Discourse was of going to the *Gatehouse*.

Mr. *Just. Pemberton*. They do not deny it neither.

Mr. *Just. Jones*. I don't see they do.

Mr. *Just. Pemberton*. 'Tis a very strong and plain Evidence as can be given.

Mr. *Just. Jones*. There is nothing can be said for Mrs. *Price*, little for Mr. *Tasborough*.

Mr. *Just. Pemberton*. I see nothing that can do him any good.

Mr. *Just. Dolben*. Come Gentlemen, lay your Heads together and consider of the Matter.

Which the Jury did at the Bar: And being asked by the Clerk of the Crown, Whether they were agreed; they answer'd, Yes.

Cl. of Cr. Who shall say for you?

Omnes. Fore-man.

Cl. of Cr. Do you find the Defendants Guilty of the Trespas and Offence whereof they stand Indicted, or Not Guilty?

Fore-man. Guilty.

Mr. *Pollexfen*. As to part only for Mr. *Tasborough*.

Fore-man. Guilty of the Indictment.

Mr. *Just. Jones*. We all know he is not found Guilty of one part, and that must be consider'd at the setting of the Fine.

Mr. *At. Gen.* Mr. *Tasborough* hath been upon Bail, but I suppose he must not go upon Bail now; we pray that he may be committed.

Mr. *Just. Pemberton*. They must both be committed; take them both.

Mr. *Sanders*. Mrs. *Price* is still in the *Gatehouse*.

Mr. *Just. Pemberton*. We have her here now, she is in our Custody.

Mr. *Sanders*. If you please, Sir, we desire she may be remanded back.

Mr. *Just. Pemberton*. No, they shall go both into the *Marshal's* Custody.

Price. I beg of your Lordships I may go back to the *Gatehouse*.

Mr.

Mr. Just. Pemberton. What! These are not things to be trifled with.

Mr. Just. Dolben. No, we must not shew you any Favour at all.

Mr. Just. Pemberton. No, we must have no Favour for you that would destroy us all.

Then the Prisoners were taken into Custody by the Marshal, to be kept till their Judgment.

Afterwards John Tasborough was fin'd 100*l*. and Anne Price 200*l*.

XCI. *The Trial of BENJAMIN HARRIS, Bookseller, at Guild-Hall, for causing to be Printed, and Sold, a Libel, Entitled, An Appeal from the Country to the City, for the Preservation of His Majesty's Person, Liberty, Property, and the Protestant Religion. February 5, 1679. 32 Car. II.*

* Mr. RECORDER.



HOPE, this being a Matter to be tried in the City of London, Persons coming here in great Multitudes, come to blush, rather than to give Encouragement to it; and if we can give your Lordship, and this Jury, Satisfaction that this Person is guilty of the Offence, according as it is laid in the Information, I hope that both you and all others that shall hear it, (for I perceive there is a great Expectation this Day from this Cause) I hope, I say, you will abominate any Man that shall offer at any such like thing. Indeed we live in an Age where all sorts of Faction and Rebellion is countenanced, Magistrates reviled, and scandalized by some Persons, who think they have Authority so to do. It is just like such another kind of Religion, which some have now of late taken up, that rather than they will be thought to turn Fanaticks, they will turn plain Atheists, and others, who scorn to be either, downright Rebels. This Book is as base a Piece as ever was contrived in Hell, either by Papists, or the blackest Rebel that ever was: It seems to carry with it a fine Character, and has a Figure of all plausible Obedience to the Crown, to wit, *An Appeal, &c. for the Preservation of his Majesty's Person, Liberty, Property, and the Protestant Religion.* But if any of you have seen it, I hope you will be so far from giving any Countenance to it, as that you will, with me, think, 'tis so far from tending well to the Government, that it is only design'd to rake up all Sedition and Rebellion, and the very worst of all Rebellion. I must confess, I would rather have believed that it was only the sake of Lucre made him do what he did, for that would have somewhat extenuated his Crime, if he had not read it first; but then to go and have it Printed, and exposed to Sale, &c. this is a great Aggravation.

If the same sort of Insinuation had been used towards any private Tradesman, as hath been offered to the King and Magistrates, I believe

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there is no Man but would say, that e'er this time he might have hid his Head.

But Dissemblances of Pretences for the sake of the Protestant Religion now-a-days in his Shop will pass well enough, and Persons can tell you there how far you may go from hence to Rome with Safety; and after they have blackened their Mouths with Tobacco and Smoke, and do not rail against the Church and the Government, they are look'd upon strait as no Protestants.

But still as to this Person, the farther to urge it, by way of Aggravation upon him, he could vauntingly make his Boasts, when it was put home to him, Why he would venture to do such things, &c? That he had above a Thousand Persons who would stand by him in whatsoever he did.

† L. C. J. There was hardly ever † Sir William any Book more pernicious to set us Scroggs. together by the Ears than this, nor any thing a greater Incendiary; one can hardly write a worse —

Says he, *We in the Country have done our Parts in Chusing, for the generality, good Members to serve in Parliament; but if (as our Two last Parliaments were) they must be Dissolved, or Prorogued, whenever they come to redress the Grievances of the Subject, we may be pitied, but not blamed. If the Plot takes effect, (as in all probability it will) our Parliaments are not then to be Condemned, for that their not being suffered to Sit occasioned it.*

So that here is a sly way of casting it upon the King himself. And if it be not down-right Treason, I am sure, it is just upon the Heels of it. 'Tis a most abominable Piece.

Then were called the Witnesses, to prove that the Books were sold in his Shop; and after they were all sworn, first of all Mrs. Grover, a Printer's Wife, stood up, who confessed she had half a Dozen of them, but not of him; for he was either gone out, or not in the way, but she had them of his Man.

6 Q

Then

Then stood up one Mary Darby, and she said, she had four of them.

After her, Mr. Benjamin Tooke, at the Ship in St. Paul's Church-yard, Bookseller, was Examined, who said he saw several Quires of them in the Shop. And being asked by Mr. Harris, How he knew they were all those Books? He answered, That he turned over a great many of them, and found them all the same.

Mr. Recorder. My Lord, he was so mighty zealous of this Book, of so great Importance, no doubt, to his Party, that for fear he should be disappointed in time, he gave somewhat to hasten it.

Mr. Recorder. Call — the Printer's Man, and swear him. *[Who stood up, and was sworn.]*

Mr. Recorder. What did Mr. Harris give you, ha?

Printer's Man. He laid me down Six-pence.

L. C. J. And what, that was for hastening the Book, was it not?

Printer's Man. I cannot tell, Sir, not I, but he gave me Six-pence.

Mr. Recorder. And what, did you do it in the Day-time, was you not at it in the Night?

Printer's Man. Yes, I was upon it in the Night.

Mr. Recorder. Ay, it was a Deed of Darkness, and so fit for Night-work.

Mr. Serj. Strobe. My Lord, if it can be made out to your Lordship and this Jury, that he designed maliciously to scandalize the King and the Government by it, we must acquiesce; but that, my Lord, he absolutely denies; but seeing it running up and down the Town, he gets some of them, and suffers them to lie up and down in his Shop, and this only as a common thing to get Money, so that we suppose it may not lie within the Information, because it does not intentionally scandalize the King and the Government.

Mr. Williams. He in his Trade sold this Book, and that we admit; but my Lord, it is a material Part of the Information, that it was done with a malicious Design, &c. and we do not take it so; but for the other Matter we submit to it.

L. C. J. Then you do admit, that he did sell some of these Books.

Mr. Williams. We do, my Lord, that he did sell one.

Mr. Ollibear. My Lord, this Book was publickly sold in other Booksellers Shops before we had it, and so we thought in a way of Trade, we might do the like; but as soon as ever we heard there was any thing ill in the Book, we suppress'd the Selling of it.

Mr. Serj. Strobe. They say, my Lord, the Printer had Six-pence given him by Mr. Harris, — Friend, does not he come, and give you some Money at other times? Have you never had any of him before?

Printer's Man. No, Sir. I never Printed any thing for him before.

Mr. Serj. Strobe. Was not this Printed before you saw it?

Printer. Not to my Knowledge.

Mr. Serj. Strobe. Pray ask the first Witness. Was not this in Print before you saw it in his Shop?

Grover. Yes, my Lord.

Mr. Williams. My Lord, he is a Man of other Principles, than to do such things.

L. C. J. There is scarce any but Smith, that is so factious a Seller of Books, as Harris: All your Domestick Intelligences are so; for which, you know, you have forfeited your Recognizance almost in every Book.

A Neighbour was called by Mr. Williams, to give an Account of Mr. Harris.

Neighbour. My Lord, I have known him about a Twelve-month; and I have always looked upon him, to be a fair-conditioned, quiet, peaceable Man: He is, and has been so reputed among his Neighbours. And I have never seen any thing from him, but what was very quiet and peaceable.

Mr. Recorder. A Bookseller that causes a Factious Book to be Printed, or Re-printed, if it was Printed before, is a factious Fellow.

L. C. J. You say right.

Mr. Goodhall (another Neighbour of Mr. Harris's) said, upon his being asked, if he were acquainted with him? And, if he were wont to oppose, or to scandalize the King or Government? That he never heard such a like thing of him.

Mr. Recorder. I presume that none of these do stand by him in any such thing: But he, being advertised of it, and being asked, Why he would offer to expose to Sale such a Book as this? He answered and said, That he had a Thousand Persons that would stand by him.

Call Robert Stevens.

L. C. J. What can you say?

Robert Stevens. My Lord, I have seen this Book several times in his Shop, and others too. And I have asked him, Why he would so publickly vend them? (I did not indeed buy one of them my self, but I caused a Man to buy one for me) and he said, He had several Thousands to stand by him: And he is accounted an Anabaptist. He said so before the Master and Wardens of the Company; who question'd him, why he sold such scandalous things? And he said he had several Thousands to stand by him.

Then spake the Lord Chief Justice to this Purpose.

Because my Brother shall be satisfied with the Opinion of all the Judges of England, what this Offence is, which they would insinuate, as if the meer Selling of such a Book was no Offence: 'Tis not long since, that all the Judges met, by the King's Command; as they did some time before too: And they both times declared unanimously, That all Persons that do Write, or Print, or Sell any Pamphlet, that is either scandalous to Publick, or Private Persons; such Books may be seiz'd, and the Person punish'd by Law: That all Books, which are scandalous to the Government may be seiz'd; and all Persons so exposing them, may be punish'd. And further, That all Writers of News, though not scandalous, seditious, nor reflective upon the Government or the State; yet if they are Writers (as there are few others) of false News, they are Indictable and Punishable upon that Account.

So

So that your Hopes of any thing of that kind, will be vain; for all the Judges have declared this Offence, at the Common-Law, to be punishable in the Seller, though in the way of his Trade: The Books may be seized, and the Person punished.

As for this Book, in particular; you can hardly read a more base, and pernicious Book, to put us all into a Flame: It gives you such Incitements, and such base Encouragements, with such Reflections upon all sorts of Persons, (for I have read it upon this Account) that I think, there can scarce be a worse made. He would set up another Man, that has no Title to the Crown: For (says he) *the greatest Danger accruing to your Persons, as well as to the whole Kingdom, upon the King's untimely Death, will proceed from a Confusion, and Want of some Eminent and Interested Person, whom you may trust to lead you up against a French and Popish Army: For which Purpose, no Person is fitter than his Grace the Duke of Monmouth; as well for Quality, Courage, and Conduct, as for that his Life and Fortune depends upon the same Bottom with yours. He will stand by you; and therefore, you ought to stand by him. And remember the old Rule is, He who hath the worst Title, ever makes the best King; as being constrained by a Gracious Government, to supply what he wants in Title: That instead of GOD and my Right; his Motto may be, GOD and my People.* He says, *Such a one would make a better King; for, as you see, the Worse the Title, the Better the King. A King with a Bad Title, makes a Better King, than he that hath a Good One; for, he shall be obliged to comply with, and will humour the People, for want of a Title.* A Thing, which is of the basest Nature that can be: And yet this Man must give Money to hasten the Printing of such a Book; and he had several Quires of them in his Shop. Except the Writer of it, there cannot be a worse Man in the World; who, for trivial Profit, will neglect the Peace and Quiet of his Country, and set us all together by the Ears for a Groat. And, Mr. Harris, if you expect any thing in this World, of this kind of Favour, you must find out the Author; for he must be a rebellious, and a villainous Traitor: For, though he seems to inveigh against Popery, it is only to be a Rebel. And certainly, he has rejected all the Laws of God, and all Obedience that Man requires; and prophaned all Holy Writ. He is some Body, whose Fortune does not suit with his Condition; and who, because he is not at Ease and Quiet himself, will let no body else be so neither.

[Speaking to the Jury, who presently withdrew.]

You have nothing more to do, but to give your Verdict:

If there be any thing in Law, let me know it, because you go out.

Then one of the Jury asked my Lord, if they might not have the Book with them, which was there in the Court, and it was answered in the Negative.

Before the Jury went out, Mr. Harris would

fain have spoke to them for himself, but it was not permitted him.

Then, after a little while tarrying, they returned to the Bar.

And being, as is usual, asked if they were agreed on their Verdict, and who should speak for them; they answered, Yes; and appointed their Fore-man, who said he was Guilty of Selling the Book.

At which there was a very great and clamorous Shout.

Lord Chief Justice said, that was not their Business, they were only to determine whether barely Guilty, or Not Guilty.

The Recorder would have had them given their Verdict by the Poll, but they all unanimously cried out, they were all agreed, and then the Fore-man gave the Verdict again, Guilty.

Mr. Recorder then prayed, he being for the King, that Mr. Harris might stand Committed; Who was thereupon presently delivered to a Tipstaff, to be carry'd to the King's-Bench.

Mr. Harris earnestly beseeched his Lordship, that he might be sent to any other Prison, and named Newgate three or four times, but it was not granted him: Thereupon he said, I hope God will give me Patience to go through it.

Then my Lord Chief Justice spake to the Jury to this Effect.

I am sorry you gave Countenance to this Cause so much, as to stir from the Bar, when the Evidence was so full, and when I told you plainly, not only my Opinion, but likewise that of all the Judges of England, that selling this Book was an Offence at the Common Law, for which they ought to be punished: And yet with your Scruples, you give the Party (with their Hollows, and Shoutings) to take Advantage; though you did mean upon the Matter the same thing then, you do now: yet you see, upon every little Occasion, when a thing shall seem to thwart the Government, how ready they are to send up their loud Hollowings. It was not so prudently done as might have been done.

We had need look about us, for if at such a Time, and for such a base Book, such clamorous Noises shall be made, what shall become of us? Our Lives and Fortunes are at stake. Would I knew some of those Shouters, I would make them know, I would punish them: I am incensed in the Behalf of the Government, and of all our Lives and Fortunes, that such shall go unpunished.

He afterwards received Sentence in the Court of King's-Bench, to pay 500*l.* Fine; stand on the Pillory an Hour; and find Sureties for his Good Behaviour for Three Years; and had it not been for Mr. Justice Pemberton, the Chief Justice would have added, That he should be publicly Whipt.



XCII. *The Trial of FRANCIS SMITH, Bookseller, at the Guild-Hall of London, for Publishing a Libel, February 7, 1679. Hil. 32 Car. II.*

The Jury being Sworn, Mr. Holt opened the Information.

Mr. Holt.  AY it please your Lordship, here is an Information preferr'd in behalf of the King against *Francis Smith, Bookseller*: And it sets forth, That after *Sir George Wakeman, William Marshal, William Rumley, and James Corker*, were Indicted and Try'd on the 18th of July, 1679, for divers High-Treasons, at the *Sessions-House* in the *Old-Baily*, before *Sir James Edwards*, then Lord-Mayor of *London*, and the Lord Chief Justice *Scroggs*, and others; the Defendant, *Francis Smith*, publish'd a scandalous Libel relating to the late Trials, which was intitled, *Some Observations upon the late Trial, &c.* the Words are particularly set forth in the Information; to which the Defendant pleads Not Guilty: But if we prove it upon him, you of the Jury are to find for the King; and if you find he is Not guilty, you are to say so, and no more, &c.

Then Mr. Recorder spake to this Effect.

Mr. Recorder *. My Lord, I am of Council against the Defendant for the King, who stands inform'd against for a very great Offence. The Information particularly sets forth, That whereas some certain Persons were Indicted at the *Sessions-House* in the *Old-Baily*, before the then Lord-Mayor, *Sir James Edwards*, and other Persons then in Commission of Oyer and Terminer, and Gaol-Delivery for that Place, and particularly my Lord Chief Justice *Scroggs*; and after the Trial was over, and the Persons thereupon acquitted, there was a Book, which is mentioned in the Information, printed and publish'd, and it is a Book that is known by the Name of *Tom Ticklefoot*; a very abusive thing; but Persons now begin to grow wonderful witty in the beginning of their Books, in hopes to insnare People to read them, and to prevail upon them so far as to make them believe there is somewhat extraordinary by the Title. You see, Malice finds out all the Ways in the World to insnare and gain upon the People, to so bad an Age are we come.

But I confess, it is the second Time ever since I had the Fortune or Happiness to know this City of *London*, that I have known such Expectations, as have been upon two Causes in this Place: The first was but two Days ago, the

second is at this Time; wherein is truly a sort of Countenance, I am afraid, too much given by Persons that dare pretend to be no other sort of Protestants, but can impudently outface all sort of Governors. Now, as all Persons ought to abhor and detest that damnable Doctrine, That Men hope to be Saints in another World, because they may commit Murders in this; so this ought too as much to be condemn'd by all Protestants as the other, That Men shall endeavour to rebel, and be factious in this World, that so they may be reckon'd good Subjects; the one are as far from being good Saints, as the others from being good Subjects. I take this Occasion to speak all this before your Lordship and this Court, because I hope the City of *London* will never be corrupted by the base Insinuations of some idle Busy-bodies in it; Men, who cannot, or will not be pleas'd, because (forsooth) every thing does not go according to their Mind and Fancy; and tho' by no means they will allow the *Pope* to be *Infallible*, yet every factious Fellow will expect, that every one should pay him the Tribute of *Infallible*, as if he were the only fit Person to give Measures to Government and Governors.

When we come to have extraordinary Cases and Persons, extraordinary Occasions ought to be taken to inflict due and just Punishments upon them.

And when they shall dare to come to disparage *Great Men* that act by *Supreme Authority*, Men that act by their *Consciences*; and because they cannot be steer'd by the Humours of these sort of People, therefore they must be look'd upon as *Papists*, or at least as *Brib'd*, because they cannot comply with that base Humour which some sort of Persons have.

I take notice of this to your Lordship, because one that is intrusted in as great a Place for the Welfare of this Nation, as any whosoever, is extremely concern'd in the Affair of this Day; I mean, the *Lord Chief Justice of the King's-Bench*; who being assisted with several other Judges, as far forth as it did appear to him, did deliver the Sense of the whole Court; who, for acting according to his Conscience, and as he ought to do, hath been *Libelled* and *Reproached* with as base a Book as ever was written against any Magistrate whatsoever: If such things as this shall be permitted, then there will be an end of your Lordship's sitting here, or anywhere else, or of any other that shall act as a Magistrate ought to act, and that shall not be afraid to do his Duty. But such is the Happiness of this

* *Sir George Jefferies.*

this City, in this Jury, that, I must confess, I receive so much the greater Satisfaction that it comes before them; for as I know the Men to be Men of Loyalty and Affection to the Government, and will be so just to him, that if they do not find him Guilty of the Matter of the Information, they will acquit him: So, on the other side, they will not think themselves to be aw'd by a Multitude, or inflav'd by private Insinuations, to debase their Consciences, either in respect to God above, or to the King his Vicegerent here on Earth; therefore observe your Duty to both, that you may render to *Cæsar* the Things that be *Cæsar's*, as well as to God the Things that are God's.

Now as the King is God's Vicegerent, so is every Magistrate the King's Vicegerent, in that Particular.

I would not take up so much of your Lordship's Time, but that I see this is a Matter of great Expectation; and I know that every Word is taken in Short-hand, to be commented upon as Persons Humours shall steer them. I do think, as being the Mouth of the City of London, it is my Duty to speak thus much, that I hope, nay, I may dare confidently affirm, that the Generality of the City of London, all good Men, and Men of Abilities, &c. are for the King, and the Government as it is now Establish'd by Law.

[At which there was a general Hem thro' the Court.]

Having said thus much against this Person, Mr. Francis Smith, I must say, That if the way of common Report were Evidence enough to convict a Man, he would be convicted without any more ado: But such is the Happiness of our Laws, that they expect Testimony, besides common Fame.

I would rather a great deal it might be a Caution to Mr. Smith, if there had not been many before, and that he could not be convicted, and the Evidence not plain in Proof against him.

Well, he printed this Book in the Name of another Person, one Mrs. Brewster: He sold several of them in Quires to several People; and Brewster questioning wherefore he should put her Name to this Book: Truly, he said, he intended no Harm to her, for he was resolved to save her harmless; and this we will prove to you; and likewise that several Books have been taken in his Shop; and he justifying himself in what he had done, and his further Resolution to expose them still to Sale. And if we shall prove this to you, there will be an End of all sort of Justice, if in case that you, who are the only Means of bringing Men to Justice, will not contribute to have Justice executed where it ought to be: None can be legally punished, unless they be legally convicted; and I doubt not your Honesty and Loyalty, but that you will do your Part by Conviction, and by Justice too.

Against all Libellers, I am sure, there is Law enough, and every honest Man will endeavour to have it put in Execution against them, as far forth as it lies in his way: I hope the Generality of those that are here, do come to shew an Abhorrency against this Person informed against, and not to give any Countenance to such base Actions.

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Mr. Williams. [Council for the Defendant.] My Lord, the Libel is sufficiently infamous, we must needs own; and I do not come to justify the Thing, neither Mr. Smith my Client, nor any body else that shall be guilty of it: The Question is, Whether he be Guilty of, &c. as it is laid in the Information.

Mr. Recorder. Sir, do you admit the Record?

Mr. Just. Jones. If you do not admit it, you must call in your Witnesses, and prove what you can.

Whereupon Robert Stevens, Anne Brewster, and Margaret Clark were call'd into Court, and stood up behind the Jury.

Mr. Williams. Sir, if you will give me leave, you shall hear what we will admit.

Mr. Recorder. Come, come, Sir, if you do not admit the Record, we will have none of your Anticipations.

Mr. Williams. What call you your Speech but Anticipation?

My Lord, the poor Man, my Client, is a languishing, sick and dying Man, and one that is almost ruin'd; if any Submission will serve the Turn, he will give all the Submission that is fit for a Man to give: All that we say is this, that he did not order this to be printed, as it is laid in the Information. — But I think we may admit —

Mr. Fettiplace said [Who was Council on the same Side.] he had no such Order given him by his Client, as to admit the Record.

Then they were just going on to swear the Witnesses, but Mr. Just. Jones said, It would be very well if they would admit, &c. and the Defendant come to Submission.

Mr. Recorder. Ay, that is your best way; for it would be a great Means to testifie, that your Submission is really intended as a Submission: But if it be to prepare us to think, that you are innocent, then we will not have your Submission. — And I am for a Sinner's Repentance with all my Heart.

Mr. Just. Jones. If your Client be willing to submit, let the King have a Verdict in Law, and then he will find my Lord Chief Justice Scroggs full of Pity and Compassion; and if I can see any Signs of Repentance, I will promise you to intercede to my Lord for him.

Mr. Williams. One that came from my Client told me, that if he had offended, he would submit to any thing: And now here is his Wife come.

Mr. Just. Jones. I would save him if I can, if he will throw himself into Mercy.

Well, what do you say, Mistress, for your Husband?

Mrs. Smith. My Lord, my Husband is very sick and weak, and is not able to come himself, or else he would have done it; but I ask'd Mr. Williams if it were not best to submit to the Court.

Mr. Just. Jones. Are you content to own it shall be so?

Mrs. Smith. I leave it to the Gentlemen, my Council; I shall acquiesce in what they think fitting.

Mr. Williams. Then I presume to admit the Record.

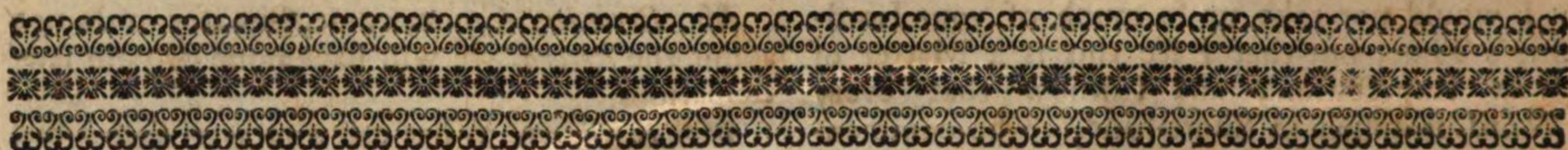
Mr. Just. Jones. Then you are to find for the King: [*Speaking to the Jury.*] 'Tis the Cause of the King, altho' only my Lord Chief Justice be concern'd. 'Tis a high Scandal; a great Scandal against a great Officer and Magistrate of the King. I will say nothing more to aggravate the Offence at this Time, because I would invite Repentance in all Persons that have offended in this, or the like Cases.

Then the Jury being asked, Whether they were agreed on their Verdict, said, Yes; and chusing their Fore-man to speak for them, he gave the Verdict, Guilty.

Mr. Just. Jones. Well, Mistress, you have done very well; if, now you for your Husband came here to make a publick Acknowledgement of his Guiltiness, hereafter he shall go, and ingenuously make Submission to my Lord; I know he is a Person of that Pity and Compassion, that he loves no Man's Ruin, but delights rather in the universal Welfare of all People: And I promise this, that I will be an Intercessor to my Lord in your Husband's Behalf.

Mr. Recorder. And as far forth as I can contribute to it, I will do the same.

He afterwards submitted to a small Fine.



XCIH. *The Trial of JANE CURTIS, for Publishing the same Libel.* 1679. 32 Car. II.

Mr. Holt.  AY it please your Lordship, and Gentlemen of the Jury, here is an Information brought against *Jane Curtis*; and it sets forth, That the Defendant did publish and put to sale a seditious Libel against my Lord Chief Justice *Scroggs*: The Defendant pleads Not Guilty; if we prove it upon her, you are to find for the King; and if not, you are to say so, and no more.

Mr. Williams said [*Who was a Council for the Defendant.*] he would admit the Record: Whereupon they proceeded no further to Trial, but the Woman being call'd, she said:

Mrs. Curtis. I was ignorant in the Matter, and knew no such thing, my Lord; my Husband, an't please your Lordship, was in the Country a hundred Miles off of me, in *Lincolnshire*.

Mr. Just. Jones. You did it ignorantly and simply, without any Malice, and, I suppose, you are heartily sorry for it. You see your Neighbour there, *Mrs. Smith*, hath shew'd good Discretion in the Behalf of her Husband; she has ingenuously declar'd, that he shall come and make Submission; and if I find you as submissive, and as sorry for what you have done, I may do the like for you.

Mrs. Curtis. In any thing that I have done, I know not my self Guilty; and if I am, I beg your Lordship's Pardon with all my Heart, my Lord, or any Body's else.

Mr. Just. Jones. I know you will find Mercy from my Lord Chief Justice, and therefore go and make your Submission.

Then the Jury proceeded to give their Verdict, and their Fore-man said, Guilty.

The End of the SECOND VOLUME.



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